



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

Regular Meeting Agenda

**4:00 p.m., December 5, 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:** Nov. 7 and Nov. 14 Regular Meetings and the Nov. 21 Special Meeting

### **Approval of Agenda**

**1) Open Sealed Bids:** 2024 Asphalt Paving Project and refer to the Engineering Department

**2) Legal/Fire Departments request:** Approve the Memorandum of Understanding (MOU) between the City, **Joseph Cestone**, and Goshen Firefighters Association Local No. 1443 and authorize the Mayor to execute the MOU

**3) Clear Creek Associates request:** Approve the use two parking spaces on W. Washington Street, Dec. 13-Dec. 18, to place a dumpster for the disposal of items from The Famous building

**4) Kauffman Construction requests:** Approve the placement of building improvements in the City's right of way at **103 North Fifth Street**, which was formerly Tony's Famous Grill

**5) Legal Department request:** Approve and authorize the Mayor to execute agreements with Chamber of Commerce of Goshen, Downtown Goshen, Inc. for its administrative, façade and First Fridays programs, Goshen Theater, Inc., Lacasa, Inc., South Bend Elkhart Regional Partnership, and Warsaw Housing Authority for the services described in each agreement

**6) Legal/Fire Departments request:** Approve the agreement of the City and TouchPhrase Development, LLC, dba as **Julota**, and authorize the Mayor to execute the agreement

**7) Legal/Police Departments request:** Approve Resolution 2024-29, *Approving Revised City of Goshen Police Department Policies and Repealing Certain Policies*

**8) Legal Department request:** Approve Resolution 2024-31, *Declaring Surplus and Authorizing the Disposal of IT Equipment*

**9) Legal Department request:** Approve Resolution 2024-30, *Declaring Surplus and Authorizing the Disposal of Vehicles and Equipment*

**10) Legal Department request:** Approve Consignment Agreement with **Bright Star Realty and Auctions, LLC**



- 11) Legal/Parks & Recreation Departments request:** Approve the agreement with **DJ Construction** as presented, and authorize the Mayor to execute the agreement
- 12) Legal Department request:** Approve and authorize the Mayor to execute the agreement with **Peerless Midwest, Inc.** for Hydrogeologic Services to Drilling and Development for Well #TW-24F at a cost of \$162,665
- 13) Legal Department request:** Accept the easement at **1304 East Lincoln Avenue**
- 14) Legal Department & Clerk-Treasurer's Office request:** Approve and authorize the Mayor to execute the service agreement with **Ricoh USA** for the new copier for City Hall
- 15) Legal Department request:** Approve and authorize the Mayor to execute the amendment agreement with **Rowell Chemical Corporation** to renew for one (1) year to purchase and supply of Sodium Hypochlorite
- 16) Legal Department request:** Approve and authorize the Mayor to execute the amendment agreement with **PVS Technologies, Inc.** to renew for one (1) year to purchase and supply of Ferric Chloride
- 17) Water & Sewer Office request:** Move \$1,801.13 in uncollected finalized accounts from active to collection, sewer liens and write offs for the period through Aug. 12, 2024
- 18) Engineering Department information:** The City Traffic Commission has asked Engineering staff to request that the Indiana Department of Transportation make pedestrian **crossing safety improvements at Main Street and College Avenue**
- 19) Engineering Department request:** Approve the installation of three speed limit signs and the relocation of the curve ahead warning sign closer to the curve on **Chicago Avenue**
- 20) Engineering Department request:** Approve the release of the 1-year maintenance bond of \$213,424.68 posted by **Niblock Excavating** and accept the asphalt paving project for permanent maintenance
- 21) Engineering Department request:** Approve Agreement with **Middlebury Electric** for the 2025 Utilities Electrical Maintenance for \$47,270 per year for three years
- 22) Engineering Department request:** Approve and authorize the Mayor to sign the agreement with **Abonmarche Consultants** for \$198,000 to provide design and bid support services for the Eisenhower Drive and Caragana Court Reconstruction project

## **Privilege of the Floor**



**CITY OF GOSHEN STORMWATER BOARD**

**4:00 p.m., Dec. 5, 2024**

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

**Members:** Mayor Leichty, Mike Landis and Mary Nichols

**23) Accept the post-construction stormwater management plan amendment:** For **Brinkley RV** - Building #1 Additional Parking as it has been found to meet the requirements of City Ordinance 4329

**CITY BOARD OF PUBLIC WORKS & SAFETY PUBLIC HEARINGS:**

**4:00 p.m., Dec. 5, 2024**

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

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

**24) Review of the Order of the City of Goshen Building Commissioner for 423 North 5th Street** (Ronald E. Davidhizar, property owner)

**25) Review of the Order of the City of Goshen Building Commissioner for 511 North 5th Street** (Ronald E. Davidhizar, property owner)

**26) Review of the Order of the City of Goshen Building Commissioner for 513 North 5th Street** (Ronald E. Davidhizar, property owner)

**Approval of Civil City and Utility Claims**

***Adjournment***



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD  
MINUTES OF THE NOVEMBER 7, 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:** None

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

**REVIEW/APPROVE AGENDA:** Mayor Leichty presented for Board consideration the minutes of the Oct. 31 Regular Meeting as prepared by Clerk-Treasurer Aguirre. Board member Mary Nichols made a motion to approve the minutes as presented. Board member Barb Swartley seconded the motion. Motion passed 5-0.

**REVIEW/APPROVE AGENDA:** Mayor Leichty presented the agenda as prepared by the Clerk-Treasurer with the suggested deletion of agenda item #7, *Legal/Fire Departments: Approve the Memorandum of Understanding (MOU) between the City, Joseph Cestone, and Goshen Firefighters Association Local No. 1443 and authorize the Mayor to execute the MOU.* Board member Nichols made a motion to approve the agenda as amended. Board member Swartley seconded the motion. The motion passed 5-0.

**1) Open Sealed Bids: For the services of a Construction Manager as Constructor for preconstruction and construction services required for the renovation of and improvements to the City Annex Building**

In a Nov. 4, 2024 memorandum to the Board, Assistant City Attorney Don Shuler reported that the City solicited sealed proposals for the services of a Construction Manager as Constructor for preconstruction and construction services required for the renovation of and improvements to the City Annex Building.

Shuler wrote that all sealed proposals were due by 3:45 p.m. on Nov. 7 to the Clerk-Treasurer's Office or by 4 p.m. at the Board's meeting. He asked that the Board open all sealed bids submitted, identify the bidders, and return all proposals to the Legal Department for review.

Mayor Leichty asked if there are any additional bids to be submitted to the Board. There were not. The Mayor then announced that the following proposals were received:

- DJ Construction, Goshen, IN
- Shawnee Construction and Engineering, Inc., Fort Wayne, IN
- Shiel Sexton Co., Indianapolis, IN
- Tonn and Blank Construction, Michigan City, IN
- Ziolkowski Construction, Inc., South Bend, IN

Nichols/Swartley made a motion to forward all sealed proposals to the City Legal Department for review. The motion passed 5-0.

**2) Fire Department request: Approve the promotion of Garrett Sheline to Captain**

Assistant Fire Chief Anthony Powell asked the Board to approve the promotion of Lieutenant Garrett Sheline to the rank of Captain within the Goshen Fire Department.

Chief Powell said Lieutenant Sheline "has exemplified dedication and professionalism throughout his service, consistently upholding the department's mission and values. His proven leadership abilities and commitment to excellence make him an outstanding candidate for this promotion. I am confident that Lieutenant Sheline's promotion to Captain will further enhance our department's capabilities and service to the community."





Nichols/Swartley made a motion to approve the promotion of Lieutenant Garrett Sheline to the rank of Captain with the Goshen Fire Department. The motion passed 5-0.

*After the Board's action, Mayor Leichty swore in Garrett Sheline as a Goshen Fire Captain.*

**3) Fire Department request: Approve the promotion of Matt Stamm to Lieutenant**

**Assistant Fire Chief Anthony Powell** asked the Board to approve the promotion of **Sergeant Matthew Stamm to the rank of Lieutenant** within the Goshen Fire Department.

**Chief Powell** said Sergeant Stamm "has exemplified dedication and professionalism throughout his service, consistently upholding the department's mission and values. His proven leadership abilities and commitment to excellence make him an outstanding candidate for this promotion. I am confident that Sergeant Stamm's promotion to Lieutenant will further enhance our department's capabilities and service to the community."

**Nichols/Swartley made a motion to approve the promotion of Sergeant Matthew Stamm to the rank of Lieutenant with the Goshen Fire Department, effective Nov. 9, 2024. The motion passed 5-0.**

*After the Board's action, Mayor Leichty swore in Matthew Stamm as a Goshen Fire Lieutenant.*

**4) Fire Department request: Approve the promotion of Charles Stevens to Sergeant**

**Assistant Fire Chief Anthony Powell** asked the Board to approve the promotion of **Firefighter Charles Stevens to the rank of Sergeant** within the Goshen Fire Department.

**Chief Powell** said Firefighter/Paramedic Stevens "has exemplified dedication and professionalism throughout his service, consistently upholding the department's mission and values. His proven leadership abilities and commitment to excellence make him an outstanding candidate for this promotion. I am confident that Firefighter/Paramedic Stevens' promotion to Sergeant will further enhance our department's capabilities and service to the community."

**Nichols/Swartley made a motion to approve the promotion of Firefighter Paramedic Charles Stevens to the rank of Sergeant with the Goshen Fire Department. The motion passed 5-0.**

*After the Board's action, Mayor Leichty swore in Charles Stevens as a Goshen Fire Sergeant.*

**5) Fire Department request: Approve the hiring of John Kauffman as a Probationary Firefighter/Paramedic**

**Assistant Fire Chief Anthony Powell** asked the Board to approve the hiring of **John Kauffman as a Probationary Firefighter/Paramedic** the Goshen Fire Department, effective Nov. 8, 2024.

**Chief Powell** said Kauffman "brings valuable skills and a strong commitment to serving our community, which will be an asset to our department. His qualifications align well with the high standards we uphold, and I am confident he will make a positive impact as part of our team."

**Nichols/Swartley made a motion to approve the hiring of John Kauffman as a Probationary Firefighter/Paramedic with the Goshen Fire Department, effective Nov. 8, 2024. The motion passed 5-0.**

*After the Board's action, Mayor Leichty swore in John Kauffman as a Probationary Firefighter/Paramedic.*

**6) Fire Department request: Approve the promotion of Captain Phil Schrock to Assistant Chief of Administration**

**Assistant Fire Chief Anthony Powell** asked the Board to approve the promotion of **Captain Phil Schrock to the rank of Assistant Chief of Administration.**

**Chief Powell** said Captain Schrock "has consistently demonstrated unwavering dedication to our department's mission and values. His leadership and commitment to fostering positive change have made a significant impact on our team, and his deep understanding of our operations uniquely qualifies him for this role."

"Captain Schrock's success in his previous roles showcases his ability to adapt and innovate, ensuring that he brings both experience and a forward-thinking perspective to this essential position."



"I am confident that his promotion will further strengthen our administrative leadership and enhance our department's service to the community."

**Nichols/Swartley made a motion to approve the promotion of Captain Phil Schrock to the rank of Assistant Chief of Administration, effective Nov. 9, 2024. The motion passed 5-0.**

***After the Board's action, Mayor Leichity swore in Phil Schrock as Assistant Chief of Administration.***

**8) Legal & Fire Departments request: Approve the agreement between Brycer, LLC and the City, for the benefit of the Fire Department, for the provision of "The Compliance Engine" software, and authorize the Mayor to execute the agreement**

In a Nov. 4 memorandum to the Board, **Assistant City Attorney Don Shuler** wrote that an agreement attached to the Board's agenda packet proposed a collaboration between the Goshen Fire Department and Brycer, LLC to implement "The Compliance Engine" solution for the Department. This solution is intended to streamline the tracking and management of fire inspection reports.

**Shuler** recommended that the Board approve and authorize the Mayor to execute the agreement. Under the agreement, Brycer will provide the Goshen Fire Department with access to The Compliance Engine at no direct cost. **Shuler** said Brycer will handle fees associated with third-party inspectors, who will submit fire inspection reports into the system for oversight and follow-up. The agreement includes safeguards on data ownership, system uptime, and client support, ensuring Brycer's responsibilities align with the Department's operational needs.

In response to a question from **Board member Landis**, **Shuler** clarified the costs of the agreement. **Mayor Leichity** asked that the City's Technology staff check the software for security purposes before it is implemented.

**Nichols/Swartley made a motion to approve the agreement between Brycer, LLC and the City, for the benefit of the Fire Department, for the provision of "The Compliance Engine" software, and authorize the Mayor to execute the agreement. The motion passed 5-0.**

**9) Legal & Fire Departments request: Approve and authorize Mayor Leichity to execute the Agency Designated Endowment Fund Agreement with the Community Foundation of Elkhart County to support the Goshen Fire Department Danny Sink Regional Training Facility**

**City Attorney Bodie Stegelmann** recommended that the Board approve and authorize Mayor Leichity to execute the attached Agency Designated Endowment Fund Agreement with the Community Foundation of Elkhart County that would establish an endowment fund to support the Goshen Fire Department Danny Sink Regional Training Facility.

**Stegelmann** added that the required signature on the agreement was changed from **Chief Powell** to **Mayor Leichity**.

**Nichols/Swartley made a motion approve and authorize Chief Anthony Powell to execute an attached Agency Designated Endowment Fund Agreement with the Community Foundation of Elkhart County to support the Goshen Fire Department Danny Sink Regional Training Facility. The motion passed 5-0.**

**10) Legal Department request: Approve and authorize the Mayor to execute the agreement with Barkes, Kolbus, Rife & Shuler, LLP for the provision of legal services**

**City Attorney Bodie Stegelmann** recommended that the Board approve and authorize the Mayor to execute the attached agreement with Barkes, Kolbus, Rife & Shuler, LLP for the provision of legal services in 2025.

**Stegelmann** said for 2025, the bi-weekly salary paid to **Jim Kolbus** to act as Planning and Zoning Attorney is \$358.45, and the hourly rate paid to **Don Shuler** to act as Assistant City Attorney is \$54.57 (as provided in Ordinance 5198 for 2025 Compensation for Civil City and Utilities Employees). He's expected to work 20 hours per week.

**Stegelmann** said the firm will be paid \$222 per hour for all other services rendered on behalf of the City or its departments, provided such services are not covered by the compensation paid to Jim Kolbus as Planning and Zoning Attorney, or the compensation paid to Don Shuler as Assistant City Attorney.



The firm will be compensated \$276 per hour for projects where City's legal fees are paid from a non-City funding source.

**Nichols/Swartley made a motion approve and authorize the Mayor to execute the agreement with Barkes, Kolbus, Rife & Shuler, LLP for the provision of legal services. The motion passed 5-0.**

**11) Legal Department request: Approve and ratify the Mayor's execution of Amendment No. 1 to the contract for Solid Waste Collection Services with Waste Management of Indiana, L.L.C., which would approve a 3.8% increase in unit rates effective Oct. 9, 2024**

**City Attorney Bodie Stegelmann** recommended that the Board approve and ratify the Mayor's execution of Amendment No. 1 to the Aug.10, 2022 Contract for Solid Waste Collection Services with Waste Management of Indiana, L.L.C. The contract provides for an adjustment in rates that may not exceed the annual percentage change for the previous calendar year as set forth in the Consumer Price Index. An adjustment could be requested beginning April 1, 2024.

**Stegelmann** said the original contract language states that an adjustment may be made no more frequently than once every April 1st. The amendment revises this language so that a rate adjustment may be made no more frequently than once every 12 months.

**Stegelmann** said Waste Management requested a rate adjustment on Oct. 9, 2024. The annual percentage change for 2023 as set forth in the Consumer Price Index was 3.8%. Amendment No. 1 is to approve in writing a 3.8% increase in the unit rates. The adjusted unit rates shall be effective for services provided by Waste Management beginning Oct. 9, 2024.

**Nichols/Swartley made a motion to approve and ratify the Mayor's execution of Amendment No. 1 to the Contract for Solid Waste Collection Services with Waste Management of Indiana, L.L.C. The motion passed 5-0.**

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

**Mayor Leichthy opened Privilege of the Floor at 4:24 p.m. There were no public comments.**

However, **Mayor Leichthy** said that Friday, Nov. 8 would be **Fire Department Chief Dan Sink's** last day of service for the City of Goshen. She extended her heartfelt thanks to Chief Sink for his many years of service and wished him well on his "next adventures.". The Mayor also invited all those present to attend the change of command service on Friday at 5:30 p.m. at the Goshen Theater.

**Chief Sink** thanked **Mayor Leichthy** for her comments.

**Mayor Leichthy recessed the Board of Public Works & Safety meeting at 4:25 p.m. and opened a review hearing for 208 Queen Street (Artisan Investment Group, LLC, property owner).**

**CITY BOARD OF PUBLIC WORKS & SAFETY PUBLIC HEARING:**

**4:00 p.m., Nov. 7, 2024**

**Members present:** Mayor Leichthy, Mike Landis, Orv Myers, Mary Nichols and Barb Swartley

**12) Review hearing for the Order of the City of Goshen Building Commissioner for 208 Queen Street (Artisan Investment Group, LLC, property owner)**



**At 4:25 p.m., Mayor Leichty convened a hearing to review the Order of the City of Goshen Building Commissioner for 208 Queen Street (Artisan Investment Group, LLC, property owner).**

**BACKGROUND:**

In an Nov. 4, 2024 memorandum, **Assistant City Attorney Don Shuler** reminded Board members that the Board last held a hearing for this property on Sept. 5, 2024.

**Shuler** wrote that at the conclusion of the hearing, **the Board tabled further action to Oct. 10, 2024, but ordered then property owner, Leopoldo Mendoza, to submit to the Board at its next hearing a detailed scope of work for the property with estimated completion dates and contracts with subcontractors, as well as sufficient documentation to demonstrate financial solvency and the ability to complete the necessary repairs.** A copy of the Board's Sept. 5, 2024 Tabling Order was attached to the Board's agenda packet.

**Prior to Oct. 10, 2024, the property was transferred, from Leopoldo Mendoza to Artisan Investment Group, LLC.** The Board's Oct. 10, 2024 hearing was rescheduled due to the Board's meeting schedule, and reset for Nov. 7, 2024. A copy of the Notice of Reschedule Hearing provided to Artisan Investment Group, LLC was also provided to the Board in the agenda packet.

**Shuler** wrote that currently, the property is subject to a demolition order but the Board has given the option of repair based on representations of the prior owner, **Leopoldo Mendoza**. He wrote that the purpose of the Board's Nov. 7 hearing, ultimately, was to determine if there have been reasonable attempts to comply with the Board's prior orders seeking substantial progress on repairs.

**Shuler** indicated that the Board has continuing jurisdiction over the enforcement of its Orders. Therefore, he wrote that the Board should receive any additional information and evidence concerning the property and its status. At the conclusion of the hearing, **Shuler wrote that the Board could take any of the following actions:**

**1. Continue the matter for further review at a future date.**

**2. Modify the Order in any of the following ways:**

- a. Provide additional time to make repairs
- b. Order demolition of the unsafe building
- c. Find completion of repairs and rescind the Order

**3. Or, upon a finding of willful failure to comply, impose a civil penalty up to \$5,000.**

- a. The effective date of the civil penalty could be postponed for a reasonable period to permit repairs to be made.

**DISCUSSION AND OUTCOME OF CONTINUED BOARD REVIEW HEARING ON NOV. 7, 2024:**

**At 4:25 p.m., Mayor Leichty** convened the review hearing.

**Present were: Board members Leichty, Landis, Myers, Nichols and Swartley; City Attorney Bodie Stegelmann; Assistant City Attorney Don Shuler; City Building Inspector Travis Eash; and Marlin Schwartz (a representative of the property owner, Artisan Investment Group, LLC).**

**Assistant City attorney Don Shuler** provided the background of the case and the reason for the review hearing. He also discussed actions the Board could take after considering evidence presented today as outlined in his Nov. 4, 2024 memorandum to the Board..

**Mayor Leichty** thanked **Shuler** for his presentation and swore in two witnesses to give truthful and complete testimony. The witnesses: **City Building Inspector Travis Eash** and **Marlin Schwartz** (a representative of the property owner, Artisan Investment Group, LLC).

Before the meeting **Eash** distributed to Board members a one-page memorandum, dated Nov. 7, 2024, about the current condition of the property. (**EXHIBIT #1**), He then gave a brief update on the property at 208 Queen Street.



Reading from his memo, **Eash** said, “This property has changed hands a couple of times over the last year. Since the last hearing the property again was sold. The new owners have already obtained a remodel permit. I haven’t been inside the property since the last hearing but can confirm through the new owners that not much has changed to this point and it’s relatively in the same condition.”

**Eash** continued, “When speaking with the new owners, they believe that they can get started in two to three weeks and they are here to elaborate on what they want to do and their time frame to get the complete remodel done.

“From a Building Department standpoint, we understand the volume of projects that the new owners have and are willing to work with them on a time frame. We would like the Demolition Order to remain in place but allow for all permits to be pulled, work to be done and all required inspections completed throughout the process. At the appropriate time the Building Commissioner can rescind the Order to a Repair Order,” **Eash** concluded.

**Mayor Leichty** asked **Eash** if he had list of all of Artisan’s pending renovation projects in the City. **Eash** said he did not, but noted that **Marlin Schwartz** could provide that information.

**Mayor Leichty** then invited **Schwartz** to provide an update to the Board.

**Schwartz** said Artisan has completed 95% of the outstanding repair orders that it inherited on 22 properties determined by the City to be unsafe. He said the company has to only complete one more inspection before all repairs have been completed. He said repairs are pending on four properties outside Goshen, in Elkhart County.

**Schwartz**, who oversees projects for Artisan, said the company is seeking state funding to renovate its properties. However, he said framing and electrical work would still begin on 208 Queen Street within two weeks with completion of renovations in about 90 days. He said Artisan hopes to rent the home after it is renovated.

**Mayor Leichty** provided Board members with the background of the state economic development grant Artisan is seeking. **Swartz** said he was unsure how much Artisan could receive from the \$9 million it was seeking from the state.

**Schwartz** said he appreciated the City’s patience, noting that Artisan recently acquired a total of 98 homes in Elkhart County, some of them deemed unsafe, including about 45 in the City of Goshen. He stressed that Artisan has been moving forward to renovate all properties, but would need time to work on 208 Queen Street. He asked for 120 days to complete those repairs.

Asked by the **Mayor** if he had a recommendation for the Board, **Assistant City Attorney Shuler** said the Board could keep the demolition order in place and continue the review hearing to March 6 or March 13, 2024

**Board members** discussed the history of 208 Queen Street and past efforts to address its status as an unsafe property. They then agreed to provide Artisan with more time to make the required repairs.

**Nichols/Swartley made a motion maintain the demolition order for 208 Queen Street, but allow for all permits to be pulled and to order work to continue along with all required inspections and for the review hearing to be continued to March 6, 2025. The motion passed 5-0.**

At 4:41 p.m., **Mayor Leichty** adjourned the hearing and reopened the meeting of the Board of Public Works and Safety.

#### Approval of Civil City and Utility Claims

**Mayor Leichty/Board member Swartley** then moved to approve Civil City and Utility claims and adjourn the meeting. The motion passed 5-0.



**Adjournment**

**Mayor Leichthy adjourned the meeting at 4:41 p.m.**

**EXHIBIT #1:** *A Nov. 7, 2024 one-page memorandum written by City Building Inspector Travis Eash about the status of 208 Queen Street. This memo was submitted during and for consideration of agenda item #12, Review hearing for the Order of the City of Goshen Building Commissioner for 208 Queen Street (Artisan Investment Group, LLC, property owner).*

**APPROVED:**

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**Mayor Gina Leichthy**

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**Mike Landis, Member**

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**Orv Myers, Member**

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**Mary Nichols, Member**





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**Barb Swartley, Member**

**ATTEST:**

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**Richard R. Aguirre, Clerk-Treasurer**



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD**  
**MINUTES OF THE NOVEMBER 14, 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:** No minutes were available to be reviewed/approved at this meeting.

**REVIEW/APPROVE AGENDA:** Mayor Leichty presented the agenda as prepared by the Clerk-Treasurer and asked to amend the agenda to add a "Request to Purchase" two 2024 Chevy Silverado 1500 pickup trucks" as the 14<sup>th</sup> agenda item. Board Member Barb Swartley made a motion to approve the agenda as amended. Board Member Mary Nichols seconded the motion. The motion passed unanimously, 5-0.

**1) Open Sealed Bids and request: For the purchase of a Trailer Mounted Sewage Bypass Pump for the City's Wastewater Treatment Plant and refer the bids to the Engineering Department.**

Mayor Leichty asked for any unsubmitted bids from the audience, and since there were none, proceeded to open and record the bids. The results were as follows:

- MWI Sales Pumps proposed a cost of \$60,680 and an alternate proposal for \$46,340.00,
- BL Anderson provided a proposal of \$64,550.00.
- The Henry P. Thompson Company provided a proposal of \$69,408.54.

Swartley/Nichols made a motion to refer the bids to the Engineering Department for further consideration, The motion passed 5-0.

**2) Fire Department request: Approve the hiring of Charles Holderbaum as a Probationary Firefighter, effective Friday, Nov. 15, 2024.**

City Fire Chief Anthony Powell presented his request that the Board of Works approve the hiring of Charles Holderbaum as a Probationary Firefighter.

Chief Powell said Holderbaum has successfully met all the standards and requirements set by both the Goshen Fire Department and the State PERF Commission and "brings valuable skills and experience from his service in the United States Marine Corps and his work in the private sector. We believe these attributes will significantly enhance our team's capabilities and operations."

Swartley/Nichols made a motion to approve the hiring. The motion passed 5-0.

*After the approval, Mayor Leichty swore Charles Holderbaum into office as a Probationary Firefighter.*

**3) Fire Department: request: Approve the hiring of Brian Guerra as a Probationary Firefighter, effective Friday, Nov. 15, 2024**

City Fire Chief Anthony Powell presented his request that the Board of Works approve the hiring of Brian Guerra as a Probationary Firefighter.

Chief Powell said Guerra has successfully met all the standards and requirements set by both the Goshen Fire Department and the State PERF Commission.



**Chief Powell** added that **Guerra** “brings valuable skills and experience from the FDNY EMS, which we believe will enhance our team's capabilities and operations.”

**Swartley/Nichols made a motion to approve the hiring. The motion passed 5-0.**

***After the approval, Mayor Leichty swore Brian Guerra into office as a Probationary Firefighter.***

**4) Fire Department request: Approve the hiring of Jeffery Gill as a Probationary Firefighter, effective Friday, Nov. 15, 2024**

**City Fire Chief Anthony Powell** presented his request that the Board of Works approve the hiring of **Jeffery Gill as a Probationary Firefighter.**

**Chief Powell** said **Gill** has successfully met all the standards and requirements set by both the Goshen Fire Department and the State PERF Commission and “brings valuable skills and experience from his service in the United States Navy, which we believe will significantly enhance our team's capabilities and operations.”

**Swartley/Nichols made a motion to approve the hiring. The motion passed 5-0.**

***After the approval, Mayor Leichty swore Jeffery Gill into office as a Probationary Firefighter.***

**5) Fire Department request: Approve the hiring of Ryan Rentfrow as a Probationary Firefighter, effective Friday, Nov. 15, 2024**

**City Fire Chief Anthony Powell** presented his request that the Board of Works approve the hiring of **Ryan Rentfrow as a Probationary Firefighter.**

**Chief Powell** said **Rentfrow** has successfully met all the standards and requirements set by both the Goshen Fire Department and the State PERF Commission and “brings valuable skills and experience from his background in the Fire Service as well as his experience as a business owner. We believe his diverse expertise will enhance our team's capabilities and operations.”

**Swartley/Nichols made a motion to approve the hiring. The motion passed 5-0.**

***After the approval, Mayor Leichty swore Ryan Rentfrow into office as a Probationary Firefighter.***

**At this point, the Mayor exited the meeting for another commitment, and Board Member Mike Landis presided over the remainder of the meeting.**

**6) First Brethren Church request: Approve a non-illuminated free-standing sign to be placed in the right-of-way along West Clinton Street**

**Todd Lehman of Signtech Sign Services** introduced a wayfinding sign on behalf of First Brethren Church, saying that the sign was to help individuals visiting the Downtown Ministries to find the correct entry into the Church.

In its written request, church officials indicated that First Brethren, in partnership with Downtown Ministries, offers development and recovery classes for those experiencing life-altering challenges like poverty, abuse, and addictions. Downtown Ministries operates Monday through Thursday evenings, and Tuesday mornings.

The church requested approval for a non-illuminated free-standing sign to be placed in the City's right-of-way along West Clinton Street that would be 9.76 square feet standing at 3 foot, 6 inches in height, identifying the meeting location and entrance for Downtown Ministries.

**Assistant Planning and Zoning Administrator Rossa Deegan** said that the City Board of Zoning Appeals is scheduled to consider the sign request later this month. Deegan said that this would be the third free-standing sign that the church displays although the Zoning Ordinance only permits one free-standing sign for a church.



Even if the Board of Works denies approval for the sign in the right-of-way, **Deegan** said the Board of Zoning Appeals could still approve the free-standing sign, but it would need to remain on church property.

**City Director of Public Works and Utilities Dustin Sailor** provided a Nov. 14 memorandum to the Board (**EXHIBIT #1**) in which he stated that the church already had two monument signs and one post sign encroaching in the City's right of way. He said the Goshen Engineering Department didn't view the new encroachment request as essential, and recommended that the Board deny the request. Sailor also suggested that if the Board wanted to approve the request, he recommended that the new sign be required to be placed in line with the sign on the west side of the entry off of Clinton Street.

**Austin Kaufman**, the Lead Pastor of First Brethren, said the church was trying to regulate entrances to the building to reduce congestion with the Fire Department and direct individuals to the correct spaces within the building.

**Swartley/Nichols made a motion to deny approval of a new free-standing sign in the right-of-way on West Clinton Street. The motion passed 4-0.**

**7) Legal Department request: Approve Amendment No. 1 to EAP Full-Service Contract for the Police Department with New Avenues, Inc.**

**City Attorney Bodie Stegelmann** introduced a contract amendment with New Avenues, Inc. regarding the Police Department's employee assistance program.

The amendment would increase the fee for Self-referred Short-Term Counseling from \$4.05 per employee, per month to \$5.00 per employee, per month. The effective date of the fee increase would be Jan. 1, 2025.

**Board member Landis** asked if the fee increase was nearly 25 percent. **Stegelmann** confirmed that it was, adding that **Police Chief José Miller** was amenable to the increase, that there was room in the budget for the agreement's cost, and that the service has proved valuable for the Police Department.

**Swartley/Nichols made a motion to approve and authorize the Mayor to execute Amendment No. 1 to the Employee Assistance Program Full Service Contract for the Police Department with New Avenues, Inc. The motion passed 4-0.**

**8) Legal Department request: Award the quote for the purchase of a 2025 15-passenger van to Eby Ford Sales, Inc., as the lowest responsible and responsive quoter, and approve and execute the agreement with Eby for the purchase of the van for the Goshen Fire Department at a cost of \$55,400 and authorize Mayor Leichthy to execute the agreement**

**City Attorney Bodie Stegelmann** said the City solicited sealed quotes for the purchase of a 2025 or newer 15 passenger van for the Goshen Fire Department in accordance with Indiana Code § 5-22-8-3. The following quotes were submitted:

Vendor	Item	Total Bid price
Eby Ford Sales, Inc	2025 Ford Transit 350 Passenger	\$55,400
Jordan Ford	2025 Ford Transit	\$58,524

**Stegelmann** recommended that Eby Ford Sales, Inc be awarded the contact for the purchase of the 2025 15-passenger van as the lowest responsible and responsive quoter.

**Swartley/Nichols made motion to award the quote for the purchase of a 2025 15-passenger van to Eby Ford Sales Inc. as the lowest responsible and responsive quoter, and to approve and execute the Agreement with Eby Ford Sales, Inc. for the purchase of a 2025 15-passenger van for the Goshen Fire Department as a cost of \$55,400 and authorize Mayor Leichthy to execute the same. The motion passed 4-0.**



**9) Planning Department request: Accept the Replat of Lot 1A of Replat of East College Avenue Industrial Park subdivision plat with easements**

**Planning & Zoning Administrator Rhonda Yoder** introduced a request to replat Lot 1A of the East College Avenue Industrial Park into eight individual lots. The subject property contains ±113.62 acres, and is generally located on the north side of College Avenue, between Brinkley Way East and Brinkley Way West, zoned Industrial M-1.

The subdivision was granted a variance by the Board of Zoning Appeals on Oct 22, 2024, for the following developmental deficiencies:

- 0' parking/driving aisle setback internally between all eight lots (internal side and rear property lines, excluding front property lines and external side lot lines adjacent to Common Area No. 3A);
- A perimeter fence to cross internal lot lines between all eight lots (excluding front property lines and external side lot lines adjacent to Common Area No. 3A), subject to any easement restrictions; and
- Parking shared between Lots 9, 10, 11 and 12 in a shared parking easement.

The subdivision meets the Zoning Ordinance and Subdivision Ordinance requirements, and is consistent with the primary subdivision approved by the Plan Commission on Sept. 17, 2024.

**Yoder** said that the drainage plan was already approved by the Board of Works, the developer has purchased a bond, and the plat will include several easements.

**Swartley/Nichols made a motion to accept the Replat of Lot 1A of Replat of East College Avenue Industrial Park subdivision plat with easements, Nichols seconded the motion. The motion passed 4-0.**

**10) Engineering Department request: Approve the closure of one parking space on the north side of Washington Street, in front of 121 W. Washington St., on Dec.10 and 11, 2024, for access to a monitoring well**  
**City Director of Public Works & Utilities Dustin Sailor** introduced the request for IWM Consulting to use a parking space in front of 121 West Washington Street to access a monitoring well located in the space. Sailor said that the space was required to monitor groundwater contamination.

**Swartley/Nichols made a motion to approve the closure of one parking space on the North side of Washington Street in front of 121 West Washington Street on Dec. 10 and 11, 2024 for access to a monitoring well. The motion passed 4-0.**

**11) Engineering Department request: Approve the 2024 Pavement Asset Management Plan for submittal to the Indiana Department of Transportation (INDOT) through the Local Technical Assistance Program**  
**City Engineering Project Manager Andrew Lund** introduced and provided an overview of the 2024 Pavement Asset Management Plan developed by the City's Engineering Department. It is to be presented to the Indiana Department of Transportation (INDOT) through the Local Technical Assistance Program at Purdue University. The Asset Management Plan reports on the current condition of Goshen's road assets, provides suggested guidance to increase the overall condition of Goshen's road assets, and fulfills eligibility requirements for Community Crossings Matching Grant Fund applications.

**Lund** provided some corrections to the Board of Works, saying that page 17 of the prior version was out-of-date (see **EXHIBIT #2**)

**Lund** said that he appreciated the help from **Boston Snyder, City Asset Manager**, who was instrumental in guiding through the process of compiling the Asset Management Plan.

**Board member Landis** asked if there was an optimistic summary at the end of the plan.



**Lund** directed **Landis** to page 18 of the report which indicated that the City has budgeted more than the \$2,500,000 required to simply maintain the current condition of our roads. Lund also said that this plan does not include alternative plans such as chip and seal updates to roads.

**Swartley/Nichols made a motion to approve the 2024 Pavement Asset Management Plan for submittal to INDOT through the Local Technical Assistance Program with the change to the treatment program on page 17. The motion passed 4-0.**

**12) Engineering Department request: Approve Change Order No. 6 for the 10th Street and Douglas Street Reconstruction project in the amount of \$191,865 and 14 days**

**City Director of Public Works & Utilities Dustin Sailor** introduced a change order for the 10th Street and Douglas Street Reconstruction project, saying that the change was due to a sanitary sewer extension along Reynolds Street which identified a few homes on a "party line" or combined sewer laterals on vacant properties.

**Sailor** also said that the change order encompassed some underground storage in front of the Gleason property. The cost will be split between Goshen Utilities and Goshen Redevelopment.

**Swartley/Nichols made a motion to approve Change Order Number 6 for the 10<sup>th</sup> Street and Douglas Street Reconstruction Project in the amount of \$191,865.00 and 14 days. The motion passed 4-0.**

**13) Engineering Department request: Approve Change Order No. 11 for the Wilden Avenue Reconstruction Project in the amount of \$327,916.98 and authorize the Mayor to sign the change order**

**City Engineering Project Manager Andrew Lund** introduced a change order for the Wilden Avenue Reconstruction Project for a contract increase of \$327,916.98, which is a balancing change order to close the project.

**Lund** said the changes were primarily due to changes from pavement to concrete within the project. Lund shared with the board that the Indiana Department of Transportation software was not calculating correctly, and that page 1 of the change order form should be corrected.

The current change order amount in the report reflected \$327,507.98, and Lund provided a corrected report to the board (see **EXHIBIT #3**). Lund said that the amount in his memo, \$327,916.98, was the correct amount.

**Board member Landis** asked about the cost of the curb and gutter field quantity. **Lund** said the overage was due to cost increases and that the original design did not include the portions of curb that was completed in the project.

**Swartley/Nichols made a motion to approve Change Order No. 11 in the amount of \$327,916.98 and authorize the Mayor to sign the change order. The motion passed 4-0.**

**14) Legal Department request: Request to Purchase two 2024 Chevy Silverado 1500 pickup trucks**

**City Attorney Bodie Stegelmann** introduced a Request to Purchase (**EXHIBIT #4**), saying that the Fire Department sought to purchase the two vehicles under a quantity purchase agreement through the City of Fort Wayne. He said Kelly Chevrolet in Fort Wayne was awarded the contract, and the City of Goshen wished to purchase two pickup trucks through the agreement.

**Swartley/Nichols made a motion to approve compensation to Kelly Chevrolet for the purchase of two 2024 Chevy Silverado Crew Cab 4x4 trucks, one for \$50,090.00 and one for \$52,170.00, for a total sum of \$102,260.00. The motion passed 4-0.**

**Privilege of the Floor**

**Board member Landis** opened Privilege of the Floor at 4:48 p.m. No one asked to speak, so Landis closed the public comment period.





**Approval of Civil City and Utility Claims**

As all matters before the Board of Public Works & Safety were concluded, Landis/Nichols made a motion to approve Civil City and Utility Claims and adjourn the meeting. The motion passed 4-0.

**Adjournment**

Board member Landis adjourned the Board of Works meeting at 4:48 p.m.

**EXHIBIT #1:** *A Memorandum from Dustin K. Sailor regarding First Brethren Church, 215 W. Clinton Streets, dated Nov. 14, 2024. The two-page memo outlined Sailor's analysis and recommendation to the Board regarding the sign encroachment into the City's right of way which was proposed by First Brethren Church.*

**EXHIBIT #2:** *A correction to the 2024 Pavement Asset Management Plan provided by City Engineering Project Manager Andrew Lund, dated Nov. 14, 2024. The correction is to Page 17 with red outlines showed the numbers revised from the original report.*

**EXHIBIT #3:** *A correction to Change Order No. 11 provided by City Engineering Project Manager Andrew Lund, dated Nov. 14, 2024. The correction is to page 1 with red outlines showing the numbers revised from the original report.*

**EXHIBIT #4:** *A Request to Purchase, dated Nov. 14, 2024 from City Attorney Bodie Stegelmann recommending the purchase of two Chevy trucks from Kelly Chevrolet for the Goshen Fire Department.*

**APPROVED:**

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**Mayor Gina Leichty**

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**Mike Landis, Member**



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**Orv Myers, Member**

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**Mary Nichols, Member**

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**Barb Swartley, Member**

**ATTEST:**

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**Jeffery Weaver, City of Goshen Deputy Clerk-Treasurer**



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

From: Dustin K. Sailor, Director of Public Works

RE: **FIRST BROTHERS CHURCH – 215 W. CLINTON STREET  
(JN: STREETS – W. CLINTON STREET)**

Date: November 14, 2024

The First Brethren Church has made a request to install an additional sign within the public right-of-way. In review of the property, there are already two monument signs and one post sign for the church placed within the public right-of-way. Additionally, the building appears to be encroaching into the right-of-way, based on aerial photography and mapped right-of-way lines. See the mapped sign locations below.



Goshen Engineering does not view the encroachment request as essential, and recommends the Board deny the request. If it is the Board's desire is to approve the request, Goshen Engineering requests the Board make the sign's placement conditional by requiring the sign to be placed in line with the sign on the west side of the entry off of Clinton Street, which would take the back of sidewalk offset from 18", as requested, to 7'.



## Treatment Summary

The following table shows the total mileage of treatments applied to the city's roadway network for the previous 5 years.

Values revised

Treatment	2020	2021	2022	2023	2024	Costs
Crack Seal	18.37	8.46	4.54	12.25	17.58	\$ 612,000.00
Overlay - 1.5"	0.41	0.19	1.68	0.34	0	\$ 196,500.00
Mill and Resurface - 1.5"	0	0	3.3	0	0	\$ 990,000.00
Mill and Resurface - 2"	0.58	3.92	0	1.9	0.66	\$ 2,294,500.00
Mill and Resurface - 4"	0	0	0	0.56	0	\$ 224,000.00
Reconstruction - Asphalt	0.45	3.53	1.02	1.4	0.24	\$ 4,980,000.00
Reconstruction - Concrete	0.7	0.4	0.67	0	0	\$ 1,539,900.00
Full Depth Reclamation with Asphalt	0	0	0	0.2	0	\$ 90,000.00
Rejuvenator	0	0	0	0	3.64	\$ 100,100.00
Total Miles	20.51	16.5	11.21	16.65	22.12	--
<b>Costs</b>	<b>\$1,349,450.00</b>	<b>\$4,368,350.00</b>	<b>\$2,509,300.00</b>	<b>\$2,129,500.00</b>	<b>\$ 670,400.00</b>	<b>\$11,027,000.00</b>

It should be noted that 2024 is substantially lower than previous years. This is due to a timing issue with a roadway project. Planned roadway work scheduled for 2024 is going to occur in 2025 *in addition to* work scheduled for 2025. Without knowing what the annual budget will be for the street infrastructure, it is better to look at allocations based on a percentage approach, rather than a dollar amount. The main preservation treatment types that the City of Goshen will be applying to the roadway will be Maltene Rejuvenation, Crack Sealing, Milling and Paving, and Full Reconstruction. It is suggested that the City of Goshen allocate their budget in order to address all four treatment types, with the percentage of the budget large enough to encompass applying Maltene Rejuvenation to all PASER rating 10 roadway segments. A possible allocation split for the budget would be 45% allocation towards Full Reconstruction, 45% allocation towards Milling and Paving, 5% allocation towards Crack sealing, and 5% allocation for Maltene Replacement, up to the amount needed, then the remaining allocation to be used towards Milling and Paving.

The following table is an example of the budget allocation based on the described percentages above for a total of \$2,500,000.00.

Contract No:R -37647

Change Order No.: 011

**INDIANA Department of Transportation  
Construction Change Order and Time Extension Summary**

Page: 1

**Contract Information**

Contract No.: R -37647      Letting Date:05/05/2022  
District:FT. WAYNE DISTRICT      AE:Koch, Michael      PE/S:Wakeman, John      Status:Draft

**Change Order Information**

Change Order No.: 011      EWA: Y or Force Acct: N  
Date Generated: 00/00/0000      Date Approved: 00/00/0000  
Reason Code: FINAL QUANTITY ADJUSTMENT

Description: Over/Unders

Original Contract Amount		\$ 6,965,019.56	
Current Change Order Amount	<b>\$327,916.98</b>	<del>\$ 327,507.98</del>	Percent: 4.702 %
Total Previous Approved Changes		\$ 432,216.44	Percent: 6.206 %
Total Change To-Date	<b>\$760,133.42</b>	<del>\$ 759,724.42</del>	Percent: 10.908 %
Modified Contract Amount	<b>\$7,725,152.98</b>	<del>\$ 7,724,743.98</del>	

**Time Extension Information**

Date Initiated 00/00/0000      Date Completed 00/00/0000  
Original Contract Time      SS Completion Date 00/00/0000 or SS Calendar/Work Days 0  
SP Date 00/00/0000      or SP Days  
(SS = Standard Specification, SP = Special Provision)

Time Element Description:

Current Time Extension      SS Days 0 SP Days 0      SP Days Value \$ 0.00  
Previous Time Approved      SS Days by AE: \_\_\_\_\_ DCE: \_\_\_\_\_ SCE: \_\_\_\_\_ DDCM: \_\_\_\_\_  
SS Days \_\_\_\_\_      SP Days Value \$ \_\_\_\_\_

Revised Contract Time      SS Completion Date 00/00/0000 or SS Calendar/Work Days 0  
SS Date 00/00/0000      or SP Days 0



**REQUEST TO PURCHASE**

This contract shall include the terms and conditions set forth, as well as the terms and conditions contained in The City of Fort Wayne Purchasing Department, Invitation to Bid, 2024 Chevy Silverado 1500 Trucks ITB #8601921 and all information and items required to be provided in accordance with above mentioned document as well as the Kelly Chevrolet "Quote" document attached, all of which are a part of this contract as if set out verbatim, or if not attached, as if attached:

City shall purchase from Kelly Chevrolet two (2) 2024 Chevy Silverado 1500 Crew Cab LT 4x4, Model CK10743, Stock# M3110 and Stock# M3121.

City shall be provided the following upon pick up:

- Certificate of Origins
- Odometer Disclosure Statements
- Certificate of Gross Retail or Use Tax Paid (Form ST108-E)

The Identified owner of the vehicles shall be:

City of Goshen  
 202 South 5th Street  
 Goshen Indiana 46528

The City of Goshen agrees to compensate Kelley Chevrolet for the purchase of two (2) 2024 Chevy Silverado 1500 Crew Cab LT 4x4, Model CK10743, Stock# M3110 for Fifty Thousand Ninety Dollars (\$50,090) and Stock# M3121 for Fifty-Two Thousand One Hundred Seventy Dollars (\$52,170) for a total sum of One Hundred Two Thousand Two Hundred Sixty Dollars (\$102,260).

**City of Goshen**  
**Board of Public Works and Safety**

**Kelly Chevrolet, LLC**

\_\_\_\_\_  
Gina Leichty, Mayor

\_\_\_\_\_  
Mark T. Wright,  
Fleet/Government Sales Manager

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

Date \_\_\_\_\_

\_\_\_\_\_  
Michael Landis, Member

\_\_\_\_\_  
Barbara Swartley, Member

\_\_\_\_\_  
Orv Myers, Member

Date \_\_\_\_\_

# Fort Wayne ITB #: 8601921 2024 Silverado 1500 Crew LT 4X4 V-8 Engine

<b>Vehicle Description</b>	2024 Chevy Silverado 1500 Crew Std. Bed	
	Silverado 1500 7,100 Lb. Minimum GVW	
<b>Model</b>		CK10743
<b>Standard Package/Equipment Group</b>		**** 1LT w/5.3L V-8 ****

## Base Standard Equipment

Description	Mfg. Option Code	Option Description
5.3L V-8 engine w/Dynamic Fuel Management	L84	5.3L 355 HP - 383 Lb-Ft Torque V-8 Gas
Automatic Transmission	MHT	10 - Speed transmission
Locking Rear Differential	G80	GM Locking Rear Differential
17" Aluminum Wheels Bright Silver	Q5U	17" X 8" Aluminum Wheels
All-Star Edition Package	PDU	<b>Includes:</b> Dual-Zone Climate control, 10-Way Power Driver seat, 4-way Manual Passenger seat, Heated front seats, Heated leather-wrapped steering wheel, Tilt-telescoping steering wheel, Dash & bed-mounted 120-volt outlets, Rear window defogger, Keyless Open/Start w/Remote Start.
Deluxe Driver Information Center	UDV	12.3" Multicolor - Reconfigurable - Choice of 4 screen layouts and information provided on screen
Front bench seat w/Carpeted flooring	AZ3/B30	40/20/40 Front Bench Seat - Carpeting
Push-button start	BTM	Dash-mounted pushbutton start
Single-Speed 4X4 transfer case	NP0	2WD - AutoTrac - 4WD High
Trailer package	Z82	2" Receiver Hitch

## Total Cost for Base Specified Vehicle

<b>2024 Model Year Base W/T Starting Price</b>	<b>\$ 39,900.00</b>
<b>2024 Silverado 1500 Crew 1LT Pkg. Price UP 4 Trim Levels</b>	<b>\$ 9,600.00</b>

### Base Silverado 1500 1LT Cost \$ 49,500.00

Additional Options Available	Option Code	Additional Cost
Z-71 Off-Road & Protection Pkg. Includes: Off-Road Suspension, Skid plates, HD air filter, Dual exhaust w/polished outlets, 2-Speed 4X4 transfer case, Z71 All-Weather floor liners, Factory Spray-on bedliner, rear wheelwell liners, Hill descent control, 18" X 8.5" Silver painted aluminum wheels w/265/65R18SL All-Terrain tires	PDZ	\$ 2,080.00
Front Bucket seats w/center console	A50	\$ 590.00

### Dealer Installed GM Accessories:

GM Black 4" Round Side Steps 84011355	D/I	\$ 900.00
GM Black 5" Work-Style Flat side steps 8401711	D/I	\$ 650.00
Line-X Spray-on Bedliner	D/I	\$ 545.00
GM Floor Liners	D/I / RIA	\$ 250.00

<b>Order #: DHDCHN</b>	<b>Additional options, included:</b>	<b>\$ 590.00</b>
<b>Stock #: M3110</b>	<b>Sub-Total:</b>	<b>\$ 50,090.00</b>
	<b>Total Price, as ordered:</b>	<b>\$ 50,090.00</b>

<b>Dealer Name</b>	<i>Kelley Chevy, LLC</i>
<b>Contact Names</b>	Mark T. Wright / Jordan Ladig
<b>Phone Numbers</b>	D - 260-496-6491 Cell: 260-437-9218 / D - 260-496-6460 Cell: 260-445-6993
<b>Contact E-mails</b>	mwright@kelleyauto.com / jladig@kelleyauto.com
<b>Dealer Address</b>	5220 Value Drive Fort Wayne, IN 46808



# Fort Wayne ITB #: 8601921 2024 Silverado 1500 Crew LT 4X4 V-8 Engine

<b>Vehicle Description</b>		2024 Chevy Silverado 1500 Crew Std. Bed
		Silverado 1500 7,100 Lb. Minimum GVW
<b>Model</b>		CK10743
<b>Standard Package/Equipment Group</b>		**** 1LT w/5.3L V-8 ****
<b>Base Standard Equipment</b>		
<b>Description</b>	<b>Mfg. Option Code</b>	<b>Option Description</b>
5.3L V-8 engine w/Dynamic Fuel Management	L84	5.3L 355HP - 383 Lb-Ft Torque V-8 Gas
Automatic Transmission	MHT	10 - Speed transmission
Locking Rear Differential	G80	GM Locking Rear Differential
17" Aluminum Wheels Bright Silver	Q5U	17" X 8" Aluminum Wheels
All-Star Edition Package	RDU	<b>Includes:</b> Dual-Zone Climate control, 10-Way Power Driver seat, 4-way Manual Passenger seat, Heated front seats, Heated leather-wrapped steering wheel, Tilt-telescoping steering wheel, Dash & bed mounted 120-volt outlets, Rear window defogger, Keyless Open/Start w/Remote Start.
Deluxe Driver Information Center	UDV	12.3" Multicolor - Reconfigurable - Choice of 4 screen layouts and information provided on screen
Front bench seat w/Carpeted flooring	AZ3/B30	40/20/40 Front Bench Seat - Carpeting
Push-button start	BTM	Dash-mounted pushbutton start
Single-Speed 4X4 transfer case	NP0	2WD - AutoTrac - 4WD High
Trailer package	Z82	2" Receiver Hitch
<b>Total Cost for Base Specified Vehicle</b>		
<b>2024 Model Year Base W/T Starting Price</b>	<b>\$ 39,900.00</b>	
<b>2024 Silverado 1500 Crew 1LT Pkg. Price UP 4 Trim Levels</b>	<b>\$ 9,600.00</b>	
	<b>Base Silverado 1500 1LT Cost \$ 49,500.00</b>	
<b>Additional Options Available</b>	<b>Option Code</b>	<b>Additional Cost</b>
Z-71 Off-Road & Protection Pkg. Includes: Off-Road Suspension, Skid plates, HD air filter, Dual exhaust w/polished outlets, 2-Speed 4X4 transfer case, Z71 All-Weather floor liners, Factory Spray-on bedliner, rear wheelwell liners, Hill descent control, 18" X 8.5" Silver painted aluminum wheels w/265/65R18SL All-Terrain tires	<b>PDZ</b>	<b>\$ 2,080.00</b>
Front Bucket seats w/center console	<b>A50</b>	<b>\$ 590.00</b>
<b>Dealer Installed GM Accessories:</b>		
GM Black 4" Round Side Steps 84011355	D/I	\$ 900.00
GM Black 5" Work-Style Flat side steps 8401711	D/I	\$ 650.00
Line-X Spray-on Bedliner	D/I	\$ 545.00
GM Floor Liners	D/I / RIA	\$ 250.00
<b>Order #: DHDFHN</b>	<b>Additional options, included: \$ 2,670.00</b>	
<b>Stock #: M3121</b>	<b>Sub-Total: \$ 52,170.00</b>	
	<b>Total Price, as ordered: \$ 52,170.00</b>	
<b>Dealer Name</b>	<b>Kelley Chevy, LLC</b>	
<b>Contact Names</b>	<b>Mark T. Wright / Jordan Ladig</b>	
<b>Phone Numbers</b>	D - 260-496-6491 Cell: 260-437-9218 / D - 260-496-6460 Cell: 260-445-6993	
<b>Contact E-mails</b>	mwright@kelleyauto.com / jladig@kelleyauto.com	
<b>Dealer Address</b>	<b>5220 Value Drive</b>	
	<b>Fort Wayne, IN 46808</b>	

## The City of Fort Wayne Vehicle Invitation to Bid

Unless signed "Read and Accepted", the entire bid will be considered incomplete and non-responsive.

### I. Overview

- A. In order to meet the everyday demands of its operations, the City of Fort Wayne's Purchasing Department and Fleet Department are requesting bids for vehicles.
- B. It is further understood that other governmental agencies, particularly in Northeast Indiana, and any other tax supported governmental agencies, will be extended the opportunity to purchase off this bid during the same calendar model year. In entering into such agreements, the vendor and those parties understand that neither the City of Fort Wayne are agents of, partners to/or representatives of these outside agencies and are not obligated or liable for any action or debts that may arise out of such independently negotiated "piggy-back" procurements. The awarded dealer will receive a purchase order from and invoice each agency separately.
- C. Upon mutual agreement, the City reserves the right to allow an increase to rollover contracts for the next calendar year.
- D. Upon request, Vendor shall submit all available factory options and pricing. Options will be selected at time of order and should be charged to the City of Fort Wayne at dealer invoice price or better.
- E. Include in your bid complete manufacturer's descriptive literature and identification of the product being offered. Documents can be uploaded with the **Vendor Submission** form.
- F. The fact that every item constituting the construction of a complete unit is not specifically mentioned nor described will be interpreted to mean that the manufacturer shall include all items that conform to the best known engineering standards of the trade, relative to design, strength, quality and workmanship. Furthermore, each unit delivered is to be fully equipped with all the manufacturers' standard equipment and accessories. This equipment must meet the latest federal safety regulation.
- G. The price submitted for all vehicles must include delivery to the City Fleet Garage. A delivery schedule must be confirmed prior to the issuance of a purchase order. The dealer is responsible for delivery charges at the bid price to all participants located within Allen County. Delivery charges to participating agencies outside of Allen County must be noted on the bid response.
- H. Units shall be North American made, manufactured, and assembled within conformance to the latest engineering standards of the trade, relative to design, strength, quality, durability, and workmanship. Every Item assembled upon these units must meet the latest Federal Safety Standards.
- I. Bidder must state the model number under which the units are listed in a publication of recognized standing, devoted to the manufacturing industry of this specified unit.

- J. All bidders must submit color charts for each type of vehicle bid if awarded the bid item. Unless stated otherwise, the color of the vehicle will be chosen when the order is placed.
- K. For orders from the City of Fort Wayne; Vendors MUST use the following name and address on all Certificate of Origins and STE 108E forms: See below
- L. Certificates of Origin MUST be hand delivered or sent with tracking to the Fleet Department for the City of Fort Wayne.
- M. Upon Evaluation of the bids, at which a determination of delivery responsiveness will be determined, the City of Fort Wayne will issue a blanket order to the successful dealer for the 2024 models. A determination of a more responsive bid may cause the City to not award to the apparent lowest bidder when deemed in the City's best interest. The City reserves the right to factor any vehicle-related savings into the bid award. The City Cooperative program allows each municipality to process their own orders for the vehicle individually with their purchase order or letter of authorization. The Dealer that is awarded the bid must fill out a City of Fort Wayne Fleet Package/Equipment group form that will be used for other municipalities to purchase from in electronic form. A copy of the form is attached for your information

# City of Fort Wayne

Thomas C. Henry, Mayor

Purchasing Department

200 East Berry Street, Ste. 490

Fort Wayne, Indiana 46802-1804

Telephone (260) 427-1103 Fax (260) 427-1393

## Vendor Submission

ITB.....#8601921

Description.....2024 Chevy Silverado 1500 Trucks

ITB Due Date.....Friday, August 4, 2023, at 11:00 a.m.

Bids will be received electronically through QuestCDN vBid Online Bidding ONLY.

By mutual agreement between the City of Fort Wayne and the supplier, the contract period may be extended for an additional like or lesser time period at the discretion of the City.

This ITB is issued to establish a contract to supply the City of Fort Wayne with a commodity in accordance with accompanying specifications. The execution hereof by the bidder is acceptance of all terms and conditions herein and in that regard the bidder agrees to be bound by same and be bound to the amount of the bid until order is fulfilled.

Company: Kelley Chevy, LLC.

Address: 5220 Valuc Drive

City/State/Zip: Fort Wayne, IN 46808.

Printed Name: Mark T. Wright

Email: mwright@kelloyauto.com





• [Contact Quest](#)

Providing State-of-the-Art Bid Management Systems for Public Construction, RFPs, and General Goods & Services Procurement since 1999

**2024 Chevy Silverado 1500 Trucks (#8601921)**

08/04/2023 11:00 AM EDT

Owner: Purchasing

Solicitor: Fort Wayne IN, City of

[Export to CSV](#)

Sections shown in this color are not included in the Base Bid Total - *Mandatory* completion

Sections shown in this color are not included in the Base Bid Total - *Optional* completion

Sections shown in this color are fixed and cannot be edited by the bidder

Item Item	Item Code	Item Description	Unit	Quantity	Unit Price	Subtotal	Fixed Price	Adjusted Price
<b>2024 Chevrolet Silverado 1500 Trucks</b>								
1	1	1500 Regular Cab SWB 4x4	Ea	1	\$37,400.00	\$37,400.00	\$38,766.40	\$38,766.40
2	2	1500 Double Cab SWB 4x4	Ea	1	\$37,400.00	\$37,400.00	\$38,828.00	\$38,828.00
3	3	1500 Crew Cab SWB 4x4	Ea	1	\$39,600.00	\$39,600.00	\$40,962.80	\$40,962.80
4	4	1500 Regular Cab LWB 4x4	Ea	1	\$37,600.00	\$37,600.00	\$38,952.60	\$38,952.60
5	5	1500 Crew Cab LWB 4x4	Ea	1	\$39,900.00	\$39,900.00	\$41,242.10	\$41,242.10
<b>2024 Chevrolet Silverado 1500 Trucks Total:</b>						<b>\$191,900.00</b>		<b>\$198,751.90</b>
						<b>\$191,900.00</b>		<b>\$198,751.90</b>

[Export to CSV](#)



## City of Fort Wayne Notice of Award

**Bid:** #8601921- 2024 Chevy Silverado Trucks  
**Bid Date:** 8/4/2023  
**Owner:** City of Fort Wayne Purchasing Department (260) 427-1103  
200 East Berry Street- Suite 490; Fort Wayne, IN 46802  
**Bidder:** Kelley Automotive  
5220 Value Drive  
Fort Wayne, IN 46808

You are the awarded vendor of the above referenced contract for the following items:

1500 Regular Cab SWB 4x4	\$37,400.00
1500 Double Cab SWB 4x4	\$37,400.00
1500 Crew Cab SWB 4x4	\$39,600.00
1500 Regular Cab LWB 4x4	\$37,600.00
1500 Crew Cab LWB 4x4	\$39,900.00

Please sign below to accept this award and all terms set forth in the bid documents:

Mark T Wright Date 8/17/2023  
Kelley Automotive

Michelle Meyer Date 8/17/23  
City of Fort Wayne



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD**  
**MINUTES OF THE NOVEMBER 21, 2024 SPECIAL MEETING**  
*Convened in the Goshen Police & Court Building, 111 East Jefferson St., Goshen, Indiana*

**Present:** Mike Landis, Orv Myers and Barb Swartley

**Absent:** Mayor Gina Leichty and Mary Nichols

**Call To Order:** Acting Board Chair Mike Landis called the meeting to order at 4:00 p.m.

**Review/Approve Agenda:** Acting Board Chair Landis presented the agenda as prepared by Clerk-Treasurer Aguirre. Board member Orv Myers made a motion to approve the agenda as presented. Board member Barb Swartley seconded the motion. The motion passed 3-0.

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

Acting Board Chair Landis opened Privilege of the Floor at 4:01 p.m. There were no public comments. Although no audience members were present, Landis stated that the news media was notified of this special Board meeting, the agenda was published on the City of Goshen's website and the agenda also posted at City Hall and outside the meeting place as required by state statutes.

**Approval of Civil City and Utility Claims**

Board members Landis/Swartley moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 3-0.

**Adjournment**

Acting Board Chair Landis then adjourned the meeting, at 4:02 p.m.

**APPROVED:**

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Mayor Gina Leichty



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**Mike Landis, Member**

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**Orv Myers, Member**

---

**Mary Nichols, Member**

---

**Barb Swartley, Member**

**ATTEST:**

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**Richard R. Aguirre, Clerk-Treasurer**



**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

RE: **2024 ASPHALT PAVING PROJECT  
PROJECT NO. 2024-0002**

DATE: December 5, 2024

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The Clerk-Treasurer's Office has received bids from contractors for the 2024 Asphalt Paving project and we are requesting that the Board of Public Works and Safety open these bids at today's meeting.

**Requested Motion: Open bids received from Contractors for the 2024 Asphalt Paving project and read the Bid Total amount and refer the bids to the Engineering Department.**



**CITY OF GOSHEN LEGAL DEPARTMENT**  
**Donald R. Shuler, Assistant City Attorney**

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

donshuler@goshencity.com • www.goshenindiana.org  
Phone (574) 537-3855 • Fax (574) 533-8626 • TDD (574) 534-3185

November 27, 2024

To: Board of Public Works and Safety

From: Don Shuler, Assistant City Attorney

Subject: Memorandum of Understanding – Fire Department Employment of Joseph Cestone

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The Board extended a conditional offer of employment to and entered into a Conditional Offer of Employment Agreement with Joseph F. Cestone on October 28, 2021. Cestone has completed the paramedic training per the Conditional Offer of Employment, but did not otherwise become a certified paramedic. The Fire Department, the Fire Union, and Cestone have discussed retaining his employment as they discuss potential revisions to their ambulance run procedures, and wish to utilize the attached Memorandum of Understanding (MOU) to amend the prior Conditional Offer of Employment Agreement.

It is recommended that the Board approve and authorize the Mayor to execute the attached MOU. The MOU provides that Cestone will retain his employment with the City Fire Department, that he will continue to serve as an Emergency Medical Technician on ambulance runs, and is otherwise bound by all obligations consistent with the prior Conditional Offer of Employment Agreement and the Collective Bargaining Agreement between the City and the Fire Union.

**Suggested Motion: Move to approve the Memorandum of Understanding between the City, Joseph Cestone, and Goshen Firefighters Association Local No. 1443 and authorize the Mayor to execute the MOU.**



## **Memorandum of Understanding**

This Memorandum of Understanding (MOU) is entered into by and between the City of Goshen, Indiana, by and through the Goshen Board of Public Works and Safety (“City”), Joseph F. Cestone (“Cestone”), and Goshen Firefighters Association Local No. 1443 (“Union”).

### Recitals:

WHEREAS, Cestone was extended a conditional offer of employment by City on October 28, 2021, requiring Cestone to complete paramedic training and certification;

WHEREAS, Cestone completed the paramedic training but did not otherwise become a certified paramedic as required by the conditional offer of employment;

WHEREAS, Cestone is currently certified as an Emergency Medical Technician (EMT) and has maintained all other required employment standards;

WHEREAS, City, Union, and Cestone wish to maintain Cestone’s employment as an EMT, subject to the terms of this MOU.

### Agreement:

1. Cestone shall be retained by the City in the role of an EMT, regardless of failure to achieve the paramedic certification as stipulated in the Conditional Offer of Employment dated October 28, 2021.
2. Cestone agrees to maintain employment for a minimum of three (3) years from the date of this MOU, unless terminated for other reasons pursuant to the collective bargaining agreement or departmental policies. If Cestone fails to maintain employment per this MOU for three (3) full years, Cestone agrees to repay City a prorated portion of Fifteen Thousand Dollars (\$15,000.00) for the paramedic training. The Fifteen Thousand Dollars (\$15,000.00) will be credit at the rate of Five Thousand Dollars (\$5,000.00) for each full year Cestone maintains his employment with City. Credit will not be given for partial years of service.
3. The Union agrees that it will not file a grievance as a result of this MOU or the City’s retention of Cestone as an employee.

4. Any amendments to this MOU must be in writing and signed by all parties. This MOU shall be governed by and construed in accordance with the laws of the State of Indiana.

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

By: \_\_\_\_\_  
Gina M. Leichty, Mayor

\_\_\_\_\_  
Joseph F. Cestone

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

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

Goshen Firefighters Association Local No. 1443

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

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

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

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



November 25, 2024

To Goshen City Board Of Works,

Clear Creek Associates recently purchased The Famous building located at 203 South Main Street. We are relocating our offices from our current location at 212 West Washington Street. As part of the move, we need to remove old furniture and miscellaneous debris that has been stored in the basement of our new location. To aid in removal, we are requesting the city allow us to place a dumpster in the two parking spaces nearest the intersection at rear alley and West Washington Street. The dumpster will be placed on Friday December 13 and removed between Monday December 16 and Wednesday December 18. We have notified our new neighbors at 201 South Main Street (Refind Curated Consignment) and 116 West Washington Street (Wellington & Weddell) of our intentions. They expressed no objections to dumpster placement. The tenant space at 108 West Washington Street is currently vacant.

The size of the dumpster is 8'-0" wide by 22'-0" long by 4'-0" high. Attached to this email is a copy of the document sent to Himco Waste Away showing a drawing of proposed dumpster placement. We are also requesting Goshen City Street Department place some type of barrier at these two parking spaces so they are empty when dumpster is delivered on Friday December 13. The time of day for delivery is unknown.

If you have any questions in regards to these requests, please contact me.

Sincerely,

David Gingerich

CAD Technician  
574-9714381 (mobile)



# Himco

## Temporary Container Waiver

Date of Entry: 11/25/24

Account Number \_\_\_\_\_

Himco Representative AG

### Delivery Information

Name DAVID GINGERICH

Address 203 S MAIN ST Suite 2

City GOSHEN State IN Zip 46526

Contact DAVID GINGERICH

Phone 574-971-4381 Fax \_\_\_\_\_

### Billing Information

Billing Name CLEAR CREEK ASSOC.

Address 203 S MAIN ST. Suite 2

City GOSHEN State IN Zip 46526

Contact DAVID GINGERICH

Phone 574-537-9060 Fax \_\_\_\_\_

### Roll-Off Containers

Size Requested: 21 YD

All-Inclusive Charge \$ 600

Additional Tonnage \$ 70

Per Day Demurrage \$ 25

### Spotting Instructions

We are removing old furniture and misc from basement of 203 South Main St. The door to basement is near the rear alley entrance.

We have permission from the city to use two parking spaces for dumpster.

### All-Inclusive Pricing Includes:

- Site Inspection
- Container Delivery
- Container Removal
- 14 Days onsite
- 3 Tons of Material

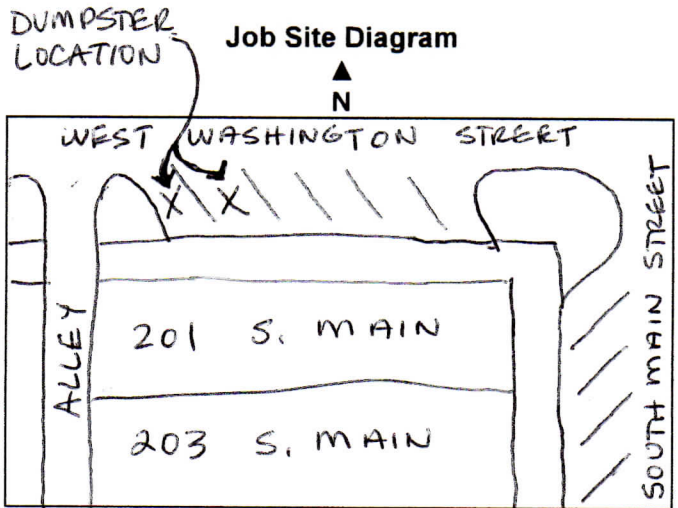
Delivery Date: 12/13/24

Removal Date: 12/17/24

The container will be **automatically** scheduled for removal unless time is extended at least 24-hours in advance.

Materials in receptacle are not to exceed the top lip of the container. Overloaded containers that require downloading will be invoiced a \$250.00 runback fee.

Customer is responsible for all materials in the container. If the container contains any hazardous or unacceptable materials which includes but is not limited to, Electronic Waste, Tires, Items Containing Freon, Fuels & Pesticides, the customer will be responsible for removing those materials from the receptacle. The customer will be invoiced a \$250.00 runback fee.



### Additional Information

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Initials: \_\_\_\_\_



**TERMS OF AGREEMENT:**

Customer agrees to pay Himco for all services rendered herein in accordance with the terms and charges as shown herein: all charges are due in full before the services are tendered. Any unpaid balance beyond the due date will be subject to a late charge of 1.5% per month. Customer shall be responsible for all expenses, court costs, and attorney fees, which are incurred by Himco due to the enforcement of this agreement. This agreement shall be binding on the parties and their successors and assigns.

**WASTE MATERIAL TO BE TRANSPORTED:**

Himco agrees to collect and dispose legally permitted solid wastes generated by the customer. Customer warrants that all waste deposited for collection hereunder will not contain any waste or substances that pose a present or potential hazard to human health and the environment or that is regulated hazardous waste as defined in the Federal Regulations, 40CFR, Part 261, and State of Indiana Administrative Code, title 320IAC- 4.1 or any other applicable law or regulations. These items include but are not limited to wet paint, fuels, pesticides, tires, items containing Freon. Customer agrees to indemnify and hold Himco and its affiliates harmless against all losses, claims, expenses (including reasonable attorney fees), lawsuits or other liabilities for injury or damage to persons, property or the environment in connection with the use of equipment by customer of breach of any warranty made herein by customer. The indemnity provided herein shall extend beyond the termination of this Service Agreement.

**EQUIPMENT CUSTODY AND USAGE:**

Himco places in the care, custody and control of said Customer appropriate equipment for the express purpose of collection and disposal of solid waste; such equipment is and shall remain the sole property of Himco. Customer further acknowledges that Himco shall not be liable for any damage to pavement, driving surfaces, or underground structures, such as, but not limited to septic systems or dry wells. Customer agrees not to alter, move, overload, or use equipment in any other manner than instructed by either the manufacturer or Himco. The customer acknowledges and agrees that any fire related damage to Himco equipment is the Customer's sole responsibility and agrees to provide sufficient insurance coverage to protect Himco's interest in said equipment. At the time of collection, customer shall provide unobstructed access to the equipment.

The undersigned individual signing this agreement on behalf of customer acknowledges that he/she has read and understands the terms and conditions of this agreement.

Customer Signature David Dingerich  
Date 11-25-24

Operations  Approved  Not Approved

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

Comments:



**Richard Aguirre, City Clerk-Treasurer**  
**CITY OF GOSHEN**

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

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

[richardaguirre@goshencity.com](mailto:richardaguirre@goshencity.com) • [www.goshenindiana.org](http://www.goshenindiana.org)

**To:** City of Goshen Board of Public Works & Safety  
**From:** Clerk-Treasurer Richard R. Aguirre  
**Date:** December 5, 2024  
**Subject:** Kauffman Construction right of way requests

**On Nov. 27, 2024, the Clerk-Treasurer's Office received the following request:**

Good afternoon,

I need approval on a number of items that we would like to add or redo on what was formerly known as Tony's Famous Grill.

- Tear out ADA Ramp and porch cap and repour it so that there are no cracks
- Install 2 black awnings on the south side of the building to match the existing awning next door at giving tree massage
- Install 2 mini split units on the north porch next to the kitchen wall to provide A/C in the kitchen
- Install a white vinyl privacy fence around the mini split units to keep the public away and safe

I have attached a site plan and pictures for your review. If you need anything else please let me know.

Thank You,

**Jonathan Kuhns**

Sales

(231) 245-7787

[jonathan@kauffmanconstructionllc.com](mailto:jonathan@kauffmanconstructionllc.com)

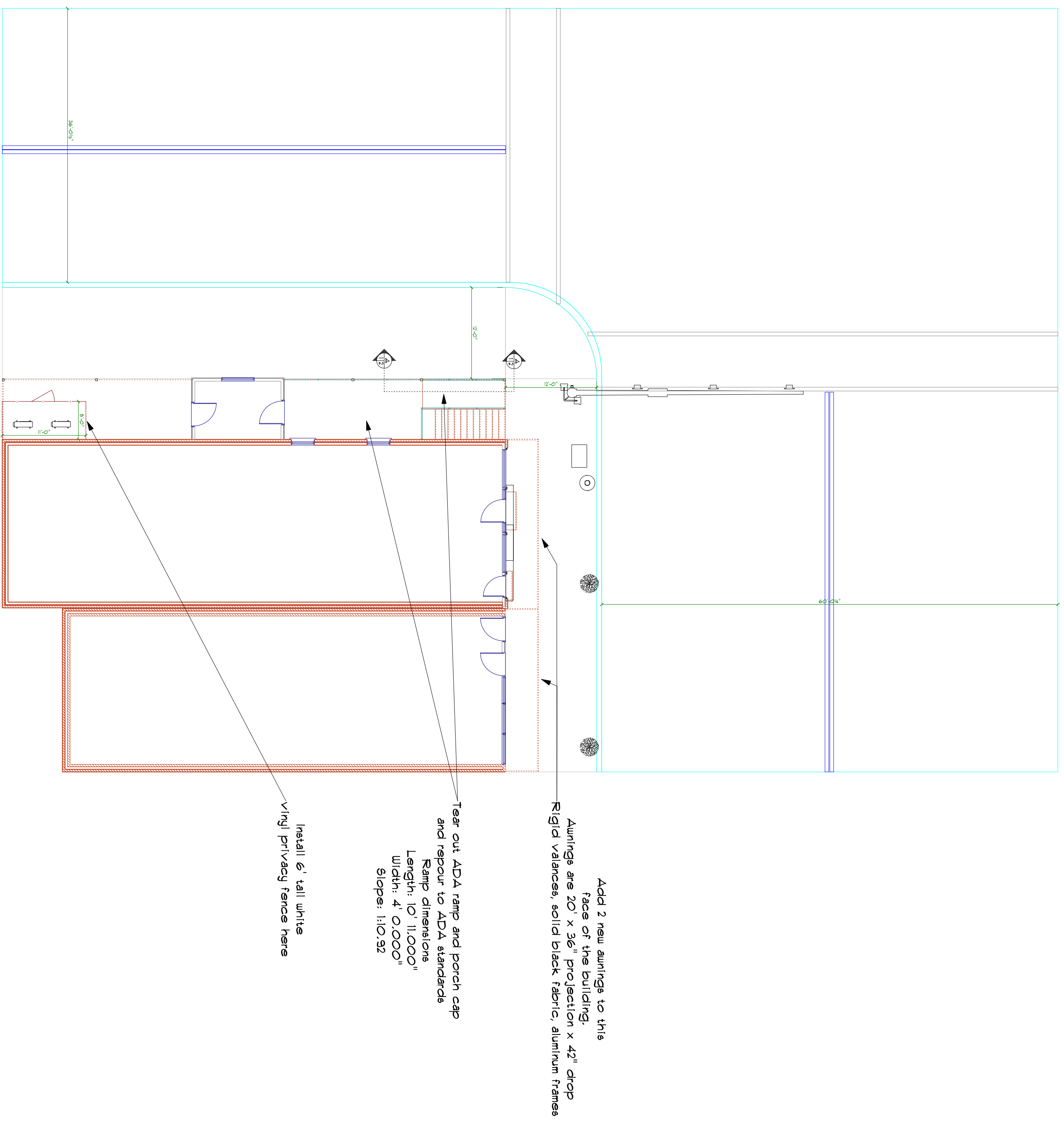


5593 Fir Rd

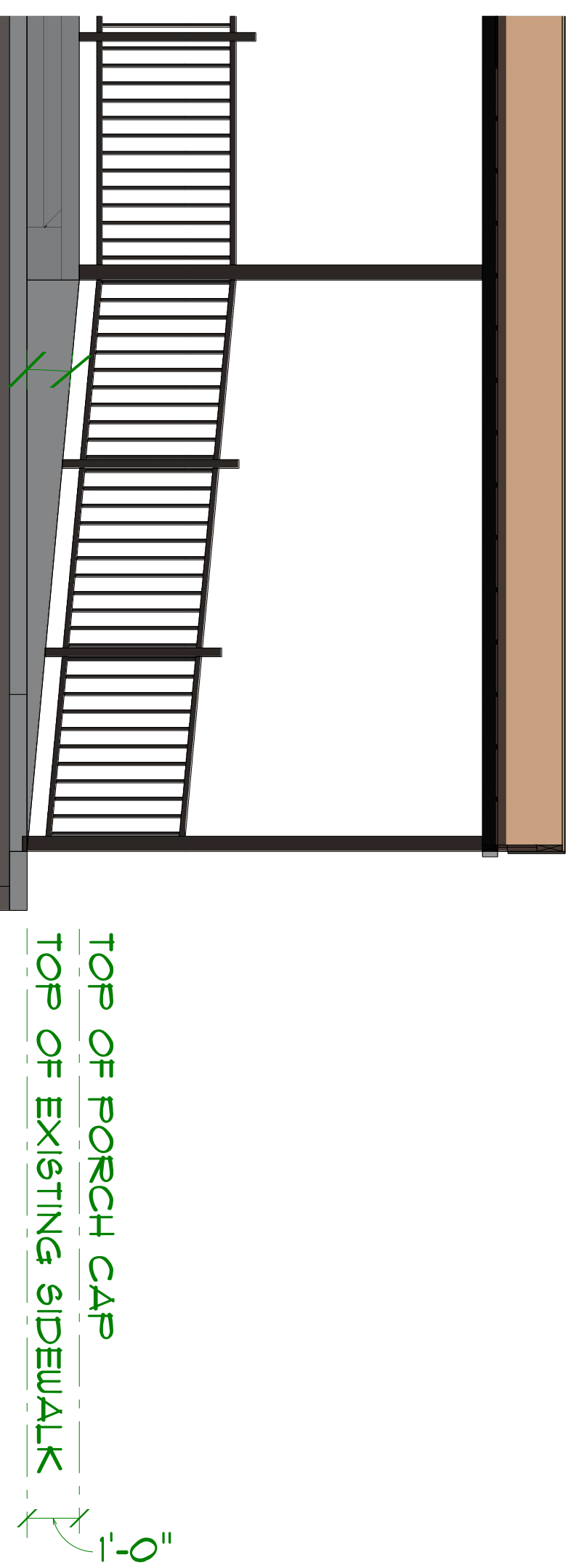
Bremen, IN 46506

[www.kauffmanconstructionllc.com](http://www.kauffmanconstructionllc.com)





**Site Plan**  
SCALE: 1" = 10'-0"



**CROSS SECTION OF ADA RAMP**  
SCALE: 3/8" = 1'-0"



**KAUFMAN**  
CONSTRUCTION  
103 N. 5th St.  
Goshen, IN 46526

**Kyle Stiffney**  
Phone #

**Site Plan**

SCALE: As Noted

DATE: Wednesday, November 27, 2024





6

91

HOME OF THE GIANT STEAK SANDWICH

Sherlock Homes

Tommy's  
HUMAN GRILL  
OPENING

5TH ST



more dates

Get View



103

Tommy's  
Home Care









**Legal Department, CITY OF GOSHEN**

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

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

December 5, 2024

**To:** Board of Public Works and Safety  
**From:** Brandy L. Toms, Paralegal  
**Subject:** Community Service Partnership Agreements

The City of Goshen has many various community service organizations that provide services or programs to its residents in a manner more efficient than what the City could provide. The City has supported these organizations with funds in the past and wishes to continue to do so. These organizations were subject to an application process requiring specific documentation regarding their organization and a detailed description of how these funds will be used. The organizations will also have to account for how the funds were used. As such, I bring before the Board today the 2024 Community Service Partnership Agreements for your consideration and approval.

Organization	Grant amount
Chamber of Commerce of Goshen IN, Inc.	\$50,000
Downtown Goshen, Inc. - Administrative	\$ 5,000
Downtown Goshen, Inc. – Façade	\$25,000
Downtown Goshen, Inc. – First Fridays	\$50,000
Goshen Theater, Inc.	\$75,000
Lacasa, Inc.	\$25,000
South Bend Elkhart Regional Partnership	\$ 2,750
Warsaw Housing Authority	\$20,000

All of these applicants have provided all the required information and the agreements are now being brought before the Board for consideration and approval.

**Suggested Motion:** I move to approve and authorize Mayor Leichty to execute agreements with Chamber of Commerce of Goshen, IN, Inc., Downtown Goshen, Inc. for its Administrative, Façade and First Fridays programs, Goshen Theater, Inc., Lacasa, Inc., South Bend Elkhart Regional Partnership, and Warsaw Housing Authority for the services described in each agreement.

## COMMUNITY SERVICE PARTNERSHIP AGREEMENT

With Downtown Goshen, Inc.

To Support Downtown Goshen, Inc Administrative Costs

This Community Service Partnership Agreement (“Agreement”), entered into by and between the City of Goshen, Indiana (“the City”) and Downtown Goshen, Inc. (the “Partner”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Agreement; Funds Award.

A. The purpose of this Agreement is to enable the City to award funds, in the amount of Five Thousand Dollars (\$5,000), to the Partner for eligible costs of the services or program described in Partner’s Community Services Partnership Application, a copy of which is attached hereto and made a part hereof (the “Project”).

B. The funds shall be used exclusively in accordance with the provisions contained in this Agreement, in Partner’s Community Services Partnership Application, and in conformance with any applicable Indiana Code provisions. The funds received by the Partner pursuant to this Agreement shall be used only to implement the Project or to provide the services in conformance with this Agreement and for no other purpose.

2. Representations and Warranties of the Partner.

A. The Partner expressly represents and warrants to the City that it is statutorily eligible to receive these funds and that the information set forth in its Community Services Partnership Application is true, complete, and accurate. The Partner expressly agrees to promptly repay all funds paid to it under this Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its Community Services Partnership Application.

B. By entering into this Agreement, Partner certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency. The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Partner.

3. Implementation of and Reporting on the Project.

A. The Partner shall implement and complete the Project in accordance with the description contained in Partner’s Community Services Partnership Application. Any modification of the Project from the description given in Partner’s Community Services Partnership Application shall require prior written approval of the City.



B. The Partner shall submit to the City a Final Community Services Partnership Report Form within thirty (30) days of completion of the Project, but no later than December 16, 2024, on forms provided by the City.

4. Term. This Agreement commences upon execution by both parties and approval by the Goshen Board of Public Works and Safety, and shall remain in effect through completion of the Project, or December 31, 2024, whichever is later.

5. Funding.

A. The City shall fund this award during its term, pursuant to the project budget set forth within Partner's Community Services Partnership Application. The Partner shall not make substantial modifications to any line item in the budget without the prior written consent of the City, nor shall the Project costs funded by this Agreement be changed or modified without the prior written consent of the City.

B. The disbursement of funds to the Partner shall not be made until this Agreement has been fully approved by the City.

6. Payment of Claims.

A. If advance or lump payment of all or a portion of the funds is not prohibited by statute or regulation, and the City agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. Otherwise, all payments shall be made forty-five (45) days in arrears in conformance with applicable fiscal policies and procedures.

B. Requests for payment will be processed only upon presentation of a claim in the form designated by the City, and must be submitted with accompanying supportive documentation as requested by the City.

7. Project Monitoring by the City. The City may conduct on-site or off-site monitoring reviews of the Project during the term of this Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Partner shall extend its full cooperation and give full access to the Project site and to relevant documentation to the City or its authorized designees for the purpose of determining, among other things:

A. whether Project activities are consistent with those set forth in the Partner's Community Services Partnership Application;

B. the actual expenditure of funds to date on the Project is in conformity with the amounts for each budget line item as contained in Partner's Community Services Partnership Application and that unpaid costs have been properly accrued; and

C. that Partner is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Agreement and are fully and accurately reflected in Project reports submitted to the City.

8. Audits and Maintenance of Records. Partner may be required to submit to an audit of funds paid pursuant to this Agreement, and shall make all books, accounting records, and other documents available at all reasonable times during the term of this Agreement and for a period of three (3) years after final payment for inspection by the City or its authorized designee. Copies shall be furnished to the City at no cost.

9. Compliance with Laws.

A. The Partner shall comply with all applicable federal, state and local laws, rules, regulations and ordinances. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the City and the Partner to determine whether the provisions of this Agreement require formal modification.

B. The Partner warrants that the Partner and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of any work activities. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further opportunities with the City under this program.

C. The Partner affirms that, if it is an entity described in Indiana Code Title 23, it is properly registered, and owes no outstanding reports to the Indiana Secretary of State.

D. As required by I.C. § 5-22-3-7:

i. The Partner and any principals of the Partner certify that:

a. the Partner, except for *de minimis* and nonsystematic violations, has not violated the terms of:

(i) I.C. 24-4.7 [Telephone Solicitation of Consumers];

(ii) I.C. 24-5-12 [Telephone Solicitations]; or

(iii) I.C. 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

b. the Partner will not violate the terms of I.C. 24-4.7 for the duration of this Agreement, even if I.C. 24-4.7 is preempted by federal law.

ii. The Partner and any principals of the Partner certify that an affiliate or principal of the Partner and any agent acting on behalf of the Partner or on behalf of an affiliate or principal of the Partner, except for *de minimis* and nonsystematic violations,

- a. has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and
  - b. will not violate the terms of I.C. 24-4.7 for the duration of this Agreement even if I.C. 24-4.7 is preempted by federal law.
10. Employment Eligibility Verification. As required by I.C. 22-5-1.7, the Partner hereby swears or affirms under the penalties of perjury that:
  - A. The Partner has enrolled and is participating in the E-Verify program;
  - B. The Partner has provided documentation to the City that it has enrolled and is participating in the E-Verify program;
  - C. The Partner does not knowingly employ an unauthorized alien.
  - D. The Partner shall require its contractors who perform work under this Agreement to certify to Partner that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Partner shall maintain this certification throughout the duration of the term of a contract with a contractor.

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

11. Funding Cancellation. When a written determination is made that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled.

12. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in Elkhart County, State of Indiana.

13. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including I.C. § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Partner covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, sexual orientation or identity, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Partner certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Partner understands that the City is a recipient of federal funds, and therefore, where applicable, Partner and any subcontractors shall comply with requisite affirmative action

requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

14. Contracting with Relatives. Pursuant to IC 36-1-21, if Partner is wholly or partially owned by a relative of an elected official of the City Partner certifies that Partner has notified in writing both the elected official of the City and the City's legal department prior to entering into this contract that an elected official of the City is a relative of an owner of Partner.

15. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the City shall be sent to:

City of Goshen  
Attn: Legal Department  
204 E. Jefferson Street  
Goshen, IN 46526  
bodiestegelman@goshencity.com

B. Notices to the Partner shall be sent to (Include contact name and title, mailing and e-mail address):

Downtown Goshen, Inc  
Attn: Veronica Berkey  
324 S 5<sup>th</sup> Street  
Goshen, IN 46528  
veronica@fablesbooks.com

16. Order of Precedence. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or State law; (2) this Agreement; (3) the Community Services Partnership Application.

17. Termination for Breach.

A. Failure to complete the Project and expend funds in accordance with this Agreement may be considered a material breach, and shall entitle the City to suspend payments under this Agreement, and suspend the Partner's participation in the City Community Service Partnership program until such time as all material breaches are cured to the City's satisfaction.

B. The expenditure of funds other than in conformance with the Project or the Budget may be deemed a breach. The Partner explicitly covenants that it shall promptly repay to the City all funds not spent in conformance with this Agreement.

18. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award under this Agreement, this Agreement may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in the best interest of the City. Termination shall be effected by delivery to the Partner of a Termination Notice,

specifying effective date of termination and extent of termination. The Partner shall be compensated for completion of the Project properly done prior to the effective date of termination. The City will not be liable for work on the Project performed after the effective date of termination.

19. Non-Collusion, Acceptance. The undersigned individual signing on behalf of the Partner attests, subject to the penalties for perjury, that the undersigned is the Partner or a properly authorized representative, agent, member, or officer of the Partner. To the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Partner, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

In Witness Whereof, Partner and the City have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

CITY:

CITY OF GOSHEN, INDIANA

\_\_\_\_\_  
Gina Leichty, Mayor

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

PARTNER:

DOWNTOWN GOSHEN, INC

\_\_\_\_\_  
Veronica Berkey, President

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

## EXHIBIT A

**Briefly describe your organization's structure and services provided:** Downtown Goshen Inc. exists to promote the growth and vibrancy of Goshen's historic commercial core.

**Proposed Project Description (250 words or less):** Continued oversight of two subcommittees, as well as strategic planning for the future of DGI.

**What are the measurable goals for this project? How will you define and measure success?** Continued strategic planning outlined in mission statement.

**Community needs or problems to be addressed:** Continued enhancement and promotion of Downtown Goshen businesses and public spaces.

**Describe how grant funds will be utilized. 250 words or less:** Payment of accounting services, subscription software and insurance.

**In 250 words or less, describe how the project will meet one or more objectives identified in the Goshen Comprehensive Plan, CDBG Consolidated Plan, or meet an urgent community development need:** Section E-3 of the comprehensive plan specifically identifies "positioning Downtown Goshen as a hub for small business and entrepreneurship." Section E-8 identifies Downtown Goshen as an area to "protect, develop and promote." These align with the mission and goals of DGI.



## COMMUNITY SERVICE PARTNERSHIP AGREEMENT

With Downtown Goshen, Inc.

To Support Downtown Goshen, Inc Façade Program

This Community Service Partnership Agreement (“Agreement”), entered into by and between the City of Goshen, Indiana (“the City”) and Downtown Goshen, Inc. (the “Partner”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Agreement; Funds Award.

A. The purpose of this Agreement is to enable the City to award funds, in the amount of Twenty Thousand Dollars (\$20,000), to the Partner for eligible costs of the services or program described in Partner’s Community Services Partnership Application, a copy of which is attached hereto and made a part hereof (the “Project”).

B. The funds shall be used exclusively in accordance with the provisions contained in this Agreement, in Partner’s Community Services Partnership Application, and in conformance with any applicable Indiana Code provisions. The funds received by the Partner pursuant to this Agreement shall be used only to implement the Project or to provide the services in conformance with this Agreement and for no other purpose.

2. Representations and Warranties of the Partner.

A. The Partner expressly represents and warrants to the City that it is statutorily eligible to receive these funds and that the information set forth in its Community Services Partnership Application is true, complete, and accurate. The Partner expressly agrees to promptly repay all funds paid to it under this Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its Community Services Partnership Application.

B. By entering into this Agreement, Partner certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency. The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Partner.

3. Implementation of and Reporting on the Project.

A. The Partner shall implement and complete the Project in accordance with the description contained in Partner’s Community Services Partnership Application. Any modification of the Project from the description given in Partner’s Community Services Partnership Application shall require prior written approval of the City.

B. The Partner shall submit to the City a Final Community Services Partnership Report Form within thirty (30) days of completion of the Project, but no later than December 16, 2024, on forms provided by the City.

4. Term. This Agreement commences upon execution by both parties and approval by the Goshen Board of Public Works and Safety, and shall remain in effect through completion of the Project, or December 31, 2024, whichever is later.

5. Funding.

A. The City shall fund this award during its term, pursuant to the project budget set forth within Partner's Community Services Partnership Application. The Partner shall not make substantial modifications to any line item in the budget without the prior written consent of the City, nor shall the Project costs funded by this Agreement be changed or modified without the prior written consent of the City.

B. The disbursement of funds to the Partner shall not be made until this Agreement has been fully approved by the City.

6. Payment of Claims.

A. If advance or lump payment of all or a portion of the funds is not prohibited by statute or regulation, and the City agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. Otherwise, all payments shall be made forty-five (45) days in arrears in conformance with applicable fiscal policies and procedures.

B. Requests for payment will be processed only upon presentation of a claim in the form designated by the City, and must be submitted with accompanying supportive documentation as requested by the City.

7. Project Monitoring by the City. The City may conduct on-site or off-site monitoring reviews of the Project during the term of this Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Partner shall extend its full cooperation and give full access to the Project site and to relevant documentation to the City or its authorized designees for the purpose of determining, among other things:

A. whether Project activities are consistent with those set forth in the Partner's Community Services Partnership Application;

B. the actual expenditure of funds to date on the Project is in conformity with the amounts for each budget line item as contained in Partner's Community Services Partnership Application and that unpaid costs have been properly accrued; and

C. that Partner is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Agreement and are fully and accurately reflected in Project reports submitted to the City.

8. Audits and Maintenance of Records. Partner may be required to submit to an audit of funds paid pursuant to this Agreement, and shall make all books, accounting records, and other documents available at all reasonable times during the term of this Agreement and for a period of three (3) years after final payment for inspection by the City or its authorized designee. Copies shall be furnished to the City at no cost.

9. Compliance with Laws.

A. The Partner shall comply with all applicable federal, state and local laws, rules, regulations and ordinances. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the City and the Partner to determine whether the provisions of this Agreement require formal modification.

B. The Partner warrants that the Partner and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of any work activities. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further opportunities with the City under this program.

C. The Partner affirms that, if it is an entity described in Indiana Code Title 23, it is properly registered, and owes no outstanding reports to the Indiana Secretary of State.

D. As required by I.C. § 5-22-3-7:

i. The Partner and any principals of the Partner certify that:

a. the Partner, except for *de minimis* and nonsystematic violations, has not violated the terms of:

(i) I.C. 24-4.7 [Telephone Solicitation of Consumers];

(ii) I.C. 24-5-12 [Telephone Solicitations]; or

(iii) I.C. 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

b. the Partner will not violate the terms of I.C. 24-4.7 for the duration of this Agreement, even if I.C. 24-4.7 is preempted by federal law.

ii. The Partner and any principals of the Partner certify that an affiliate or principal of the Partner and any agent acting on behalf of the Partner or on behalf of an affiliate or principal of the Partner, except for *de minimis* and nonsystematic violations,

- a. has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and
  - b. will not violate the terms of I.C. 24-4.7 for the duration of this Agreement even if I.C. 24-4.7 is preempted by federal law.
10. Employment Eligibility Verification. As required by I.C. 22-5-1.7, the Partner hereby swears or affirms under the penalties of perjury that:
  - A. The Partner has enrolled and is participating in the E-Verify program;
  - B. The Partner has provided documentation to the City that it has enrolled and is participating in the E-Verify program;
  - C. The Partner does not knowingly employ an unauthorized alien.
  - D. The Partner shall require its contractors who perform work under this Agreement to certify to Partner that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Partner shall maintain this certification throughout the duration of the term of a contract with a contractor.

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

11. Funding Cancellation. When a written determination is made that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled.

12. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in Elkhart County, State of Indiana.

13. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including I.C. § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Partner covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, sexual orientation or identity, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Partner certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Partner understands that the City is a recipient of federal funds, and therefore, where applicable, Partner and any subcontractors shall comply with requisite affirmative action

requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

14. Contracting with Relatives. Pursuant to IC 36-1-21, if Partner is wholly or partially owned by a relative of an elected official of the City Partner certifies that Partner has notified in writing both the elected official of the City and the City's legal department prior to entering into this contract that an elected official of the City is a relative of an owner of Partner.

15. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the City shall be sent to:

City of Goshen  
Attn: Legal Department  
204 E. Jefferson Street  
Goshen, IN 46526  
bodiestegelman@goshencity.com

B. Notices to the Partner shall be sent to (Include contact name and title, mailing and e-mail address):

Downtown Goshen, Inc  
Attn: Michelle Horning  
324 S 5<sup>th</sup> Street  
Goshen, IN 46528  
michhorning@gmail.com

16. Order of Precedence. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or State law; (2) this Agreement; (3) the Community Services Partnership Application.

17. Termination for Breach.

A. Failure to complete the Project and expend funds in accordance with this Agreement may be considered a material breach, and shall entitle the City to suspend payments under this Agreement, and suspend the Partner's participation in the City Community Service Partnership program until such time as all material breaches are cured to the City's satisfaction.

B. The expenditure of funds other than in conformance with the Project or the Budget may be deemed a breach. The Partner explicitly covenants that it shall promptly repay to the City all funds not spent in conformance with this Agreement.

18. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award under this Agreement, this Agreement may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in the best interest of the City. Termination shall be effected by delivery to the Partner of a Termination Notice,

specifying effective date of termination and extent of termination. The Partner shall be compensated for completion of the Project properly done prior to the effective date of termination. The City will not be liable for work on the Project performed after the effective date of termination.

19. Non-Collusion, Acceptance. The undersigned individual signing on behalf of the Partner attests, subject to the penalties for perjury, that the undersigned is the Partner or a properly authorized representative, agent, member, or officer of the Partner. To the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Partner, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

In Witness Whereof, Partner and the City have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

CITY:

CITY OF GOSHEN, INDIANA

\_\_\_\_\_  
Gina Leichty, Mayor

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

PARTNER:

DOWNTOWN GOSHEN, INC

\_\_\_\_\_  
Veronica Berkey, President

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



## EXHIBIT A

**Briefly describe your organization's structure and services provided:** The Facade Committee acts on behalf of Downtown Goshen, Inc. (DGI) to provide downtown building owners and tenants funding for maintaining & rehabilitating the facades of their building(s).

**Proposed Project Description (250 words or less):** The Facade Committee has already approved \$20,000 in grants for 2024 (following the protocols from prior years that funding was already secured even though the money wouldn't be received until August 2024). Approved grants for 2024 include full facade rehabilitations, painting, external front entry upgrades, and brickwork. \$25,000 is being requested for 2024 because some of our previous year funding was used by DGI to pay administrative (bookkeeping fees), which we were unaware of until financial reports were requested for this application.

**Community needs or problems to be addressed:** Maintaining an attractive central business district.

**Describe how grant funds will be utilized. 250 words or less:** The main goal is for funding to be used to maintain historic or architectural integrity as follows: - Preserve or restore architectural features - Use material and colors that match building or district identity - Consider the entire building - Take cues from neighboring buildings - Maintain continuity with character of district (i.e. storefront retail, etc.) - Improve or maintain interest and appeal at street level - Expand or maintain visual access to building interiors

**In 250 words or less, describe how the project will meet one or more objectives identified in the Goshen Comprehensive Plan, CDBG Consolidated Plan, or meet an urgent community development need:** E-3 of the comprehensive plan addresses the importance of small, locally-owned businesses, which comprises most of the downtown area. Well maintained and historically attractive buildings has proven to support a healthy and vibrant downtown that is a destination for visitors and community members.

## COMMUNITY SERVICE PARTNERSHIP AGREEMENT

With Downtown Goshen, Inc.

To Support Downtown Goshen, Inc First Fridays Program

This Community Service Partnership Agreement (“Agreement”), entered into by and between the City of Goshen, Indiana (“the City”) and Downtown Goshen, Inc. (the “Partner”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Agreement; Funds Award.

A. The purpose of this Agreement is to enable the City to award funds, in the amount of Fifty Thousand Dollars (\$50,000), to the Partner for eligible costs of the services or program described in Partner’s Community Services Partnership Application, a copy of which is attached hereto and made a part hereof (the “Project”).

B. The funds shall be used exclusively in accordance with the provisions contained in this Agreement, in Partner’s Community Services Partnership Application, and in conformance with any applicable Indiana Code provisions. The funds received by the Partner pursuant to this Agreement shall be used only to implement the Project or to provide the services in conformance with this Agreement and for no other purpose.

2. Representations and Warranties of the Partner.

A. The Partner expressly represents and warrants to the City that it is statutorily eligible to receive these funds and that the information set forth in its Community Services Partnership Application is true, complete, and accurate. The Partner expressly agrees to promptly repay all funds paid to it under this Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its Community Services Partnership Application.

B. By entering into this Agreement, Partner certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency. The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Partner.

3. Implementation of and Reporting on the Project.

A. The Partner shall implement and complete the Project in accordance with the description contained in Partner’s Community Services Partnership Application. Any modification of the Project from the description given in Partner’s Community Services Partnership Application shall require prior written approval of the City.

B. The Partner shall submit to the City a Final Community Services Partnership Report Form within thirty (30) days of completion of the Project, but no later than December 16, 2024, on forms provided by the City.

4. Term. This Agreement commences upon execution by both parties and approval by the Goshen Board of Public Works and Safety, and shall remain in effect through completion of the Project, or December 31, 2024, whichever is later.

5. Funding.

A. The City shall fund this award during its term, pursuant to the project budget set forth within Partner's Community Services Partnership Application. The Partner shall not make substantial modifications to any line item in the budget without the prior written consent of the City, nor shall the Project costs funded by this Agreement be changed or modified without the prior written consent of the City.

B. The disbursement of funds to the Partner shall not be made until this Agreement has been fully approved by the City.

6. Payment of Claims.

A. If advance or lump payment of all or a portion of the funds is not prohibited by statute or regulation, and the City agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. Otherwise, all payments shall be made forty-five (45) days in arrears in conformance with applicable fiscal policies and procedures.

B. Requests for payment will be processed only upon presentation of a claim in the form designated by the City, and must be submitted with accompanying supportive documentation as requested by the City.

7. Project Monitoring by the City. The City may conduct on-site or off-site monitoring reviews of the Project during the term of this Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Partner shall extend its full cooperation and give full access to the Project site and to relevant documentation to the City or its authorized designees for the purpose of determining, among other things:

A. whether Project activities are consistent with those set forth in the Partner's Community Services Partnership Application;

B. the actual expenditure of funds to date on the Project is in conformity with the amounts for each budget line item as contained in Partner's Community Services Partnership Application and that unpaid costs have been properly accrued; and

C. that Partner is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Agreement and are fully and accurately reflected in Project reports submitted to the City.

8. Audits and Maintenance of Records. Partner may be required to submit to an audit of funds paid pursuant to this Agreement, and shall make all books, accounting records, and other documents available at all reasonable times during the term of this Agreement and for a period of three (3) years after final payment for inspection by the City or its authorized designee. Copies shall be furnished to the City at no cost.

9. Compliance with Laws.

A. The Partner shall comply with all applicable federal, state and local laws, rules, regulations and ordinances. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the City and the Partner to determine whether the provisions of this Agreement require formal modification.

B. The Partner warrants that the Partner and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of any work activities. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further opportunities with the City under this program.

C. The Partner affirms that, if it is an entity described in Indiana Code Title 23, it is properly registered, and owes no outstanding reports to the Indiana Secretary of State.

D. As required by I.C. § 5-22-3-7:

i. The Partner and any principals of the Partner certify that:

a. the Partner, except for *de minimis* and nonsystematic violations, has not violated the terms of:

(i) I.C. 24-4.7 [Telephone Solicitation of Consumers];

(ii) I.C. 24-5-12 [Telephone Solicitations]; or

(iii) I.C. 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

b. the Partner will not violate the terms of I.C. 24-4.7 for the duration of this Agreement, even if I.C. 24-4.7 is preempted by federal law.

ii. The Partner and any principals of the Partner certify that an affiliate or principal of the Partner and any agent acting on behalf of the Partner or on behalf of an affiliate or principal of the Partner, except for *de minimis* and nonsystematic violations,

- a. has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and
  - b. will not violate the terms of I.C. 24-4.7 for the duration of this Agreement even if I.C. 24-4.7 is preempted by federal law.
10. Employment Eligibility Verification. As required by I.C. 22-5-1.7, the Partner hereby swears or affirms under the penalties of perjury that:
  - A. The Partner has enrolled and is participating in the E-Verify program;
  - B. The Partner has provided documentation to the City that it has enrolled and is participating in the E-Verify program;
  - C. The Partner does not knowingly employ an unauthorized alien.
  - D. The Partner shall require its contractors who perform work under this Agreement to certify to Partner that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Partner shall maintain this certification throughout the duration of the term of a contract with a contractor.

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

11. Funding Cancellation. When a written determination is made that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled.

12. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in Elkhart County, State of Indiana.

13. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including I.C. § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Partner covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, sexual orientation or identity, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Partner certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Partner understands that the City is a recipient of federal funds, and therefore, where applicable, Partner and any subcontractors shall comply with requisite affirmative action

requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

14. Contracting with Relatives. Pursuant to IC 36-1-21, if Partner is wholly or partially owned by a relative of an elected official of the City Partner certifies that Partner has notified in writing both the elected official of the City and the City's legal department prior to entering into this contract that an elected official of the City is a relative of an owner of Partner.

15. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the City shall be sent to:

City of Goshen  
Attn: Legal Department  
204 E. Jefferson Street  
Goshen, IN 46526  
bodiestegelman@goshencity.com

B. Notices to the Partner shall be sent to (Include contact name and title, mailing and e-mail address):

Downtown Goshen, Inc  
Attn: Amanda Rose  
324 S 5<sup>th</sup> Street  
Goshen, IN 46528  
amanda@eyedart.com

16. Order of Precedence. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or State law; (2) this Agreement; (3) the Community Services Partnership Application.

17. Termination for Breach.

A. Failure to complete the Project and expend funds in accordance with this Agreement may be considered a material breach, and shall entitle the City to suspend payments under this Agreement, and suspend the Partner's participation in the City Community Service Partnership program until such time as all material breaches are cured to the City's satisfaction.

B. The expenditure of funds other than in conformance with the Project or the Budget may be deemed a breach. The Partner explicitly covenants that it shall promptly repay to the City all funds not spent in conformance with this Agreement.

18. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award under this Agreement, this Agreement may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in the best interest of the City. Termination shall be effected by delivery to the Partner of a Termination Notice,



specifying effective date of termination and extent of termination. The Partner shall be compensated for completion of the Project properly done prior to the effective date of termination. The City will not be liable for work on the Project performed after the effective date of termination.

19. Non-Collusion, Acceptance. The undersigned individual signing on behalf of the Partner attests, subject to the penalties for perjury, that the undersigned is the Partner or a properly authorized representative, agent, member, or officer of the Partner. To the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Partner, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

In Witness Whereof, Partner and the City have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

CITY:

CITY OF GOSHEN, INDIANA

\_\_\_\_\_  
Gina Leichty, Mayor

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

PARTNER:

DOWNTOWN GOSHEN, INC

\_\_\_\_\_  
Veronica Berkey, President

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

## EXHIBIT A

**Briefly describe your organization's structure and services provided:** Downtown Goshen, Incorporated ("DGI") has successfully activated the downtown business district and attracted a diverse audience of people to downtown Goshen. DGI has accomplished this by hosting regular municipal events, developing collaborative promotions with downtown businesses, supporting strategic economic development initiatives, and enhancing the visual landscape of the downtown district through façade improvements.

**Proposed Project Description (250 words or less):** First Fridays is a monthly street festival created to attract folks to and activate Downtown Goshen merchants and destinations, all while providing a safe and family-friendly community event.

**What are the measurable goals for this project? How will you define and measure success?** The main goal of First Fridays is to provide a free community event that brings together folks of all backgrounds all while activating our Downtown economy. Success is measured by the amount of visibility we give to our Downtown each month.

**Describe how grant funds will be utilized. 250 words or less:** The funds will be used to help support the remainder of the year's entertainment, pay our contractors, marketing, and administrative time associated with planning and executing the event.

**In 250 words or less, describe how the project will meet one or more objectives identified in the Goshen Comprehensive Plan, CDBG Consolidated Plan, or meet an urgent community development need:** First Fridays showcases the value of the place we live, providing a free community event for all, all while highlighting the many services the Downtown Goshen businesses have to offer.

**COMMUNITY SERVICE**  
**PARTNERSHIP AGREEMENT**

**With Goshen Theater, Inc to Provide Assistance with the Operating Fund**

This Community Service Partnership Agreement (“Agreement”), entered into by and between the City of Goshen, Indiana (“the City”) and Goshen Theater, Inc (the “Partner”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. **Purpose of this Agreement; Funds Award.**

A. The purpose of this Agreement is to enable the City to award funds, in the amount of Seventy-Five Thousand Dollars (\$75,000), to the Partner for eligible costs of the services or program described in Partner’s Community Services Partnership Application, a copy of which is attached hereto and made a part hereof (the “Project”).

B. The funds shall be used exclusively in accordance with the provisions contained in this Agreement, in Partner’s Community Services Partnership Application, and in conformance with any applicable Indiana Code provisions. The funds received by the Partner pursuant to this Agreement shall be used only to implement the Project or to provide the services in conformance with this Agreement and for no other purpose.

2. **Representations and Warranties of the Partner.**

A. The Partner expressly represents and warrants to the City that it is statutorily eligible to receive these funds and that the information set forth in its Community Services Partnership Application is true, complete, and accurate. The Partner expressly agrees to promptly repay all funds paid to it under this Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its Community Services Partnership Application.

B. By entering into this Agreement, Partner certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency. The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Partner.

3. **Implementation of and Reporting on the Project.**

A. The Partner shall implement and complete the Project in accordance with the description contained in Partner’s Community Services Partnership Application. Any modification of the Project from the description given in Partner’s Community Services Partnership Application shall require prior written approval of the City.

B. The Partner shall submit to the City a Final Community Services Partnership Report Form within thirty (30) days of completion of the Project, but no later than December 16, 2024, on forms provided by the City.

4. Term. This Agreement commences upon execution by both parties and approval by the Goshen Board of Public Works and Safety, and shall remain in effect through completion of the Project, or December 31, 2024, whichever is later.

5. Funding.

A. The City shall fund this award during its term, pursuant to the project budget set forth within Partner's Community Services Partnership Application. The Partner shall not make substantial modifications to any line item in the budget without the prior written consent of the City, nor shall the Project costs funded by this Agreement be changed or modified without the prior written consent of the City.

B. The disbursement of funds to the Partner shall not be made until this Agreement has been fully approved by the City.

6. Payment of Claims.

A. If advance or lump payment of all or a portion of the funds is not prohibited by statute or regulation, and the City agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. Otherwise, all payments shall be made forty-five (45) days in arrears in conformance with applicable fiscal policies and procedures.

B. Requests for payment will be processed only upon presentation of a claim in the form designated by the City, and must be submitted with accompanying supportive documentation as requested by the City.

7. Project Monitoring by the City. The City may conduct on-site or off-site monitoring reviews of the Project during the term of this Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Partner shall extend its full cooperation and give full access to the Project site and to relevant documentation to the City or its authorized designees for the purpose of determining, among other things:

A. whether Project activities are consistent with those set forth in the Partner's Community Services Partnership Application;

B. the actual expenditure of funds to date on the Project is in conformity with the amounts for each budget line item as contained in Partner's Community Services Partnership Application and that unpaid costs have been properly accrued; and

C. that Partner is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Agreement and are fully and accurately reflected in Project reports submitted to the City.

8. Audits and Maintenance of Records. Partner may be required to submit to an audit of funds paid pursuant to this Agreement, and shall make all books, accounting records, and other documents available at all reasonable times during the term of this Agreement and for a period of three (3) years after final payment for inspection by the City or its authorized designee. Copies shall be furnished to the City at no cost.

9. Compliance with Laws.

A. The Partner shall comply with all applicable federal, state and local laws, rules, regulations and ordinances. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the City and the Partner to determine whether the provisions of this Agreement require formal modification.

B. The Partner warrants that the Partner and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of any work activities. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further opportunities with the City under this program.

C. The Partner affirms that, if it is an entity described in Indiana Code Title 23, it is properly registered, and owes no outstanding reports to the Indiana Secretary of State.

D. As required by I.C. § 5-22-3-7:

i. The Partner and any principals of the Partner certify that:

a. the Partner, except for *de minimis* and nonsystematic violations, has not violated the terms of:

(i) I.C. 24-4.7 [Telephone Solicitation of Consumers];

(ii) I.C. 24-5-12 [Telephone Solicitations]; or

(iii) I.C. 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

b. the Partner will not violate the terms of I.C. 24-4.7 for the duration of this Agreement, even if I.C. 24-4.7 is preempted by federal law.

ii. The Partner and any principals of the Partner certify that an affiliate or principal of the Partner and any agent acting on behalf of the Partner or on behalf of an affiliate or principal of the Partner, except for *de minimis* and nonsystematic violations,

c. has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

d. will not violate the terms of I.C. 24-4.7 for the duration of this Agreement even if I.C. 24-4.7 is preempted by federal law.

10. Employment Eligibility Verification. As required by I.C. 22-5-1.7, the Partner hereby swears or affirms under the penalties of perjury that:

A. The Partner has enrolled and is participating in the E-Verify program;

B. The Partner has provided documentation to the City that it has enrolled and is participating in the E-Verify program;

A. The Partner does not knowingly employ an unauthorized alien.

B. The Partner shall require its contractors who perform work under this Agreement to certify to Partner that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Partner shall maintain this certification throughout the duration of the term of a contract with a contractor.

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

11. Funding Cancellation. When a written determination is made that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled.

12. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in Elkhart County, State of Indiana.

13. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including I.C. § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Partner covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, sexual orientation or identity, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Partner certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Partner understands that the City is a recipient of federal funds, and therefore, where applicable, Partner and any subcontractors shall comply with requisite affirmative action



requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

14. Contracting with Relatives.

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

15. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the City shall be sent to:

City of Goshen  
Attn: Legal Department  
204 E. Jefferson Street  
Goshen, IN 46526  
bodiestegelmann@goshencity.com

B. Notices to the Partner shall be sent to (Include contact name and title, mailing and e-mail address):

Goshen Theater, Inc  
Attn: Susan Visser, Executive Director  
216 South Main Street  
Goshen, IN 46526  
execdir@goshentheater.org

16. Order of Precedence. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or State law; (2) this Agreement; (3) the Community Services Partnership Application.

17. Termination for Breach.

A. Failure to complete the Project and expend funds in accordance with this Agreement may be considered a material breach, and shall entitle the City to suspend payments under this Agreement, and suspend the Partner's participation in the City Community Service Partnership program until such time as all material breaches are cured to the City's satisfaction.

B. The expenditure of funds other than in conformance with the Project or the Budget may be deemed a breach. The Partner explicitly covenants that it shall promptly repay to the City all funds not spent in conformance with this Agreement.

18. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award under this Agreement, this Agreement may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in the best interest of the City. Termination shall be effected by delivery to the Partner of a Termination Notice, specifying effective date of termination and extent of termination. The Partner shall be compensated for completion of the Project properly done prior to the effective date of termination. The City will not be liable for work on the Project performed after the effective date of termination.

19. Non-Collusion, Acceptance. The undersigned individual signing on behalf of the Partner attests, subject to the penalties for perjury, that the undersigned is the Partner or a properly authorized representative, agent, member, or officer of the Partner. To the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Partner, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

In Witness Whereof, Partner and the City have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

CITY:

CITY OF GOSHEN, INDIANA

\_\_\_\_\_  
Gina Leichty, Mayor

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

PARTNER:

GOSHEN THEATER, INC

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

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

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

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

## EXHIBIT A

**Briefly describe your organization's structure and services provided:** Goshen Theater is a 501(c) 3 nonprofit organization, governed by a 13-member Board of Directors and with a staff of 4 full-time professional employees. It has a 600-seat auditorium, a ballroom, and an elegant lobby, all available as performance and gathering spaces. It's a strong asset to downtown Goshen and the entire region, as a place to gather and enjoy community and the arts. In the last three years, GT has enhanced its programming to best utilize the recently renovated spaces. New to the program portfolio are in-house produced plays and musicals; fine arts exhibitions in the lobby; music opportunities like the monthly Martinis and Music; and strong collaborations with other arts providers such as the Elkhart County Symphony Orchestra, Phoenix Performing Arts, and WVPE Public Radio.

**Proposed Project Description (250 words or less):** Goshen Theater is requesting operating support for 2025. The Theater represents the resurrection of an important historical, architectural landmark, providing a venue to showcase regional talent in all disciplines, serving as a community gathering place, and bringing in audiences and performers from beyond the region to stimulate new ideas. The energy and vitality of the theater stimulate the entire downtown and the theater activities bring hundreds of people to Downtown Goshen annually. GT will continue to provide programs for all ages and serve as a meeting place for community. Several programs will be presented as series' starting in 2025. This includes: A Readers Theater Series; A Cabaret Series; Martinis and Music Series; Movie Series; monthly partnership with First Fridays; Phoenix Performing Arts production series for all ages and for youth; Summer Theater Camp; After School Classes. In addition to this, we will produce one musical production, one straight play, and one musical collaboration with The Elkhart County Symphony Orchestra. Tentatively, our straight play in 2025 will be "Puffs", which is a parody of the Harry Potter books. It is a comedy with a message and will offer acting opportunities for all. Our musical is, tentatively, "Cabaret", providing lively and beautiful vocal numbers to be performed by regional talent. The Theater will also continue its vibrant rental programs, which accommodate business and family events and bring in musical presentations such as bands, dance, and vocal music.

**Community needs or problems to be addressed:** Goshen Theater seeks to provide a gathering place for all. The spaces will accommodate meetings, family events, corporate events, special occasions and more. The performance spaces are available to showcase talent in all stages of development---from students to professionals. We seek to promote the arts in all forms, provide learning in all styles, and celebrate all cultures.

**Describe how grant funds will be utilized. 250 words or less:** Goshen Theater is requesting general operating funds. This support will help to provide the infrastructure needed in order to create and implement the many programs and services described in this application. That infrastructure might include: staff salaries; cost of utilities; maintenance of our historic building; fees for the cost of productions; and more. We have been extremely grateful for the past support of the City of Goshen because general operating support is generally not the kind of funding which appeals to individual or corporate donors, who prefer to see their funds go toward programming or educational programs.

**In 250 words or less, describe how the project will meet one or more objectives identified in the Goshen Comprehensive Plan, CDBG Consolidated Plan, or meet an urgent community development need:** The work of Goshen Theater supports the goal of positioning Downtown Goshen as a hub of innovative and entrepreneurial activity. Our programs are all based in creativity and innovation and bring in partners from the region and beyond to share new ideas and bring new audiences to Goshen.

**COMMUNITY SERVICE**  
**PARTNERSHIP AGREEMENT**

**With Warsaw Housing Authority to Provide Operational and Programming Support**

This Community Service Partnership Agreement (“Agreement”), entered into by and between the City of Goshen, Indiana (“the City”) and Lacasa, Inc. (the “Partner”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. **Purpose of this Agreement; Funds Award.**

A. The purpose of this Agreement is to enable the City to award funds, in the amount of Twenty-Five Thousand Dollars (\$25,000), to the Partner for eligible costs of the services or program described in Partner’s Community Services Partnership Application, a copy of which is attached hereto and made a part hereof (the “Project”).

B. The funds shall be used exclusively in accordance with the provisions contained in this Agreement, in Partner’s Community Services Partnership Application, and in conformance with any applicable Indiana Code provisions. The funds received by the Partner pursuant to this Agreement shall be used only to implement the Project or to provide the services in conformance with this Agreement and for no other purpose.

2. **Representations and Warranties of the Partner.**

A. The Partner expressly represents and warrants to the City that it is statutorily eligible to receive these funds and that the information set forth in its Community Services Partnership Application is true, complete, and accurate. The Partner expressly agrees to promptly repay all funds paid to it under this Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its Community Services Partnership Application.

B. By entering into this Agreement, Partner certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency. The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Partner.

3. **Implementation of and Reporting on the Project.**

A. The Partner shall implement and complete the Project in accordance with the description contained in Partner’s Community Services Partnership Application. Any modification of the Project from the description given in Partner’s Community Services Partnership Application shall require prior written approval of the City.

B. The Partner shall submit to the City a Final Community Services Partnership Report Form within thirty (30) days of completion of the Project, but no later than December 16, 2024, on forms provided by the City.

4. Term. This Agreement commences upon execution by both parties and approval by the Goshen Board of Public Works and Safety, and shall remain in effect through completion of the Project, or December 31, 2024, whichever is later.

5. Funding.

A. The City shall fund this award during its term, pursuant to the project budget set forth within Partner's Community Services Partnership Application. The Partner shall not make substantial modifications to any line item in the budget without the prior written consent of the City, nor shall the Project costs funded by this Agreement be changed or modified without the prior written consent of the City.

B. The disbursement of funds to the Partner shall not be made until this Agreement has been fully approved by the City.

6. Payment of Claims.

A. If advance or lump payment of all or a portion of the funds is not prohibited by statute or regulation, and the City agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. Otherwise, all payments shall be made forty-five (45) days in arrears in conformance with applicable fiscal policies and procedures.

B. Requests for payment will be processed only upon presentation of a claim in the form designated by the City, and must be submitted with accompanying supportive documentation as requested by the City.

7. Project Monitoring by the City. The City may conduct on-site or off-site monitoring reviews of the Project during the term of this Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Partner shall extend its full cooperation and give full access to the Project site and to relevant documentation to the City or its authorized designees for the purpose of determining, among other things:

A. whether Project activities are consistent with those set forth in the Partner's Community Services Partnership Application;

B. the actual expenditure of funds to date on the Project is in conformity with the amounts for each budget line item as contained in Partner's Community Services Partnership Application and that unpaid costs have been properly accrued; and

C. that Partner is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Agreement and are fully and accurately reflected in Project reports submitted to the City.

8. Audits and Maintenance of Records. Partner may be required to submit to an audit of funds paid pursuant to this Agreement, and shall make all books, accounting records, and other documents available at all reasonable times during the term of this Agreement and for a period of three (3) years after final payment for inspection by the City or its authorized designee. Copies shall be furnished to the City at no cost.

9. Compliance with Laws.

A. The Partner shall comply with all applicable federal, state and local laws, rules, regulations and ordinances. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the City and the Partner to determine whether the provisions of this Agreement require formal modification.

B. The Partner warrants that the Partner and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of any work activities. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further opportunities with the City under this program.

C. The Partner affirms that, if it is an entity described in Indiana Code Title 23, it is properly registered, and owes no outstanding reports to the Indiana Secretary of State.

D. As required by I.C. § 5-22-3-7:

i. The Partner and any principals of the Partner certify that:

a. the Partner, except for *de minimis* and nonsystematic violations, has not violated the terms of:

(i) I.C. 24-4.7 [Telephone Solicitation Of Consumers];

(ii) I.C. 24-5-12 [Telephone Solicitations]; or

(iii) I.C. 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

b. the Partner will not violate the terms of I.C. 24-4.7 for the duration of this Agreement, even if I.C. 24-4.7 is preempted by federal law.

ii. The Partner and any principals of the Partner certify that an affiliate or principal of the Partner and any agent acting on behalf of the Partner or on behalf of an affiliate or principal of the Partner, except for *de minimis* and nonsystematic violations,

c. has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

d. will not violate the terms of I.C. 24-4.7 for the duration of this Agreement even if I.C. 24-4.7 is preempted by federal law.

10. Employment Eligibility Verification. As required by I.C. 22-5-1.7, the Partner hereby swears or affirms under the penalties of perjury that:

A. The Partner has enrolled and is participating in the E-Verify program;

B. The Partner has provided documentation to the City that it has enrolled and is participating in the E-Verify program;

A. The Partner does not knowingly employ an unauthorized alien.

B. The Partner shall require its contractors who perform work under this Agreement to certify to Partner that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Partner shall maintain this certification throughout the duration of the term of a contract with a contractor.

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

11. Funding Cancellation. When a written determination is made that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled.

12. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in Elkhart County, State of Indiana.

13. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including I.C. § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Partner covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, sexual orientation or identity, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Partner certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Partner understands that the City is a recipient of federal funds, and therefore, where applicable, Partner and any subcontractors shall comply with requisite affirmative action



requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

14. Contracting with Relatives.

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

15. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the City shall be sent to:

City of Goshen  
Attn: Legal Department  
204 E. Jefferson Street  
Goshen, IN 46526  
bodiestegelmann@goshencity.com

B. Notices to the Partner shall be sent to (Include contact name and title, mailing and e-mail address):

Lacasa, Inc.  
Attn: Heidi McHugh  
202 N. Cottage Avenue  
Goshen, IN 46528  
Heidi.mcugh@lacasainc.net

16. Order of Precedence. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or State law; (2) this Agreement; (3) the Community Services Partnership Application.

17. Termination for Breach.

A. Failure to complete the Project and expend funds in accordance with this Agreement may be considered a material breach, and shall entitle the City to suspend payments under this Agreement, and suspend the Partner's participation in the City Community Service Partnership program until such time as all material breaches are cured to the City's satisfaction.

B. The expenditure of funds other than in conformance with the Project or the Budget may be deemed a breach. The Partner explicitly covenants that it shall promptly repay to the City all funds not spent in conformance with this Agreement.

18. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award under this Agreement, this Agreement may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in the best interest of the City. Termination shall be effected by delivery to the Partner of a Termination Notice, specifying effective date of termination and extent of termination. The Partner shall be compensated for completion of the Project properly done prior to the effective date of termination. The City will not be liable for work on the Project performed after the effective date of termination.

19. Non-Collusion, Acceptance. The undersigned individual signing on behalf of the Partner attests, subject to the penalties for perjury, that the undersigned is the Partner or a properly authorized representative, agent, member, or officer of the Partner. To the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Partner, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

In Witness Whereof, Partner and the City have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

CITY:

CITY OF GOSHEN, INDIANA

\_\_\_\_\_  
Gina Leichty, Mayor

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

PARTNER:

LACASA, INC.

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

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

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

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

## EXHIBIT A

**Briefly describe your organization's structure and services provided:** Lacasa is a community development corporation operating in Elkhart County with a focus on financial empowerment, housing stability, community engagement, and neighborhood revitalization. The agency achieves its mission through five lines of business including: Financial Empowerment, Asset Management, Community Building and Engagement, Tenant Resources, and Real Estate Development. Lacasa owns and operates 378 units of affordable rental housing in Elkhart County with 226 in Goshen. Annually, over 450 people benefit from financial education services, 20 become first-time homeowners, and 500 interact with Community Building and Engagement. The organization has been in business since 1970. Lacasa services are client-driven, allowing us to offer individualized attention. Resulting behavior and outcomes are sustainable changes that can impact not only the client, but also the immediate family and following generations. Lacasa provides a roadmap for success for people to achieve economic mobility and well-being. Lacasa is governed by a Board of Directors that meets ten times per year. As a certified Community Housing Development Organization (CHDO), we maintain representation of the communities we serve on our board. Currently, 75% of our board is women and/or minorities, and over one-third are low- and moderate-income (LMI) households or reside in LMI neighborhoods. The organization is led by President/CEO, Jeremy Stutsman, and a five-member leadership team. Lacasa has 31 employees, of which 2 are part time.

**Proposed Project Description (250 words or less):** Lacasa has been a cornerstone in the Goshen community for decades. By furthering our partnership with Goshen, Lacasa can continue to expand our reach, ensuring that more families have access to the resources they need to thrive. The value we bring to the community is multifaceted: we not only address the immediate housing needs of low-income families, but we also contribute to the long-term economic development of Goshen by fostering a stable, engaged, and prosperous community through our projects and empowering individuals with education and connections. Investment in Lacasa is an investment in Goshen's future. Through our housing initiatives, we help to increase homeownership rates, reduce blight, and enhance the overall quality of life in neighborhoods. Our financial empowerment programs equip residents with the tools to manage their finances, build credit, and achieve economic independence, which in turn reduces the demand on public assistance programs. Our Individual Development Account (IDA) program over the last 5 years has brought over \$1.3 million to local individuals that is spent in our local economy with the purchase of major assets. Our focus on neighborhood revitalization leads to increased property values, attracting new businesses and investments to the area. By supporting Lacasa, Goshen is not only helping to meet the immediate needs of its most vulnerable citizens but also laying the groundwork for sustained community growth and prosperity. Lacasa works to increase access to asset-building opportunities in Goshen through affordable rental housing, development of homes for homeownership, and supporting homebuyers for long-term success.

**Community needs or problems to be addressed:** Many working adults struggle to get by with their wages, making it challenging to save and build assets for major investments (like buying a

home) or emergencies (such as illness or job loss). Solid personal finances are crucial for housing acquisition and retention, fundamental to financial stability and addressing today's housing crisis. Without financial literacy, housing stability is precarious. Lacasa's Financial Empowerment Center equips adults with knowledge and tools to transform personal finances from stressors to stability mechanisms. Lacasa's housing counselors support clients for long-term success as homeowners, providing greater opportunity for upward mobility and generational wealth-building. Based on the newest reporting with data from 2021, IndianaHousingDashboard.com sponsored by Indiana Housing and Community Development Authority (IHCDA) highlights that over 42% of renters and 15.5% of homeowners in Elkhart County face housing cost burdens, spending 30% or more of their income on housing. Despite ongoing challenges households face with stagnant income levels, Lacasa's financial education serves as a crucial foundation for establishing financial stability for our community's most vulnerable families. Our housing counselors focus on ensuring clients prepare for the future, considering not only current income but also future factors for long-term success as homeowners. These home-buyer services contribute to the creation of new homeowners, ultimately fostering neighborhood stabilization. There is also very little existing housing stock available for these low- and-moderate income households to be able to purchase or rent. Drastic increases in construction costs, higher interest rates, and skyrocketing insurance costs for developers and affordable housing providers demonstrate the need for organizations like Lacasa. We are essential to filling the gap to ensure that not only are people able to buy homes but some of the community's most vulnerable people gain and stay housed in safe, affordable conditions. Likewise, other sources of funds are essential to bridge these widening cost gaps to ensure the sustainability of agencies like Lacasa.

**What are the measurable goals for this project? How will you define and measure success?** In our Financial Empowerment Center (FEC), providing individualized, actionable steps to reach goals (SMART Goals) is a very effective way to measure progress for our clients. Our surveys provide valuable information for each class. We review the feedback and respond with additional tools in the needed areas and increase or decrease content in other areas. With Individual Development Accounts (IDA), in addition to accounts opened and total amount of dollars saved into these accounts, we also track our success rate for IDA clients, which consistently runs over 90% and is a key reason why Lacasa is allocated the most IDA accounts in the state every year by the Indiana Housing and Community Development Authority (IHCDA). We currently track home closings for our IDA clients only. This is helpful to measure the progress of our clients but is not reflective of our assistance for all homebuyers. We expect that 20 participants in our programs will successfully complete a first-time home purchase, with 2 of those participants purchasing a new home built by Lacasa. We expect 500 individuals utilizing Lacasa's roadmap for success to work toward economic mobility and well-being and take action through behavior changes and activities such as budgeting and paying down debt due to participating in FEC classes. FEC clients will achieve improved financial stability through increased savings, reduced debt burdens, and an improvement in credit score. Working adults will become more knowledgeable and confident with their financial decisions and gain access to the financial mainstream. Lacasa currently has 226 rental units in Goshen, with over 30 more in development over the next two years, as well as preservation investments in at least 27 more apartments and

construction of 2 homes for homeownership. All these units will be home to more households of the same demographics previously outlined. In addition to the physical development of these units, we also actively work on potential projects to apply for funding and infrastructure, meaning that 20 – 50 additional housing units are in some stage of planning each year.

**Describe how grant funds will be utilized. 250 words or less:** Funds support our organizational efforts to put together and complete successful housing projects in Goshen that provide more safe, affordable housing to low- and moderate-income households and improve the overall quality of life in our neighborhoods. Funds support our efforts in developing, maintaining, and delivering relevant classes in Goshen, as well as the necessary training for our Financial Counselors meeting with working families, the program ensures that households have access to essential knowledge and resources to achieve their goals. This support helps individuals navigate financial challenges and make informed decisions, ultimately leading to greater financial stability and the ability to secure housing. In 2023, 20 clients achieved homeownership, 4 of which were new homes built by Lacasa in Goshen. 509 Class graduates utilized Lacasa's roadmap for success and worked toward economic mobility and well-being through behavior changes and activities such as paying down debt and building credit and savings for homeownership. 22 Gained greater access to financial mainstream through non-predatory, low-barrier financial products. While we charge minimal fees for some services, shifting the cost burden would make these services inaccessible to those who need it most, understanding that not every transformative program can become self-sustaining. Therefore, Lacasa actively pursues diverse funding avenues, including corporate sponsorships, donor expansion, and philanthropic support.

**In 250 words or less, describe how the project will meet one or more objectives identified in the Goshen Comprehensive Plan, CDBG Consolidated Plan, or meet an urgent community development need:** This work directly aligns with several goals and objectives in the Goshen Comprehensive Plan, including most of the “Neighborhoods & Housing” section, with a few specific objectives outlined here. Our programs promote homeownership as prioritized in N-1 Objective 1, by both developing new homes and providing classes and counseling to prospective new homeowners by our HUD certified housing counselors. N-3 Objective 1 “Promote residential and infill development that is cohesive with existing neighborhood characteristics and design.” Lacasa works closely with the City of Goshen on infill opportunities for development and builds with intentionality for new homes to fit with the look of the neighborhood. In historic neighborhoods it is particularly important that the new construction has the look and feel of the existing characteristics. N-7 Is to “Expand housing options and opportunities” and Lacasa’s work aligns with these objectives to increase the supply and ensure the quality of affordable housing, partnering to provide community services for special needs housing, education for homeownership, and delivering rental and owner-occupied rehab of existing housing. Additionally, Lacasa works to develop new and rehab existing housing with energy efficient and low-waste designs as named in N-9. When Lacasa builds or rehabs a building or home, optimal energy efficiency and weatherization is prioritized. We switched to energy efficient lighting and low-flow toilet systems years ago. We also recycle construction material when possible to reduce

landfill waste. Additionally, we have multiple solar installations and four geothermal systems at multi-family properties.

## AGREEMENT

### **With Michiana Partnership, Inc D/B/A South Bend Elkhart Regional Partnership and Affiliate**

#### **To Support Regional Economic Development Strategies**

This Agreement (“Agreement”), entered into by and between the City of Goshen, Indiana (“the City”) and (D/B/A) South Bend Elkhart Regional Partnership and Affiliate (the “Partner”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Agreement; Grant Funds.

A. The purpose of this Agreement is to enable the City to award a grant, in the amount of Two Thousand Seven Hundred Fifty Dollars (\$2,750.00), to the Partner for eligible costs of the services or program described in Partner’s Community Services Grant Application, a copy of which is attached hereto and made a part hereof (the “Project”).

B. The funds shall be used exclusively in accordance with the provisions contained in this Agreement, in Partner’s Community Services Grant Application, and in conformance with any applicable Indiana Code provisions. The funds received by the Partner pursuant to this Agreement shall be used only to implement the Project or to provide the services in conformance with this Agreement and for no other purpose.

2. Representations and Warranties of the Partner.

A. The Partner expressly represents and warrants to the City that it is statutorily eligible to receive these Grant funds and that the information set forth in its Community Services Grant Application is true, complete, and accurate. The Partner expressly agrees to promptly repay all funds paid to it under this Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its Community Services Grant Application.

B. By entering into this Agreement, Partner certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency. The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Partner.

3. Implementation of and Reporting on the Project.

A. The Partner shall implement and complete the Project in accordance with the description contained in Partner’s Community Services Grant Application. Any

modification of the Project from the description given in Partner's Community Services Grant Application shall require prior written approval of the City.

B. The Partner shall submit to the City a Final Community Services Partnership Report Form within thirty (30) days of completion of the Project, but no later than December 16, 2024, on forms provided by the City.

4. Term. This Agreement commences upon execution by both parties, and shall remain in effect through completion of the Project, or December 31, 2024, whichever is later.

5. Funding.

A. The City shall fund this award during its term, pursuant to the project budget set forth within Partner's Community Services Grant Application. The Partner shall not make substantial modifications to any line item in the budget without the prior written consent of the City, nor shall the Project costs funded by this Agreement be changed or modified without the prior written consent of the City.

B. The disbursement of funds to the Partner shall not be made until this Agreement has been fully approved by the City.

6. Payment of Claims.

A. If advance or lump payment of all or a portion of the grant funds is not prohibited by statute or regulation, and the City agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. Otherwise, all payments shall be made forty-five (45) days in arrears in conformance with applicable fiscal policies and procedures.

B. Requests for payment will be processed only upon presentation of a claim in the form designated by the City, and must be submitted with accompanying supportive documentation as requested by the City.

7. Project Monitoring by the City. The City may conduct on-site or off-site monitoring reviews of the Project during the term of this Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Partner shall extend its full cooperation and give full access to the Project site and to relevant documentation to the City or its authorized designees for the purpose of determining, among other things:

A. whether Project activities are consistent with those set forth in the Partner's Community Services Grant Application;

B. the actual expenditure of funds to date on the Project is in conformity with the amounts for each budget line item as contained in Partner's Community Services Grant Application and that unpaid costs have been properly accrued; and

C. that Partner is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in



this Agreement and are fully and accurately reflected in Project reports submitted to the City.

8. Audits and Maintenance of Records. Partner may be required to submit to an audit of funds paid pursuant to this Agreement, and shall make all books, accounting records, and other documents available at all reasonable times during the term of this Agreement and for a period of three (3) years after final payment for inspection by the City or its authorized designee. Copies shall be furnished to the City at no cost.

9. Compliance with Laws.

A. The Partner shall comply with all applicable federal, state and local laws, rules, regulations and ordinances. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the City and the Partner to determine whether the provisions of this Agreement require formal modification.

B. The Partner warrants that the Partner and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of any work activities. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of grant opportunities with the City.

C. The Partner affirms that, if it is an entity described in Indiana Code Title 23, it is properly registered, and owes no outstanding reports to the Indiana Secretary of State.

D. As required by I.C. § 5-22-3-7:

i. The Partner and any principals of the Partner certify that:

a. the Partner, except for *de minimis* and nonsystematic violations, has not violated the terms of:

(i) I.C. 24-4.7 [Telephone Solicitation of Consumers];

(ii) I.C. 24-5-12 [Telephone Solicitations]; or

(iii) I.C. 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

b. the Partner will not violate the terms of I.C. 24-4.7 for the duration of this Agreement, even if I.C. 24-4.7 is preempted by federal law.

ii. The Partner and any principals of the Partner certify that an affiliate or principal of the Partner and any agent acting on behalf of the Partner or on behalf of an affiliate or principal of the Partner, except for *de minimis* and nonsystematic violations,

a. has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

b. will not violate the terms of I.C. 24-4.7 for the duration of this Agreement even if I.C. 24-4.7 is preempted by federal law.

10. Employment Eligibility Verification. As required by I.C. 22-5-1.7, the Partner hereby swears or affirms under the penalties of perjury that:

A. The Partner has enrolled and is participating in the E-Verify program;

B. The Partner has provided documentation to the City that it has enrolled and is participating in the E-Verify program;

C. The Partner does not knowingly employ an unauthorized alien.

D. The Partner shall require its contractors who perform work under this Agreement to certify to Partner that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Partner shall maintain this certification throughout the duration of the term of a contract with a contractor.

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

11. Funding Cancellation. When a written determination is made that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled.

12. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in Elkhart County, State of Indiana.

13. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including I.C. § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Partner covenants that it shall not discriminate against any employee or applicant for employment relating to this Grant with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, sexual orientation or identity, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Partner certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Partner understands that the City is a recipient of federal funds, and therefore, where applicable, Partner and any subcontractors shall comply with requisite affirmative action

requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

14. Contracting with Relatives.

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

15. Notice to Parties. Whenever any notice, statement or other communication is required under this Grant, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the City shall be sent to:

City of Goshen  
Attn: Legal Department  
204 E. Jefferson Street  
Goshen, IN 46526  
bodiestegelmann@goshencity.com

B. Notices to the Partner shall be sent to (Include contact name and title, mailing and e-mail address):

South Bend Elkhart Regional Partnership  
Attn: Bethany Hartley  
635 S. Lafayette Blvd, Ste 123  
South Bend, IN 46601  
bhartley@southbendelkhart.org

16. Order of Precedence. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or State law; (2) this Agreement; (3) the Community Services Grant Application.

17. Termination for Breach.

A. Failure to complete the Project and expend funds in accordance with this Agreement may be considered a material breach, and shall entitle the City to suspend grant payments, and suspend the Partner's participation in the City grant programs until such time as all material breaches are cured to the City's satisfaction.

B. The expenditure of funds other than in conformance with the Project or the Budget may be deemed a breach. The Partner explicitly covenants that it shall promptly repay to the City all funds not spent in conformance with this Agreement.

18. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award of the grant, this Agreement may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in the best interest of the City. Termination shall be affected by delivery to the Partner of a Termination Notice, specifying effective date of termination and extent of termination. The Partner shall be compensated for completion of the Project properly done prior to the effective date of termination. The City will not be liable for work on the Project performed after the effective date of termination.

19. Non-Collusion, Acceptance. The undersigned individual signing on behalf of the Partner attests, subject to the penalties for perjury, that the undersigned is the Partner or a properly authorized representative, agent, member, or officer of the Partner. To the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Partner, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

In Witness Whereof, Partner and the City have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

CITY OF GOSHEN, INDIANA:

\_\_\_\_\_  
Gina Leichty, Mayor

\_\_\_\_\_  
Date

PARTNER: MICHIANA PARTNERSHIP, INC DBA SOUTH BEND ELKHART REGIONAL PARTNERSHIP

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

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

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

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

## EXHIBIT A

**Briefly describe your organization's structure and services provided:** The South Bend - Elkhart Regional Partnership is a collaboration of the economic development partners from 47 smart connected communities in Northern Indiana and Southwest Michigan. The Regional Partnership focuses on a long-term systemic approach to advance the region's economy by aligning the efforts of various stakeholders around five key areas: Educating a world-class workforce, recruiting and retaining great talent, attracting and growing new economy companies in complement to our remarkably strong manufacturing industries, promoting inclusion and sparking opportunities for minorities, and helping entrepreneurs thrive. The regional partnership seeks to unify and collaborate so that together, the communities across the region work together to achieve what cannot be done individually.

**Community needs or problems to be addressed:** We believe the three biggest challenges our region faces still relate to the underlying root causes of previous economic declines:

1. First is Population Stagnation. Our rate of population growth continues to lag the state and nation. This is further exacerbated by the levels of out-migration, most often of the region's most talented individuals.
2. The second challenge relates to Educational Attainment. The region's Educational attainment levels are also lower than the state and nation, which limits the talent available to drive existing industry, as well as expansion into emerging areas of opportunity.
3. The third challenge is a Lack of economic diversification. Our region remains highly reliant upon key industry clusters that are extremely vulnerable to business cycles.

**Describe how grant funds will be utilized. 250 words or less:** This grant supports execution of the collaborative Regional Economic Development Plan focused on five crucial strategies:

1. Educating a world-class workforce. raise the post-secondary attainment levels among the region's residents from 30 to 50 percent.
2. recruiting and retaining great talent. stop the net out-migration of population and transform to a neutral or positive in-migration.
3. attracting and growing new economy companies in complement to our remarkably strong manufacturing industries. grow jobs in higher pay traded industry clusters by 20 percent.
4. helping entrepreneurs thrive. establish 200 high-potential startups.
5. promoting inclusion and sparking opportunities for minorities. Improve to the top 20 percent of metro areas for minority income equality

**In 250 words or less, describe how the project will meet one or more objectives identified in the Goshen Comprehensive Plan, CDBG Consolidated Plan, or meet an urgent community development need:** The project aligns with the City of Goshen's ten-year Comprehensive Plan & Community Vision, particularly related to economic development. Our Industry Growth initiatives work to diversify the local economy by creating a supportive environment for entrepreneurship which will increase new businesses and resiliency. Our work with the LIFT Network is focused on providing innovation facilities, expertise, and training for our region's legacy manufacturers. The SBE Region has a strong advanced mfg. sector on which to build, but the region's firms, are under tremendous competitive pressure. Maintaining and expanding the economic performance of advanced manufacturing in the SBE region will depend on these firms' ability to innovate and move new processes and products into the market rapidly. The LIFT Network's development of apprenticeship and internship programs are training the skilled workforce needed to support these industries as they adopt new technologies. execution of the we +you brand and work to improve quality of life aid in the recruitment of talent. our entrepreneurship programming such as the elevate origins seed and pre-seed accelerator and the HustleSBE bootcamp support the development of small locally-owned businesses.

**COMMUNITY SERVICE**  
**PARTNERSHIP AGREEMENT**

**With Warsaw Housing Authority to Provide Operational and Programming Support**

This Community Service Partnership Agreement (“Agreement”), entered into by and between the City of Goshen, Indiana (“the City”) and Warsaw Housing Authority (the “Partner”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. **Purpose of this Agreement; Funds Award.**

A. The purpose of this Agreement is to enable the City to award funds, in the amount of Twenty Thousand Dollars (\$20,000), to the Partner for eligible costs of the services or program described in Partner’s Community Services Partnership Application, a copy of which is attached hereto and made a part hereof (the “Project”).

B. The funds shall be used exclusively in accordance with the provisions contained in this Agreement, in Partner’s Community Services Partnership Application, and in conformance with any applicable Indiana Code provisions. The funds received by the Partner pursuant to this Agreement shall be used only to implement the Project or to provide the services in conformance with this Agreement and for no other purpose.

2. **Representations and Warranties of the Partner.**

A. The Partner expressly represents and warrants to the City that it is statutorily eligible to receive these funds and that the information set forth in its Community Services Partnership Application is true, complete, and accurate. The Partner expressly agrees to promptly repay all funds paid to it under this Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its Community Services Partnership Application.

B. By entering into this Agreement, Partner certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency. The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Partner.

3. **Implementation of and Reporting on the Project.**

A. The Partner shall implement and complete the Project in accordance with the description contained in Partner’s Community Services Partnership Application. Any modification of the Project from the description given in Partner’s Community Services Partnership Application shall require prior written approval of the City.

B. The Partner shall submit to the City a Final Community Services Partnership Report Form within thirty (30) days of completion of the Project, but no later than December 16, 2024, on forms provided by the City.

4. Term. This Agreement commences upon execution by both parties and approval by the Goshen Board of Public Works and Safety, and shall remain in effect through completion of the Project, or December 31, 2024, whichever is later.

5. Funding.

A. The City shall fund this award during its term, pursuant to the project budget set forth within Partner's Community Services Partnership Application. The Partner shall not make substantial modifications to any line item in the budget without the prior written consent of the City, nor shall the Project costs funded by this Agreement be changed or modified without the prior written consent of the City.

B. The disbursement of funds to the Partner shall not be made until this Agreement has been fully approved by the City.

6. Payment of Claims.

A. If advance or lump payment of all or a portion of the funds is not prohibited by statute or regulation, and the City agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. Otherwise, all payments shall be made forty-five (45) days in arrears in conformance with applicable fiscal policies and procedures.

B. Requests for payment will be processed only upon presentation of a claim in the form designated by the City, and must be submitted with accompanying supportive documentation as requested by the City.

7. Project Monitoring by the City. The City may conduct on-site or off-site monitoring reviews of the Project during the term of this Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Partner shall extend its full cooperation and give full access to the Project site and to relevant documentation to the City or its authorized designees for the purpose of determining, among other things:

A. whether Project activities are consistent with those set forth in the Partner's Community Services Partnership Application;

B. the actual expenditure of funds to date on the Project is in conformity with the amounts for each budget line item as contained in Partner's Community Services Partnership Application and that unpaid costs have been properly accrued; and

C. that Partner is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Agreement and are fully and accurately reflected in Project reports submitted to the City.

8. Audits and Maintenance of Records. Partner may be required to submit to an audit of funds paid pursuant to this Agreement, and shall make all books, accounting records, and other documents available at all reasonable times during the term of this Agreement and for a period of three (3) years after final payment for inspection by the City or its authorized designee. Copies shall be furnished to the City at no cost.

9. Compliance with Laws.

A. The Partner shall comply with all applicable federal, state and local laws, rules, regulations and ordinances. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the City and the Partner to determine whether the provisions of this Agreement require formal modification.

B. The Partner warrants that the Partner and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of any work activities. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further opportunities with the City under this program.

C. The Partner affirms that, if it is an entity described in Indiana Code Title 23, it is properly registered, and owes no outstanding reports to the Indiana Secretary of State.

D. As required by I.C. § 5-22-3-7:

i. The Partner and any principals of the Partner certify that:

a. the Partner, except for *de minimis* and nonsystematic violations, has not violated the terms of:

(i) I.C. 24-4.7 [Telephone Solicitation Of Consumers];

(ii) I.C. 24-5-12 [Telephone Solicitations]; or

(iii) I.C. 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

b. the Partner will not violate the terms of I.C. 24-4.7 for the duration of this Agreement, even if I.C. 24-4.7 is preempted by federal law.

ii. The Partner and any principals of the Partner certify that an affiliate or principal of the Partner and any agent acting on behalf of the Partner or on behalf of an affiliate or principal of the Partner, except for *de minimis* and nonsystematic violations,



c. has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

d. will not violate the terms of I.C. 24-4.7 for the duration of this Agreement even if I.C. 24-4.7 is preempted by federal law.

10. Employment Eligibility Verification. As required by I.C. 22-5-1.7, the Partner hereby swears or affirms under the penalties of perjury that:

A. The Partner has enrolled and is participating in the E-Verify program;

B. The Partner has provided documentation to the City that it has enrolled and is participating in the E-Verify program;

A. The Partner does not knowingly employ an unauthorized alien.

B. The Partner shall require its contractors who perform work under this Agreement to certify to Partner that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Partner shall maintain this certification throughout the duration of the term of a contract with a contractor.

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

11. Funding Cancellation. When a written determination is made that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled.

12. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in Elkhart County, State of Indiana.

13. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including I.C. § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Partner covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, sexual orientation or identity, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Partner certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Partner understands that the City is a recipient of federal funds, and therefore, where applicable, Partner and any subcontractors shall comply with requisite affirmative action

requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

14. Contracting with Relatives.

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

15. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the City shall be sent to:

City of Goshen  
Attn: Legal Department  
204 E. Jefferson Street  
Goshen, IN 46526  
bodiestegelman@goshencity.com

B. Notices to the Partner shall be sent to (Include contact name and title, mailing and e-mail address):

North Central Indiana Housing (Warsaw Housing Authority)  
Attn: Pam Kennedy, Executive Director  
109 Catherine Street  
PO Box 387  
Milford, IN 46542  
pkennedy@warsawhousing.com

16. Order of Precedence. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or State law; (2) this Agreement; (3) the Community Services Partnership Application.

17. Termination for Breach.

A. Failure to complete the Project and expend funds in accordance with this Agreement may be considered a material breach, and shall entitle the City to suspend payments under this Agreement, and suspend the Partner's participation in the City Community Service Partnership program until such time as all material breaches are cured to the City's satisfaction.

B. The expenditure of funds other than in conformance with the Project or the Budget may be deemed a breach. The Partner explicitly covenants that it shall promptly repay to the City all funds not spent in conformance with this Agreement.

18. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award under this Agreement, this Agreement may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in the best interest of the City. Termination shall be effected by delivery to the Partner of a Termination Notice, specifying effective date of termination and extent of termination. The Partner shall be compensated for completion of the Project properly done prior to the effective date of termination. The City will not be liable for work on the Project performed after the effective date of termination.

19. Non-Collusion, Acceptance. The undersigned individual signing on behalf of the Partner attests, subject to the penalties for perjury, that the undersigned is the Partner or a properly authorized representative, agent, member, or officer of the Partner. To the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Partner, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

In Witness Whereof, Partner and the City have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

CITY:

CITY OF GOSHEN, INDIANA

\_\_\_\_\_  
Gina Leichty, Mayor

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

PARTNER:

WARSAW HOUSING AUTHORITY

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

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

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

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

## EXHIBIT A

**Briefly describe your organization's structure and services provided:** The Housing Authority administers the Housing Choice Voucher Program for the City of Warsaw and City of Goshen. We assist low income, disabled and elderly families with rental assistance. We are responsible to HUD to ensure their eligibility, calculate their income and deductions, and lead them to other services that may assist them in living in safe, affordable housing. Above our commitments to HUD, state and federal; we administer a Rental Education and budgeting class for families when they are issued a voucher. In return for attending the class, the cities have funded the \$400.00 per family for deposit assistance on a rental unit they are leasing with their Housing Choice Voucher. To ensure that the program is successful, we partner with landlords and property developers to ensure there are affordable housing units available for the families that we serve. To entice new landlords, we give first time landlords to the program \$250.00 bonus from city funding to help with costs for repairs to make the unit pass Housing Quality Standards. Common repairs are installing GFCI's, installing a drop pipe and additional smoke detectors and/ or CO detectors. To be more accessible we established a partnership with the Salvation Army to have a presence in the City of Goshen one day a week. Staff travels to homes of voucher holders for elderly and disabled for their annual re-certifications and in special circumstances to issue vouchers. Our funding comes from HUD for administering the HCV program. We act as a pass through for federal funding to pay rent. Any programs that we create to make the families more successful or the program to succeed we use "Business Activity" funding which we have received from the City of Warsaw and City of Goshen.

**Proposed Project Description (250 words or less):** This funding is to enable the NCIH (Warsaw Housing Authority) to support families in their quest to obtain safe, affordable housing. To do this we need to support new affordable housing projects, recruit new landlords and empower families with vouchers to be successful in keeping their housing. To be successful we build partnerships to keep a presence in the community. We work with special populations that are the most vulnerable. Our location in Milford is a barrier to for those without transportation, coming to Goshen once a week, conducting appointments where they live, eliminates this barrier. Offering the Rental Ed Class educates families to be successful in their new housing units and assists in providing funding towards their deposits. The Good Housekeeping Program encourages tenants to have pride where they live. Adding more landlords to the program increases affordable housing for voucher holders. Working with developers increases affordable units for different populations that we serve.

**Community needs or problems to be addressed:** This past year we issued 75 vouchers to elderly persons to be ready to be housed at Green Oaks. 53 were able to obtain Medicaid vouchers and qualified to live there. This opened up 1- bedroom rental units in Goshen for other voucher holders. Some homes were put up for sale, placing houses in Goshen on the market for families to purchase. This is an example of meeting various goals listed in the CDBG Five Year Consolidated Plan. As stated in the CDBG Five Year Consolidated Plan; "The most direct method of preventing homelessness is the Housing Choice Voucher Program administered for Goshen by

the Warsaw Housing Authority". In 2023, we had 296 families request housing assistance. We called in 151 families out of which 95 families were issued vouchers. Only 24 of those families obtained housing. (This excludes the 75 vouchers issued for Green Oaks) 41 families lost or gave up their vouchers in 2023. Various situations existed such as death, buying homes, withdrew, or termed for fraud. Available housing units is the biggest hurdle. We spend time with housing studies and supplying statistics to potential developers to encourage more development of affordable housing.

**What are the measurable goals for this project? How will you define and measure success?** We measure our success by how many barriers we can eliminate to get the families with vouchers leased. If they are successful on the program until they can afford to be on their own. The classes, deposit assistance, landlord incentives and when landlords are pleased on how their unit is kept attributes to success. Conducting meetings in Goshen is helpful to families due to transportation issues. We closely monitor and document trends in the populations we serve and unit types and sizes that are needed.

**Describe how grant funds will be utilized. 250 words or less:** At this time, we have already done the programs and work described above this year. We have traveled to Goshen weekly, conducted monthly Rental Ed Classes, paid out rental deposits and landlord incentives. We will be in the red in our business activities for the year. We have to continue our commitment in our contract to Warsaw even though we have spent their funding working in Goshen.



**CITY OF GOSHEN LEGAL DEPARTMENT**  
**Donald R. Shuler, Assistant City Attorney**

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

donshuler@goshencity.com • www.goshenindiana.org  
Phone (574) 537-3855 • Fax (574) 533-8626 • TDD (574) 534-3185

November 27, 2024

To: Board of Public Works and Safety

From: Don Shuler, Assistant City Attorney

Subject: Julota SaaS License Agreement – Goshen Fire Department

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The attached proposed agreement is with TouchPhrase Development, LLC d/b/a Julota to implement a Software as a Service (SaaS) solution tailored for the needs of the Goshen Fire Department. The platform, “Julota Reach”, is designed to enhance the City’s ability to track and coordinate services for patients between Fire, EMS, law enforcement, and potentially health care facilities.

Under the agreement, Julota will provide Goshen with access to the hosted service and related modules. The service includes features for tracking patient interactions, managing resources, and generating reports, and contains data privacy measures compliant with HIPAA and other health privacy laws. The agreement outlines an initial term of one year, with options for annual renewal.

The service is offered at an annual fee of \$39,474.50, which includes implementation, ongoing maintenance, and support. The agreement has been reviewed by the City’s IT department to ensure proper integration with the City’s servers and equipment.

Suggested Motion: Move to approve the agreement between TouchPhrase Development, LLC d/b/a Julota, and authorize the Mayor to execute the agreement.



Julota® SaaS Agreement

### Software as a Service (SaaS) License Agreement

This Software as a Service Agreement (“SaaS Agreement” or “Agreement”), effective on the date on which the last of the parties executes this Agreement (“Effective Date”), is made by and between TouchPhrase Development, LLC d/b/a Julota, which has a place of business at 102 S. Tejon St., Ste. 1100, Colorado Springs, CO 80903 (“Julota”), and the City of Goshen, which has a place of business at: 209 N. 3<sup>rd</sup> Street, Goshen, IN 46526 (“Customer”), in exchange for the mutual promises contained herein, the receipt and legal sufficiency of which are acknowledged. Julota and Customer shall be collectively referred to as the “Parties”.

Julota provides a platform for organizations: a) to provide services directly to individuals seeking assistance through it; b) to coordinate with other individuals or organizations to provide services to individuals seeking assistance that it does not provide directly; c) to cooperate with other organizations to identify services needed for individuals seeking assistance; or d) to assemble, monitor and direct Care Team(s) (defined below).

#### 1. DEFINITIONS.

**1.1 Care Team** means an individual or an organization used or assembled by or through Customer or on behalf of Customer or in conjunction with Customer to assist Customer, directly or indirectly, in providing to a Help Seeker (defined below) the assistance he or she seeks or requires.

**1.2 Trusted Partner** means any organization that provides services to a Help Seeker through Customer utilizing the Hosted Service.

**1.3 Customer Data** means any data collected through the provision of these services, excluding publicly available data and data previously obtained by Julota. Customer Data may include Personal Data.

**1.4 Customer Website** means the website owned and operated by Customer as identified in the applicable Order Schedule.

**1.5 Documentation** means any user guide, help information and other documentation and information regarding the Hosted Service that is delivered by Julota to Customer in electronic or other form, if any, including any updates provided by Julota from time to time.

**1.6 Health Privacy Laws** means (i) the Health Insurance Portability and Accountability Act of 1996, as amended and including any implementing regulations (“HIPAA”); (ii) HITECH; (iii) 42 C.F.R. Part 2; and (iv) any other applicable federal or state statute, regulation, administrative or judicial ruling requiring a party to protect the confidentiality, privacy and/or security of Personal Data and other healthcare-related information pertaining to Help Seekers.

**1.7 Help Seeker(s)** means the individual seeking assistance from or through the Customer for health or non-health related assistance.

**1.8 Hosted Service** means the real-time website service hosted by Julota and provided to Customer from time to time. The Hosted Service includes any change, improvement, extension or other new version thereof that is developed or otherwise made available to Customer.

**1.9 Julota API** means the Julota application programming interface, scripts, widgets, embeddable snippets and other tools that allow Customer to integrate the Customer’s website or any other system of Customer with all or part of the Hosted Services.

**1.10 Personal Data** means any personal information that Julota collects, receives, or obtains, from Customer that does or can identify a specific individual or by or from which that specific individual may be identified, contacted or located, such as the individual’s name, address, social security number, or any information that applicable law proscribes as personally identifiable information. Personal Data may include Protected Health Information (defined below).

**1.11 Platform** means all ideas, concepts, inventions, systems, platforms, software, interfaces, tools, utilities, templates, forms, content, graphics, techniques, methods, processes, algorithms, code, know-how, trade secrets and other technologies, implementations and information that are used by Julota in providing the Julota services, including any innovations, revisions, enhancements, upgrades or improvements of the foregoing.

**1.12 Protected Health Information or PHI** shall have the same meaning as the term “protected health information” as defined in HIPAA.



Julota® SaaS Agreement

**1.5 Services** means, collectively, the Hosted Service, Platform, Julota API (if available or applicable), and Documentation, as described in the applicable SOW (defined below).

**2. SERVICES.** Subject to the terms and conditions of this Agreement, Julota will provide Customer with access to the Services as described in each Statement of Work "SOW". The first SOW will be Exhibit A-1 and each subsequent SOW will be designated "Exhibit A-\_\_\_", completing the blank for each subsequent SOW with the appropriate number, in ascending numerical order. A sample form SOW is attached as Exhibit A. Each SOW will be subject to the terms of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of a SOW, the terms and conditions of the SOW shall govern as to that SOW only. Customer's use of the Services is subject to this Agreement and the applicable SOW.

**3. LICENSE GRANT.**

**3.1 License Grant to Customer.** Subject to the terms and conditions of this Agreement, Julota grants Customer (defined in the applicable SOW), during the term of the applicable SOW and the term of this Agreement (whichever period is shorter), a non-exclusive, non-transferable right and license to access and use the Services as provided for in the applicable SOW. The Services will also be provided pursuant to the service levels set forth in the Service Level Agreement ("SLA"), which is attached as Exhibit B.

**3.2 License Restrictions for Customer.** Customer shall not, directly or indirectly, permit any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services; (ii) modify, translate, or create derivative works based on the Services; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the Services; (iv) make the use of the Services available to anyone other than for its own internal purposes; (v) use the Services for timesharing or service bureau purposes or otherwise for the benefit of a third party; (vi) remove any proprietary notices from the Services or any other Julota materials furnished or made available hereunder; (vii) publish or disclose to third parties any evaluation of the Services; (viii) use the Services in automatic, semi-automatic or manual tools designed to create virus signatures, virus detection routines, or any other data or code for detecting malicious code or data; or (ix) use the Services to build a competitive product or service, or copy any features, functions or graphics of the Services.

**3.3 API License.** If provided for in the applicable SOW, Julota hereby grants Customer, during the term of the applicable SOW, a nonexclusive, nontransferable, nonassignable, license to access and use the Julota API solely in connection with its use of the Services.

**3.4 License Grant to Julota.** Customer grants Julota, during the term of this Agreement and the applicable SOW, a non-exclusive, non-transferable, non-sublicensable license for it to use Customer Data and its trademarks (the "Marks") for the sole purpose of providing the Services or as otherwise set forth in this Agreement. Customer reserves all ownership and other rights in the Customer Data and the Marks not expressly included herein and nothing in this Agreement shall be deemed to convey or transfer to Julota any ownership rights in or to the Customer Data or the Marks. Notwithstanding the foregoing, Customer understands that it may not be the exclusive owner of Customer Data.

**3.5 License Restrictions for Julota.** Julota's license to the Marks is subject to the following restrictions: (i) all of Julota's uses of the Marks must be preapproved by Customer; (ii) Julota shall not use any Marks in such a way as to give the impression that they are the property of anyone other than Customer; and (iii) Julota shall comply with Customer's trademark guidelines, if any, and any other reasonable requirements established by Customer concerning the style, design, display, and use of its Marks. Customer's trademark guidelines, if any, are attached as Exhibit C.

**4. PRIVACY.** Julota may collect or store Customer Data, which may contain Personal Data concerning Help Seekers in connection with the provision of the Services. Julota will comply with its non-disclosure obligations set forth in this Agreement. The Parties agree to comply with the requirements of all Health Privacy Laws. The Parties agree that Julota will serve as a Business Associate with respect to certain Services it provides to Customer. Accordingly, as it applies to such Services, the Parties shall execute and abide by the terms set forth in the business associate agreement attached hereto and incorporated herein as Exhibit D ("BAA").

**5. PASSWORDS / SECURITY / DISCLOSURE.**





## Julota® SaaS Agreement

**5.1 Passwords.** Customer is responsible for maintaining the confidentiality of its passwords. Customer is solely responsible for any and all activities that occur under its account and all charges incurred from use of the Services accessed with Customer's passwords. Customer agrees to immediately notify Julota of any unauthorized use of Customer's account or any other breach of security known to Customer. Julota shall have no liability for any loss or damage arising from Customer's failure to comply with these requirements.

**5.2 Security.** Julota will maintain the Services at a third-party hosting facility and will implement industry standard security precautions, which are intended to prevent unauthorized access to Customer Data. Customer acknowledges that, notwithstanding such security precautions, use of, or in connection to, the internet provides the opportunity for unauthorized third parties to circumvent such precautions and gain access to the Services and Customer Data.

**5.3 Disclosure.** Customer agrees that Julota and its agents, which have agreed to confidentiality obligations at least as restrictive as Julota's obligations in this Agreement, can access Customer Data and its account information in order to respond to its service requests and/or as necessary, in Julota's sole discretion, to provide Customer with the Service. Julota will not otherwise disclose such data except if compelled by law, permitted by Customer, or pursuant to the terms of the BAA and the terms of Julota's Privacy Policy, which is available at [www.Julota.com/privacy-policy/](http://www.Julota.com/privacy-policy/) (the "Privacy Policy") and is incorporated into this Agreement. The terms of this Agreement shall supersede any inconsistent terms in the Privacy Policy.

**5.4 Permission to Disclose.** By submitting any Help Seeker's Personal Data to the Hosted Services and providing said Personal Data to Julota for processing, Customer warrants that it has: (i) legal authority to disclose such Personal Data in compliance with Health Privacy Laws and (ii) if required by Health Privacy Laws, this Agreement, or Julota's Privacy Policy or other policies, the necessary permissions, authorizations and consents from the Help Seekers that it enters Personal Data about through the Services and for the viewing and processing of their Personal Data and Customer Data by Julota, its agents, third-party service providers, other organizations utilizing the Hosted Services to provide assistance to Help Seekers, and Care Teams as set forth herein.

## 6. OWNERSHIP.

**6.1** With the exception of Customer Data, the Platform, the Hosted Services, and all information, reports, studies, object and source code (including without limitation the Services and all modifications, enhancements, additions, upgrades, or other works based thereon or related thereto), flow charts, product documentation, diagrams, specifications, methods and other tangible or intangible material of any nature whatsoever produced through or as a result of or related to any product, service or deliverable (collectively, "Works") or development of any data analytics or usage models hereunder, and all patents, copyrights, trademarks and other proprietary rights related to such Works and models, shall be the sole and exclusive property of Julota, its Affiliates (defined below) or their third party providers (collectively, "Julota Property"). Nothing in the Agreement shall convey to Customer any title to or ownership of any Julota Property. Customer hereby irrevocably assigns and transfers to Julota, its Affiliates or their third-party providers all rights, title, and interest in any such Works and models. "Affiliate" means an entity that controls, is controlled by, or under common control with a party, where "control" means the direct or indirect ownership of more than 50% of the voting securities of such entity or party. No rights are granted to Customer hereunder other than as expressly set forth herein.

**6.2** Customer acknowledges and agrees that Julota shall have the right to utilize data capture, syndication, and analysis tools, and other similar tools, to extract, compile, synthesize, and analyze any non-personally and non-Customer identifiable data or information resulting from Customer's use of the Service ("Statistical Data"). Statistical Data may be collected by Julota for any lawful business purpose without a duty of accounting to Customer, provided that the Statistical Data is used only in an aggregated form, without specifically identifying the source of the Statistical Data. Except for the limited rights granted herein, at no time shall Julota acquire any ownership, license, rights or other interest in or to the Customer Data, all of which shall, as between Customer and Julota, be and remain the confidential and proprietary information of Customer.

**6.3** Julota shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable and perpetual license to incorporate into the Service or otherwise use Statistical Data, any suggestions, enhancement requests, recommendations or other feedback Julota receives from Customer.



## 7. CUSTOMER OBLIGATIONS.

**7.1 Process.** Customer shall assign two (2) representatives who will be responsible for all communications with Julota related to the use of the Services.

**7.2 Conduct.** Customer is and will be solely responsible for its actions and the actions of its authorized users while using the Services. Customer is and will also be solely responsible for the actions of each Care Team and each of the Care Team's officers, directors, members, employees, agents, contractors, subcontractors and individual(s) related to Customer's use of the Services or the provision of assistance to any Help Seeker. Customer is and will be responsible for all claims made by a Care Team related to any transaction related to the Services. Customer acknowledges and agrees that Julota is not liable for, or responsible to, remediate any issues found on Customer's network or in Customer's web traffic through the Services. In addition to the conduct restricted in Section 3.2 (License Restrictions for Customer), Customer agrees, on behalf of itself and its authorized user(s) to: (i) abide by all laws and regulations including, without limitation, all laws applicable to any service Customer provides or any Care Team provides to a Help Seeker and all laws applicable to the transmission of technical data exported from the United States through the Services and to wireless e-mail marketing and advertising; (ii) not to upload or distribute in any way content that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Services or another's computer or mobile device; (iii) not to use the Services for illegal, fraudulent, unethical or inappropriate purposes; (iv) not to interfere or disrupt networks connected to the Services or interfere with the ability of others to access or use the Services; (v) not to distribute, promote or transmit through the Services any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene, pornographic, indecent, defamatory, hateful, racially, ethnically, unwanted or otherwise objectionable material of any kind or nature; (vi) not to transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability; (vii) not to interfere with another customer's use and enjoyment of the Services or another entity's use and enjoyment of similar services; (viii) not to engage in, or permit others to engage in, contests, chain letters or post or transmit "junk mail," "spam," "chain letters," or unsolicited mass distribution of e-mail; and (ix) to comply with all regulations, policies and procedures of networks connected to the Services, Julota, or Julota's service providers, as the same may be promulgated from time to time. Julota may remove any violating data on the website posted or stored using the Services or transmitted through the Services, without notice to Customer; however, Julota has no obligation to do so.

**7.3** Customer will maintain privacy policies and will provide copies or access to its privacy policies as required by applicable law to each Help Seeker prior to entering any information about the Help Seeker through the Services. Customer will ensure that its practices for storing and safeguarding Help Seeker related information are consistent with industry privacy, security standards and all applicable legal requirements. Customer must obtain the necessary authorizations and its privacy policy must include the following disclosures and terms sufficient to allow for: (i) the collection and processing of data from Help Seekers, including any Personal Data from a Help Seeker; (ii) Julota's processing of Help Seeker data; (iii) the use of Personal Data belonging to Help Seekers as contemplated in the provision of the Services and in the applicable SOW; (iv) the maintenance and retention of Personal Data after assistance is rendered by Customer to a Help Seeker; (v) the processing and sharing of Personal Data and other data of Help Seekers with other organizations utilizing the Hosted Services and by Care Teams; and (vi) the sharing and utilizing of each Help Seeker's Personal Data and the aggregate data derived therefrom by Julota. Customer shall be solely responsible for obtaining and maintaining documentation of any and all legally required written permissions, consents or authorizations from Help Seekers before a Help Seeker's Personal Data is provided to Julota or placed on the Platform. Any and all information provided by Customer to Julota via the Hosted Services or any other Services relating to any Help Seeker's permissions, consents or authorizations shall be accurate and valid. Customer shall notify Julota, on a form provided and/or approved by Julota, of any restrictions on the use or disclosure of a Help Seeker's Personal Data that Customer is required to abide by to the extent that such restriction may affect Julota's use or disclosure of that Help Seeker's Personal Data. Customer shall notify Julota of any changes in, or revocation of, the permission, authorization or consent by a Help Seeker for Customer to disclose such Help Seeker's Personal Data on the Platform. Notwithstanding the foregoing revocation or change in authorization, Julota may retain copies of that data in read only format to the extent permitted by law in order to comply with its statutory or regulatory requirements or to defend against a claim or complaint.



**8. FEES AND TAXES.**

**8.1 Fees.** Customer agrees to pay Julota the fees set forth on the applicable SOW for the Services, in accordance with the fees, charges, and billing terms set forth in this Agreement (collectively, "Fees"). All Fees are quoted in United States currency. Except as otherwise provided in this Agreement, Fees are non-refundable.

**8.2 Additional Charges.** Customer shall pay travel and living expenses and other out-of-pocket expenses reasonably incurred by Julota in connection with the Services. As applicable, such out-of-pocket expenses shall be incurred in accordance with Julota's then-current corporate travel and expense policy. If an out-of-pocket expense is listed in an Exhibit, such expense may be changed to reflect changes issued by the applicable vendor. All expenses incurred by Julota for which it seeks reimbursement from Customer must be preapproved in writing by Customer.

**8.3 Payments.** Unless stated otherwise on the applicable SOW, all Fees are due and payable by Customer within thirty (30) days after the invoice date. Any payment not received from Customer by the due date shall accrue (except with respect to charges then under reasonable and good faith dispute), at the lower of one and a half percent (1.5%) of the outstanding balance per month (being 18% per annum), or the maximum rate permitted by law, from the date such payment is due until the date paid. Customer shall also pay all sums expended (including, without limitation, reasonable legal fees) in collecting overdue payments.

**8.4 Taxes.** All fees set forth in this Agreement are exclusive of all taxes and similar fees. Customer shall be responsible for and shall pay in full all sales, use, excise or similar governmental taxes imposed by any federal, state, or local governmental entity upon the fees charged the Customer under this Agreement, exclusive, however, of taxes based on Julota's income, which taxes shall be paid by Julota. If any taxes for which Customer is responsible hereunder are paid by Julota, Customer will promptly reimburse Julota upon Customer's receipt of proof of payment.

**9. TERM.** This Agreement commences on the Effective Date and shall continue for one year, unless earlier terminated in accordance with this Agreement. Following the initial Term, this Agreement shall renew for successive twelve (12)-month periods unless either party provides written termination notice 60 days prior to the end of the Term.

**10. TERMINATION.**

**10.1 Breach.** Except as otherwise provided in this Section 10, either party shall have the right to terminate this Agreement or the applicable SOW upon written notice if the other party has breached a material term of this Agreement or the applicable SOW and has not cured such breach within thirty (30) days of receipt of notice from the non-breaching party specifying the breach.

**10.2 Insolvency.** Either party shall have the right to terminate this Agreement if (i) the other party has a receiver appointed for it or its property; (ii) any proceedings are commenced by the other party under a Chapter 7 bankruptcy; or (iii) the other party is liquidated or dissolved.

**10.3 Failure to Pay/Customer Conduct.** Julota shall have the right to suspend or terminate access to the Services, at its sole option, with or without notice to Customer, if: (i) any payment is delinquent by more than sixty (60) days, or (ii) if Customer breaches Sections 3.2, 5 or 7 of this Agreement

**10.4 Immediate Termination.** Julota may immediately suspend or terminate this Agreement or the applicable SOW, in its sole and absolute discretion, if Customer violates Section 7.2 of this Agreement or violates or misappropriates Julota's intellectual property rights related to the Services.

**10.5 Effect of Termination.** Termination of this Agreement will terminate all SOWs. Termination of an individual SOW will only terminate that SOW and will not result in the termination of this Agreement, unless the SOW provides otherwise. Julota shall not be liable to Customer or any third party for suspension or termination of Customer's access to, or right to use, the Services under this Agreement. If Customer terminates this Agreement or an SOW pursuant to Section 10.1 or if Julota terminates this Agreement or an SOW without cause, Customer will be obligated to pay the balance due for the Services up to the date of termination. If Julota terminates



#### Julota® SaaS Agreement

this Agreement or an SOW pursuant to Section 10.1 or if Customer terminates this Agreement or SOW without cause, Customer shall pay any unpaid fees through the date of termination and shall pay any unpaid fees covering the remainder of the term of all SOWs, if the Agreement is terminated, or the applicable SOW, if only the SOW is terminated. Upon the effective date of termination of this Agreement for any reason, Customer's access to the Services will terminate and Customer shall cease accessing and using the Services immediately and Julota shall cease use immediately of any Marks. Sections 3.2, 4, 5, 6, 8 through 16 and 18 of this Agreement shall survive termination for any reason.

## 11. CONFIDENTIALITY.

**11.1 Obligations.** Each of the Parties agrees to maintain in confidence any proprietary or non-public information of the other party, whether written or otherwise, disclosed by the other party in the course of performance of this Agreement that a party knows or reasonably should know is considered confidential by the disclosing party ("Confidential Information"). The Parties hereby agree the terms and conditions of this Agreement, and any discussions related to the Services shall be considered Confidential Information. Confidential Information also includes: (i) trade secrets and proprietary information (including that of any client, supplier or licensor); (ii) customer lists, client lists, business plans, information security plans, business continuity plans, requests for proposals or requests for information and responses to such requests that the Parties may change after the Effective Date, and proprietary software programs; and (iii) any other information received from or on behalf of a disclosing party that is marked confidential or that the recipient of the information could reasonably be expected to know is confidential. The receiving party shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and the Parties' respective rights therein, at all times exercising at least a reasonable level of care. Each party agrees to restrict access to the Confidential Information of the other party to those employees or agents who require access in order to perform their obligations under this Agreement and who agreed to be bound by these obligations of confidentiality and non-disclosure. Except as otherwise expressly provided in this Agreement, upon termination of this Agreement for any reason, and at the request of the disclosing party, the receiving party shall promptly return or destroy (at the disclosing party's option), all copies of the other party's Confidential Information. Notwithstanding the foregoing, each party may maintain archival copies of Confidential Information for the applicable statutory periods.

**11.2 Exclusions.** Confidential Information shall not include any information that is (i) already known to the receiving party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the receiving party; (iii) subsequently disclosed to the receiving party on a non-confidential basis by a third party not having a confidential relationship with the other party hereto that rightfully acquired such information; (iv) communicated to a third party by the receiving party with the express written consent of the other party hereto; or (v) requests for information pursuant to the Freedom of Information Act, or any open-records or public disclosure laws, provided an exemption to said disclosure or other law superseding the requirement for disclosure does not apply, and provided that the disclosure does not include data solely stored in the Hosted Service. A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process shall not be considered a breach of this Agreement; provided the receiving party provides prompt notice of any such subpoena, order, or the like to the other party so that such party will have the opportunity to obtain a protective order or otherwise oppose the disclosure.

## 12. WARRANTY.

**12.1 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS," AND, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, JULOTA MAKES NO AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, IMPLIED WARRANTIES OR MERCHANTABILITY, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY JULOTA, OR OTHERWISE UNDER THESE TERMS. WITHOUT LIMITING THE FOREGOING, JULOTA DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT USE OF THE SERVICES WILL BE



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UNINTERRUPTED OR ERROR FREE. JULOTA DISCLAIMS ALL LIABILITY FOR ANY MALFUNCTIONING, IMPOSSIBILITY OF ACCESS, OR POOR USE CONDITIONS OF THE SERVICE DUE TO INAPPROPRIATE OR DEFECTIVE EQUIPMENT, DISTURBANCES RELATED TO INTERNET SERVICE PROVIDERS, TO THE SATURATION OF THE INTERNET NETWORK, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMMUNICATIONS LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, OR ALTERATION OF, USER COMMUNICATIONS, PROBLEMS RELATED TO THE SERVICES OR ITS USE, LOSS OF PERSONAL CONTENT, OR ANY OTHER REASONS. JULOTA ALSO EXPLICITLY DISCLAIMS ANY WARRANTIES RELATED TO BUSINESS RESULTS THAT MAY BE OBTAINED BY USE OF THE SERVICES AND SPECIFICALLY STATES NO SUCH REPRESENTATIONS ARE OR HAVE BEEN MADE TO CUSTOMER. CUSTOMER WILL BE SOLELY RESPONSIBLE FOR (I) ESTABLISHING AND MAINTAINING AN INTERNET CONNECTION SUFFICIENT FOR THE SERVICES TO FUNCTION PROPERLY, (II) THE CONTENT AND EFFICACY OF ALL MARKETING INITIATIVES, AND (III) FULFILLING ALL ITS OBLIGATIONS TO HELP SEEKERS IN CONNECTION WITH THE USE OF THE SERVICES. CUSTOMER WILL FOLLOW PROPER BACK-UP PROCEDURES FOR ANY OTHER PROGRAMMING AND ALL DATA TO PROTECT AGAINST LOSS OR ERROR RESULTING FROM THE USE OF ANY EQUIPMENT OR THE SERVICES. CUSTOMER AGREES THAT JULOTA AND THE PLATFORM AND SERVICES DO NOT MAKE CLINICAL, MEDICAL OR OTHER DECISIONS OR RECOMMEND, ENDORSE OR MAKE ANY MEDICAL, CLINICAL OR RELATED REPRESENTATIONS OR WARRANTIES. CUSTOMER ASSUMES ALL RESPONSIBILITY IN CONNECTION WITH DISCLOSING CUSTOMER DATA ON THE PLATFORM.

**12.2 Open Source.** Parts of the software for the Services may be subject to the GPL (General Public License) for open source software, and all warranties are disclaimed for such parts by the Free Software Foundation, Inc. See the GNU General Public License for more details. Similarly, parts of such software may be subject to the MIT License for open source software, and therefore, the following restrictions: MIT grants permission, free of charge to any person obtaining a copy of the software and associated documentation files, to deal in the software without restriction, including without limitation the rights to use, copy, modify, merge, publish, distribute, sublicense, and/or sell copies of the software, and to permit persons to whom the software is furnished to do so, subject to the following conditions and notwithstanding anything to the contrary in this Agreement: the software is provided "AS IS" without warranty of any kind, express or implied, including but not limited to, the warranties of merchantability, fitness for a particular purpose and non-infringement. In no event shall the authors or copyright holders be liable for any claim, damages or other liability, whether in an action of contract, tort or otherwise, arising from, out of or in connection with the software or the use of other dealings in the software.

**12.3 Mutual Warranties.** Each party represents and warrants that: (i) it does not have any contractual obligations that would prevent it from entering into this Agreement; and (ii) it will comply with all laws and regulations directly applicable to its performance of its obligations under this Agreement or its use of the Services.

**13. INDEMNIFICATION.** Julota shall indemnify, defend, or at its option settle, any third party claim or suit based on any third party claim or suit based on a claim that the provision of the Services violate applicable law or that the Services (excluding any third party software) violate, infringe or misappropriate any United States patent, copyright, trademark or trade secret and Julota shall pay any final judgment entered against Customer in any such proceeding or agreed to in settlement; provided (i) Julota is promptly notified in writing of such claim or suit, (ii) Julota or its designee has sole control of such defense or settlement, and (iii) Customer gives all information and assistance requested by Julota or such designee. To the extent that use of the Services is enjoined, Julota may at its option either (a) procure for Customer the right to use the Services, (b) replace the Services with other suitable products, or (c) refund the prepaid portion of the Fee(s) paid by Customer for the Services or the affected part thereof. Julota shall have no liability under this Section 13 or otherwise to the extent a claim or suit is based upon (1) use of the Services in combination with software or hardware not provided by Julota if infringement would have been avoided in the absence of such combination, (2) modifications to the Services not made by Julota, if infringement would have been avoided by the absence of such modifications, or (3) use of any version other than a current release of the Services, if infringement would have been avoided by use of a current release.

THIS SECTION 13 STATES JULOTA'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR VIOLATION, INFRINGEMENT AND MISAPPROPRIATION CLAIMS BASED ON THE SERVICES.



**14. LIMITATION OF LIABILITY.**

**14.1 Limitation on Direct Damages.** EXCEPT AS IT RELATES TO JULOTA'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL JULOTA'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER FOR THE SERVICES FOR THE PERIOD OF TWELVE (12) MONTHS PRIOR TO THE EVENT THAT DIRECTLY GAVE RISE TO THE DAMAGES CLAIMED, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.

**14.2 Waiver of Consequential Damages.** EXCEPT AS IT RELATES TO JULOTA'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, IN NO EVENT SHALL JULOTA BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA OR LOSS OF PROFITS, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF JULOTA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**14.3 No Liability for Wrongful Third-Party Disclosures.** Notwithstanding anything to the contrary herein, Julota will have no liability to Customer or any other organization or individual related to the wrongful disclosure by Customer, the Care Team, a Trusted Partner or any director, officer, employee, agent or service provider of the foregoing.

**15. NON-SOLICITATION.** During the term and for a period of twelve (12) months thereafter, Julota and Customer shall not knowingly, directly or indirectly, solicit, recruit, employ or contract with any employees of one another.

**16. INSURANCE.** Julota will maintain (and shall cause each of its agents, independent contractors and subcontractors performing any services hereunder to maintain) at its sole cost and expense at least the following insurance covering its obligations under this Agreement:

**16.1 Commercial General Liability.** With coverage of not less than One Million Dollars (\$1,000,000) each occurrence (for bodily injury and for damage to property); including coverage for premises and operations, contractual liability, broad form property damage and products and completed operations and Three Million Dollars (\$3,000,000) in the aggregate.

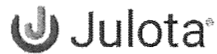
**16.2 Cyber Liability Insurance.** With coverage of not less than Three Million Dollars (\$3,000,000) in the aggregate which shall include at a minimum coverage for (i) unauthorized access by an outside party, which may take the form of a "hacker attack" or a "virus" introduced by a third party; (ii) failure to prevent a party other than an insured from unauthorized access to, use of, tampering with or introduction of malicious code into data, programs or systems; and (iii) breach of Customer's data.

**16.3 Policy Terms.** Such insurance shall name Customer as an additional insured. A blanket endorsement or an additional insured endorsement evidencing the policy shall be provided to Customer upon execution. Julota shall provide Customer with written notice of any policy cancellation within thirty (30) days of the receipt of such notice. Julota shall obtain replacement insurance policies meeting the requirements of this Section 17.

**17. GENERAL.**

**17.1 Notices.** All notices to a party shall be in writing and sent to the addresses specified in this Agreement (and in the case of Julota, to the attention of the Chief Operating Officer) or such other address as a party notifies the other party, and shall be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; three days after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

**17.2 Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State that the Customer is located, excluding its conflict of laws rules. Each party hereby irrevocably submits to the exclusive jurisdiction of the Courts within the County of El Paso located in the State of Colorado. Any provision of this Agreement held to be unenforceable shall not affect the enforceability of



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any other provisions of this Agreement. Each party further hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

**17.3 Dispute Resolution.** Before initiating legal action against the other party relating to a dispute herein, the Parties agree to work in good faith to resolve disputes and claims arising out of this Agreement. To this end, each party may request that the other party designate an officer or other management employee with authority to bind such party to meet to resolve the dispute or claim. If the dispute is not resolved within 30 days of the commencement of informal efforts under this paragraph, either party may pursue formal legal action. This paragraph will not apply if expiration of the applicable time for bringing an action is imminent and will not prohibit a party from pursuing injunctive or other equitable relief to which it may be entitled.

**17.4 Relationship of the Parties.** The Parties to this agreement are independent entities, and no agency, partnership franchise, joint venture or employee-employer relationship is intended or created by this Agreement.

**17.5 Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Julota (not to be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety (including all SOWs), without consent of the other Party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, provided that, in the case of Customer, the assignment is not to a direct competitor of Julota. In the event that either Party assigns its rights or obligations hereunder, in violation of this Section, either Party may at its election, terminate this Agreement, provided it does so within sixty (60) days of the date that written notice of the assignment is provided to the non-assigning Party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**17.6 Entire Agreement.** This Agreement, including all SOWs, exhibits and addenda hereto, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any SOW, exhibit or addendum hereto, the terms of such SOW, exhibit, or addendum shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or other order documentation (excluding SOWs) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. Further, notwithstanding the foregoing, terms of the SOW that conflict with or are inconsistent with this Agreement, which conflict with statutory or regulatory requirements will not control or supersede this Agreement and such terms will be deemed waived.

**17.7 Force Majeure.** Neither party shall be in default if its failure to perform any obligation under this Agreement is caused solely by supervening conditions beyond that party's reasonable control including, without limitation, acts of God, civil commotion, war, strikes, labor disputes, third party Internet service interruptions or slowdowns, vandalism or "hacker" attacks, acts of terrorism or governmental demands or requirements.

**17.8 No Third-Party Beneficiary Rights.** This Agreement is not intended to and shall not be construed to give any third-party any interest or rights (including, without limitation, any third-party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

**17.9 Headings.** The headings of the sections of this Agreement are for reference only and shall not modify, define or limit any of the terms or provisions of this Agreement.

**17.10 Severability.** If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, that provision will be enforced to the maximum extent permissible so as to affect the intent of the parties and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.



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**17.11 Construction.** This Agreement has been negotiated by the Parties and will be fairly interpreted in accordance with its terms and without any strict construction in favor or against any party.

**17.12 Counterparts and Signatures.** This Agreement and any SOWs, exhibits, addenda and amendments may be executed in counterparts, each of which shall be deemed an original and which shall together constitute one instrument. Each party may execute this Agreement and any SOWs, exhibits, addenda Exhibit or amendment hereto in the form of an electronic record utilizing electronic signatures, as such terms are defined in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.). Customer and its affiliates will not dispute the validity or authenticity of electronic signatures submitted to Julota by Customer or its affiliates, nor will Customer or its affiliates dispute the legal authority, validity or authenticity of those who sign with such electronic signatures to bind Customer and its affiliates. Electronic signatures by Customer and its affiliates, as well as signatures by either party transmitted by facsimile or electronically via PDF or similar file delivery method, shall have the same effect as an original signature.

**17.13 Federal Government End Use Provisions.** If Customer is a U.S. federal government end user, the Services are a "Commercial Item" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as those terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, these Services are licensed to You with only those rights as provided under the terms and conditions of this Agreement.

Each party hereto has caused this Agreement to be executed by its authorized representative with effect from the Effective Date.

**TouchPhrase Development, LLC d/b/a Julota**

By:

**City of Goshen, ("Customer")**

By:

\_\_\_\_\_

\_\_\_\_\_

Name: Scott Cravens

Name:

Title: CEO

Title:

Date Signed:

Date Signed:





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**EXHIBIT A**

**Statement of Work No. 1**

Service and Fees

This Statement of Work No. 1 ("SOW") entered on the date on which the last of the parties executes this Agreement (the "Effective Date") by and between TouchPhrase Development, LLC d/b/a Julota ("Julota") and the City of Goshen ("Customer"). Except as otherwise specifically provided herein, the terms and conditions of the agreement between Julota and Customer are incorporated herein by reference. Any capitalized term used but not defined in this SOW shall have the meaning first assigned to it in the Agreement.

**A. Term:**

The term of this SOW is set forth in Appendix 1 to this SOW.

**B. License and Deliverables:**

1. Services: Julota will license to Customer access to a web-based and mobile integrated software for tracking services provided to Help Seekers on the Platform, which is called "Julota Reach." Customer and its authorized users may access the Services for the purpose of providing long-term Health Seeker contact, tracking, monitoring and care. Customer will, through the administration panel of Julota Reach, create and authorize new authorized users. Julota Reach software will allow Customer and its authorized users to communicate action steps necessary to integrate and coordinate the care of Help Seekers.
2. Authorized users: Authorized users may be individuals from Customer's organization or Care Teams and their employees. Customer may authorize an unlimited number of authorized users to access Julota Reach through Customer's license.
3. Usage and Storage: The amount of usage of the Hosted Services (not including enrollments) and data storage is unlimited.
4. Excess Hosted Service Usage Fee: \$0
5. Service Levels: Julota will provide general support for Julota Reach as provided for in the SLA attached as Exhibit "B" to the Agreement.

**C. Fees and Expenses:**

1. Fees and expenses will be as provided in Appendix 1 to this Statement of Work.
2. **Payment:** All payments are due by 30 days from the date on the invoice. Payments should be made via ACH or wire. Please contact us for ACH/wire instructions. If ACH is unavailable, payment via check made payable to Julota will be accepted at the following address:

TouchPhrase Development, LLC (or TouchPhrase Development, LLC d/b/a Julota)  
Attention: Accounting Department  
102 S. Tejon St., Suite 1100  
Colorado Springs, CO 80903

Contact: [billing@julota.com](mailto:billing@julota.com)



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Julota may change the payment method provided it does so in writing to Customer. Payments not paid within 30 days of the date on the invoice will be charged at the lower of one and a half percent (1.5%) of the outstanding balance per month (being 18% per annum), or the maximum rate permitted by law, from the date such payment is due until the date paid, whichever is lower. Customer shall also pay all sums expended (including, without limitation, reasonable legal fees) in collecting overdue payments.

**D. Schedule:**

Upon execution of the Agreement and this SOW, provided the fee for the Initial Term is paid upon execution of this SOW, Julota will commence the planning and execution of the Services with the intent of launching the Services for Customer by TBD.

**E. Service Changes:**

Julota reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful to:

1. maintain or enhance (i) the quality or delivery of the Services for its customers, (ii) the competitive strength of or market for Julota's services, or (iii) the cost efficiency or performance of the Services; or
2. to comply with applicable Law.

Notwithstanding the foregoing, in no event will such Julota initiated changes result in increased cost to Customer during the term of this SOW.

Customer understands that daily and weekly Julota initiated changes may occur without advance notice and such changes are for the purpose of bug fixes and minor improvements.

During the term of this SOW, Julota shall provide to Customer at no additional charge the following:

1. any and all changes that it develops with respect to the Services, unless such changes are considered optional to the Customer and bear additional costs to Julota outside of costs for Julota initiated implementation and development;
2. any and all changes required by federal or state governmental, or professional regulatory mandates related to the Customer's use of the Services; and
3. the Documentation associated with any changes.

Without limiting the foregoing, Customer may, at any time during the Term, request in writing changes to the Services. The Parties shall evaluate the requested changes and, if agreed, implement all such requested changes in accordance with a mutually agreed change order. No requested changes will be effective unless and until memorialized in a written change order signed by both Parties.

**F. Subcontractors:**

Julota may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor")

**G. On-Site Resources:**

Any Julota personnel visiting Customer's facilities shall comply with all applicable Customer policies regarding access to, use of, and conduct within such facilities. Customer will provide copies of such policies to Julota upon request.

**H. Customer Acknowledgments:**



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Customer shall be responsible for purchasing, acquiring and installing all hardware associated with the Agreement and this SOW. Customer shall also be responsible for all training. Julota has no responsibility related to any of the hardware, including, but not limited to, in-store hardware (iPads, cables, cases, etc.). Julota may advise Customer regarding proper deployment of Services, but such advice is without warranty and provided "As Is".

**I. Definitions:**

1. "Dataset Migration" is the process of selecting, preparing, extracting, and transforming data from one computer storage system to another."
2. "Monthly Active Client(s)" is a Help Seeker whose name has been added to the Hosted Services, through Customer's subscription to the Services, for a service, encounter or enrollment for a particular month.

Each party hereto has caused this Statement of Work to be executed by its authorized representative as of the Effective Date.

**TouchPhrase Development, LLC d/b/a Julota**

**City of Goshen, ("Customer")**

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Name: Scott Cravens

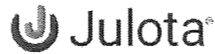
Name:

Title: CEO

Title:

Date Signed:

Date Signed:



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**Appendix 1 to the Statement of Work No. 1**

This Appendix 1 to the Statement of Work No. 1 ("Appendix"), except as otherwise specifically provided herein, incorporates by reference the terms of the Agreement and the SOW. Any capitalized term used but not defined in this Appendix shall have the meaning first assigned to it in the SOW and, to the extent not defined in the SOW, then the meaning assigned to it in the Agreement.

The terms for Julota will provide the Services according to the following:

1. Term: The "Term" of the SOW shall be for one (1) year from the Effective Date (the "Initial Term"), after which date this SOW shall automatically renew for successive 1-year periods, not to exceed five (5) years (each, a "Renewal Term"), or until such time as either party elects not to renew this SOW by providing written notice of non-renewal to the other party at least 60 days prior to the expiration of the Initial Term or the current Renewal Term.
2. Fees (the following fees do not include applicable taxes):

Name	Units	Price per Unit	Subtotal
<b>One Time Fee Schedule</b>			
Implementation Package Per Hub Includes: <ul style="list-style-type: none"> <li>• Workflow understanding and guidance</li> <li>• 1 PDF Workflow Training Documents</li> <li>• 7 Days of Premium Launch Support</li> <li>• 2 Custom Form (up to 30 fields)</li> </ul>	1	\$5,740.00	\$5,740.00
SDOH Report	1	\$750.00	\$750.00
Simple Interface Implementation ESO	1	\$1,300.00	\$1,300.00
Complex Interface Implementation Goshen PD's RMS (Spillman/Tyler/Central)	1	\$3,042.00	\$3,042.00
			<b>\$10,832.00</b>
<b>Recurring Annual Fees Schedule (non-refundable)</b>			
Julota Base Platform License Includes basic reports and data extractions Population Covered - City of Goshen - 34,308 lives	1	\$5,750.00	\$5,750.00
Standard Hubs City of Goshen	1	\$1,300.00	\$1,300.00
Trusted Partners	0	\$750.00	\$0.00



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Community Resource Organizations	15	\$0.00	\$0.00
Services ART	1	\$400.00	\$400.00
Simple Interface Maintenance ESO	1	\$1,300.00	\$1,300.00
Complex Interface Maintenance Goshen PD's RMS (Spillman/Tyler/Central)	1	\$1,300.00	\$1,300.00
Average Monthly Actives (Annualized)	250	\$5.25	\$1,312.50
TeleHealth Module	1	\$1,500.00	\$1,500.00
SDOH Module	1	\$1,950.00	\$1,950.00
Clinical Module	1	\$1,020.00	\$1,020.00
Criminal History Module	15	\$1,050.00	\$1,050.00
SDOH Report	1	\$750.00	\$750.00
			<b>\$23,242.50</b>
<b>Support Services</b>			
Yearly Julota Essential Support Services <ul style="list-style-type: none"> <li>Support for ongoing configuration to platform</li> <li>Help Desk access via web portal and email</li> <li>Critical outage response within 1 hour on any business day or 2 hours for any non-business day</li> <li>1 video Training session (recorded) included</li> </ul>	1	<del>\$5,400.00</del>	\$5,400.00
			<b>\$5,400.00</b>
			<b>\$23,242.50</b>

**Grand Total** **\$39,474.50**

- For the completion of the Dataset Migration, Customer is responsible for providing its "data dictionary," which provides the name of the data fields in the old system, the definition of each data field, and the name of the field it is being moved to on Julota's system.



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- 4. If Customer exceeds the estimated number of Monthly Active Clients during a year, it will not be charged for additional Monthly Active Clients, but Julota reserves the right to adjust the fee for Monthly Active Clients in the following year.
- 5. At the end of the Initial Term and each Renewal Term, Julota may increase the charges set forth in this SOW. Julota agrees to notify Customer in writing at least sixty (60) days prior to any such price increase.
- 6. Additional services listed above may be purchased at any time by Customer by providing written notice to Julota requesting the additional services. The rates set forth above in the "Recurring Annual Fees Schedule" are valid if ordered during the Term for Non-Recurring Term subscriptions and during the Initial Term for Auto-Renew Term subscriptions. Thereafter, the rates will be at the then current rates set by Julota.
- 7. The fees in the "Recurring Annual Fees Schedule" are based upon anticipated usage for the first year of the Term and then based on anticipated or actual usage for any additional years following the first year of the Term.
- 8. The Data Warehouse services require a two-year commitment ("Data Warehouse Term"), which will commence on the Effective Date of the SOW. Regardless of the term of the Agreement or the SOW, if the Agreement or SOW terminate prior to the end of the Data Warehouse Term, Customer will remain responsible for the full cost of the Data Warehouse Term.

Each party hereto approves of and accepts the terms of this Appendix.

**TouchPhrase Development, LLC d/b/a Julota**

**City of Goshen, ("Customer")**

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Name: Scott Cravens

Name:

Title: CEO

Title:

Date Signed:

Date Signed:



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**EXHIBIT B**

**Service Level Agreement**

In performing the Services for Customer, Julota's level of performance shall be at least equal to or exceed the Service Levels set forth in this Service Level Agreement (this "SLA") at all times during the Term of the applicable Statement of Work.

**A. Definitions.** Unless otherwise defined in this Addendum, the capitalized terms in this Addendum have the following meaning. Defined terms that are not defined in this Addendum will have the same meaning as in the Agreement.

1. **"Authorized User"** is a person who has been granted authority to use the Services by the Customer Representative.
2. **"Availability"** means that the Services are readily available to Customer and operating without material Error, excluding any Outages and "Low" level incidents (defined below).
3. **"Customer Representative"** means the single person that Customer has designated in writing to Julota to be its Customer Representative. Customer may change the Customer Representative by written notice to Julota. Only one person may be designated as Customer Representative at any time. In addition to the authority designated in this Addendum, the Customer Representative is awarded all rights designated to Authorized Users (e.g., the ability to contact the Support Desk). Only the Authorized Users may contact the Support Desk.
4. **"Emergency Maintenance"** means the downtime required by Julota for upgrading or maintaining the Services; provided, that Julota has given Customer at least twenty-four hours prior written notice of such downtime, provided that Emergency Maintenance does not exceed five (5) hours per month, and provided that Emergency Maintenance does not occur more than six (6) times per year.
5. **"Failure"** means any failure of Julota to meet a Service Level requirement; but excludes those failures attributable to a Force Majeure event.
6. **"Monthly Availability Percentage"** means the amount equal to the total number of minutes (multiply the number of calendar days in any given month by the product of 24 times 60) in the applicable calendar month, minus the total Outage time for that month, then divided by the total number of minutes.
7. **"Outage"** means the period (measured in minutes) that the Services are not readily available to Customer and/or are operating with material Error; but shall not include: (i) Scheduled Downtime (which will not exceed ten (10) hours in aggregate per month); (ii) emergency maintenance activities which will not exceed five (5) hours per month; (iii) periods of unavailability attributable to Customer's negligent acts or omissions; or (iv) Customer's failure to timely respond to Julota in connection with the resolution of any Problem.
8. **"Regular Release"** means releases of minor product updates for upgrading or maintaining the Services; provided that there shall be no more than two regular releases per week and downtime for these weekly releases does not exceed sixty (60) minutes for each release.
9. **"Scheduled Downtime"** means the downtime required by Julota for upgrading or maintaining the Services; provided, that (i) such downtime occurs between the hours of 22:00 MT USA and 5:00 MT USA (or such other hours that Customer has previously and specifically approved in writing); and (ii) Julota has provided five (5) business days prior written notice of such downtime. This may also be referred to as "Scheduled Maintenance". (iii) not to exceed 10 hours each month.
10. **"Support Desk"** is a resource that provides administrative support and technical support to Authorized Users.

**B. Technical Support.**

1. **Contact Methods.** Julota will make available to the Authorized Users two means of contacting the Support Desk: an email ("Support Email") and Web Portal.



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1. 1. Email Support: [Julota-Support@julota.com](mailto:Julota-Support@julota.com)
  2. 2. Web Portal: <http://support.julota.com>
2. User Support Hours. Unless otherwise stated, standard user support hours are Monday – Friday from 8 AM to 5 PM Mountain time with the exception of state and Federal holidays. In the event calls or emails are received outside of User Support Hours, Julota will address the Authorized User's query during User Support Hours with the exception of Critical events (as discussed below).
  3. Technical support will be limited to the permissions of the Authorized User, which will be determined by the Customer Representative pursuant to the "Protocol Authorization Form," a sample of which is attached as "Annex A" in blank format. The permissions will be defined in the Protocol Authorization Form. The Protocol Authorization Form will set forth the Authorized User's permissions granted to him or her.
  4. At the time that the Authorized User contacts the Support Desk, the Authorized Users permissions will be verified in order to determine the scope of support that may be granted. If an Authorized User does not have sufficient permissions (e.g., they are attempting to report an issue for an area that they do not have the authority to access, the event will be deemed unreported).
- C. Severity Levels and Response Times. The following are a description of the service levels and the service level response times:
1. **Critical.** An incident with a severity level of "Critical" is defined as one that produces an emergency situation (e.g., system down) in which the Services are substantially or completely non-functional or inoperable. In the event of a Critical incident, the Authorized User shall contact the Support Desk to report the problem. If the reported event is Critical and outside of User Support Hours, the Authorized User shall contact the Support Desk via the hotline, which is monitored 24x7x365, excluding State and Federal holidays. The Support Desk will contact the Authorized User, who reported the incident within four (4) hours to diagnose and begin remediation of the event and will use commercially reasonable efforts to resolve the event as soon as it is reasonably possible under the circumstances. Any Authorized User may contact the support desk to report a Critical incident, even if the issue in question relates to a portion of Julota that is not under the purview of the Authorized User's permissions. In this case, the Support Desk will take the report of the issue, but will not contact the reporting user with resolution, but instead, will contact the Customer Representative to report resolution.
  2. **High.** An incident with a severity level of "High" is defined as one that produces a detrimental situation in which the Services are usable, but materially incomplete; performance (response time) of the Services is degraded substantially such that there is a severe impact on use under reasonable loads; one or more mainline functions or commands is inoperable; or the use is otherwise significantly impacted. If the reported event is a High severity, the Support Desk will contact the Authorized User who reported the event within eight (8) User Support Hours to diagnose and begin remediation of the event, and will use commercially reasonable efforts to resolve the event with five (5) business days. Any authorized user may contact the support desk to report any issue, even if the issue in question relates to a portion of Julota that is not under the purview of the authorized user's permissions. Notwithstanding the foregoing, if the Authorized User that reported the event is not under the purview of the Authorized User's permissions, the Support Desk will take the report of the issue, but will not contact the reporting user with resolution, but instead, will contact the Customer Representative to report resolution.
  3. **Low.** An incident with severity level of "Low" is defined as one that produces an inconvenient situation in which the Services are usable but do not provide a function in the most convenient or expeditious manner and the Authorized User suffers little or no significant impact. If the reported event is Low severity, Julota will attempt to resolve the event in a commercially reasonable manner in future maintenance releases. Only the Authorized User may contact the support desk to report the issue.





Julota® SaaS Agreement

	Essential Services	Premium Services	Elite Services
Coverage	Business Hours	Business Hours	24/7
Response Time			
Critical	4 hours via hotline	2 hours via hotline	1 hour via hotline
High	2 business days via email or web portal	1 business day via email or web portal	1/2 day via email or web portal
Low	3 business days via email or web portal	1 business day via email or web portal	1 business day via email or web portal

D. Availability and Responsiveness Customer

1. **Monthly Availability Percentage.** Julota shall maintain Availability of the hosting Services in accordance with at least the following Monthly Availability Percentage (as defined in this **Exhibit B** below):

Monthly Availability Percentage
99.9%

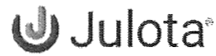
2. **Failure to meet Monthly Availability Percentage.** In the event of a Failure by Julota to meet the Monthly Availability Percentage set forth above in any calendar month during the Term, Julota shall issue Customer a service credit (“**Service Credit**”) as follows:

Performance Level	Monthly Availability Percentage	Service Credit
1	Between 97% and 99.8%	2% of the monthly subscription fees paid in the month preceding the Failure.
2	Between 95% and 96.99%	3% of the monthly subscription fees paid in the month preceding the Failure.
1	Less than 94.99%	2% of the monthly subscription fees paid in the month preceding the Failure.

Customer shall have the right to immediately terminate this Agreement upon written notice to Julota if a) the Monthly Availability Percentage falls below 85% for one calendar month, or b) the Monthly Availability Percentage falls below 94.99% for two consecutive calendar months, or c) if the Monthly Availability Percentage falls below 94.99% for five or more calendar months per calendar year.

E. Plan Coverage

Coverage	Basic Services	Premium Services	Elite Services
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Julota® SaaS Agreement

Help Desk via Email/Portal Support (standard support hours)	X	X	X
Email Access via Email/Portal Support (standard support hours)	X	X	X
Training (one on one training: maximum 4 hours/month)		X	X
Post Implementation Development	X (\$225/hour)	X (\$175/hour)	X (\$150/hour)
Telephone support from 8:00 am – 5:00 pm (Mountain time zone)		X	
Telephone support—24/7 dedicated phone line for all hub users.		X	X
Travel—if training not provided virtually			X (charged at cost)
10 Trusted Partners engaged, trained, on boarded, and supported once contract provided per year.			X



Julota® SaaS Agreement

**EXHIBIT C**

**Customer Trademark Guidelines**

Julota ® Is a registered trademark of TouchPhrase Development, LLC

Connecting Your Community ® Is a registered trademark of TouchPhrase Development, LLC



Julota® SaaS Agreement

**EXHIBIT D**

**HIPAA Business Associate Agreement**

This HIPAA Business Associate Agreement ("Agreement") entered into and effective on the date on which the last of the parties executes this Agreement ("Effective Date") by and between the City of Goshen ("Customer") and TouchPhrase Development, LLC d/b/a Julota ("Business Associate").

WHEREAS, Customer is subject to the "HIPAA Rules," which for purposes of this Agreement shall include the Privacy Rule, Security Rule, Breach Notification Rule and Enforcement Rule (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, as amended; and

WHEREAS, Business Associate may maintain, transmit, create or receive Protected Health Information ("PHI") of individuals in the course of providing services to Customer. A description of the services that Business Associate will perform for the Customer is set forth in the SaaS Agreement entered into between the parties.

THE PARTIES THEREFORE AGREE TO THE FOLLOWING:

1. Definitions

Terms used, but not otherwise defined, in this Agreement, shall have the same meaning as those terms as defined in the HIPAA Rules. The parties recognize that electronic PHI is a subset of PHI, all references to PHI in this Agreement shall include electronic PHI.

2. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement and to comply with the HIPAA Security Rule (Subpart C of 45 CFR Part 164).

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effects that are known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Customer any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware, including a Breach of Unsecured PHI as required by 45 CFR 164.410.

(e) Business Associate agrees, in accordance with 45 CFR 164.502(e)(1)(ii) and 45 CFR 164.308(b)(2) to ensure that any individual or entity that subcontracts with Business Associate to create, receive, maintain or transmit PHI received from, or created or received by Business Associate on behalf of Company agrees to the same restrictions and conditions that apply through the HIPAA Rules and this Agreement to Business Associate with respect to such information.



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(f) To the extent that Business Associate maintains a designated record set on behalf of Customer, Business Associate agrees to provide access, at the request of Customer, as necessary to allow Customer to meet the requirements under 45 CFR 164.524.

(g) To the extent that Business Associate maintains a designated record set on behalf of Customer, Business Associate agrees to make any amendment(s) to PHI that the Customer directs as necessary for compliance with 45 CFR 164.526.

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Customer available to the Customer, or at the request of the Customer to the Secretary, within a reasonable time of such request for purposes of the Secretary determining Customer's compliance with the HIPAA Rules.

(i) If Business Associate is required to make a disclosure of information because of a legal requirement, it will track such a disclosure and will provide information to Customer that would be necessary for Customer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

(j) Business Associate agrees that it will use or disclose only the minimal amount of PHI necessary to accomplish the intended purpose.

(k) Business Associate agrees to alert Customer of any Security Incident of which it becomes aware.

(l) To the extent Business Associate is to carry out one of Customer's obligations under the Privacy Rule, Business Associate agrees to comply with the requirements of the HIPAA Rules that apply to Customer in the performance of such obligation.

3. Permitted Uses and Disclosures by Business Associate

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Customer as requested by Customer provided that such use or disclosure would not violate the HIPAA Rules if done by Customer.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Customer as permitted by 45 CFR 164.504(e)(2)(i)(B).

(d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).



Julota® SaaS Agreement

4. Obligations of Customer

(a) Customer shall notify Business Associate of any limitation(s) in its Notice of Privacy Practices to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Customer shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Customer shall notify Business Associate of any restriction to the use or disclosure of PHI that Customer has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. Permissible Requests by Customer

Except as otherwise permitted by this Agreement, Customer shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by Customer.

6. Term and Termination

(a) Term. The Term of this Agreement shall be effective as of the Effective Date and shall continue in full force and effect until termination as set forth below.

(b) Termination. This Agreement may be terminated as set forth in the Software as a Service Agreement. In the event of termination or expiration of this Agreement, to the extent feasible, Business Associate will return or destroy all PHI received from Customer.

(c) Continued Safeguard of Information. Depending on the nature of Business Associate's Services, the parties may mutually agree that immediate return or destruction of the information is infeasible. Under such circumstances, Business Associate will extend the protections of this Agreement for as long as the information is maintained and will limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. When the information is no longer needed by Business Associate, the information will be returned or destroyed. The Business Associate's obligations to continue to safeguard PHI shall survive the termination of the Agreement.

7. Miscellaneous

(a) No Third-Party Beneficiary Rights. Nothing express or implied in this Agreement is intended to give, nor shall anything herein give any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

(b) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.

(c) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Customer to comply with the HIPAA Rules.



Julota® SaaS Agreement

CUSTOMER

BUSINESS ASSOCIATE

By:

By:

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Name:

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Name: Scott Cravens

Title:

Title: CEO

Date Signed:

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) 533-8626 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

Date: December 5, 2024

To: Board of Public Works and Safety

From: Bodie J. Stegelmann

Subject: Resolution 2024-29, Approving Revised City of Goshen Police Department Policies and Repealing Certain Policies

The Board of Public Works and Safety previously approved City of Goshen Police Department Policies developed in coordination with Lexipol, LLC. The Police Department and Lexipol LLC staff have identified certain revisions to existing policies deemed appropriate due to legislative or other changed circumstances.

Attached to Resolution 2024-29 are redlined existing policies to show the revisions suggested. If the Board approves Resolution 2024-29, the redlines will be removed and the policies will be inserted into the Policy Manual in final form with an effective date of December 12, 2024.

**Suggested Motion:** Move to approve Resolution 2024-29, Approving Revised City of Goshen Police Department Policies and Repealing Certain Policies, effective December 12, 2024.



**GOSHEN BOARD OF PUBLIC WORKS AND SAFETY  
RESOLUTION 2024-29**

**Approving Revised City of Goshen Police Department Policies  
and Repealing Certain Policies**

WHEREAS, on December 7<sup>th</sup>, 2020, the Board of Public Works and Safety approved an agreement with Lexipol LLC to review, revise, and keep up-to-date the City of Goshen Police Department's policies;

WHEREAS, the Board has previously approved Police Department policies developed and suggested by Lexipol LLC, as well as revisions thereto;

WHEREAS, as part of the process of keeping its policies up-to-date, the Police Department and Lexipol LLC staff have identified certain revisions to existing policies deemed appropriate due to legislative or other changed circumstances; and

WHEREAS, the Goshen Board of Public Works and Safety finds that it is appropriate to approve certain revised policies identified below, and to repeal policies previously approved, separately identified below.

NOW, THEREFORE, BE IT RESOLVED by the Goshen Board of Public Works and Safety that the following revised City of Goshen Police Department Policies, red-line versions of which are attached hereto and made a part hereof, are hereby approved, effective December 12, 2024:

- 300 – Response to Resistance
- 301 – Response to Resistance Review Boards
- 316 – Missing Persons
- 410 – Emergency Detentions
- 801 – Records Section
- 1021 – Temporary Modified-Duty Assignments
- 1024 – Wellness Program
- 

BE IT FURTHER RESOLVED by the Goshen Board of Public Works and Safety that, upon the approval of the above-described City of Goshen Police Department Policies, the following current City of Goshen Police Department Policies are hereby repealed, effective December 12, 2024:

- 300 – Response to Resistance
- 301 – Response to Resistance Review Board
- 316 – Missing Persons
- 410 – Involuntary Detentions
- 801 – Records Section
- 1021 – Temporary Modified-Duty Assignments
- 1024 – Wellness Program

PASSED and ADOPTED by the Goshen Board of Public Works and Safety on December 5, 2024.

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Gina M. Leichy, Mayor

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Mary Nichols, Member

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Orv Myers, Member

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Michael A. Landis, Member

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Barb Swartley, Member

## Response to Resistance

### 300.1 PURPOSE AND SCOPE

This policy provides additional guidelines on the reasonable use of force apart from the Indiana Law Enforcement Training Board (LETB) Uniform Statewide Policy on Deadly Force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected also to use these additional guidelines to make such decisions in a professional, impartial, and reasonable manner.

In addition to those additional methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy and the LETB Uniform Statewide Policy on Deadly Force shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Conducted Energy Device policies.

#### 300.1.1 DEFINITIONS

Definitions related to this policy include:

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

**Force** - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

**Imminent** - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes that the individual has a weapon or is attempting to access one and intends to use it against the officer or another person. An imminent danger may also exist if the individual is capable of causing serious bodily injury or death without a weapon, and the officer believes the individual intends to do so.

**Totality of the circumstances** - All facts and circumstances known to the officer at the time, taken as a whole, including the conduct of the officer and the subject leading up to the use of force.

### 300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

# Goshen Police Department

## Policy Manual

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The Goshen Police Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

### 300.2.1 DUTY TO INTERVENE AND REPORT

Any officer present and observing a member other than a sworn officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intervene to prevent the use of unreasonable force.

Any officer who observes another law enforcement officer or a member use force that is potentially beyond that which is objectively reasonable under the circumstances and does not intervene should report these observations to a supervisor as soon as feasible.

### 300.2.2 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each officer should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.

## 300.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by this department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

### 300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION

For guidance on de-escalation see the LETB Uniform Statewide Policy on Deadly Force.

# Goshen Police Department

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### 300.3.2 USE OF FORCE TO EFFECT AN ARREST

For guidance on use of force to effect an arrest or prevent escape see the LETB Uniform Statewide Policy on Deadly Force.

### 300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of suspected drug or alcohol use.
- (e) The individual's mental state or capacity.
- (f) The individual's ability to understand and comply with officer commands.
- (g) Proximity of weapons or dangerous improvised devices.
- (h) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (i) The availability of other reasonable and feasible options and their possible effectiveness.
- (j) Seriousness of the suspected offense or reason for contact with the individual.
- (k) Training and experience of the officer.
- (l) Potential for injury to officers, suspects, and others.
- (m) Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
- (n) The risk and reasonably foreseeable consequences of escape.
- (o) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (p) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (q) Prior contacts with the individual or awareness of any propensity for violence.
- (r) Any other exigent circumstances.

### 300.3.4 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have

# Goshen Police Department

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successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the individual can comply with the direction or orders of the officer.
- (c) Whether the individual has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

For additional guidance on the use of defensive tactics see the LETB Uniform Statewide Defensive Tactics Training Program Policy.

### 300.3.5 CAROTID CONTROL HOLD

A carotid control hold is a technique designed to control an individual by temporarily restricting blood flow through the application of pressure to the side of the neck and, unlike a chokehold, does not restrict the airway. The proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is limited to those circumstances where deadly force is authorized and is subject to the following:

- (a) At all times during the application of the carotid control hold, the response of the individual should be monitored. The carotid control hold should be discontinued when circumstances indicate that the application no longer reasonably appears necessary.
- (b) Any individual who has had the carotid control hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until such examination occurs.
- (c) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the individual lost consciousness as a result.
- (d) Any officer attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.
- (e) The use or attempted use of the carotid control hold shall be thoroughly documented by the officer in any related reports.

### 300.3.6 RESPIRATORY RESTRAINTS

If applied, a respiratory restraint, also known as a chokehold, is subject to the same guidelines and requirements as a carotid control hold.

### 300.3.7 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration

or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the Goshen Police Department for this specific purpose.

### **300.4 WARNINGS AND IDENTIFICATION BEFORE DEADLY FORCE APPLICATIONS AND ADDITIONAL CONSIDERATIONS**

When reasonable, the officer shall, prior to the use of deadly force, make efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

An officer ~~should not~~ shall not use deadly force against a person whose actions are a threat solely to themselves or property unless the person poses an imminent danger of death or serious physical injury to the officer or others in close proximity.

#### **300.4.1 MOVING VEHICLES**

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force.

When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

### **300.5 REPORTING THE USE OF FORCE**

Any use of force by a member of this department shall be documented promptly, completely, and accurately in the Response to Resistance report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.

To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

#### [Response to Resistance Form \(2022\)](#)

#### **300.5.1 NOTIFICATIONS TO SUPERVISORS**

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of the conducted energy device or control device.



- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

### **300.6 MEDICAL CONSIDERATIONS**

Once it is reasonably safe to do so, medical assistance shall be obtained for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed. Individuals should not be placed on their stomachs for an extended period, as this could impair their ability to breathe.

Based upon the officer's initial assessment of the nature and extent of the individual's injuries, medical assistance may consist of examination by an emergency medical services provider or medical personnel at a hospital or jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Individuals who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics, and imperviousness to pain, or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away.

See the Medical Aid and Response Policy for additional guidelines.

### **300.7 SUPERVISOR RESPONSIBILITIES**

A supervisor should respond to a reported application of force resulting in visible injury, if reasonably available. When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

# Goshen Police Department

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- (b) Ensure that any injured parties are examined and treated.
- (c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas.
  - 1. These photographs should be retained until all potential for civil litigation has expired.
- (d) Identify any witnesses not already included in related reports.
- (e) Review and approve all related reports.
- (f) Determine if there is any indication that the individual may pursue civil litigation.
  - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (g) The Review Board evaluates the circumstances surrounding the incident and can initiate an administrative investigation if there is a question of policy noncompliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

### 300.7.1 SHIFT SUPERVISOR'S RESPONSIBILITY

The Shift Supervisor shall review each use of force by any personnel within their command prior to the end of his/her tour of duty to ensure compliance with this policy and to address any training issues.

## 300.8 TRAINING

Officers shall receive training on this policy and demonstrate their knowledge and understanding.

Subject to available resources, officers should receive periodic training on guidelines regarding vulnerable populations, including but not limited to children, elderly, pregnant persons, and individuals with physical, mental, or intellectual disabilities.

### 300.8.1 TRAINING REQUIREMENTS

Required annual training should include:

- (a) Legal updates.
- (b) De-escalation tactics, including alternatives to force.
- (c) The duty to intervene.
- (d) The duty to request and/or render medical aid.
- (e) Warning shots (see the LETB Uniform Statewide Policy on Deadly Force).
- (f) All other subjects covered in this policy (e.g., use of deadly force, chokeholds and carotid holds, discharge of a firearm at or from a moving vehicle, verbal warnings).

## **300.9 USE OF FORCE ANALYSIS**

At least annually, the Patrol Division Chief should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police.

## Attachments

## 09 Response to Resistance Form (2022).pdf

# Response to Resistance Report

Date/Time: \_\_\_\_\_ / \_\_\_\_\_ Nature of Call/Incident: \_\_\_\_\_ Incident #: \_\_\_\_\_

## Incident Type:

Civil Disturbance       Suicidal       Suicide by Cop       Violent Suspect  
 Barricaded       Warrant       Other

Location:     Indoor     Outdoor     Jail     Other \_\_\_\_\_     Human     Animal

Person Affected: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Age: \_\_\_\_\_

Address: \_\_\_\_\_

Sex: \_\_\_\_\_ Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_

On Scene Supervisor: \_\_\_\_\_ Officer(s) Involved: \_\_\_\_\_

Charges(s): \_\_\_\_\_ Booked: (Y/N) \_\_\_\_\_ Photos: (Y/N) \_\_\_\_\_

If No Photos, Explain: \_\_\_\_\_

## Response Used: (Check All That Apply)

Physical       Less-Lethal       Firearm       Chemical  
 Taser       Impact Weapon       K-9       Other

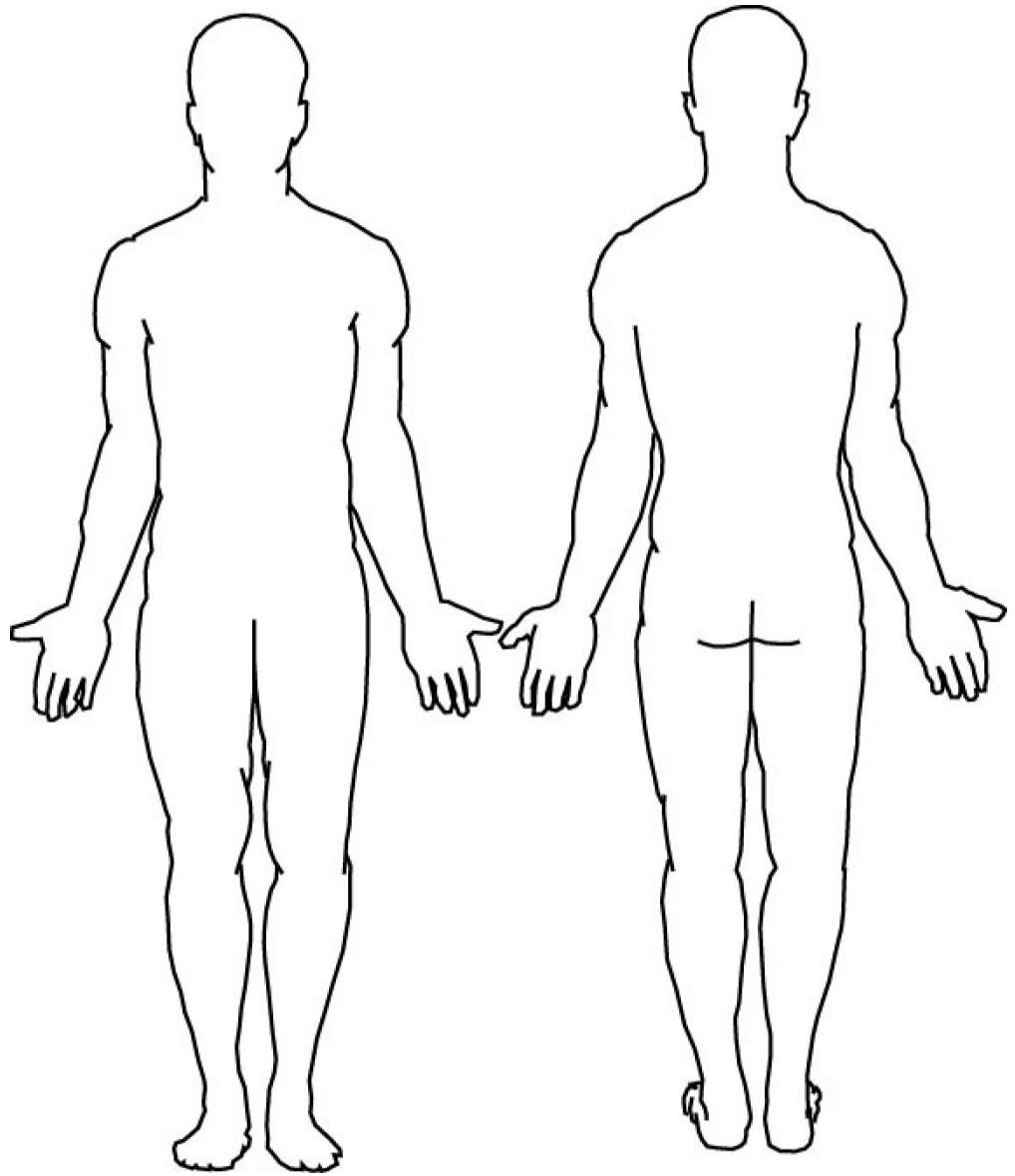
Explain Other: \_\_\_\_\_

Legend Options

Place Check(s) for General Areas of Application

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Physical Tactics	(PT)
Taser (Probes)	(TP)
Taser (stun)	(TS)
K-9	(K9)
Impact Weapons	(IW)
Other	(O)
The Wrap	(TW)



Nature of the Injuries and Medical Treatment Required (Be Specific):

Medical Facility: \_\_\_\_\_ Admitted: (Y/N) \_\_\_\_\_ Doctor: \_\_\_\_\_ Medical Exam: (Y/N) \_\_\_\_\_

Admitted for Psychiatric: (Y/N) \_\_\_\_\_ Suspect Under the Influence of: \_\_\_\_\_

Was an Officer, Police Employee, Volunteer, or Citizen Injured: (Y/N)\_\_\_\_ If yes, Describe Below:

**Complete the Following Portion if a Taser was Used:**

TASER: Dart Probe Contact: (Y/N)\_\_\_\_ Drive Stun Contact: (Y/N)\_\_\_\_ TASER Serial #: \_\_\_\_\_

TASER use: \_ Success / \_ Failure Suspect Wearing Heavy Clothes: (Y/N)\_\_\_\_

Number of Cartridges Fired:\_\_\_\_ Number of Cycles Applied:\_\_\_\_ Need for Additional Shot (Y/N)\_\_\_\_

Cartridge Serial Number: \_\_\_\_\_ If TASER Cartridge Unsuccessful, was Drive Stun Used: (Y/N)\_\_\_\_

Usage: \_ Arc Display Only \_ Laser Display Only \_ TASER Application \_ Verbal

Approximate Target Distance at Time of Launch: \_\_\_\_\_ Feet

Dart Contact Penetration Subject's Skin: (Y/N) \_\_\_\_\_ Probes Removed on Scene: (Y/N) \_\_\_\_\_

Taser Application Cause Injury: (Y/N) \_\_\_\_\_ If Yes, was Subject Treated for Injury: (Y/N) \_\_\_\_\_

Describe Subject Demeanor After Device Used or Displayed:



**Synopsis:**

\_\_\_\_\_  
**Officer Completing Report**

\_\_\_\_\_  
**Unit #**

\_\_\_\_\_  
**Approving OIC**

\_\_\_\_\_  
**Unit #**

# Response to Resistance Review Boards

## 301.1 PURPOSE AND SCOPE

Best Practice MODIFIED

This policy establishes a process for the Goshen Police Department to review the response to resistance by its members.

This review process shall be in addition to any other review or investigation that may be conducted by any outside or multi-agency entity having jurisdiction over the investigation or the evaluation of the response to resistance.

## 301.2 POLICY

Best Practice MODIFIED

The Goshen Police Department will objectively evaluate the response to resistance by its members to ensure that their authority is used appropriately and is consistent with training and policy.

## 301.3 REMOVAL FROM LINE DUTY ASSIGNMENT

Discretionary MODIFIED

Whenever a member's actions or response to resistance in an official capacity, or while using department equipment, results in death or very serious injury to another, that member may be placed in a temporary administrative assignment pending an administrative review. The Chief of Police may exercise discretion and choose not to place a member in an administrative assignment.

## 301.4 REVIEW BOARD

Best Practice MODIFIED

The Response to Resistance Review Board will be convened as soon as possible when the response to resistance by a member results in very serious injury or death to another. The board will be convened at minimum on a quarterly schedule in all other circumstances.

The Response to Resistance Review Board will also investigate and review the circumstances surrounding every discharge of a firearm, whether the member was on- or off-duty, excluding training or recreational use.

The Chief of Police may request the Response to Resistance Review Board to investigate the circumstances surrounding any response to resistance incident.

The appropriate Division Chief will convene the Response to Resistance Review Board as necessary. It will be the responsibility of the Captain of the involved member to notify the Administration of any incidents requiring board review. The involved member's Captain will also ensure that all relevant reports, documents and materials are available for consideration and review by the board.

### 301.4.1 COMPOSITION OF THE BOARD

Discretionary MODIFIED

# Goshen Police Department

## Policy Manual

### *Response to Resistance Review Boards*

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The Administration should staff the Response to Resistance Review Board with a minimum of five individuals from the following, as appropriate:

- At least two Patrol Captains, preferably all three Patrol Captains
- Training Lieutenant
- Head Trainer of Training Division
- A law enforcement officer from an outside law enforcement agency, as appropriate
- Department instructor for the type of weapon, device or technique used

The Head Trainer of the Training Division will serve as chairperson.

#### 301.4.2 RESPONSIBILITIES OF THE BOARD

**Best Practice** **MODIFIED**

The Response to Resistance Review Board is empowered to conduct an administrative review and inquiry into the circumstances of an incident.

The board members may request further investigation, request reports be submitted for the board's review, call persons to present information and request the involved member to appear if it does not extend to the level of a criminal or internal investigation. The involved member will be notified of the meeting of the board.

If the incident involves potential criminal charges against the officer/officers involved, the Chief of Police will delay its review until after completion of any criminal investigation, review by any prosecutorial body, filing of criminal charges, or the decision not to file criminal charges or any other action is made. The board should be provided all relevant available material from these proceedings for its consideration.

The review shall be based upon those facts which were reasonably believed or known by the officer at the time of the incident, applying any legal requirements, department policies, procedures and approved training to those facts. Facts later discovered but unknown to the involved member at the time shall neither justify nor call into question a member's decision regarding the response to resistance.

Any questioning of the involved member conducted by the board will be in accordance with Goshen Police Department disciplinary procedures, the Personnel Complaints Policy, the current collective bargaining agreement and any applicable state or federal law.

The board shall make one of the following recommended findings:

- (a) The member's actions were within department policy and procedure.
- (b) The member's actions require additional remedial training
- (c) The member's actions were in violation of department policy and procedure.

A recommended finding requires a majority vote of the board. Each board member's vote shall be polled and noted when the consensus is not unanimous. All dissenting opinions differing from

# Goshen Police Department

## Policy Manual

### Response to Resistance Review Boards

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the majority vote shall be noted in the board's ~~determination recommendation~~ by the chairperson. The board may also recommend additional investigations or reviews, such as disciplinary investigations, training reviews to consider whether training should be developed or revised, and policy reviews, as may be appropriate. The board chairperson will submit the written recommendation to the appropriate Division Chief.

The appropriate Division Chief shall review the board's recommendation and if further review is not needed, the Division Chief shall forward to the Chief of Police. Should the Division Chief decide further review is needed, the Division Chief shall request the chairperson ~~shall to~~ submit a written ~~document report to define detail~~ the board's finding and vote, within 14 days. The ~~C~~chairperson will review the detailed report with the Chief of Police, Assistant Chief of Police and both Division Chiefs to make a final determination as to whether the member's actions were within policy and procedure, the member's actions require additional remedial training, or the member's actions were in violation of department policy and procedure ~~and shall communicate those findings to the Chief of Police to~~ The Chief of Police shall determine whether any additional actions, investigations or reviews are appropriate. If the Chief of Police concludes that discipline should be considered, a timely and consistent disciplinary process will be initiated.

At the conclusion of any additional actions, investigations or reviews, copies of all relevant reports and information will be filed with the Chief of Police.

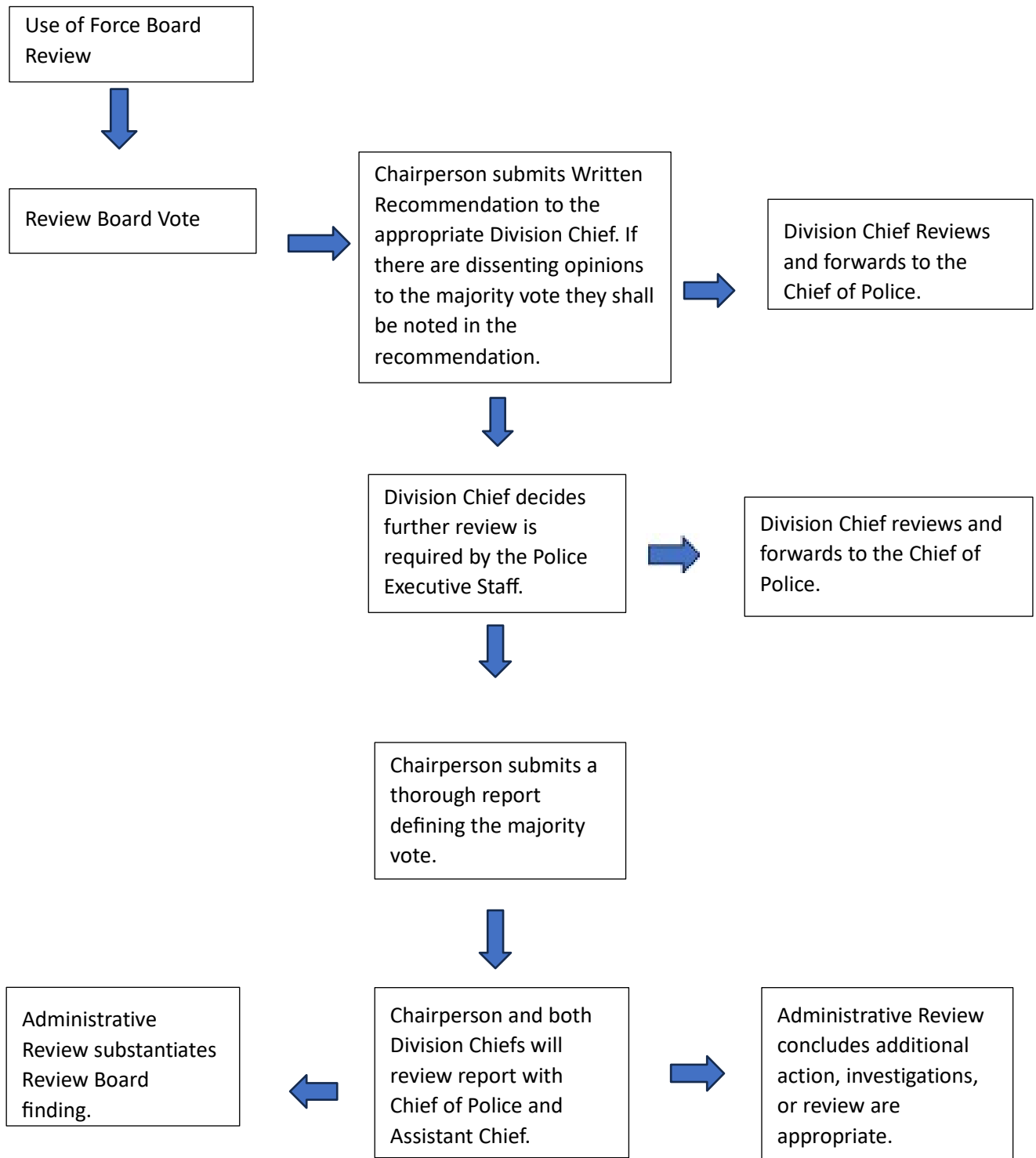
For additional information regarding Board responsibilities see: [Review Board Illustration](#)

## Attachments

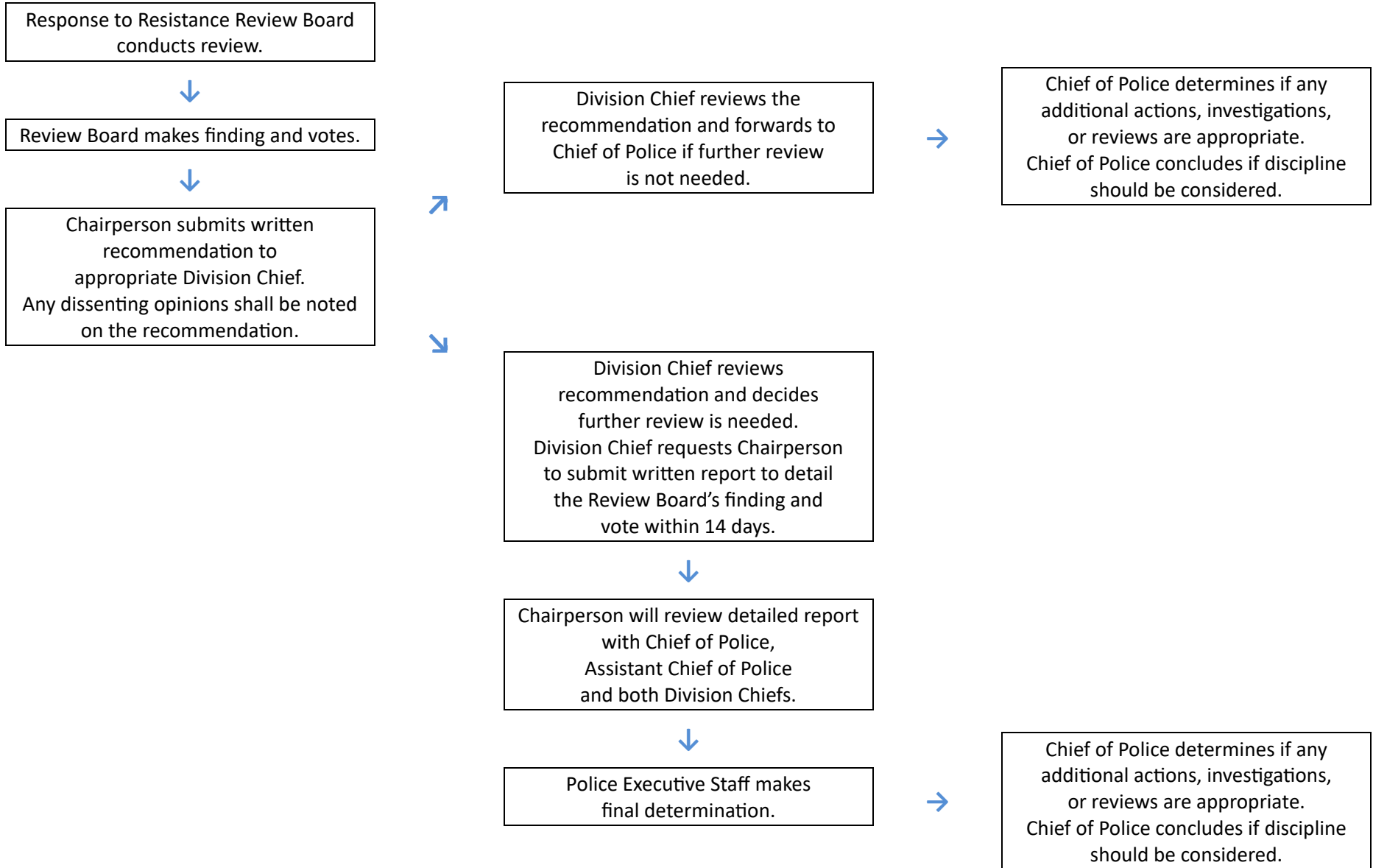
## Review Board Illustration.pdf

## Illustrated Review Board Process

**REPLACE THIS ILLUSTRATION WITH THE ILLUSTRATION ON THE NEXT PAGE**



## Illustrated Review Board Process





## Missing Persons

### 316.1 PURPOSE AND SCOPE

This policy provides guidance for handling missing person investigations (I.C. § 5-2-17-1 et seq.).

#### 316.1.1 DEFINITIONS

Definitions related to this policy include:

**High risk** - A person whose whereabouts are not known and who may be at risk of injury or death. High risk includes but is not limited to a missing person (I.C. § 5-2-17-1):

- (a) Who is missing as a result of abduction by a stranger.
- (b) Whose disappearance may be the result of the commission of a crime.
- (c) Whose disappearance occurred under circumstances that are inherently dangerous.
- (d) At risk due to abduction by a noncustodial parent.
- (e) Who is mentally impaired.
- (f) Under the age of 21.
- (g) Who has previously been the victim of a threat or act of violence.
- (h) Who has been determined by a law enforcement agency to be at risk for injury or death.
- (i) Who is an at-risk veteran or active-duty military member (I.C. § 12-7-2-197.3).

**Missing person** - Any person who is reported missing to law enforcement when that person's location is unknown.

**Missing person networks** - Databases or computer networks that are available to law enforcement and are suitable for obtaining information related to missing person investigations. This includes the National Crime Information Center (NCIC), the [National Missing and Unidentified Persons System \(NamUs\)](#), the [Indiana Data and Communication System \(IDACS\)](#), and the Indiana Clearinghouse for Information on Missing Children, Missing Veterans at Risk, and Missing Endangered Adults (I.C. § 10-13-3-35; I.C. § 10-13-5-3).

### 316.2 POLICY

The Goshen Police Department does not consider any report of a missing person to be routine and assumes that the missing person is in need of immediate assistance until an investigation reveals otherwise. Priority shall be given to missing person cases over property-related cases. Members will initiate an investigation into all reports of missing persons, regardless of the length of time the person has been missing.

### 316.3 REQUIRED FORMS AND BIOLOGICAL SAMPLE COLLECTION KITS

The Investigation Division supervisor shall ensure the following forms and kits are developed and available:

- Missing person report form

## Missing Persons

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- Missing person investigation checklist that provides investigation guidelines and resources that could be helpful in the early hours of a missing person investigation
- Missing person school notification from School Resource Officer if applicable
- Medical records release form
- Biological sample collection kits

### 316.4 ACCEPTANCE OF REPORTS

Any member encountering an individual who wishes to report a missing person or runaway shall render assistance without delay. This can be accomplished by accepting the report via telephone, electronically or in-person and initiating the investigation. Those members who do not take such reports or who are unable to give immediate assistance shall promptly dispatch or alert a member who can take the report (I.C. § 5-2-17-4; I.C. § 5-2-17-5; I.C. § 12-10-18-1; I.C. § 31-36-1-1).

A report shall be accepted in all cases and regardless of where the person was last seen, where the person resides or any question of jurisdiction.

If jurisdiction is in question, the officer shall advise the individual to also make a report to the law enforcement agency having jurisdiction where the missing person was last seen or, if that place is unknown, where the missing person resides (I.C. § 5-2-17-4).

### 316.5 INITIAL INVESTIGATION

Officers or other members conducting the initial investigation of a missing person should take the following investigative actions, as applicable:

- (a) Respond to a dispatched call as soon as practicable and begin the investigation (I.C. § 31-36-2-1; I.C. § 12-10-18-4).
- (b) Interview the reporting party and any witnesses to determine the description of the person and whether the person qualifies as a missing person and, if so, whether the person may be high risk (I.C. § 5-2-17-6(b)).
  1. If the missing person is under 18 years of age, provide the reporting party with the information pamphlet from the Indiana State Police (ISP) about the National Center for Missing and Exploited Children and the National Runaway Safeline (I.C. § 5-2-17-7; I.C. § 10-11-2-34).
- (c) Notify a supervisor immediately if there is evidence that a missing person is either high risk or may qualify for a public alert, or both (see the Public Alerts Policy).
- (d) Broadcast ~~an alert~~ [a radio alert \(e.g., internal broadcast, interagency broadcast\)](#) if the person is high risk. This shall be immediately broadcast as required by I.C. § 5-2-17-10(d).
- (e) Ensure that entries are made into the appropriate missing person networks:
  1. Immediately, when the missing person is high risk (I.C. § 5-2-17-10(d)).
  2. In all other cases, as soon as practicable, recommended within two hours, but not later than five hours from the time of the initial report ([34 USC § 41308](#); I.C. § 31-36-1-2; I.C. § 5-2-17-10(c)).

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### Missing Persons

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- (f) Complete the appropriate report forms accurately and completely as required (I.C. § 5-2-17-6; I.C. § 12-10-18-1; I.C. § 12-10-18-2; I.C. § 31-36-1-1; I.C. § 31-36-1-2).
- (g) Initiate a search as applicable ~~under~~ according to the facts.
- (h) Collect and/or review:
  - 1. A photograph and fingerprint card of the missing person, if available.
  - 2. A voluntarily provided biological sample of the missing person, if available (e.g., toothbrush, hairbrush).
  - 3. Any documents that may assist in the investigation, such as court orders regarding custody.
  - 4. Any other evidence that may assist in the investigation, including personal electronic devices (e.g., cell phones, computers).
- (i) When circumstances permit and if appropriate, attempt to determine the missing person's location through ~~the missing person's~~ their telecommunications carrier.
- (j) Contact the appropriate agency if the report relates to a missing person report previously made to another agency and that agency is actively investigating the report. When this is not practicable, the information should be documented in an appropriate report for transmission to the appropriate agency. If the information relates to a high-risk missing person, the member should notify a supervisor and proceed with reasonable steps to locate the missing person.
- (k) If the missing person qualifies for an AMBER Alert™, a Silver Alert, or a Green Alert, contact the ISP as soon as practical (I.C. § 12-10-18-3). ~~The member should contact the Clearinghouse at 1(800) 831 8953, make the appropriate report through the web portal at <https://www.in.gov/isp/3412.htm> ;~~
- (l) As necessary, obtain the assistance of the appropriate response team, Child Abduction Response Team (CART) for missing abducted children, or other law enforcement agencies including the ISP (I.C. § 5-2-17-10(a)). Assistance can be obtained by contacting the appropriate agency to activate the response team.
- (m) As appropriate, the officer shall inform other law enforcement agencies of a high-risk missing person (I.C. § 5-2-17-10(b)).
- (n) If requested, inform the individual making the report, a family member of the missing person, and any other individual who may be helpful in locating the missing person of the following (I.C. § 5-2-17-7):
  - 1. The general procedure for handling missing person cases.
  - 2. The approach of the case, unless disclosure would adversely affect the investigation.
  - 3. That additional information may be required if the missing person is not promptly located or if additional information is discovered in the course of the investigation.

## Missing Persons

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4. Provide contact information for the NCMEC or the Americas Missing Adults, or other similar organizations and advise that those organizations may provide additional resources.

### 316.6 REPORT PROCEDURES AND ROUTING

Members should complete all missing person reports and forms promptly and advise the appropriate supervisor as soon as a missing person report is ready for review.

[Indiana Missing Report Form](#)

[Clearinghouse Alert Flow Chart](#)

#### 316.6.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of the supervisor shall include, but are not limited to:

- (a) Reviewing and approving missing person reports upon receipt.
  1. The reports should be submitted promptly.
- (b) Ensuring resources are deployed as appropriate.
- (c) Initiating a command post as needed.
- (d) Ensuring applicable notifications and public alerts are made and documented.
- (e) Ensuring that records have been entered into the appropriate missing person networks.
- (f) Taking reasonable steps to identify and address any jurisdictional issues to ensure cooperation among agencies.
  1. If the case falls within the jurisdiction of another agency, the supervisor should facilitate transfer of the case to the agency of jurisdiction.
- (g) Assessing new information that may make the person high risk (I.C. § 5-2-17-6(b)).
- (h) Making a determination to stop the investigation if the person is not missing or is voluntarily missing (I.C. § 5-2-17-6(c)).
  1. If the investigation is cancelled, ensure the investigative steps and results of the investigation are properly documented (I.C. § 5-2-17-6(d)).
  2. Ensure that the location of the missing person is not disclosed to others if the missing person requests confidentiality (I.C. § 5-2-17-6(e)).
- (i) Determining if a photograph of the missing person should be released to the public (I.C. § 5-2-17-9).
- (j) Making a determination regarding the release of information to other agencies, the media and the public (I.C. § 12-10-18-3).
- (k) Initiating a search of the area if applicable. Steps to initiate a search may include:
  1. Arrange for a search team of department members or volunteers
  2. Determine the locations to be searched

## Missing Persons

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3. Establish a search pattern
4. Arrange for other resources as needed (e.g., divers, air support, canines)

### 316.6.2 RECORDS SECTION RESPONSIBILITIES

The responsibilities of the Records Section receiving member shall include, but are not limited to:

- (a) As soon as reasonable under the circumstances, notifying and forwarding a copy of the report to the agency of jurisdiction for the missing person's residence in cases where the missing person is a resident of another jurisdiction.
- (b) Notifying and forwarding a copy of the report to the agency of jurisdiction where the missing person was last seen.
- (c) Notifying and forwarding a copy of the report to the agency of jurisdiction for the missing person's intended or possible destination, if known.
- (d) Forwarding a copy of the report to the Investigation Division.
- (e) Forwarding copies of a missing child report to all agencies as required by I.C. § 31-36-1-3.
- (f) Coordinating with the NCIC Terminal Contractor for Indiana to have the missing person record in the NCIC computer networks updated with additional information obtained from missing person investigations (34 USC § 41308).

### 316.7 INVESTIGATION DIVISION FOLLOW-UP

In addition to completing or continuing any actions listed above, the investigator assigned to a missing person investigation:

- (a) Should ensure that the missing person's school, child care center or child home care is notified no later than 15 days after completion of the report if the missing person is a child less than 13 years of age (I.C. § 31-36-1-4).
  1. The notice shall be in writing and should also include a photograph.
  2. The investigator should meet with school officials as appropriate to stress the importance of including the notice in the child's student file, along with the investigator's contact information, if the school receives a call requesting the transfer of the missing child's files to another school (I.C. § 31-36-1-5).
- (b) Should recontact the reporting party and/or other witnesses within 30 days of the initial report and within 30 days thereafter to keep them informed, as appropriate, and to determine if any additional information has become available.
- (c) Should consider contacting other agencies involved in the case to determine if any additional information is available.
- (d) Shall verify and update IDACS, NCIC and any other applicable missing person networks within 30 days of the original entry into the networks and every 30 days thereafter until the missing person is located (34 USC § 41308).

## Missing Persons

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- (e) Should continue to make reasonable efforts to locate the missing person and document these efforts at least every 30 days.
- (f) Shall maintain a close liaison with state and local child welfare systems and the National Center for Missing and Exploited Children (NCMEC) if the missing person is under the age of 21 and shall promptly notify NCMEC when the person is missing from a foster care family home or childcare institution (34 USC § 41308).
- (g) Should make appropriate inquiry with the Elkhart County Homicide Unit.
- (h) Should obtain and forward medical ~~records,~~ and dental records, photos, X-rays, and biological samples, as applicable (I.C. § 5-2-17-8; I.C. § 31-36-2-3).
- (i) Shall attempt to obtain the most recent photograph for persons under 18 years of age if it has not been obtained previously and forward the photograph ~~as appropriate to~~ and enter the photograph into applicable missing person networks (34 USC § 41308).
- (j) ~~Should consider making appropriate entries and searches in the National Missing and Unidentified Persons System (NamUs).~~
- (k) Shall update the NCIC's Missing Person File if an arrest warrant is issued for a person who abducted or unlawfully retained a missing child (I.C. § 31-36-2-5).
- (l) Shall search the NCIC's Wanted Person File for reports of arrest warrants issued for persons who allegedly abducted or unlawfully retained children and compare these reports to the missing child's NCIC Missing Person File (I.C. § 31-36-2-2).
- (m) Shall update the investigation upon the discovery of new information and forward the information to the appropriate agencies and organizations (I.C. § 31-36-2-2).
- (n) Shall report as soon as possible relevant information to the FBI's Violent Criminal Apprehension Program (ViCAP) (I.C. § 5-2-17-9).
- (o) In the case of a high-risk missing person or a person who has been missing for an extended time, should consult with a supervisor regarding seeking federal assistance from the FBI and the U.S. Marshals Service (28 USC § 566).

### **316.8 WHEN A MISSING PERSON IS FOUND**

When any person reported missing is found, the assigned investigator shall document the location of the missing person in the appropriate report, notify the relatives and/or reporting party, as appropriate, and other involved agencies and refer the case for additional investigation if warranted. When a missing child is found, notification shall be promptly made to all involved agencies, and persons as provided in I.C. § 31-36-2-6.

The Administrative Assistant shall ensure that, upon receipt of information that a missing person has been located, the following occurs:

- (a) The missing child's school, child care center or child care home is promptly notified (I.C. § 31-36-2-6).
- (b) Entries are made in the applicable missing person networks.
- (c) Notification shall be made to any other law enforcement agency that took the initial report or participated in the investigation.

## Missing Persons

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### 316.8.1 UNIDENTIFIED PERSONS

Members investigating a case of an unidentified person who is deceased or a living person who cannot assist in identifying ~~him/herself~~ themselves should:

- (a) Obtain a complete description of the person.
- (b) Enter the unidentified person's description into the NCIC Unidentified Person File and the NamUs database.
- (c) Use available resources, such as those related to missing persons, to identify the person.

### 316.9 CASE CLOSURE

The Investigation Division supervisor may authorize the closure of a missing person case after considering the following:

- (a) Closure is appropriate when the missing person is confirmed returned or evidence matches an unidentified person or body.
- (b) If the missing person is a resident of Goshen or this department is the lead agency, the case should be kept under active investigation for as long as the person may still be alive. Exhaustion of leads in the investigation should not be a reason for closing a case.
- (c) If this department is not the lead agency, the case can be made inactive if all investigative leads have been exhausted, the lead agency has been notified and entries are made in the applicable missing person networks, as appropriate.
- (d) A missing person case should not be closed or reclassified because the person would have reached a certain age or adulthood or because the person is now the subject of a criminal or civil warrant.

### 316.10 TRAINING

Subject to available resources, the Training Lieutenant or designee should ensure that members of this department whose duties include missing person investigations and reports receive training that includes:

- (a) The initial investigation:
  1. Assessments and interviews
  2. Use of current resources, such as Mobile Audio/Video (MAV)
  3. Confirming missing status and custody status of minors
  4. Evaluating the need for a heightened response
  5. Identifying the zone of safety based on chronological age and developmental stage
- (b) Briefing of department members at the scene.

# Goshen Police Department

## Policy Manual

### *Missing Persons*

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- (c) Identifying NCIC Missing Person File categories (e.g., disability, endangered, involuntary, juvenile and catastrophe).
- (d) Verifying the accuracy of all descriptive information.
- (e) Initiating a neighborhood investigation.
- (f) Investigating any relevant recent family dynamics.
- (g) Addressing conflicting information.
- (h) Key investigative and coordination steps.
- (i) Managing a missing person case.
- (j) Additional resources and specialized services.
- (k) Update procedures for case information and descriptions.
- (l) Preserving scenes.
- (m) Internet and technology issues (e.g., Internet use, cell phone use).
- (n) Media relations.
- (o) Understanding and correctly entering medical or dental information into a database (I.C. § 5-2-17-10(c)).



## **Involuntary**Emergency Detentions

### **410.1 PURPOSE AND SCOPE**

This policy provides guidelines for when officers may place a person under ~~involuntary~~ emergency detention.

#### 410.1.1 DEFINITIONS

Definitions related to this policy include:

**Immediate**Emergency **detention** - When an individual ~~is involuntarily detained by an officer for~~ has a mental illness, is either dangerous or gravely disabled, and is in immediate need of hospitalization and treatment as provided in I.C. § 12-26-5-0.5.

~~Involuntary detention~~ — ~~Includes both immediate and emergency detentions.~~

~~Emergency detention~~ — ~~W or w~~ when an individual is ~~involuntarily~~ detained pursuant to a court approved petition under I.C. § 12-26-5-1.

### **410.2 POLICY**

It is the policy of the Goshen Police Department to protect the public and individuals through legal and appropriate use of the ~~involuntary~~ emergency detention process.

### **410.3 AUTHORITY**

An officer may take into custody and transport an individual to the appropriate facility in the following circumstances:

- (a) There are reasonable grounds to believe that an individual has a mental illness, is either dangerous or gravely disabled, and is in immediate need of hospitalization and treatment (I.C. § 12-26-5-0.5).
- (b) Pursuant to a court order (I.C. § 12-26-5-0.5).
- (c) Where an emergency detention petition is approved by a judge (I.C. § 12-26-5-2).

Individuals shall not be transported to a state institution (I.C. § 12-26-5-0.5).

#### ~~410.3.1 VOLUNTARY EVALUATION~~

~~If an officer encounters an individual who may qualify for involuntary detention, they may inquire as to whether the person desires to be voluntarily evaluated at an appropriate facility. If the person so desires, the officer should:~~

- ~~(a) Transport the person to an appropriate facility that is able to conduct the evaluation and admit the person.~~
- ~~(b) If at any point the person changes their mind regarding voluntary evaluation, the officers should proceed with immediate detention, if appropriate (I.C. § 12-26-5-0.5).~~
- ~~(c) Document the circumstances surrounding the individual's desire to pursue voluntary evaluation and/or admission.~~

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## Policy Manual

### ~~Involuntary~~Emergency Detentions

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#### 410.4 CONSIDERATIONS AND RESPONSIBILITIES

Any officer handling a call involving a person who may qualify for ~~involuntary immediate~~ emergency detention should consider, as time and circumstances reasonably permit:

- (a) Available information that might assist in determining the possible cause and nature of the person's action or stated intentions.
- (b) Community or neighborhood mediation services.
- (c) Conflict resolution and de-escalation techniques.
- (d) Community or other resources that may be readily available to assist with mental health issues.

While these steps are encouraged, nothing in this section is intended to dissuade officers from taking reasonable action to ensure the safety of the officers and others.

~~Involuntary~~Emergency detentions should be preferred over arrest for people who have mental health issues and are suspected of committing minor crimes or creating other public safety issues.

#### 410.5 TRANSPORTATION

Officers may transport individuals in the patrol unit and shall secure them in accordance with the Handcuffing and Restraints Policy unless there is an underlying medical condition. Should the detainee require transport in a medical transport vehicle and the safety of any person, including the detainee, requires the presence of an officer during the transport, Shift Supervisor approval is required before transport commences.

#### 410.6 TRANSFER TO APPROPRIATE FACILITY

Upon arrival at the facility, the officer will escort the individual into a treatment area designated by a facility staff member. ~~If the individual is not seeking treatment voluntarily, t~~he officer shall provide the staff member with the emergency petition or written statement containing the basis for the officer's belief the person qualifies for ~~immediate~~ emergency detention and remain present to provide clarification of the grounds for detention, upon request.

#### 410.7 DOCUMENTATION

The written statement containing the basis for the conclusion that reasonable grounds exist for ~~immediate~~ emergency detention shall be provided to the facility staff member assigned to the individual. A copy shall be retained for inclusion in the case report and filed with the court if any related criminal charges are filed by the officer (I.C. § 12-26-5-0.5).

The officer should also provide a verbal summary to any evaluating staff member regarding the circumstances leading to the ~~immediate~~ emergency detention.

#### 410.8 FIREARMS AND OTHER WEAPONS

Whenever a person is taken into custody for an ~~involuntary~~ emergency detention, the handling officers should seek to determine if the individual owns or has access to any firearm or other deadly weapon.

# Goshen Police Department

## Policy Manual

### ~~Involuntary~~Emergency Detentions

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Officers should consider whether it is appropriate and consistent with current search and seizure law under the circumstances to seize any such firearms or other dangerous weapons (e.g., safekeeping, evidence, consent). A firearm may be seized under I.C. § 35-47-14-3 if the officer believes the person presents an imminent risk of personal injury to him/herself or another and the officer submits to the circuit or superior court having jurisdiction over the person a written statement under oath or affirmation describing the basis for the belief that the person is dangerous.

Officers are cautioned that a search warrant may be needed before entering a residence or other place to search, unless lawful warrantless entry has already been made (e.g., exigent circumstances, consent). A warrant may also be needed before searching for or seizing weapons.

The handling officer should further advise the person of the procedure for the return of any firearm or other weapon that has been taken into custody.

#### **410.9 TRAINING**

~~This~~The Behavioral Health Coordinator will provide department-approved training on interaction with mentally ill persons, ~~involuntary~~emergency detentions and crisis intervention (I.C. § 5-2-1-9(g)).

## Records Section

### 801.1 PURPOSE AND SCOPE

This policy establishes the guidelines for the operational functions of the Goshen Police Department Records Section. The policy addresses department file access and internal requests for case reports.

### 801.2 POLICY

It is the policy of the Goshen Police Department to maintain department records securely, professionally and efficiently.

### 801.3 RESPONSIBILITIES

#### 801.3.1 ADMINISTRATIVE ASSISTANT

The Chief of Police shall appoint and delegate certain responsibilities to a Administrative Assistant. The Administrative Assistant shall be directly responsible to the Administration Division Chief or the authorized designee.

The responsibilities of the Administrative Assistant include, but are not limited to:

- (a) Overseeing the efficient and effective operation of the Records Section.
- (b) Scheduling and maintaining Records Section time records.
- (c) Supervising, training and evaluating Records Section staff.
- (d) Maintaining and updating a Records Section procedure manual.
- (e) Ensuring compliance with established policies and procedures.
- (f) Supervising the access, use and release of protected information (see the Protected Information Policy).
- (g) Establishing security and access protocols for case reports designated as sensitive, where additional restrictions to access have been implemented. Sensitive reports may include, but are not limited to:
  1. Homicides
  2. Cases involving department members or public officials
  3. Any case where restricted access is prudent

#### 801.3.2 RECORDS SECTION

The responsibilities of the Records Section include, but are not limited to:

- (a) Maintaining a records management system for case reports.
  1. The records management system should include a process for numbering, identifying, tracking, and retrieving case reports.

# Goshen Police Department

## Policy Manual

### Records Section

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- (b) Entering case report information into the records management system.
  - 1. Modification of case reports shall only be made when authorized by a supervisor.
- (c) Providing members of the Department with access to case reports when needed for investigation or court proceedings.
- (d) Maintaining compliance with federal, state, and local regulations regarding reporting requirements of crime statistics (I.C. § 10-13-2-6).
- (e) Maintaining compliance with federal, state, and local regulations regarding criminal history reports and auditing (I.C. § 10-13-2-6).
- (f) Identifying missing case reports and notifying the responsible member's supervisor.
- (g) Establishing a process for collecting and submitting data to appropriate federal data collection authorities (e.g., FBI National Use-of-Force Data Collection, U.S. Department of Justice's National Law Enforcement Accountability Database), as applicable, for the following types of occurrences:
  - 1. Officer suicides
  - 2. Officer misconduct
  - 3. Uses of force
  - 4. Officer deaths or assaults
  - 5. Crime incidents, [including bias \(hate\) crimes](#)
  - 6. Deaths in custody

#### 801.3.3 WARRANT AND WANTED PERSONS FILES

If the Department is responsible for maintaining a warrant and wanted persons file, the Administrative Assistant should also develop procedures for establishing warrant service files. This includes:

- (a) Criteria for entering warrants in regional, state or federal information systems.
- (b) Criteria for receiving information from other jurisdictions.
- (c) Recording information into department files.
- (d) Verifying information.
- (e) Canceling information.
- (f) Ensuring 24-hour access to warrants.

#### 801.4 FILE ACCESS AND SECURITY

The security of files in the Records Section must be a high priority and shall be maintained as mandated by state or federal law. All case reports including, but not limited to, initial, supplemental, follow-up, evidence, and any other reports related to a police department case, [including field interview \(FI\) cards](#), criminal history records, and publicly accessible logs, shall be maintained in a secure area within the Records Section, accessible only by authorized members

# Goshen Police Department

## Policy Manual

### *Records Section*

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of the Records Section. Access to case reports or files when Records Section staff is not available may be obtained through the Shift Captain.

The Records Section will also maintain a secure file for case reports [and records \(e.g., juvenile, confidential\)](#) deemed by the Chief of Police as sensitive or otherwise requiring extraordinary access restrictions.

#### **801.5 CONFIDENTIALITY**

Records Section staff has access to information that may be confidential or sensitive in nature. Records Section staff shall not access, view or distribute, or allow anyone else to access, view or distribute any record, file or report, whether in hard copy or electronic file format, or any other confidential, protected or sensitive information except in accordance with the Records Maintenance and Release and Protected Information policies and the Records Section procedure manual.

## Temporary Modified-Duty Assignments

### 1021.1 PURPOSE AND SCOPE

This policy establishes procedures for providing temporary modified-duty assignments. This policy is not intended to affect the rights or benefits of employees under federal or state law, City rules, or current collective bargaining agreements. For example, nothing in this policy affects the obligation of the Department to engage in a good faith, interactive process to consider reasonable accommodations for any employee with a temporary or permanent disability [or limitation](#) that is protected under federal or state law.

### 1021.2 POLICY

Subject to operational considerations, the Goshen Police Department may identify temporary modified-duty assignments for employees who have an injury or medical condition resulting in temporary work limitations or restrictions. A temporary assignment allows the employee to work, while providing the Department with a productive employee during the temporary period.

### 1021.3 GENERAL CONSIDERATIONS

Priority consideration for temporary modified-duty assignments will be given to employees with work-related injuries or illnesses that are temporary in nature. Employees having disabilities covered under the Americans with Disabilities Act (ADA) or the Indiana Civil Rights Act shall be treated equally, without regard to any preference for a work-related injury.

No position in the Goshen Police Department shall be created or maintained as a temporary modified-duty assignment.

Temporary modified-duty assignments are a management prerogative and not an employee right. The availability of temporary modified-duty assignments will be determined on a case-by-case basis, consistent with the operational needs of the Department. Temporary modified-duty assignments are subject to continuous reassessment, with consideration given to operational needs and the employee's ability to perform in a modified-duty assignment.

The Chief of Police or the authorized designee may restrict employees working in temporary modified-duty assignments from wearing a uniform, displaying a badge, carrying a firearm, operating an emergency vehicle or engaging in outside employment, or may otherwise limit them in employing their law enforcement officer powers.

Temporary modified-duty assignments shall generally not exceed a cumulative total of 1,040 hours in any one-year period.

### 1021.4 PROCEDURE

Employees may request a temporary modified-duty assignment for short-term injuries or illnesses.

# Goshen Police Department

## Policy Manual

### *Temporary Modified-Duty Assignments*

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Employees seeking a temporary modified-duty assignment should submit a written request to their Division Chiefs or the authorized designees. The request should, as applicable, include a certification from the treating medical professional containing:

- (a) An assessment of the nature and probable duration of the illness or injury.
- (b) The prognosis for recovery.
- (c) The nature and scope of limitations and/or work restrictions.
- (d) A statement regarding any required workplace accommodations, mobility aids or medical devices.
- (e) A statement that the employee can safely perform the duties of the temporary modified-duty assignment.

The Division Chief will make a recommendation through the chain of command to the Chief of Police regarding temporary modified-duty assignments that may be available based on the needs of the Department and the limitations of the employee. The Chief of Police or the authorized designee shall confer with the Human Resources or the City Attorney as appropriate.

Requests for a temporary modified-duty assignment of 20 hours or less per week may be approved and facilitated by the Shift Captain or Division Chief. In cases involving reassignment due to an injury, approval shall be sought with the Chief of Police.

#### **1021.5 ACCOUNTABILITY**

Written notification of assignments, work schedules and any restrictions should be provided to employees assigned to temporary modified-duty assignments and their supervisors. Those assignments and schedules may be adjusted to accommodate department operations and the employee's medical appointments, as mutually agreed upon with the Division Chief.

##### **1021.5.1 EMPLOYEE RESPONSIBILITIES**

The responsibilities of employees assigned to temporary modified duty shall include, but are not limited to:

- (a) Communicating and coordinating any required medical and physical therapy appointments in advance with their supervisors.
- (b) Promptly notifying their supervisors of any change in restrictions or limitations after each appointment with their treating medical professionals.
- (c) Communicating a status update to their supervisors no less than once every 30 days while assigned to temporary modified duty.
- (d) Submitting a written status report to the Division Chief that contains a status update and anticipated date of return to full-duty when a temporary modified-duty assignment extends beyond 60 days.



## *Temporary Modified-Duty Assignments*

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### 1021.5.2 SUPERVISOR RESPONSIBILITIES

The employee's immediate supervisor shall monitor and manage the work schedule of those assigned to temporary modified-duty.

The responsibilities of supervisors shall include, but are not limited to:

- (a) Periodically apprising the Division Chief of the status and performance of employees assigned to temporary modified duty.
- (b) Notifying the Division Chief and ensuring that the required documentation facilitating a return to full duty is received from the employee.
- (c) Ensuring that employees returning to full duty have completed any required training and certification.

### 1021.6 MEDICAL EXAMINATIONS

Prior to returning to full-duty status, employees shall be required to provide certification from their treating medical professionals stating that they are medically cleared to perform the essential functions of their jobs without restrictions or limitations.

The Department may require a fitness-for-duty examination prior to returning an employee to full-duty status, in accordance with the Fitness for Duty Policy.

### 1021.7 PREGNANCY

If an employee is temporarily unable to perform regular duties due to a pregnancy, childbirth, or a related medical condition, the employee will be treated the same as any other temporarily disabled employee (42 USC § 2000e(k)). A pregnant employee shall not be involuntarily transferred to a temporary modified-duty assignment.

[If notified by an employee or the employee's representative regarding limitations related to pregnancy, childbirth, or related medical conditions, the Department should make reasonable efforts to provide an accommodation for the employee in accordance with federal law. The accommodation should be provided without unnecessary delay, as appropriate \(42 USC § 2000gg-1; 29 CFR 1636.3; 29 CFR 1636.4\).](#)

#### 1021.7.1 NOTIFICATION

Pregnant employees should notify their immediate supervisors as soon as practicable and provide a statement from their medical providers identifying any pregnancy-related job restrictions or limitations. If at any point during the pregnancy it becomes necessary for the employee to take a leave of absence, such leave shall be granted in accordance with the City's personnel rules and regulations regarding family and medical care leave.

### 1021.8 MAINTENANCE OF CERTIFICATION AND TRAINING

Employees assigned to temporary modified duty shall maintain all certification, training and qualifications appropriate to both their regular and temporary duties, provided that the certification, training or qualifications are not in conflict with any medical limitations or restrictions. Employees

# Goshen Police Department

## Policy Manual

### *Temporary Modified-Duty Assignments*

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who are assigned to temporary modified duty shall inform their supervisors of any inability to maintain any certification, training or qualifications.

# Wellness Program

## 1024.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance on establishing and maintaining a proactive wellness program for department members.

The wellness program is intended to be a holistic approach to a member's well-being and encompasses aspects such as physical fitness, mental health, and overall wellness.

Additional information on member wellness is provided in the:

- Chaplains Policy.
- Line-of-Duty Deaths Policy.
- Drug- and Alcohol-Free Workplace Policy.

### 1024.1.1 DEFINITIONS

Definitions related to this policy include (I.C. § 36-8-2.5-1):

**Communications** – Oral or written statements, notes, records, recordings, reports, or documents made during or arising from a member's receipt of critical incident stress management (CISM) services or peer support services.

**Critical incident** – An actual or perceived event or situation that involves crisis, disaster, trauma, or emergency.

**Critical incident stress** – The acute or cumulative psychological stress or trauma a member may experience in providing emergency services in response to a critical incident that causes an unusually strong emotional, cognitive, behavioral, or physical reaction that may interfere with normal functioning. The stress or trauma may cause physical and emotional injury or illness; failure of usual coping mechanisms; loss of interest in work or normal life activities; loss of ability to function; or psychological disruption of personal life including relationships with others.

**Critical Incident Stress Debriefing (CISD)** – A standardized approach using a discussion format to provide education, support, and emotional release opportunities for members involved in work-related critical incidents.

**CISM services** – Critical incident stress management services include programs and services related to education, prevention, and mitigation of the effects from exposure to highly stressful critical incidents. These include services provided by an individual certified to provide group or individual crisis intervention, peer support, or a related service.

**CISM services provider** – An individual certified to provide CISM services who is acting as part of a CISM team or in another official capacity.

**CISM team** – An organized community or local crisis response team trained and certified under standards substantially similar to the training and certification standards of the Indiana Emergency Medical Services Commission under I.C. § 16-31-2.

## *Wellness Program*

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**Peer support services** – Services provided by a member who works for the same agency as the recipient of such services and is acting in the member's capacity as a peer support team member and within the agency's peer support guidelines. Services may include active listening, assessment, mentoring, crisis intervention, or other support services provided to a member experiencing personal or professional difficulties that may or may not result from their exposure to critical incidents.

**Peer support team member** – A member who successfully completed peer support training and is designated as a peer support team member by the Chief of Police or the members' bargaining unit president.

### **1024.2 POLICY**

It is the policy of the Goshen Police Department to prioritize member wellness to foster fitness for duty and support a healthy quality of life for department members. The Department will maintain a wellness program that supports its members with proactive wellness resources, critical incident response, and follow-up support.

### **1024.3 WELLNESS COORDINATOR**

The Chief of Police should appoint a trained wellness coordinator. The coordinator should report directly to the Chief of Police or the authorized designee and should collaborate with advisers (e.g., Human Resources, legal counsel, licensed psychotherapist, qualified health professionals), as appropriate, to fulfill the responsibilities of the position, including but not limited to:

- (a) Identifying wellness support providers (e.g., licensed psychotherapists, external peer support providers, physical therapists, dietitians, physical fitness trainers holding accredited certifications).
  - 1. As appropriate, selected providers should be trained and experienced in providing mental wellness support and counseling to public safety personnel.
  - 2. When practicable, the Department should not use the same licensed psychotherapist for both member wellness support and fitness for duty evaluations.
- (b) Developing management and operational procedures for department peer support team members, such as:
  - 1. Peer support team member selection and retention.
  - 2. Training and applicable certification requirements.
  - 3. Deployment.
  - 4. Managing potential conflicts between peer support team members and those seeking service.
  - 5. Monitoring and mitigating peer support team member emotional fatigue (i.e., compassion fatigue) associated with providing peer support services.
  - 6. Using qualified peer support personnel from other public safety agencies or outside organizations for department peer support services, as appropriate.

# Goshen Police Department

## Policy Manual

### *Wellness Program*

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- (c) Verifying members have reasonable access to peer support services or licensed psychotherapist support.
- (d) Establishing procedures for CISDs, including:
  - 1. Defining the types of incidents that may initiate debriefings.
  - 2. Steps for organizing debriefings.
- (e) Facilitating the delivery of wellness information, training, and support through various methods appropriate for the situation (e.g., phone hotlines, electronic applications).
- (f) Verifying a confidential, appropriate, and timely Employee Assistance Program (EAP) is available for members. This also includes:
  - 1. Obtaining a written description of the program services.
  - 2. Providing for the methods to obtain program services.
  - 3. Providing referrals to the EAP for appropriate diagnosis, treatment, and follow-up resources.
  - 4. Obtaining written procedures and guidelines for referrals to, or mandatory participation in, the program.
  - 5. Obtaining training for supervisors in their role and responsibilities, and identification of member behaviors that would indicate the existence of member concerns, problems, or issues that could impact member job performance.
- (g) Assisting members who have become disabled with application for federal government benefits such as those offered through the Public Safety Officers' Benefits Program (34 USC § 10281 et seq.).
  - 1. The coordinator should work with appropriate Department liaisons to assist qualified members and survivors with benefits, wellness support, and counseling services, as applicable, when there has been a member death (see the Line-of-Duty Deaths Policy for additional guidance).

#### **1024.4 DEPARTMENT PEER SUPPORT TEAM**

##### **1024.4.1 PEER SUPPORT TEAM MEMBER SELECTION CRITERIA**

The selection of a department peer support team member will be at the discretion of the Chief of Police or the members' bargaining unit president (I.C. § 36-8-2.5-1). Selection should be based on the member's:

- Desire to be a peer support team member.
- Experience or tenure.
- Demonstrated ability as a positive role model.
- Ability to communicate and interact effectively.
- Evaluation by supervisors and any current peer support team members.

## *Wellness Program*

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### 1024.4.2 PEER SUPPORT TEAM MEMBER RESPONSIBILITIES

The responsibilities of department peer support team members include:

- (a) Providing pre- and post-critical incident support.
- (b) Presenting department members with periodic training on wellness topics, including but not limited to:
  - 1. Stress management.
  - 2. Suicide prevention.
  - 3. How to access support resources.
- (c) Providing referrals to licensed psychotherapists and other resources, where appropriate.
  - 1. Referrals should be made to department-designated resources in situations that are beyond the scope of the peer support team member's training.

### 1024.4.3 PEER SUPPORT TEAM MEMBER TRAINING

A department peer support team member should successfully complete department-approved peer support training prior to being assigned (I.C. § 36-8-2.5-1).

### **1024.5 CRITICAL INCIDENT STRESS DEBRIEFINGS**

A Critical Incident Stress Debriefing should occur as soon as practicable following a critical incident but is not recommended earlier than 48 hours after the incident. The coordinator is responsible for organizing the debriefing. Notes and recorded statements shall not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a critical incident.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law, or a valid court order.

Attendance at the debriefing should only include peer support team members, CISM service providers, and those directly involved in the incident.

### **1024.6 PEER SUPPORT COMMUNICATIONS**

Communications between a member and CISM services providers or peer support team members while the member is receiving peer support services, and the records of those communications, are generally confidential and may not be disclosed to a third party or in a criminal, civil, or administrative proceeding without a court order or as authorized by I.C. § 36-8-2.5-2. Those communications are confidential for purposes of the Access to Public Records law in I.C. § 5-14-3-1 et seq. (I.C. § 36-8-2.5-2).

### **1024.7 PHYSICAL WELLNESS PROGRAM**

The coordinator is responsible for establishing guidelines for any on-duty physical wellness program, including the following:

## *Wellness Program*

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- (a) Voluntary participation by members
- (b) Allowable physical fitness activities
- (c) Permitted times and locations for physical fitness activities
- (d) Acceptable use of department-provided physical fitness facilities and equipment
- (e) Individual health screening and fitness assessment
- (f) Individual education (e.g., nutrition, sleep habits, proper exercise, injury prevention) and goal-setting
- (g) Standards for fitness incentive programs. The coordinator should collaborate with the appropriate entities (e.g., human resources, legal counsel) to verify that any standards are nondiscriminatory.
- (h) Maintenance of physical wellness logs (e.g., attendance, goals, standards, progress)
- (i) Ongoing support and evaluation

### **1024.8 WELLNESS PROGRAM AUDIT**

At least annually, the coordinator or the authorized designee should audit the effectiveness of the department's wellness program and prepare a report summarizing the findings. The report shall not contain the names of members participating in the wellness program, and should include the following information:

- Data on the types of support services provided
- Wait times for support services
- Participant feedback, if available
- Program improvement recommendations
- Policy revision recommendations

The coordinator should present the completed audit to the Chief of Police for review and consideration of updates to improve program effectiveness.

### **1024.9 TRAINING**

The coordinator or the authorized designee should collaborate with the Training Lieutenant to provide all members with regular education and training on topics related to member wellness, including but not limited to:

- The availability and range of department wellness support systems.
- Suicide prevention.
- Recognizing and managing mental distress, emotional fatigue, post-traumatic stress, and other possible reactions to trauma.
- Alcohol and substance disorder awareness.
- Countering sleep deprivation and physical fatigue.

# Goshen Police Department

## Policy Manual

### *Wellness Program*

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- Anger management.
- Marriage and family wellness.
- Benefits of exercise and proper nutrition.
- Effective time and personal financial management skills.

Training materials, curriculum, and attendance records should be forwarded to the Training Lieutenant as appropriate for inclusion in training records.

#### 1024.9.1 ADDITIONAL STATE-MANDATED WELLNESS TRAINING

Officers shall complete training on topics relating to the mental health and wellness of law enforcement officers as required by I.C. § 5-2-1-9.





**CITY OF GOSHEN LEGAL DEPARTMENT**

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

December 5, 2024

To: Goshen Board of Public Works and Safety  
From: Shannon Marks  
Subject: Resolution 2024-31 - Declaring Surplus and Authorizing the Disposal of IT Equipment

The City's Technology Department wishes to dispose of personal property that is no longer needed or is unfit for the purpose for which it was intended. The items are worthless or of no market value.

Resolution 2024-31 is to declare the property as surplus and authorize its disposal in accordance with Indiana Code § 5-22-22-8 by demolishing or junking property that is worthless or of no market value.

**Suggested Motion:**

**Move to pass Resolution 2024-31 - Declaring Surplus and Authorizing the Disposal of Personal Property.**

**Goshen Board of Public Works and Safety  
Resolution 2024-31**

**Declaring Surplus and Authorizing the Disposal of IT Equipment**

WHEREAS the City of Goshen Technology Department has personal property that is no longer needed or is unfit for the purpose for which it was intended and wishes to dispose of the personal property.

WHEREAS the items are worthless or of no market value.

NOW, THEREFORE, BE IT RESOLVED by the Goshen Board of Public Works and Safety that:

1. The personal property set forth in Exhibit A is declared as surplus property, hereinafter collectively referred to as “Surplus Property.”
2. City staff is authorized to dispose of the Surplus Property in accordance with Indiana Code § 5-22-22-8 by demolishing or junking Surplus Property that is worthless or of no market value, including recycling components where possible.

PASSED by the Goshen Board of Public Works and Safety on December \_\_\_\_, 2024.

\_\_\_\_\_  
Gina M. Leichthy, Mayor

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

\_\_\_\_\_  
Orv Myers, Member

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

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

## **EXHIBIT A**

### **Surplus Property (Resolution 2024-31)**

Samsung R540 -Laptop  
Samsung R530 -Laptop  
HP EliteDesk 800 G2 TWR -Tower  
HP EliteDesk 800 G2 TWR -Tower  
HP Pro3500 Series -Tower  
HP Pro3500 Series -Tower  
HP EliteDesk 800 G2 TWR -Tower  
HP EliteDesk 800 G2 TWR -Tower  
HP EliteDesk 800 G2 TWR -Tower  
HP ProBook 440 G2 -Laptop  
HP ProBook 440 G2 -Laptop  
HP ProBook 440 G2 -Laptop  
HP ProBook 440 G2 -Laptop  
HP ProBook 440 G2 -Laptop  
Toshiba Satellite C855D-S5100 -Laptop  
HP EliteBook 840 -Laptop  
HP 280 G1 -Tower  
HP 280 G1 -Tower  
SYX IPMIP-GS -Tower  
AOC -JT085HA022328 – Flat Screen Monitor  
Acer - ETLDQ0C011851EAC534022 – Flat Screen Monitor  
Neovo - C1F15E0F53502825 – Flat Screen Monitor  
Acer- ETL480201780905172396L – Flat Screen Monitor  
HP – 803823001 - Keyboard  
Logitec – 820006477 – Keyboard  
4, Custom Towers



**CITY OF GOSHEN LEGAL DEPARTMENT**

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[www.goshenindiana.org](http://www.goshenindiana.org)

December 5, 2024

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Resolution 2024-30 - Declaring Surplus and Authorizing the Disposal of Vehicles and Equipment

The city wishes to dispose of personal property that is no longer needed or is unfit for the purpose for which it was intended. Resolution 2024-30 is to declare the property as surplus and authorize its disposal in accordance with the provisions of Indiana Code § 5-22-22-4 by engaging an auctioneer to advertise the sale of the property and conduct a public auction.

An agreement will be presented to the Board for approval with an auction company to sell the property. In addition, the city shall give notice of the auction by publication of the date, time, place and terms of the sale at least 15 days before the date of the sale.

**Suggested Motion:**

Move to pass Resolution 2024-30 - Declaring Surplus and Authorizing the Disposal of Vehicles and Equipment.

**Goshen Board of Public Works and Safety  
Resolution 2024-30**

**Declaring Surplus and Authorizing the Disposal of Vehicles and Equipment**

WHEREAS various City of Goshen departments have personal property that is no longer needed or is unfit for the purpose for which it was intended and wishes to dispose of the personal property.

NOW, THEREFORE, BE IT RESOLVED by the Goshen Board of Public Works and Safety that:

A. The following personal property is declared as surplus property:

1. 2011 5x8 Utility Trailer, VIN/Serial Number 457CA0B08B1022372 (Cemetery Asset #CM7791)
2. Coats Tire Changer Rim Clamp 7060 AX, VIN/Serial Number N/A (Central Garage Asset #N/A)
3. Whelltronic Hoist 15,000, VIN/Serial Number 205B-01831 (Central Garage Asset #N/A)
4. Coats Tire Balancer 1250, VIN/Serial Number N/A (Central Garage Asset #N/A)
5. 2003 Medtec Medic, VIN/Serial Number 1HTMNAAL63H563323 (Fire Asset #FD925)
6. 2010 Chevrolet Tahoe, VIN/Serial Number 1GNUKAE0XAR216470 (Fire Asset #F9071)
7. Poulan Push Mower, VIN/Serial Number 020300M 000622 (Fire Asset #F624)
8. 2014 Toro Timemaster Push Mower, VIN/Serial Number 314003513 (Fire Asset #F626)
9. Snapper P21507B Push Mower, VIN/Serial Number 16273954 (Fire Asset #F629)
10. Snapper Ninja Push Mower, VIN/Serial Number 2012816899 (Fire Asset #F633)
11. Toro SR4 Push Mower, VIN/Serial Number 8.0811570874e+11 (Fire Asset #F634)
12. Honda HR214 Push Mower, VIN/Serial Number 6258364 (Fire Asset #F637)
13. Lawnboy Push Mower, VIN/Serial Number 260002862 (Fire Asset #F649)
14. 2010 Chevrolet Tahoe, VIN/Serial Number 1GNUKAE05AR170434 (Fire Asset #F909)
15. 1993 Chevrolet K3500, VIN/Serial Number 1GCHK34K4PE185533 (Fire Asset #F017) with Boss Straight Plow, VIN/Serial Number A7746 (Fire Asset #F017AA)
16. Honda Push Mower, VIN/Serial Number MZBZ-6043088 (Parks Asset #PKD2212)
17. 2015 Chevrolet Impala, VIN/Serial Number 2G1WD5E32F1161227 (Police Asset #145)
18. 2014 Chevrolet Impala, VIN/Serial Number 2G1WD5E30E1179689 (Police Asset #124)

19. 2004 Ford Explorer, VIN/Serial Number 1FMZU72K14ZA76536 (Police Asset #1104)
  20. Sander/Salt Spreader, VIN/Serial Number 2029234 (Street Asset #326C)
  21. 2011 Boss V-Plow XT, VIN/Serial Number BC050045 (Street Asset #341A)
  22. 2011 Boss V Plow, VIN/Serial Number BC074291 (Street Asset #383A)
  23. 2014 Boss Snow Plow, VIN/Serial Number 223297 (Street Asset #ST342A)
  24. 2015 Boss Plow 9'2", VIN/Serial Number 237412 (Street Asset #ST378A)
  25. 2006 Chevrolet Truck Bed, VIN/Serial Number N/A (Street Asset #N/A)
  26. Broce Sweeper, VIN/Serial Number 88347 (Street Asset #388)
  27. Wacker Roller, VIN/Serial Number 5021579 (Street Asset #337)
  28. Hydrotek Power Washer, VIN/Serial Number N/A (Wastewater Asset #N/A)
  29. 2004 Trash Pump 8.0 Honda, VIN/Serial Number WAF008972 (Water & Sewer Asset #6611)
  30. 2007 GMC Canyon, VIN/Serial Number 1GTDT13E078144195 (Water & Sewer Asset #801)
  31. 2007 Dynapac LT6000 Rammer, VIN/Serial Number 76103889 (Water & Sewer Asset #WS6607)
- B. Authorization is given to dispose of the surplus property in accordance with the provisions of Indiana Code § 5-22-22-4 by engaging an auctioneer licensed under Indiana Code § 25-6.1 to advertise the sale of the property and conduct a public auction.

PASSED by the Goshen Board of Public Works and Safety on December \_\_\_\_\_, 2024.

\_\_\_\_\_  
Gina M. Leichty, Mayor

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

\_\_\_\_\_  
Orv Myers, Member

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

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



**CITY OF GOSHEN LEGAL DEPARTMENT**

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

December 5, 2024

To: Board of Public Works and Safety  
From: Shannon Marks  
Subject: Consignment Agreement with Bright Star Realty and Auctions, LLC

Board of Public Works and Safety Resolution 2024-30 authorizes the disposal of surplus property by engaging an auctioneer to advertise the sale of the property and conduct a public auction. Central Garage would like to consign the City's surplus property with Bright Star Realty and Auctions, LLC to be sold at Bright Star's upcoming consignment auction to be held on December 30, 2024 at 11751 County Road 12, Middlebury.

It is recommended that the Board approve and ratify the Mayor's execution of the attached Consignment Agreement and Addendum with Bright Star Realty and Auctions, LLC to sell the City's surplus property at Bright Star's upcoming consignment auction. Bright Star's commission to sell the surplus property is \$25 per lot plus 5% of the gross proceeds from the sale of the surplus property.

**Suggested Motion:**

Move to approve and ratify the Mayor's execution of the Consignment Agreement and Addendum with Bright Star Realty and Auctions, LLC to sell the City's surplus property at Bright Star's consignment auction.





**Attachment 1**  
**CONSIGNMENT TERMS**

1. **Absolute Auction.** The Property will be sold at an Absolute Auction. "Absolute Auction" means an auction to which all of the following apply: (a) the property is sold to the highest bidder without reserve and without any limitations; (b) there is no minimum bid requirement; (c) Seller or Seller's agent may not bid at the Consignment Auction on the Property; and (d) Seller cannot withdraw the property from Consignment Auction after the auction is opened and there is public calling for bids. Seller shall not sell or withdraw any Property, except by mutual agreement between Seller and Bright Star.

2. **Auctioneer's Authority and Exclusivity.** Seller retains Bright Star to sell the Property at the Consignment Auction. Seller gives Bright Star the sole and exclusive right to offer for sale, and to sell the Property for the Seller according to this Agreement. The exclusive right to sell the Property shall continue for three (3) months and will terminate on three months after the date shown on the first page. Bright Star shall be paid the commission as provided herein if the lots are sold at public auction or by private sale during the term of this Agreement.

3. **Property, Inspection, Estimate.** Seller agrees to consign to Bright Star the Property listed on the first page, attached hereto and incorporated herein, and/or on additional pages or photographs that are attached to and made an integral part of this Agreement. Bright Star will inspect the Property when it is received at its place of business or other designated area. The condition of the Property will be determined by inspection. The inspection is solely for the benefit of Bright Star and is not to determine whether the Property is safe, able to be used, or whether it functions. Bright Star assumes no risk related to any defects or problems with the Property. To the extent there are any defects or other issues with the Property, Seller shall be solely responsible for them and shall indemnify, defend, and hold harmless Bright Star from any liabilities, claims, or damages (including reasonable attorney fees) arising from any defects, safety issues, or other problems with the Property. Bright Star will give a pre-sale estimate to the Seller. The pre-sale estimate is a range in which Bright Star expects the Property to sell. This is not an appraisal or reserve. It is simply an estimate based on Bright Star's experience. The market and bidding is beyond the control of Bright Star, so it does not guarantee that the Property will sell within the range given at in the pre-sale estimate.

4. **Agency Relationship.** Seller agrees that Bright Star is an agent of the Seller and is not taking title or ownership of the Property. Seller shall insure the Property for its full value and bears the risk of loss for the Property until the Property is sold. Bright Star is not engaging in a joint business venture, employment relationship, or partnership with the Seller. Bright Star is acting as an independent contractor free of control from the Seller. Bright Star is authorized to sign any memorandum of sale on behalf of the Seller, or in Bright Star's own name, in connection with the sale of Seller's Property.

5. **Conduct of the Auction.** The Property may be sold in one or more Consignment Auction during the term of this Agreement. The Seller authorizes Bright Star to conduct the Consignment Auction anywhere in the United States of America, at the Auctioneer's sole discretion. Bright Star at its sole discretion, may sell any or all Property online or via the internet, including, but not limited to, using eBay or another internet auction websites.

6. **Acknowledgment of Risk.** Seller acknowledges and understands the risk of having property sold at an Absolute Auction. Each piece of the Property will be sold to the highest bidder at the Auction. Seller is committed to the sale, no matter what the level of bidding, or the Seller's notion of a lot's "true" value. The Seller has a bona fide intention to transfer ownership of each lot to the highest bidder.

7. **Terms of Sale.** Bright Star shall establish all terms of the Auction and procedures for bidding within its sole discretion. Bright Star is authorized to solicit and accept absentee, phone, and Internet bids, along with bids from a live gallery. All absentee bids will be represented by Bright Star's representative and will be handled in a competitive manner.

8. **Commission, Broker Fees, and Buyer's Premium.** Seller agrees that Bright Star may deduct its professional fees, at the rates set forth in this Agreement, as compensation for Bright Star's services to be provided under this Agreement. This fee shall be deducted from the gross proceeds realized from the sale of the Consigned Items. Gross proceeds are defined as the "hammer price" of lots sold and exclude any Buyer's Premium or Sales Tax. Seller agrees that Bright Star is not obligated to pay any fee or commission to any broker, finder, or other intermediary in connection with the sale of the Property. Seller authorizes Bright Star to charge a buyer's premium. The buyer's premium is to be paid to the Auctioneer for the Auctioneer's sole benefit.

9. **Advertising Costs.** Bright Star is authorized to place Consignment Auction advertisements in such media as Bright Star selects, and provide necessary support, promotional assistance, supplies and materials as Bright Star deems necessary to obtain the highest available bid for the Property. Bright Star shall be responsible for all costs and expenses incurred in advertising the Consignment Auction.

10. **Accepting and Collecting Payments.** Bright Star is authorized to accept payments for the Property sold in cash, check, credit card, wire transfer, or any other commercially reasonable means. All auction proceeds shall be paid directly to Bright Star and Bright Star shall be responsible for the receipt of all funds. Bright Star agrees to pay Seller the net proceeds (gross proceeds less Bright Star's professional fee) from the sale of the Lots within thirty (30) days following the receipt of monies for the Property. Bright Star shall provide to seller a settlement statement. The contract for the sale of each lot is between the successful bidder and the Seller. Bright Star shall not be responsible for collection of the purchase price in the event the buyer breaches the contract, refuses to pay, or the buyer's payment is subsequently dishonored for any reason. In these instances, Bright Star shall have the option of letting the seller keep his equipment or paying the seller the net proceeds and taking ownership of the equipment. The seller's preferences will certainly be taken into consideration by Bright Star but Bright Star's decision is final. Seller agrees that Bright Star's professional fee shall be paid first from the gross proceeds realized from the sale of Property.

11. **Interest Earned.** Any and all monies received from the Consignment Auction shall be deposited in the Bright Star's trust account. Any interest earned on the proceeds held in the trust account, if any, shall be paid to the Seller.

12. **Indemnification.** Seller agrees to indemnify, defend, and hold harmless Bright Star and its agents and employees from any and all liabilities, claims, or damages (including reasonable attorney fees) arising out of the breach of this Agreement.

13. **Unsold Property.** Bright Star will notify Seller of any unsold Property. Seller must make arrangements to pick up and recover the unsold Property within thirty (30) days of the notice. If Seller does not make reasonable arrangement, Bright Star may charge fees for storage of the unsold Property and deem worthless property abandoned.

14. **Miscellaneous.** This Agreement constitutes the entire agreement between Seller and Bright Star. It supersedes any prior or contemporaneous understanding or agreement with respect to the transactions contemplated by this agreement. It may be amended only by another written agreement signed by Seller and Auctioneer. This Agreement will be governed and construed in accordance with the laws of the State of Indiana, without regard to the choice of law provisions. All claims, disputes, or litigation relating to the Agreement must be brought in the state or federal courts sitting in and for Elkhart, Indiana. In the event any provision in this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.



## ADDENDUM

THIS ADDENDUM is made and entered into the 22 day of November, 2024, by and between Bright Star Realty and Auctions, LLC (hereinafter referred to as "Contractor"), and the City of Goshen, Indiana (hereinafter referred to as "City").

WITNESSETH:

WHEREAS Contractor and City are parties to a certain agreement for Contractor to sell certain City property at a Consignment Auction ("Agreement"); and

WHEREAS this Addendum shall be attached to and be a part of the Agreement and shall control in the event of any conflict with the terms and provisions of the Agreement.

NOW, THEREFORE, in consideration of the premises and the terms and conditions contained herein, the parties hereby mutually and further agree as follows:

State Law Provisions.

1) Non-Discrimination - Pursuant to Indiana Code § 22-9-1-10, Contractor and its subcontractors, if any, shall not to discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his race, religion, color, sex, disability, national origin, ancestry or veteran status. Breach of this covenant may be regarded as a material breach of the Agreement.

2) 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.

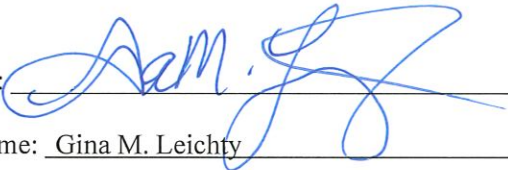
3) E-Verify Program - Pursuant to Indiana Code § 22-5-1.7-11, Contractor agrees to and shall enroll in and verify the work eligibility status of all newly hired employees of Contractor after the date of the Agreement through the E-Verify Program as defined in Indiana Code § 22-5-1.7-3; provided, however, Contractor is not required to verify the work eligibility status of all newly hired employees after the date of the Agreement through the E-Verify Program if the E-Verify Program no longer exists. Contractor further represents and certifies subject to the pains and penalties of perjury that Contractor does not knowingly employ an unauthorized alien.

4) General Requirements - Contractor further agrees to comply with the applicable requirements of Indiana state law with respect to contracting with local governmental entities.

This Addendum is dated effective with the effective date of the Agreement.

CITY:

CITY OF GOSHEN, INDIANA

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

Name: Gina M. Leichy

Title: Mayor

Date: November 21, 2024

CONTRACTOR:

BRIGHT STAR REALTY AND AUCTIONS, LLC

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

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

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

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

4) General Requirements - Contractor further agrees to comply with the applicable requirements of Indiana state law with respect to contracting with local governmental entities.

This Addendum is dated effective with the effective date of the Agreement.

CITY:

CITY OF GOSHEN, INDIANA

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

Name: Gina M. Leichty

Title: Mayor

Date: November, 2024

CONTRACTOR:

BRIGHT STAR REALTY AND AUCTIONS, LLC

By: 

Name: Loren Beachy

Title: President

Date: 11-22-2024

**City of Goshen, Indiana**  
**List of Personal Property to be Sold at Consignment Auction**  
**December 2024**

- 1. 2011 5x8 Utility Trailer**  
VIN/Serial Number: 457CA0B08B1022372  
Tire Tread: 60%  
Notes: normal wear/tear
  
- 2. Coats Tire Changer Rim Clamp 7060 AX**  
Notes: normal wear/tear
  
- 3. Whelltronic Hoist 15,000**  
VIN/Serial Number: 205B-01831  
Notes: normal wear/tear
  
- 4. Coats Tire Balancer 1250**  
Notes: normal wear/tear
  
- 5. 2003 Medtec Medic**  
VIN/Serial Number: 1HTMNAAL63H563323  
Mileage: 171938  
Engine: 6.7L  
Fuel: diesel  
Drive Train: RWD  
Transmission: auto  
Tire Tread: 60%  
Notes: normal wear/tear
  
- 6. 2010 Chevrolet Tahoe**  
VIN/Serial Number: 1GNUKAE0XAR216470  
Mileage: 172261  
Engine: 5.3 V8  
Fuel: gas  
Drive Train: 2WD  
Transmission: auto  
Tire Tread: 40%  
Notes: normal wear/tear
  
- 7. Poulan Push Mower**  
VIN/Serial Number: 020300M 000622  
Fuel: gas  
Notes: normal wear/tear
  
- 8. 2014 Toro Timemaster Push Mower**  
VIN/Serial Number: 314003513  
Fuel: gas  
Notes: normal wear/tear
  
- 9. Snapper P21507B Push Mower**  
VIN/Serial Number: 16273954  
Fuel: gas  
Notes: normal wear/tear

**City of Goshen, Indiana**  
**List of Personal Property to be Sold at Consignment Auction**  
**December 2024**

**10. Snapper Ninja Push Mower**

VIN/Serial Number: 2012816899  
Fuel: gas  
Notes: normal wear/tear

**11. Toro SR4 Push Mower**

VIN/Serial Number: 808115708741  
Fuel: gas  
Notes: normal wear/tear

**12. Honda HR214 Push Mower**

VIN/Serial Number: 6258364  
Fuel: gas  
Notes: normal wear/tear

**13. Lawnboy Push Mower**

VIN/Serial Number: 260002862  
Fuel: gas  
Notes: normal wear/tear

**14. 2010 Chevrolet Tahoe**

VIN/Serial Number: 1GNUKAE05AR170434  
Mileage: 132030  
Engine: 5.3  
Fuel: gas  
Drive Train: 4WD  
Transmission: auto  
Tire Tread: 35%  
Notes: normal wear/tear

**15. 1993 Chevrolet K3500 with Boss Straight Plow**

VIN/Serial Number: 1GCHK34K4PE185533 (Plow A7746)  
Mileage: 65732  
Engine: 5.7  
Fuel: gas  
Drive Train: 4WD  
Transmission: auto  
Tire Tread: 50%  
Notes: normal wear/tear

**16. Honda Push Mower**

VIN/Serial Number: MZBZ-6043088  
Fuel: gas  
Notes: engine/mechanical issues

**City of Goshen, Indiana**  
**List of Personal Property to be Sold at Consignment Auction**  
**December 2024**

**17. 2015 Chevrolet Impala**

VIN/Serial Number: 2G1WD5E32F1161227  
Mileage: 103668  
Engine: 3.6  
Fuel: gas  
Drive Train: FWD  
Transmission: auto  
Tire Tread: 35%  
Notes: engine/mechanical issues

**18. 2014 Chevrolet Impala**

VIN/Serial Number: 2G1WD5E30E1179689  
Mileage: 123770  
Engine: 3.6  
Fuel: gas  
Drive Train: FWD  
Transmission: auto  
Tire Tread: 40%  
Notes: normal wear/tear

**19. 2004 Ford Explorer**

VIN/Serial Number: 1FMZU72K14ZA76536  
Mileage: 185926  
Engine: 4.0 V6  
Fuel: gas  
Drive Train: 4WD  
Transmission: auto  
Tire Tread: 40%  
Notes: normal wear/tear

**20. Sander/Salt Spreader**

VIN/Serial Number: 11/07/7455

**21. 2011 Boss V-Plow XT**

VIN/Serial Number: BC050045

**22. 2011 Boss V Plow**

VIN/Serial Number: BC074291

**23. 2014 Boss Snow Plow**

VIN/Serial Number: 223297

**24. 2015 Boss Plow 9'2"**

VIN/Serial Number: 237412

**25. 2006 Chevrolet Truck Bed**

VIN/Serial Number: N/A



**City of Goshen, Indiana**  
**List of Personal Property to be Sold at Consignment Auction**  
**December 2024**

**26. Broce Sweeper**

VIN/Serial Number: 88347  
Mileage: 4624 hrs  
Engine: 4cyl  
Fuel: diesel  
Drive Train: RWD  
Tire Tread: 50%  
Notes: normal wear/tear

**27. Wacker Roller**

VIN/Serial Number: 5021579  
Mileage: 775hrs  
Engine: 18.0 HP  
Fuel: gas  
Notes: normal wear/tear

**28. Hydrotek Power Washer**

VIN/Serial Number: N/A  
Mileage: na  
Engine: 16.0 HP  
Fuel: gas

**29. 2004 Trash Pump 8.0 Honda**

VIN/Serial Number: WAF008972  
Mileage: na  
Engine: 8.0 HP  
Fuel: gas

**30. 2007 GMC Canyon**

VIN/Serial Number: 1GTDT13E078144195  
Mileage: 106612  
Engine: 3.7  
Fuel: gas  
Drive Train: 4WD  
Transmission: auto  
Tire Tread: 50%  
Notes: Rusted out frame

**31. 2007 Dynapac LT6000 Rammer**

VIN/Serial Number: 76103889  
Fuel: gas  
Notes: engine/mechanical issues





**CITY OF GOSHEN LEGAL DEPARTMENT**  
**Donald R. Shuler, Assistant City Attorney**

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

donshuler@goshencity.com • www.goshenindiana.org  
Phone (574) 537-3855 • Fax (574) 533-8626 • TDD (574) 534-3185

November 27, 2024

To: Goshen Board of Public Works and Safety  
From: Don Shuler, Assistant City Attorney  
Subject: Agreement with DJ Construction for Shanklin Pool Project

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The City previously solicited sealed proposals seeking proposals and qualifications for the services of a Construction Manager as Constructor for preconstruction and construction services required for the renovation of and improvements to Shanklin Pool. The proposals were received on September 26, 2024. Following interviews with the prospective teams submitting proposals, it was recommended that the City proceed with DJ Construction.

The attached Agreement with DJ Construction provides for the reconstruction and improvement of Shanklin Pool. It includes provisions for the demolition of existing pool facilities, the construction of a new pool and associated structures, project management responsibilities, and compliance with Indiana public works statutes. The agreement specifies that a guaranteed maximum price (GMP) will be established, with an appropriate contingency; and finalized upon execution of a GMP Amendment following the completion of pre-construction services. The City will pay DJ Construction a lump sum of \$20,000 for pre-construction services.

The Agreement requires completion of the Project by May 22, 2026.

Suggested Motion:

Move to approve the Agreement with DJ Construction as presented, and authorize the Mayor to execute the Agreement.

## **AGREEMENT**

THIS AGREEMENT (the “Agreement” or “Contract”), executed this \_\_\_\_\_, 2024, by and between the City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana, by and through its City of Goshen Park and Recreation Board and the City of Goshen Board of Public Works and Safety (“City” and “Owner”) and D-J Construction Co., Inc., an Indiana corporation (the “Contractor” or “CMc”), is made pursuant to the terms and conditions set forth herein pursuant to I.C. § 5-32, *et seq.* and I.C. § 36-1-12 *et seq.* In consideration of those mutual undertakings and covenants, the parties agree as follows:

### **1. Project Description.**

1.1. The Project involves the reconstruction and improvement to Shanklin Pool, a public swimming pool located at the City’s Shanklin Park, 411 W. Plymouth Avenue. Generally, the scope of the Project is described in the City’s Request for Proposals dated August 19, 2024, and includes, but is not necessarily limited to, the following:

- 1.1.1. Demolition of all existing pool features, including pool, pool deck, buildings, and mechanicals.
- 1.1.2. An approximate 10,000 square foot activity pool.
- 1.1.3. An approximate 18,000 square foot pool deck.
- 1.1.4. An approximate 1,400 square foot admissions/concessions building.
- 1.1.5. An approximate 3,000 square foot bathhouse.
- 1.1.6. An approximate 2,000 square foot mechanical building.
- 1.1.7. Gateway entrance feature.
- 1.1.8. Slide tower with 2-3 slides.
- 1.1.9. Inclusive play feature.
- 1.1.10. Water walk play feature.
- 1.1.11. Basketball goals.
- 1.1.12. Shade sails, cabanas, shade structures, and umbrellas.
- 1.1.13. Concessions seating.
- 1.1.14. Drop-off area and entry plaza.
- 1.1.15. Sidewalk connections.
- 1.1.16. Utility improvements including pool deck storm drainage, water service, gas, electric, and telecommunications.

1.2. It is understood that HWC Engineering, Inc. (“HWC”), which has been retained by City for the design of the new pool complex to replace the existing facility, will prepare construction plans and specifications for the Project.

### **2. Definitions.**

2.1. “Contract Documents” shall mean and include the following: this Agreement, the Project’s Request for Proposals, any Addenda issued by the City in connection with

the Project and prior to the submission of CMC's Proposal, the CMC's Proposal and Response, as well as any other documentation submitted by CMC in response to the Request for Proposals. Additionally, when applicable, Contract Documents shall include the Performance Bond and/or Payment Bond.

- 2.2. "HWC" means HWC Engineering, Inc., the architect and/or engineer with whom the City has entered into a professional services agreement for the Project.
- 2.3. "Construction Manager as Constructor or CMC" means the person that provides CMC services.
- 2.4. "Guaranteed Maximum Price" or "GMP" means the maximum sum that the City shall be responsible to pay for the completion of the Project, subject to any Contingency.
- 2.5. "Contingency" refers to a designated amount or percentage of the GMP included in the Project budget, reserved to cover unforeseen costs or events that arise during the construction of the Project. The Contingency is not allocated to any specific item of the Project and is to be utilized by the CMC, with the Owner's approval, for expenses that are necessary to address issues, refinements, or minor defects within the scope of the Project.

### 3. **Construction Manager's Responsibilities.**

#### 3.1. Pre-Construction Phase

- 3.1.1. The CMC shall exercise reasonable care in performing its Preconstruction Services. The City and HWC shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the CMC. The CMC, however, does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. The CMC is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules, and regulations, or lawful orders of public authorities, but the CMC shall promptly report to City and HWC any nonconformity discovered by or made known to the CMC as a request for information in such form as City or HWC may require.
- 3.1.2. The CMC shall provide a preliminary evaluation of the City's Project, schedule, and construction budget requirements, each in terms of the other.
- 3.1.3. The CMC shall schedule and conduct meetings with HWC and City to discuss such matters as procedures, progress, coordination, and scheduling of the Work.
- 3.1.4. The CMC shall advise City and HWC on proposed site use and improvements, selection of materials, building systems, and equipment. The CMC shall also review design documents for constructability, completeness, accuracy, and

proper coordination of disciplines, as well provide recommendations to City and HWC, consistent the Project requirements, on constructability, availability of materials and labor, time requirements for procurement, installation, and construction, prefabrication, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The CMc shall consult with HWC regarding professional services to be provided by the CMc during the Construction Phase.

- 3.1.5. CMc shall develop a detailed construction schedule for the Project, including identification of long lead items and owner supplied equipment and materials. The schedule shall be prepared for HWC's review and City's acceptance. CMc shall obtain HWC's approval for the portion of the Project schedule relating to the performance of HWC's services. The Project schedule shall coordinate and integrate the CMc's services, HWC's services, other City consultants' services, and the City's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the GMP proposal; components of the Work; times of commencement and completion required of each subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the City.
- 3.1.6. CMc, in consultation with HWC, shall provide recommendations with regard to accelerated or fact-track scheduling, procurement, and sequency for phased construction. The CMc shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.
- 3.1.7. Based on the preliminary design and other design criteria prepared by HWC, CMc shall prepare, for HWC's review and City's approval, preliminary estimates of the Cost of the Work or the cost of Project requirements using area, volume, or similar conceptual estimating techniques. If HWC or City suggests alternative materials and systems, the CMc shall provide cost evaluations of those alternative materials and systems.
- 3.1.8. As HWC progresses with the preparation of the Design Development and Construction Documents, CMc shall prepare and update, at appropriate intervals agreed to by City, CMc, and HWC, an estimate of the Cost of Work with increasing detail and refinement. CMc shall include in this estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as City and CMc agree on a GMP for the Work. The estimate shall be provided for HWC's review and City's approval. CMc shall inform the City and HWC in the event that the estimate of the Cost of Work exceeds the latest approved Project budget, and make recommendations for corrective action.

- 3.1.9. If HWC is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the CMc's cost estimates and HWC's cost estimates, CMc and HWC shall work together to reconcile the cost estimates.
- 3.1.10. As HWC progresses with the preparation of the Design Development and Construction Documents, CMc shall consult with City and HWC and make recommendations regarding constructability and schedules, for HWC's review and City's approval.
- 3.1.11. CMc shall provide recommendations and information to City and HWC regarding equipment, materials, services, and temporary Project facilities.
- 3.1.12. CMc shall provide a staffing plan for Preconstruction Phase services for City's review and approval.
- 3.1.13. Development of a comprehensive list of subcontractors and suppliers, and shall develop responsible bidders' interest in the Project. CMc shall develop Bid Packages, bid schedules, and conduct pre-bid conferences. CMc shall analyze responses to bid, conduct pre-award conferences and negotiations with successful bidders and recommend responses to be accepted or rejected.
- 3.1.14. CMc shall prepare, for HWC's review and City's acceptance, a procurement schedule for items that must be ordered in advance of construction. CMc shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If City agrees to procure any items prior to the establishment of the GMP, the City shall procure items on terms and conditions acceptable to CMc. Upon establishment of the GMP, City shall assign all contracts for these items to CMc and CMc shall thereafter accept responsibility for all obligations arising at the time of, or after, the assignment.
- 3.1.15. Advertise the bid packages for subcontractors pursuant to the applicable public works statute. Review the bids as required pursuant to the applicable public works statute.
- 3.1.16. CMc may perform portions of the work only if it complies with the applicable public works statute and if CMc:
- 3.1.16.1. Is approved by City;
  - 3.1.16.2. Would be awarded a contract for the work under the applicable contract award standard; and
  - 3.1.16.3. Performs only such work that equals not more than twenty percent (20%) of the total value of the Project.

## 3.2. Guaranteed Maximum Price Proposal

- 3.2.1. CMc shall submit to City a GMP proposal for the City's and HWC's review, and City's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of CMc's estimate for the cost of work, the CMc's contingency described in Section 3.2.4., and the CMc's Management Fee described in Section 5.2.
- 3.2.2. To the extent that the Contract Documents are anticipated to require further development, the GMP includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which shall be incorporated by Contract Amendment.
- 3.2.3. The CMc shall include with the GMP proposal a written statement of its basis, which shall include the following:
  - 3.2.3.1. A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
  - 3.2.3.2. A list of the clarifications and assumptions made by the CMc in the preparation of the GMP proposal, including assumptions under Section 3.2.2.;
  - 3.2.3.3. A statement of the proposed GMP, including a statement of the estimated Cost of Work organized by trade categories or systems, including allowances; the CMc's contingency set forth in Section 3.2.4., and the CMc's Manager Fee;
  - 3.2.3.4. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
  - 3.2.3.5. A date by which the City must accept the Guaranteed Maximum Price.
- 3.2.4. Construction Contingency: The Guaranteed Maximum Price will contain a separately identified contingency factor (the "Construction Contingency") in the amount not to exceed three percent (3%) of the GMP Construction Budget. The Construction Contingency is not allocated to any particular item of the Cost of the Project and is established for the CMc's use as may be required for costs incurred in the work from unforeseen causes or details that should have been anticipated by CMc at the time of the City's approval of the GMP. Such anticipated causes include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities that are reasonably inferable from the GMP documents, the correction of minor defects not relating to design, delays in receipt of materials due to the fault of the CMc, corrections in the work provided CMc has exhausted all reasonable means to obtain correction of same from the responsible subcontractor, labor and materials overruns, and additional costs relating to subcontractor defaults, provided any such default is not due to the City's actions or failure to act. In the event a subcontractor default is due to the City's actions or failure to act, CMc may be entitled to an appropriate

adjustment in the GMP in accordance with the terms of this Agreement. At the conclusion of the Project, any remaining balance in the Construction Contingency shall become the property of City.

- 3.2.5. CMc shall meet with City and HWC to review the GMP proposal. In the event that City or HWC discovery any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CMc, who shall make appropriate adjustments to the GMP proposal, its basis, or both.
- 3.2.6. If City notifies CMc that City has accepted the GMP proposal in writing before the date specified in the GMP proposal, the GMP proposal shall be deemed effective without further acceptance from the CMc. Following acceptance of a GMP, the City and CMc shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which City shall provide to HWC. The Guaranteed Maximum Price Amendment shall set forth the agreed upon the Guaranteed Maximum Price with the information and assumptions upon which it is based.
- 3.2.7. CMc shall not incur any cost to be reimbursed as part of the cost of the work prior to the execution of the Guaranteed Maximum Price Amendment, unless City provides prior written authorization for such costs.

### 3.3. Construction Phase

- 3.3.1. The Construction Phase shall commence upon the City's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by CMc, and the insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.
- 3.3.2. CMc shall monitor the work of the subcontractors and coordinate the work with the activities and responsibilities of the City and HWC to complete the Project in accordance with City's objectives of cost, time, quality, and safety all of which are enumerated in the Contract Documents for construction.
- 3.3.3. Provide regular monitoring of the schedule as construction progresses. Identify potential variances between scheduled and probable completion dates. Review the schedule for work not started or incomplete and recommend to City adjustments in the schedule to meet the probable completion date. Provide summary reports for each adjustment and document changes in the schedule.
- 3.3.4. Determine the adequacy of the subcontractors' personnel and equipment and the availability of materials and supplied to mee the schedule.

- 3.3.5. Schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. CMc shall prepare and promptly distribute minutes of the meetings to City and HWC.
- 3.3.6. Record the progress of the Project. On a monthly basis, or otherwise as agreed to by City, CMc shall submit written progress reports to City and HWC, showing percentages of completion and other information required by City. CMc shall keep, and make available to City and HWC, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by City.
- 3.3.7. Submit a proposed Project Schedule for City's acceptance. The proposed Project Schedule will include a detailed and comprehensive schedule utilizing a critical path method arrow diagram network that (i) shows all major design, procurement and construction elements and phases of the Project and City furnished items with milestone dates; (ii) breaks down each element or phase by trade; (iii) shows early and late start dates so that all "float" time will be accurately identified; (iv) clearly identifies critical path activities; (v) discloses relationship in number of days and types of linkage between all linked activities; (vi) identifies, coordinates, and integrates design and construction schedules, City's responsibilities, governmental approvals, early access dates for certain portions of the Work by City, and other activities necessary for the timely completion of the Project in accordance with the scheduled dates of Substantial and Final Completion; and (vii) otherwise is in a form satisfactory to City. City's acceptance is expressly limited to City's acknowledgement that based upon City's limited review, the dates of Substantial Completion and milestone dates are acceptable and the latest dates of City-provided information, materials, approvals and the like identified in the Project Schedule are reasonable.
- 3.3.8. CMc may seek to perform portions of the work as stated in Section 3.1.16. herein so long as CMc submits its bid for those portions of the work in the same manner as all other subcontractors and if the City independently determines that the CMc's bid provides the best value for the City. In the event that CMc submits a bid for a portion of the work, City will conduct the review without the assistance of the CMc.
- 3.3.9. CMc shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CMc shall identify variances between actual and estimated costs and report the variances to City and HWC, and shall provide this information in its monthly reports to City and HWC, in accordance with Section 3.3.6.



3.3.10. Inspect the work of subcontractors for defects and deficiencies in the work and for compliance with the requirements of the Construction Documents.

3.3.11. Obtain all building permits and special permits for permanent improvements, excluding permits for inspection or temporary facilities required to be obtained by the various subcontractors.

3.4. CMc agrees to comply with all applicable provisions and requirements of Indiana Code § 5-32 *et seq.*, governing the employment of construction managers as constructors for public projects. This includes, but is not limited to, adherence to all statutory requirements related to project management, subcontracting, bonding, guaranteed maximum price provisions, and all other obligations as set forth in the Indiana Code.

4. **City's Responsibilities.**

4.1. City will provide full information regarding the requirements for this Project.

4.2. The City may designate a representative who will be fully acquainted with the Project and who will render decisions and furnish information with reasonable promptness.

4.3. HWC, employed by the City, has provided design services and prepared construction documents for the Project.

5. **Consideration.**

5.1. For the CMc's Preconstruction Phase services described in Section 3.1. and 3.2., City shall compensate CMc the sum of Twenty Thousand Dollars (\$20,000.00).

5.2. For the CMc's Construction Phase services described in Section 3.3., City shall pay CMc the Contract Sum approved by City for the CMc's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum consists of the following components:

5.2.1. CMc's Management Fee: The CMc's Management Fee is not to exceed two and three-fourths percent (2.75%) of the Cost of Work, as stated in the Guaranteed Maximum Price Amendment. Included in the Construction Management Fee are salaries and other compensation of the CMc's personnel stationed at the CMc's principal or other offices (excluding project-specific personnel), general operating expenses of the CMc's principal and branch offices, general and administrative costs of any kind, CMc's capital expense, including interest on the CMc's capital employed for the Project, and cost in excess of the GMP.

5.2.2. Cost of Work, which includes all direct costs reasonably incurred by the CMc in the performance of the work, including labor, materials, equipment, subcontractor costs, and project-specific personnel costs (as provided for in Section 5.2.3.).

5.2.3. General conditions, which may include costs related to bonds, insurance, temporary barriers, signage, parking, cleaning, waste disposal, and salaries or wages of project-specific personnel, including project managers, superintendents, engineers, and other staff whose work is directly attributable to the Project. Costs for such personnel shall be billed at rates agreed upon in the Guaranteed Maximum Price Amendment.

5.2.4. Construction Contingency, as defined in Section 3.2.4.

5.2.5. Any remaining balance in the Construction Contingency becomes the property of City. It may be returned to City at Project completion through a credit to the contract sum.

5.2.6. If there are any savings realized in actual expenditures for the Cost of Work, those savings shall be returned to the City through a credit at Project completion. Returned costs shall include the portion of CMc's Management Fee proportioned to the reduced Cost of Work.

5.3. CMc guarantees that the Contract Sum shall not exceed the GMP as agreed to in the Guaranteed Maximum Price Amendment document, subject to the additions and deductions as approved by an amendment or amendments to this Agreement. Costs that would cause the GMP to be exceeded shall be paid by CMc without reimbursement by the City.

6. **Term.**

6.1. This Agreement shall become effective on the day of execution and approval by the City of Goshen Board of Public Works and Safety, the City of Goshen Park and Recreation Board, and CMc.

6.2. CMc shall begin work on the Project immediately upon execution of the Agreement.

6.3. CMc shall carry out all work on Project expeditiously with adequate work forces, with anticipated completion of the Project to permit opening of the reconstruction and improvements to Shanklin Pool by May 22, 2026.

6.4. If CMc does not substantially complete the Project by the completion date, City will incur damages. The parties acknowledge that it will be difficult or impossible to quantify, ascertain, and prove the actual damages sustained by City in the event of and by reason of such delay. Therefore, the parties agree that, in the event that the

Project is not substantially completed by the completion date, in lieu of actual damages, City shall be entitled to deduct from the amount due CMc or CMc shall pay to City the sum of One Thousand Dollars (\$1,000.00) per day as liquidated damages and not as a penalty for each calendar day the substantial completion of the Project is delayed, except for delays caused by force majeure events, City-directed changes, delays caused by City or any third party vendor, atypical weather events as defined in Section 6.4.1., or other delays explicitly excused under the terms of this Agreement. The total liquidated damages assessed under this provision shall not exceed Thirty Thousand Dollars (\$30,000.00). However, this cap on liquidated damages shall not limit the City's right to pursue additional remedies, including but not limited to actual damages or specific performance, in the event that the CMc fails to substantially complete the Project within a reasonable time after the thirty (30) calendar days covered by the liquidated damages cap.

6.4.1. Delays caused by atypical weather events beyond those reasonably anticipated for the time of year and location of the Project site in Northern Indiana shall be excused and not subject to liquidated damages. Atypical weather events include, but are not limited to:

6.4.1.1. Snowfall, rainfall, or flooding exceeding the historical monthly average for the project location by twenty-five percent (25%) or more, as determined using data from the National Weather Service (NWS).

6.4.1.2. Extreme temperatures that deviate from the 30-year historical average for the project location by more than fifteen (15) degrees Fahrenheit for a sustained period of seven (7) or more days.

6.4.2. To qualify for this provision, the CMc must (1) notify the City in writing within five (5) calendar days of the occurrence of an atypical weather event, providing specific details and supporting data from the NWS; and (2) demonstrate that the weather event directly and materially impacted the critical path of the Project Schedule, as documented in the CMc's updated schedule submitted to the City. The City reserves the right to review and approve or deny the CMc's request for an extension of the substantial completion date based on the evidence provided, with said approval to not be unreasonably withheld.

## **7. Payments for Construction Phase Services.**

7.1. Upon receipt of a detailed invoice, City shall pay CMc as work progresses on the Project based on the dollar value of work satisfactorily completed in accordance with the Specifications and Contract Documents. Partial payment(s) under this Agreement will be made no more frequently than once every thirty (30) days.

7.2. Contract shall submit proof to City that CMc has paid all subcontractors, material suppliers, laborers, and those furnishing services for the Project before final payment is made.

- 7.3. CMc shall submit to City the detailed invoice(s) along with proof of payment for labor and materials furnished for the Project to the following address, or at such other address as City may designate in writing:

City of Goshen Parks & Recreation Department  
524 E. Jackson Street  
Goshen, IN 46526

Email is also acceptable at [goshenparks@goshencity.com](mailto:goshenparks@goshencity.com).

- 7.4. Provided there is no dispute on amounts due, including amounts due all subcontractors, material suppliers, laborers, and those furnishing services for the Project, payment will be made to CMc within forty-five (45) days following City's receipt of a detailed invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- 7.5. Any payment made by City before or after final acceptance of the work shall not affect the obligation of CMc to repair or replace any defective parts or otherwise correct any work.
- 7.6. CMc is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment to CMc.

8. **Payment Bond.**

- 8.1. CMc agrees to provide City an approved payment bond equal to the contract price within fourteen (14) days after execution of the Guaranteed Maximum Price Amendment, as required by I.C. § 5-32-4-2.
- 8.2. The payment bond is binding on CMc, and any first or second tier subcontractor, and their successors and assigns for the payment of all indebtedness to a person for labor and services performed, material furnished, or services rendered. The payment bond must state that it is for the benefit of the subcontractors, laborers, material suppliers, and those performing services. The payment bond must specify that a modification, omission or addition to the terms and conditions of the Contract, plans, specifications, drawings or profile; a defect in the Contract; or a defect in the proceedings preliminary to the letting and award of the CMc Contract does not discharge the surety.
- 8.3. The surety on the payment bond shall not be released until one (1) year after the date of the City's final settlement with CMc.

9. **Performance Bond.**

- 9.1. CMc agrees to provide City an approved performance bond equal to the contract price within fourteen (14) days after execution of the Guaranteed Maximum Price Amendment, as required by I.C. § 5-32-4-2.
- 9.2. The performance bond shall guarantee the faithful and proper performance of the work in accordance with the Specifications and Contract Documents. The performance bond must specify that a modification, omission or addition to the terms and conditions of the Contract, plans, specifications, drawings or profile; a defect in the Contract; or a defect in the proceedings preliminary to the letting and award of the CMc Contract does not discharge the surety.
- 9.3. The surety on the performance bond shall not be released until one (1) year after the date of the City's final settlement with CMc.

**10. Independent Contractor.**

- 10.1. CMc shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of CMc shall be under the sole and exclusive direction and control of CMc 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 CMc and/or CMc's employees, agents or subcontractors.
- 10.2. CMc understands that City will not carry worker's compensation or any other insurance on CMc and/or CMc's employees or subcontractors. CMc 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.

**11. Non-Discrimination.**

- 11.1. In accordance with Indiana Code § 22-9-1-10, a contractor in any contractor tier shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to the employee or applicant's hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Contract.
- 11.2. In accordance with Indiana Code § 5-16-6-1, the CMc agrees:
  - 11.2.1. That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any

citizen of the state of Indiana who is qualified and available to perform the work to which the employment relates;

11.2.2. That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, religion, color, sex, national origin or ancestry;

11.2.3. That there may be deducted from the amount payable to CMc by City under this Contract, a penalty of Five Dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract; and

11.2.4. That this Contract may be cancelled or terminated by City, and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Contract.

## **12. Employment Eligibility Verification.**

12.1. In accordance with Indiana Code § 22-5-1.7 et seq., CMc shall enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. CMc is not required to participate in the E-Verify program should the program cease to exist. CMc is not required to participate in the E-Verify program if CMc is self-employed and does not employ any employees.

12.2. CMc shall not knowingly employ or contract with an unauthorized alien, and CMc shall not retain an employee or continue to contract with an individual that CMc subsequently learns is an unauthorized alien. By execution of the Contract, CMc affirms that CMc does not knowingly employ an unauthorized alien.

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

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

12.5. In accordance with Indiana Code § 5-16-13-11(1), before an individual who is required to be verified under Indiana Code § 22-5-1.7 begins work on the Project, CMc shall submit to City the E-Verify case verification number for the individual. An individual who is required to be verified under Indiana Code § 22-5-1.7 whose final case result is final non-confirmation may not be employed on the Project.

**13. Employee Drug Testing Program.**

- 13.1. CMc must implement the employee drug testing program that complies with the requirements of Indiana Code § 4-13-18-1 through Indiana Code § 4-13-18-7 as described in CMc's written plan submitted with their proposal.
- 13.2. City may cancel or terminate this Contract in the event CMc fails to implement the employee drug testing program during the term of the Contract for this Project; fails to provide information regarding the implementation of CMc's employee drug testing program at the request of City; or provides City false information regarding the employee drug testing program.

**14. Contractor Compliance with Other Laws.**

- 14.1. In accordance with Indiana Code § 5-16-13-11, CMc agrees:
- 14.1.1. A contractor shall not pay cash to any individual employed by CMc for work done by the individual on the Project.
- 14.1.2. A contractor is and shall remain in compliance with the federal Fair Labor Standards Act of 1938, as amended (29 USC 201-209) and the state Minimum Wage Law of 1965 (Indiana Code § 22-2-2-1 through Indiana Code § 22-2-2-8).
- 14.1.3. A contractor is and shall remain in compliance with the worker's compensation or occupational diseases requirements under Indiana Code § 22-3-5-1 and Indiana Code § 22-3-7-34.
- 14.1.4. A contractor is and shall remain in compliance with the unemployment insurance under Indiana Code § 22-4-1 through Indiana Code § 22-4-39.5.
- 14.1.5. A contractor is and shall remain in compliance with the training program requirements under Indiana Code § 5-16-13-12 as applicable.
- 14.2. In accordance with Indiana Code § 5-16-13-13, a contractor shall preserve all payroll and related records of a contractor for a period of three (3) years after completion of the Project; and shall open such records to inspection by the department of workforce development.

**15. Indemnification.**

- 15.1. CMc 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, injuries, or accidental deaths caused by any intentional, reckless, or negligent act or omission by CMc or

any of CMC's agents, officers, and employees during the performance of this Contract. Such indemnity shall include reasonable attorney's fees and other expenses incurred by City, and shall not be limited by reason of insurance coverage required by this Contract.

**16. Insurance.**

16.1. Prior to commencing work, CMC 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. CMC shall specifically include coverage for the City of Goshen as an additional insured for General Liability and Automobile Liability.

16.2. 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.

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

16.3.1. Workers Compensation and Employer's Liability - Statutory Limits

16.3.2. General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and \$2,000,000 aggregate

16.3.3. Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and \$2,000,000 aggregate

16.3.4. Excess Umbrella Coverage - \$4,000,000 each occurrence.

**17. Force Majeure.**

17.1. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party affected shall immediately provide written notice to the other party. 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) days from receipt of the notice of the Force Majeure Event, 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.

**18. Termination for Default.**

18.1. With the provision of thirty (30) days notice to CMC, City may terminate this Contract in whole or in part if:



- 18.1.1. CMc fails to correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the City determines progress is being made and the extension is agreed to by the parties;
- 18.1.2. CMc fails to deliver the supplies or perform the services within the time specified in this Contract or any extension;
- 18.1.3. CMc is adjudged bankrupt or makes an assignment for the benefit of creditors;
- 18.1.4. CMc becomes insolvent or in an unsound financial condition so as to endanger performance under the Contract;
- 18.1.5. CMc becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditor and/or debtors;
- 18.1.6. A receiver, trustee, or similar official is appointed for CMc or any of CMc's property;
- 18.1.7. CMc is determined to be in violation of federal, state, or local laws or regulations and that such determination renders CMc unable to perform the work required under the Contract;
- 18.1.8. CMc fails to make progress so as to endanger performance of this Contract; or
- 18.1.9. CMc fails to perform any of the other provisions of this Contract.

18.2. If the City terminates this Contract in whole or in part, it may acquire, under the terms and in the manner City considers appropriate, supplies or services similar to those terminated, and the CMc will be liable to the City for any excess costs for those supplies or services. However, the CMc shall continue the work not terminated.

18.3. The City shall pay the contract price for completed supplies delivered and services accepted. The CMc and the City shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. The City may withhold from these amounts any sum the City determines to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders.

18.4. The rights and remedies of the City in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

## **19. Termination for Convenience.**

19.1. This Contract may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in its best interest. Termination of services shall be effected by delivery to the CMc of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The CMc shall be compensated for services properly rendered prior to the effective date of termination. The City will not be liable for services performed after the effective date of termination. The CMc shall be compensated for services herein provided but in no case shall total payment made to the CMc exceed the original

contract prize or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

20. **Subcontracting or Assignment of Contract.**

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

21. **Waiver.**

21.1. No right conferred on either party under this Contract shall be deemed waiver, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the City's review, approval, or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CMc shall be and remain liable to the City in accordance with applicable law for all damages to the City and caused by the CMc's negligent performance of any of the services furnished under this Contract.

22. **Disputes.**

22.1. Should any disputes arise with respect to this Contract, the CMc and the City agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

22.2. CMc agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CMc fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the City or the CMc as a result of such failure to proceed shall be borne by the CMc, and the CMc shall make no claim against City for such costs.

22.3. If the parties are unable to resolve a contract dispute between them after good faith efforts to do so, the parties acknowledge that such dispute may benefit from resolution through mediation. Accordingly, either party may propose mediation as a voluntary means to resolve any disagreement before pursuing litigation or other remedies.

22.3.1. If both parties agree to mediation, the parties shall work together in good faith to select a mutually acceptable mediator with experience in construction-related matters. The mediation shall take place at a location agreed upon by both parties or virtually if both parties consent.

22.3.2. Each party shall bear its own costs associated with mediation, and the mediator's fees shall be shared equally, unless otherwise agreed.

22.3.3. This mediation clause is option, and neither party is obligated to initiate or participate in mediation before seeking any other legal or equitable remedy, including litigation.

22.3.4. If mediation occurs, all discussions, offers, and documents exchanged shall remain confidential and shall not be admissible in any subsequent legal proceedings, except as required by law or to enforce a settlement agreement reached in mediation.

### **23. Ownership of Documents and Materials.**

23.1. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by CMc prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CMc hereby transfers and assigns any ownership claims to City so that all Materials will be the property of the City. If ownership interest in the Materials cannot be assigned to City, the CMc grants the City a non-exclusive, non-cancelable, perpetual, world-wide royalty-free license to use the Materials and to use, modify, copy, and create derivative works of the Materials.

23.2. Use of the Materials, other than related to contract performance by the CMc, without the prior written consent of the City, is prohibited. During the performance of this Contract, the CMc shall be responsible for any loss of or damage to the Materials developed for or supplied by the City and used to develop or assist in the services provided while the Materials are in the possession of the CMc. Any loss or damage thereto shall be restored at the CMc's expense. The CMc shall provide the State full, immediate, and unrestricted access to the Materials and to CMc's work product during the term of this Contract.

### **24. Notice to Parties.**

24.1. Any notice required or desired to be given under this Contract 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. Either party may also email the notice to the other party in addition to delivering personally or sending by regular first-class mail.

City: City of Goshen, Indiana  
Attention: Goshen Legal Department  
204 East Jefferson St., Suite 2  
Goshen, IN 46528  
Email: [Legal@goshencity.com](mailto:Legal@goshencity.com)

CMc: D-J Construction Co., Inc.  
Attn: Jason Pippenger, Registered Agent  
3414 Elkhart Road  
Goshen, Indiana 46526  
Email:

**25. Severability.**

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

**26. Miscellaneous.**

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

26.2. In the event of a conflict between these documents and applicable laws, rules, regulations, or ordinances, the most stringent or legally binding requirements shall govern.

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

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

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

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

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

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

**City of Goshen, Indiana**

**D-J Construction Co., Inc.**

Goshen Board of Public Works and Safety

\_\_\_\_\_  
Gina M. Leichty, Mayor

Dated: \_\_\_\_\_

Goshen Parks & Recreation Board

\_\_\_\_\_  
Roger Nafziger, President

\_\_\_\_\_

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

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

Dated: \_\_\_\_\_



**CITY OF GOSHEN LEGAL DEPARTMENT**

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

December 5, 2024

To: Board of Public Works and Safety

From: Brandy L. Toms, Paralegal

Subject: Agreement with Peerless Midwest, Inc. for Hydrogeologic Services to Drilling and Development for Well #TW-24F

It is recommended that the Board approve and authorize the Mayor to execute the attached agreement with Peerless Midwest, Inc. for Hydrogeologic Services to Drilling and Development for Well #TW-24F. Contractor will be paid \$162,665 for the drilling and development of this test well.

**Suggested Motion:**

Approve and authorize the Mayor to execute the attached agreement with Peerless Midwest, Inc. for Hydrogeologic Services to Drilling and Development for Well #TW-24F at a cost of \$162,665.

## AGREEMENT

### Hydrogeologic Services to Drilling and Development for Well #TW-24F

THIS AGREEMENT is entered into on \_\_\_\_\_, 20\_\_\_\_, which is the last signature date set forth below, by and between **Peerless Midwest, Inc** (“Contractor”), whose mailing address is 55860 Russell Industrial Parkway, Mishawka, 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. Scope of Services**

- (A) Contractor shall provide all services under this Agreement as generally described below and as described in further detail in Contractor’s November 1, 2024 proposal attached hereto and fully incorporated into this Agreement. The services shall include the Contractor’s provision for all labor, equipment, materials, tools, insurance, supervision, and all other items necessary to provide the services described. Contractor’s services generally include:
- Task #1 Hydrogeological Services:** Completion of a new well sight survey as IDEM require for any new well site, a construction permit and set transducers for a 72-hour test. (This service may not be required at this time, depending on response from IDEM.)
  - Task #2 Drilling Materials and Labor:** Contractor will provide all necessary labor, equipment and material required to drill a 20” borehole with casing and scree to a depth of 107’.
  - Task #3 Set Test Pump and Development of Well:** 4-day development of the well after drilling. Contractor shall oversee the performance of the well and determine its capacity along with finalizing the pump design. Upon completion of the development phase, Contractor will run a 74-hour performance test.
- (B) 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.

#### **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 Services is an important element of this Agreement. Contractor shall perform all Services as expeditiously as is consistent with professional skill and care in the orderly progress of the Services.
- (C) Contractor shall commence the Services as soon as practical after receiving a notice to proceed from City.

**Section 1. Compensation**

- (A) City agrees to compensate Contractor as follows for performing all Duties:
  - Task #1 Hydrogeological Services (If required by IDEM)..... Lump Sum of \$ 13,365
  - Task #2 Drilling Materials and Labor..... Lump Sum of \$ 88,300
  - Task #3 Set Test Pump and Development of Well ..... Lump Sum of \$ 39,200
  - Extra Expenses: ..... Estimated Costs \$ 21,800  
(hydrovac, silt fencing, groundwater sampling, aquifer analysis, additional cleanup)
  - TOTAL ESTIMATED COSTS ..... \$162,665**

**Section 2. Payment**

- (A) City shall pay Contractor for Duties satisfactorily completed under this agreement.
- (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 Goshen Water & Sewer Department
  - 308 N 5<sup>th</sup> Street
  - Goshen, IN 46528
- (C) Payment will be made within forty-five (45) days following City’s receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (D) Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer’s Office before City will issue payment.

**Section 3. 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.

**Section 4. 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 5. 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.
- (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 6. 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 7. 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 8. 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 9. 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 10. 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 11. Insurance**

- (A) Prior to commencing work, the Contractor shall furnish City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the contract with City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Contractor shall specifically include coverage for the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability.
- (B) Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a material change in the policy.
- (C) Contractor shall at least include the following types of insurance with the following minimum limits of liability:
  - (1) Workers Compensation and Employer's Liability - Statutory Limits
  - (2) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and 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 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:**  
Peerless Midwest, Inc  
Attention: Adam L. Gerstbauer  
55860 Russell Industrial Parkway  
Mishawka, 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 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 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

**Peerless Midwest, Inc.**

\_\_\_\_\_  
Gina Leichty, Mayor

\_\_\_\_\_  
Adam L. Gersbauer, Project Manager

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

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



Mishawaka, IN / 574.254.9050  
Tipton, IN / 317.896.2987  
Ionia, MI / 616.527.0050  
Fenton, MI / 810.215.1295  
Lombard, IL / 630.708.3212  
Sheridan, CO / 303-698-7920

November 1, 2024

Mr. Marv Shepherd  
City of Goshen  
308 N. Fifth St.  
Goshen, Indiana 46526

**RE: Proposed Well #TW-24F Drilling, and Development**

Dear Marv:

Peerless-Midwest, Inc. (PMI) appreciates this opportunity to provide professional hydrogeologic services to the Goshen Water Department (PWSID#IN5220009) to drill TW-24F in the new well field.

**SCOPE OF WORK**

The following tasks are recommended to help the City of Goshen in its new Well #TW-24F Drilling/Development:

- **Hydrogeological Services:** Peerless Midwest will complete a New Well Sight Survey (NWS) as IDEM requires for any new well site, a Construction Permit, and Set transducers for a 72 Hr. test.
  - **Cost of Services:** \$13,365.00
    - **\*This service may not be required at this time, depending on the response from IDEM.**
  
- **Drilling Materials and Labor:** Peerless Midwest is pleased to provide all necessary labor, equipment, and material required to drill a 20" borehole with casing and screen to a depth of 107'.
  - **Cost of Drilling w/ 16" Casing and Screen:** \$88,300.00
  
- **Set Test Pump and Development of Well:** A planned four-day development of the well after drilling. This allows us to see the performance of the well and determine the capacity of the well along with finalizing the pump design. Once the development phase of the well has been completed, we will run a 72-hour performance test of the Aquaphor and then pull the test pumping equipment upon completion.
  - **Cost of Development Phase:** \$39,200.00
  
- **Likely Extras:** Some extra costs associated with the project may include hydro-vac services, silt fencing, additional cleanup, groundwater sampling, and aquifer analysis.
  - **\*Estimated Cost of Extras:** \$21,800.00

We appreciate the opportunity to provide you with this service agreement and look forward to working with you on this project. If you have any questions or want to discuss this proposal further, please call (574) 254-9050.

Sincerely,



Adam L. Gerstbauer

Adam L. Gerstbauer

Project Manager

574.252.5896 (Direct)

574.254.9050 (Office)

574.276.6059 (Cell)

[Adam.gerstbauer@peerlessmidwest.com](mailto:Adam.gerstbauer@peerlessmidwest.com)

Cc Dustin Sailor/City of Goshen

Jamey Singer/City of Goshen

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**CITY OF GOSHEN LEGAL DEPARTMENT**

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

December 5, 2024

To: Goshen Board of Public Works and Safety  
From: Shannon Marks  
Subject: Acceptance of Easement at 1304 East Lincoln Avenue

It is recommended that the Board accept the attached Easement from Douglas Fearnow, Tony Griffin, and Thomas Nagle, Trustees of Goshen Church of God, as Trustees and constituting the Local Board of Trustees of the Church of God at Goshen, in Elkhart County, Indiana. This easement is for Goshen City public parking lot purposes and is part of the real estate at 1304 East Lincoln Avenue. The easement area is depicted in Exhibit A of the attached Easement. As consideration for the Easement, the City is agreeing to install a split rail fence upon the City real estate adjacent to the Church's southern property line, and agreeing to spray the Church's gravel parking lot to control weeds in 2025, 2026, and 2027.

**Suggested Motion:**

Move to accept the Easement at 1304 East Lincoln Avenue from Douglas Fearnow, Tony Griffin, and Thomas Nagle, Trustees of Goshen Church of God, as Trustees and constituting the Local Board of Trustees of the Church of God at Goshen, in Elkhart County, Indiana, and authorize the Mayor to execute the Acceptance.

## EASEMENT

Douglas Fearnow, Tony Griffin, and Thomas Nagle, Trustees of Goshen Church of God, as Trustees and constituting the Local Board of Trustees of the Church of God at Goshen, in Elkhart County, Indiana, (“Church”), grant and convey to City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana (“City”), whose mailing address is 202 South Fifth Street, Goshen, Indiana 46528, for good and valuable consideration, the receipt whereof is hereby acknowledged, an easement over, across, and through real estate situated in Elkhart County, State of Indiana, as more particularly described in the legal description attached as Exhibit B and depicted upon the drawing attached as Exhibit A. The area so described and depicted is hereinafter referred to as “Easement.”

The Easement is part of the real estate more commonly known as 1304 East Lincoln Avenue, Goshen, Indiana, and part of Parcel Number 20-11-10-255-001.000-015. Church obtained title to the real estate by Church of God Warranty Deed dated October 29, 1970, and recorded November 6, 1970, in the Office of the Recorder of Elkhart County, in Deed Record Vol. 308, Page 51.

The Easement is granted and conveyed to City for Goshen City public parking lot purposes and to accommodate a portion of the public parking lot serving Abshire Park that has been located in the Easement for over twenty (20) years since at least 2000. Church grants City access to the Easement for the purposes of accessing, installing, operating, repairing, and maintaining the Goshen City public parking lot, including any appurtenances as may be required.

City shall restore the surface of the Easement after any entry by City to as good as or better condition than it was prior to the entry. City shall promptly pay for or otherwise rectify any damage caused by City to Church’s adjoining real estate.

City is not obligated to replace any improvements extending over or into the Easement by Church that may be damaged or removed by City during any subsequent entry.

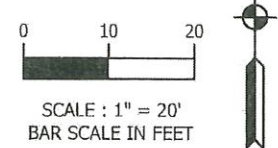
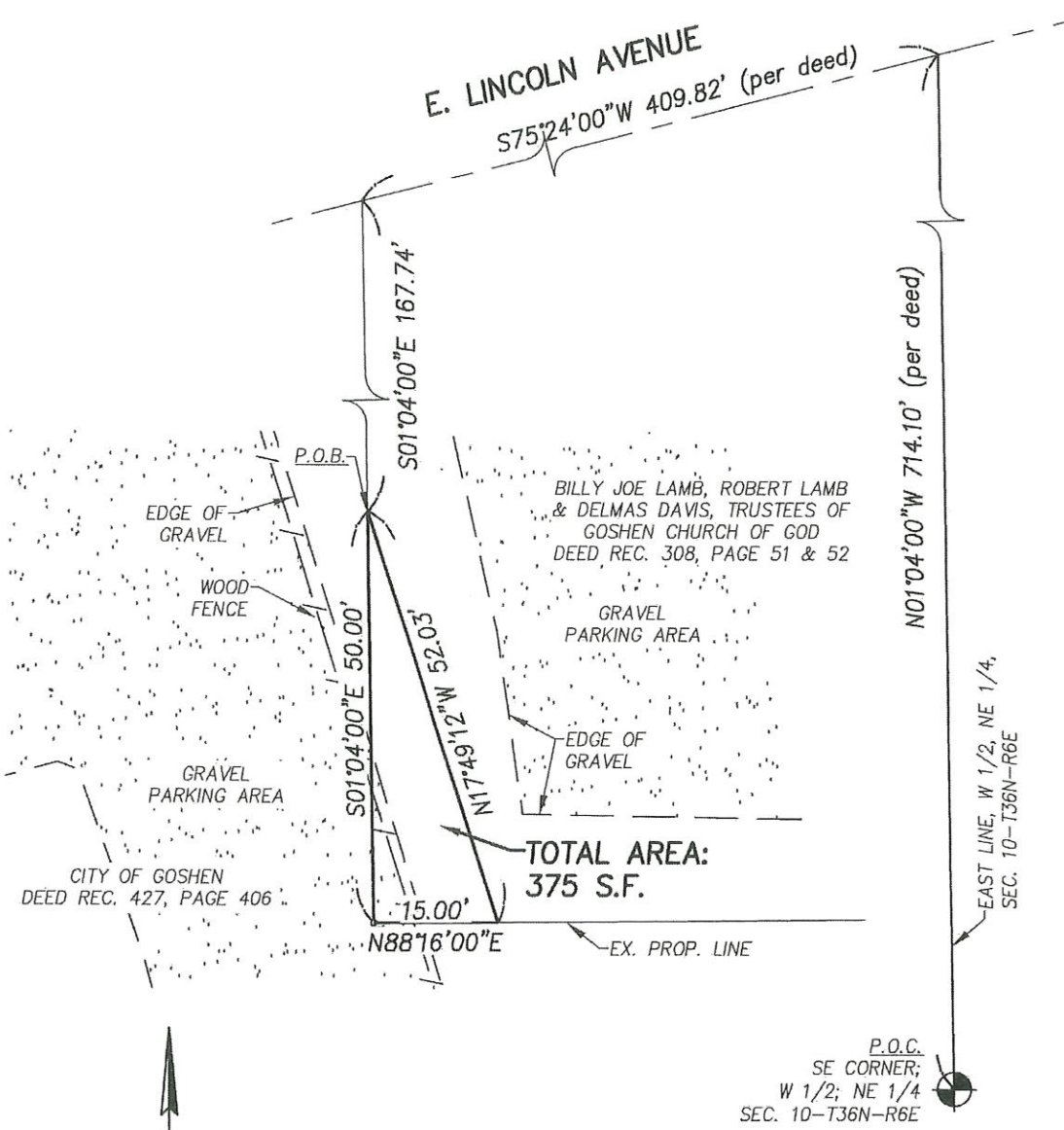
As consideration for the Easement, City agrees to install and maintain a split rail fence upon City’s real estate and adjacent to Church’s southern property line extending generally from the southwest corner of Church’s real estate in an easterly direction approximately one hundred fifteen feet (115’) to the wooded area. The fence installation will occur in 2025. City agrees to spray Church’s gravel parking lot to control weeds in 2025, 2026 and 2027.

Church may use, occupy and possess the Easement in a manner that is consistent with and does not interfere with City’s rights contained in this Easement.



# EXHIBIT "A"

A PART OF THE NORTHEAST QUARTER OF SECTION 10,  
TOWNSHIP 36 NORTH, RANGE 6 EAST, CITY OF GOSHEN,  
ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA



DATE: 09/30/24
DRAWN BY: TRM
REVIEWED BY: CLB
SCALE: 1" = 20'
JOB #: 23-1034
SHEET: 1 OF 2

**ABONMARCHE**  
302 River Kays Drive  
Goshen, IN 46526  
T 574.222.9913  
F 574.333.9911  
abonmarcche.com

Benton Harbor  
South Bend  
Goshen  
Fort Wayne  
Lafayette  
Velparaiso  
Hobart  
Kalamazoo  
Grand Haven  
Grand Rapids

PREPARED FOR:  
**CITY OF GOSHEN -  
ABSHIRE PARK  
PARKING LOT AND PATH**  
COPYRIGHT 2024 - ABONMARCHE CONSULTANTS, INC.



**EXHIBIT "B"**

AN EASEMENT BEING A PART OF A PARCEL OF LAND CONVEYED TO BILLY JOE LAMB, ROBERT LAMB & DELMAS DAVIS, TRUSTEES OF GOSHEN CHURCH OF GOD AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN DEED RECORD 308, PAGE 51 & 52, FOR THE BENEFIT OF THE CITY OF GOSHEN PARCEL RECORDED IN DEED RECORD 427, PAGE 406, ALL WITHIN THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 36 NORTH, RANGE 6 EAST; THENCE NORTH 01°04'00" WEST ALONG THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 10, 714.1 FEET TO A POINT IN THE CENTER LINE OF EAST LINCOLN AVENUE; THENCE SOUTH 75°24'00" WEST, ALONG THE CENTER LINE OF LINCOLN AVENUE, 409.82 FEET TO THE NORTHWEST CORNER OF SAID CHURCH OF GOD PARCEL; THENCE SOUTH 01°04'00" EAST ALONG THE WEST LINE OF SAID CHURCH OF GOD PARCEL, 167.74 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTH 01°04'00" EAST ALONG SAID WEST LINE 50.00 FEET TO THE SOUTHWEST CORNER OF SAID CHURCH OF GOD PARCEL; THENCE NORTH 88°16'00" EAST ALONG THE SOUTH LINE OF SAID CHURCH PARCEL, 15.00 FEET; THENCE NORTH 17°49'12" WEST, 52.03 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION. CONTAINING 375 SQUARE FEET, MORE OR LESS.



**ABONMARCHE**

303 River Race Drive  
Goshen, IN 46526  
T 574.533.9913  
F 574.533.9911  
abonmarche.com

Benton Harbor  
South Bend  
Goshen  
Fort Wayne  
Lafayette

Vejiaparaiso  
Hobart  
Kalamazoo  
Grand Haven  
Grand Rapids

PREPARED FOR:

**CITY OF GOSHEN -  
ABSHIRE PARK  
PARKING LOT AND PATH**

Engineering - Architecture - Land Surveying

COPYRIGHT 2024 - ABONMARCHE CONSULTANTS, INC.

DATE: 09/30/24

DRAWN BY: TRM

REVIEWED BY: CLB

SCALE: 1" = 10'

JOB #: 23-1034

SHEET: 2 OF 2

**ACCEPTANCE**

The City of Goshen, Indiana, by the Goshen Board of Public Works and Safety, acknowledges the receipt of this Easement from Douglas Fearnow, Tony Griffin, and Thomas Nagle, Trustees of Goshen Church of God, as Trustees and constituting the Local Board of Trustees of the Church of God at Goshen, in Elkhart County, Indiana, and accepts the Easement on \_\_\_\_\_, 20\_\_\_\_.

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

\_\_\_\_\_  
Gina M. Leichty, Mayor

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF ELKHART        )

Before me, the undersigned Notary Public, on \_\_\_\_\_, 20\_\_\_\_, personally appeared Gina M. Leichty, Mayor of the City of Goshen, Indiana on behalf of the Goshen Board of Public Works and Safety, and acknowledged the execution of the foregoing instrument.

\_\_\_\_\_  
Notary Public  
Printed: \_\_\_\_\_  
County of residence: \_\_\_\_\_  
Commission number: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

This instrument was prepared by Bodie J. Stegelmann, Attorney No. 18180-20, City of Goshen Legal Department, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, (574) 537-3820.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law (Bodie J. Stegelmann).



**CITY OF GOSHEN LEGAL DEPARTMENT**

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

December 5, 2024

To: Board of Public Works and Safety  
From: Brandy L. Toms, Paralegal  
Subject: Agreement with Ricoh USA, Inc.

The City Hall is seeking to purchase a new copier from Ricoh plus training and connection for the cost of \$7,150 and wishes to enter into a service contract with Ricoh.

The service agreement is for 60 months at a rate of \$0.0066 per B&W page and \$0.0400 per color page.

Legal has had an opportunity to review the service agreement and now recommends that the Board approved and authorize Mayor Leichty to execute the services agreement with Ricoh USA Inc.

**Suggested Motion:**

Approve and authorize Mayor Leichty to execute the service agreement with Ricoh USA for the new copier for City Hall.



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[www.goshenindiana.org](http://www.goshenindiana.org)

December 5, 2024

To: Board of Public Works and Safety  
From: Brandy L. Toms, Paralegal  
Subject: Amendment Agreement with Rowell Chemical Corporation

It is recommended that the Board approve and authorize the Mayor to execute the attached amendment agreement with Rowell Chemical Corporation for the purchase and supply of the City's Sodium Hypochlorite, a necessary chemical for water treatment. This amendment renews the agreement for a one (1) year term and memorializes a cost reduction per gallon from \$1.79 to \$1.75.

**Suggested Motion:**

Approve and authorize the Mayor to execute the amendment agreement with Rowell Chemical Corporation to renew for one (1) year to purchase and supply of Sodium Hypochlorite.



## AMENDMENT NO. 1

### PURCHASE OF SODIUM HYPOCHLORITE

THIS AMENDMENT is entered into on \_\_\_\_\_, 2024, which is the last signature date set forth below, by and between **Rowell Chemical Corporation** (“Supplier”), whose mailing address is 15 Salt Creek Lane, Suite 205, Hinsdale, Illinois 60521, 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 Supplier entered into an Agreement on March 21, 2024 for purchase and supply of Sodium Hypochlorite to the City.
- (B) Under the March 21, 2024 agreement, the parties can renew the terms and conditions for three (3) additional one (1) year terms. The parties wish to renew the Agreement for the first one (1) year renew under this agreement.
- (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. Renewal

1.01 The Agreement shall be extended for an additional period of one (1) year.

#### SECTION 2. Compensation

The parties agree to a reduction in the per gallon cost from \$1.79 to \$1.75.

#### SECTION 3. 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 4. 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

**Rowell Chemical Corporation**

\_\_\_\_\_  
Gina M. Leichty, Mayor

\_\_\_\_\_  
Dawn Drass, Acting Secretary

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

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) 533-8626 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

December 5, 2024

To: Board of Public Works and Safety  
From: Brandy L. Toms, Paralegal  
Subject: Amendment Agreement with PVS Technologies, Inc.

It is recommended that the Board approve and authorize the Mayor to execute the attached amendment agreement with PVS Technologies for the purchase and supply of the City's Ferric Chloride, a necessary chemical for water treatment. This amendment renews the agreement for a one (1) year term without any changes.

**Suggested Motion:**

Approve and authorize the Mayor to execute the amendment agreement with PVS Technologies, Inc. to renew for one (1) year to purchase and supply of Ferric Chloride.

## AMENDMENT NO. 1

### PURCHASE OF FERRIC CHLORIDE

THIS AMENDMENT is entered into on \_\_\_\_\_, 2024, which is the last signature date set forth below, by and between **PVS Technologies, Inc.** (“Supplier”), whose mailing address is 10900 Harper Avenue, Detroit, Michigan 48213, 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 Supplier entered into an Agreement on March 27, 2024 for purchase and supply of Ferric Chloride to the City.
- (B) Under the March 27, 2024 agreement, the parties can renew the terms and conditions for three (3) additional one (1) year terms. The parties wish to renew the Agreement for the first one (1) year renew under this agreement.
- (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. Renewal

The Agreement shall be extended for an additional period of one (1) year.

#### SECTION 2. 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 3. 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

**PVS Technologies, Inc.**

\_\_\_\_\_  
Gina M. Leichty, Mayor

\_\_\_\_\_  
Tatyana Lipanovich, Director of Sales

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

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

**\*\*\*REQUEST\*\*\***

**DATE:** Thursday, December 5, 2024

**TO:** GOSHEN BOARD OF WORKS

**FROM:** GOSHEN WATER & SEWER  
KELLY SAENZ

**RE:** UNPAID FINAL ACCOUNTS

The original amount of unpaid final Water/Sewer accounts for this period was **\$3,177.70**  
Collection letters were sent out and payments of **\$1,376.57** had been collected.

The uncollected amount equals **\$1,801.13**

Therefore I am requesting to move our uncollected finalized accounts from active to Collection,  
Sewer Liens and Write offs.

These are accounts for the most part were finalized thru **Monday, August 12, 2024**

**WATER:** \$1,132.64  
**SEWER:** \$668.49

**TOTALS**

REPORT TOTAL		\$3,177.70
BPS TOTAL	<b>\$1,055.20</b>	\$2,122.50
COUNTY TOTAL	<b>\$632.69</b>	\$1,489.81
W-WRITE OFF	<b>\$77.44</b>	\$1,412.37
S-WRITE OFF	<b>\$35.80</b>	\$1,376.57
PAYMENT TOTAL	<b>\$1,376.57</b>	\$0.00
AGREEMENT TOTAL	<b>\$0.00</b>	



**ENGINEERING DEPARTMENT  
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405  
Phone (574) 534-2201 • Fax (574) 533-8626  
engineering@goshencity.com • www.goshenindiana.org

## MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering

RE: **MAIN STREET (STATE ROAD 15) & COLLEGE AVENUE – REQUEST  
FOR PEDESTRIAN CROSSING SAFETY IMPROVEMENTS  
(JN 2024-0007)**

DATE: December 5, 2024

---

Following the Indiana Department of Transportation's (INDOT's) recent signal replacements at this intersection, Commissioner Weddell received a forwarded request from a resident at 1701 Woodward Place for the City to help petition INDOT to replace a "turning vehicles yield to pedestrians" sign, as well as alter the signal timing to allow for pedestrians to cross Main Street on the south side of the intersection before traffic is allowed to turn left from westbound College Avenue south onto Main Street. The left-turning vehicle moving has been allowed concurrently with the pedestrian walk signal, and these conflict with one another. Prior to INDOT's recent signal work, there had been a sign to instruct College Avenue left-turning vehicles to yield. The resident had petitioned INDOT for the protected pedestrian signal previously.

The request was brought to the November 21 Traffic Commission meeting. The Commission voted unanimously with a positive recommendation for Engineering staff to contact INDOT with the request to reinstall the recently removed "turning vehicles yield to pedestrians" sign and an exclusive pedestrian crossing phase activated by the button.



Spatial Reference Information  
 Name: NAD 1983 State Plane Indiana East FIPS 1301 Feet  
 Projection: Transverse Mercator  
 Central Meridian: -85.6667  
 Spring 2023 Aerial



All of the movements shown below have green or walk signals concurrently with current signal phasing

Turning vehicles yield to pedestrians sign has been removed (Fall 2024)

Main St (SR-15)

Gra-Roy Dr

College Ave

18th St

1700

Created: 11/19/2024  
 by Andrew Lund

City of Goshen  
 College Avenue & Main Street - Crosswalk Safety



0 12.5 25  
 US Feet

The City of Goshen's Digital Data is the property of the City of Goshen and Elkhart County, Indiana. All graphic data supplied by the city and county has been derived from public records that are constantly undergoing change and is not warranted for content or accuracy. The city and county do not guarantee the positional or thematic accuracy of the data. The cartographic digital files are not a legal representation of any of the features depicted, and the city and county disclaim any assumption of the legal status they represent. Any implied warranties, including warranties of merchantability or fitness for a particular purpose, shall be expressly excluded. The data represents an actual reproduction of data contained in the city's or county's computer files. This data may be incomplete or inaccurate, and is subject to modifications and changes. City of Goshen and Elkhart County cannot be held liable for errors or omissions in the data. The recipient's use and reliance upon such data is at the recipient's risk. By using this data, the recipient agrees to protect, hold harmless and indemnify the City of Goshen and Elkhart County and its employees and officers. This indemnity covers reasonable attorney fees and all court costs associated with the defense of the city and county arising out of this disclaimer.

The City of Goshen  
 Department of Public Works &  
 Safety Office of Engineering  
 204 East Jefferson Street, Goshen, Indiana 46528  
 Phone: 574-534-2201 Fax: 574-533-8626





**ENGINEERING DEPARTMENT  
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405  
Phone (574) 534-2201 • Fax (574) 533-8626  
engineering@goshencity.com • www.goshenindiana.org

## MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering

RE: **CHICAGO AVENUE – REQUEST TO INSTALL SPEED LIMIT SIGN  
(JN 2024-0007)**

DATE: December 5, 2024

---

The Engineering Department received a concern from Councilor Schrock regarding speeding along Chicago Avenue, between Indiana Avenue and Pike Street. The current speed limit along Chicago Avenue from Bashor Road to Pike Street is 30 MPH. Upon examining the existing signage along Chicago Avenue, it was discovered that only one (1) speed limit sign was posted, for eastbound traffic.

The current Indiana MUTCD requires Speed Limit signs at points of change from one speed limit to another, as well as beyond major intersections and other areas where it is necessary to remind motorists of the speed limit. Higher speed limits are in effect nearby, with no notice of the lower speed limit for vehicles that turn off these roads: The speed limit is 35 MPH on Pike Street / US 33 and 40 MPH on Wilden Avenue, west of Indiana Avenue.

The request was brought to the October 17 Traffic Commission meeting. The Commission voted unanimously with a positive recommendation to install three additional speed limit signs at shown on the attached map and the relocation of the curve ahead warning sign north, closer to curve.

**Requested Motion: Move to approve the installation of three speed limit signs and relocation of the curve ahead warning sign closer to the curve.**

**APPROVED:  
BOARD OF PUBLIC WORKS & SAFETY  
CITY OF GOSHEN, INDIANA**

\_\_\_\_\_  
Gina Leichty, Mayor

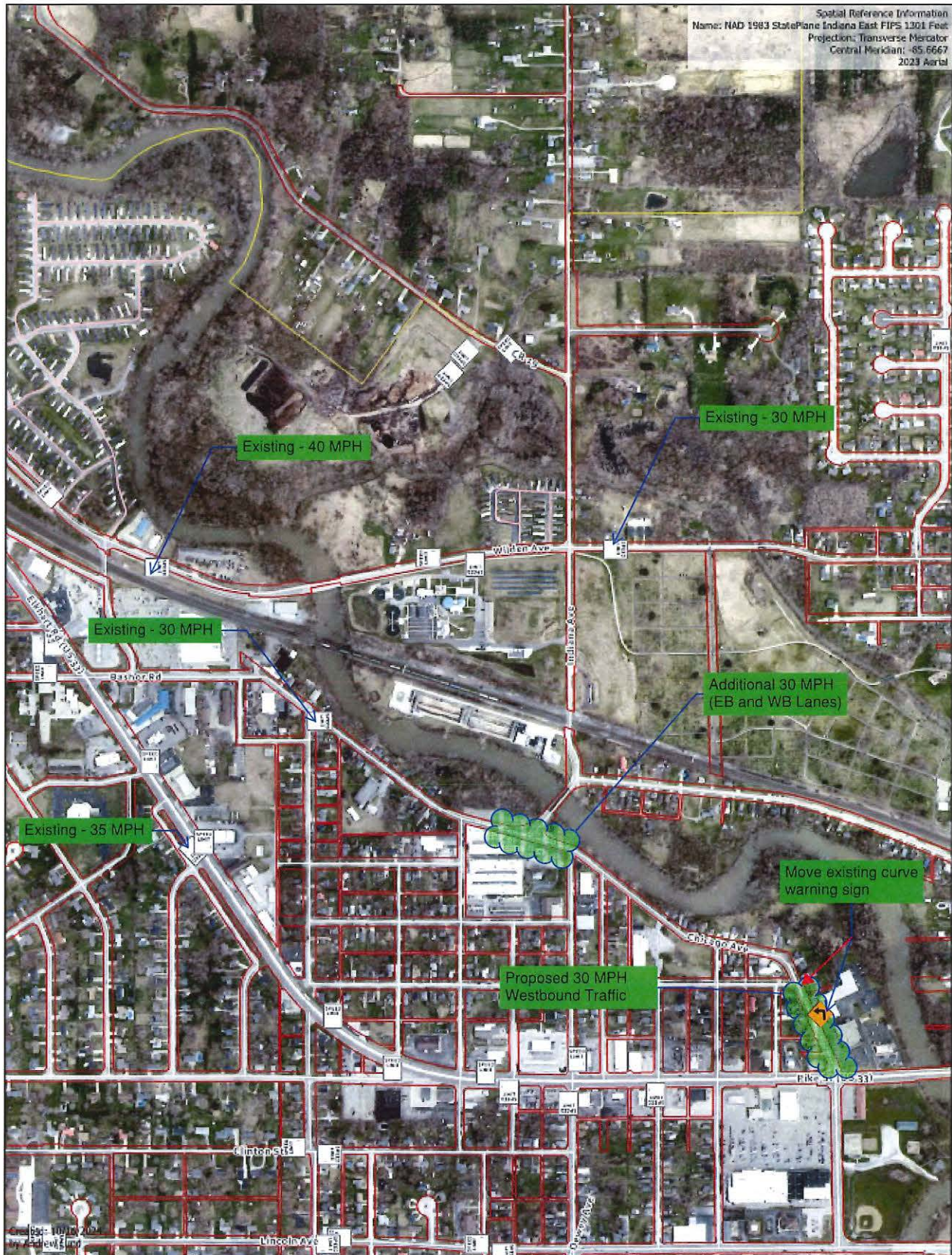
\_\_\_\_\_  
Barb Swartley, Member

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

\_\_\_\_\_  
Orv Myers, Member

\_\_\_\_\_  
Michael Landis, Member



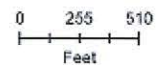


**Legend**

- ROW
- City Limits
- Road Segments
- Goshen Road Class
 

Public Road	Public Road
Private Road	Private Road
State Road/US Highway	State Road/US Highway
<all other values>	

## City of Goshen Speed Limit Signs on Chicago Avenue and Nearby Streets



**The City of Goshen**  
 Department of Public Works &  
 Safety Office of Engineering  
 204 East Jefferson Street, Goshen, Indiana 46528  
 Phone: 574-534-7201 Fax: 574-533-8676

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**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, Safety and Stormwater

FROM: Engineering Department

RE: **RELEASE OF MAINTENANCE BOND  
Asphalt Paving Project (PN: 2023-0002)**

DATE: December 5, 2024

---

Final inspection of the above-referenced project has taken place. The infrastructure (asphalt) has been found to meet City standards and specifications.

It is, therefore, recommended that the City of Goshen release the 1-year maintenance bond, which were posted by Niblock Excavating for asphalt pavement in the amount of \$213,424.68.

Please approve the release of the bond and accept this project for permanent maintenance. Copies of the maintenance bond is attached for your review.

**Requested Motion: Approve the release of the 1-year maintenance bond in the amount of \$213,424.68 and accept the asphalt paving project for permanent maintenance.**

**APPROVED:  
BOARD OF PUBLIC WORKS & SAFETY  
CITY OF GOSHEN, INDIANA**

---

Gina Leichty, Mayor

---

Barb Swartley, Member

---

Mary Nichols, Member

---

Orv Myers, Member

---

Michael Landis, Member





2200 Renaissance Blvd. Ste. 400  
King of Prussia, PA 19406-2755  
Ph. (610) 832-8240

**MAINTENANCE BOND**

Bond Number: 013131384

KNOW ALL MEN BY THESE PRESENTS, that we Niblock Excavating Inc.

PO Box 211, Bristol, IN 46507, as principal (the "Principal"), and  
Liberty Mutual Insurance Company, as surety (the "Surety"), are  
held and firmly bound unto City of Goshen  
204 East Jefferson Street, Suite 1, Goshen, IN 46528, as obligee (the "Obligee"),  
in the penal sum of Two Hundred Thirteen Thousand Four Hundred Twenty Four Dollars and 68/100  
Dollars (\$213,424.68),

for the payment of which sum well and truly to be made, the Principal and the Surety, bind ourselves, our heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement dated December 14, 2022, entered into a contract (the  
"Contract") with the Obligee for 2023 Asphalt Paving Project - Project Number: JN 2023-0002

which contract is by reference made a part hereof.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall remedy without cost to the  
Obligee any defect which may develop during a period of One (1) year(s) from the date of completion and  
acceptance of the work performed under the Contract, provided such defects are caused by defective or inferior  
materials or workmanship, then this obligation shall be null and void; otherwise, it shall be and remain in full force and  
effect.

**PROVIDED AND SUBJECT TO THE CONDITIONS PRECEDENT:**

- Obligee shall provide both Principal and Surety with written notice of the discovery (Notice of Discovery) of any item of defective or inferior materials or workmanship during the covered period (a "Covered Item"). Should Principal improperly fail to remedy the Covered Item, then Obligee shall make a written demand upon the Surety ("Demand") within ninety (90) days of the Obligee's issuance of the Notice of Discovery of the Covered Item.
- The Notice of Discovery and the Demand shall be in writing and via certified mail to the Principal and to the Surety. Notice to the Surety shall be delivered to the attention of the Surety Law Department at the above address.
- No suit or action may be commenced by the Obligee against the Surety after the expiration of one (1) year (or such lesser time period as otherwise permitted by relevant law) from the date of Obligee's discovery of a Covered Item. If the provision of this paragraph is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

DATED as of this 4th day of December, 2023.

**WITNESS / ATTEST**

*Matthew Brunodono*

Niblock Excavating Inc.  
(Principal)

By: *Chad Niblock* (Seal)  
Name: Chad Niblock  
Title: President

Liberty Mutual Insurance Company  
(Surety)

By: *Lori King-Byde* (Seal)  
Lori King-Byde Attorney-in-Fact



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8207304-013183

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Dan Cusenza, Janice Stickle, Jocelyn Petersen, Lori King-Clyde, Malissa DeVormer

all of the city of Kentwood state of MI each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 7th day of February, 2022.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: [Signature]
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 7th day of February, 2022 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1128044
Member, Pennsylvania Association of Notaries

By: [Signature]
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 4th day of December, 2023.



By: [Signature]
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.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 Works and Safety and Stormwater Board

FROM: Dustin Sailor, P.E., Utilities Engineer

RE: **UTILITIES ELECTRICAL MAINTENANCE CONTRACT – (JN: 2025-0006)**

DATE: December 3, 2024

---

Middlebury Electric has provided excellent electrical service to Goshen Utilities and we request the Board of Works and Safety and Stormwater Board accept Middlebury Electric's quote of \$47,270.00 per year to continue maintenance and enter into an agreement with them.

**Requested Motion: Approve Agreement with Middlebury Electric for the 2025 Utilities Electrical Maintenance in the amount of \$47,270.00 per year for three years.**

## AGREEMENT

### WITH MIDDLEBURY ELECTRIC, INC. FOR ELECTRICAL MAINTENANCE SERVICE FOR THE CITY'S MUNICIPAL WASTEWATER & WATER UTILITIES

THIS AGREEMENT is entered into on \_\_\_\_\_, 2024, which is the last signature date set forth below, by and between **Middlebury Electric, Inc.** ("Contractor"), whose mailing address is 2702 Elkhart Road, 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").

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 for electrical maintenance of the City's Municipal Wastewater & Water Utilities on a 24 hours/7 days a week on-call basis, (hereinafter referred to as "Duties").

The most recent Indiana state adopted edition of National Electric Code, prepared by:

National fire Protection Association, Inc.  
1 Batterymarch Park  
Quincy, Massachusetts 02169-7471

Is hereby incorporated into these Specification Documents and shall apply to all electrical work.

#### **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 three (3) calendar years, starting January 2025 and continue on through and including December 31, 2027.
- (C) 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.
- (D) The agreement shall be automatically renewed under the same terms and conditions for one (1) additional three (3) year period unless written notice of the intent to terminate the agreement is delivered by either party to the other party at least ninety (90) days before the expiration of the term of the original agreement. The term of the renewal shall not be longer than the term of the original agreement.

**Section 3. Compensation**

(A) City will compensate Contractor for the materials and labor based on the standard hourly rates set forth below and the actual hours worked, but in no event will the total compensation exceed \$47,270.00 for the performance of these Duties during the term of Agreement.

<b>Item No.</b>	<b>Estimated Quantity</b>	<b>Unit</b>	<b>Description</b>	<b>Unit Price</b>	<b>Amount</b>
1	270	HRS	Yearly electrical & associated equipment repair and maintenance, Wastewater Utility	\$105	\$28,350
2	160	HRS	Yearly electrical and associated equipment repair and maintenance, Water Utility	\$105	\$16,800
3	16	EA	Annual testing of motor amperage and voltage draws with report	\$105	\$1,680
4	1	HRS	Minimum Service Charge Fee, First Hour of Service	\$150	\$150
5	1	HRS	Boom truck, 35 feet and lower (Contractor Owned Equipment)	\$140	\$140
6	1	HRS	Boom truck, 36 to 50 feet (Contractor Owned Equipment)	\$150	\$150
<b>Total Contract Amount Only:</b>					<b>\$47,270</b>

(B) A price adjustment may be considered upon contract renewal and only upon written notice to the City no less than ninety (90) days in advance. The annual percentage increase of the Contract will not exceed five percent (5%) of the current rate.

**Section 4. Payment**

- (A) City shall pay Contractor for each phase of Duties satisfactorily completed under this agreement upon completion of Duties.
- (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 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) 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.

## **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.
- (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. Insurance**

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

- (2) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and 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**

- (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 15. 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 16. 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 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.

<b>City:</b>	<b>Contractor:</b>
City of Goshen, Indiana	Middlebury Electric
Attention: Goshen Legal Department	Attention: Jason Wogoman
204 East Jefferson St., Suite 2	65725 US 33 East
Goshen, IN 46528	Goshen, IN 46526

**Section 18. 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 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**

- (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 22. 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 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 Contractor.

**Section 26. Authority to Execute**

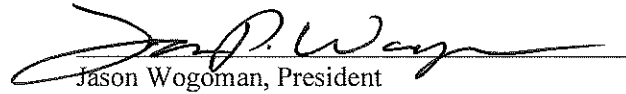
The undersigned affirm that all steps have been taken to authorize execution of this agreement, and upon the undersigned's execution, bind their respective organizations to the terms of the agreement.

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

**Middlebury Electric, Inc.**

\_\_\_\_\_  
Gina Leichty, Mayor

  
\_\_\_\_\_  
Jason Wogoman, President

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

Date Signed: 11/21/2024



**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

FROM: Engineering Department

RE: **DESIGN SERVICES AGREEMENT WITH ABONMARCHE CONSULTANTS  
FOR THE EISENHOWER DRIVE AND CARAGANA COURT  
RECONSTRUCTION PROJECT (JN: 2023-0037)**

DATE: December 5, 2024

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Goshen Engineering is requesting the approval of the attached agreement with Abonmarche Consultants for design services and the creation of project bid documents for the reconstruction of Eisenhower Drive and Caragana Court. This project will include full pavement replacement for both roadways between Dierdorff Road and Lincolnway East / US Highway 33. Limited drainage improvements may also be necessary. The construction project is expected to begin in 2025.

The project, including design services, will be funded by Goshen Redevelopment Commission. Redevelopment selected Abonmarche Consultants' proposal and approved the amount of \$198,000.00 for design services.

**Requested Motion: Approve and authorize the Mayor to sign the attached agreement with Abonmarche Consultants in the amount of \$198,000.00 to provide design and bid support services for the Eisenhower Drive and Caragana Court Reconstruction project.**

**AGREEMENT WITH ABONMARCHE CONSULTANTS, INC  
FOR THE EISENHOWER DRIVE AND CARAGANA COURT  
RECONSTRUCTION PROJECT  
JN: 2023-0037**

THIS AGREEMENT is entered into on \_\_\_\_\_, 20\_\_\_\_, 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 and the City of Goshen Redevelopment Commission (“City”).

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

**SECTION 1. Scope of Services**

- 1.01 This Agreement shall include these terms and conditions, as well as the terms and conditions set forth in the following documents:
- (A) City of Goshen, Indiana Specification Documents for the Eisenhower Drive and Caragana Court Reconstruction included in the City’s Request for Proposals dated September 3, 2024, and as amended by Addendum No. 1 to the Request for Proposals dated September 30, 2024 (collectively the “Specification Documents”) a copy of which are incorporated into and made a part of this Agreement by reference.
  - (B) Consultant’s Proposal as submitted to City, including all attachments prepared by Contractor, a copy of which is incorporated into and made a part of this Agreement by reference.
- 1.02 Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order:
- (A) This Agreement;
  - (B) The Specification Documents for the services; and
  - (C) Consultant’s Proposal.

**SECTION 2. Effective Date; Term**

- 2.01 The Agreement shall become effective on the day of execution and approval by both parties.
- 2.02 Consultant acknowledges that time is of the essence and that the timely performance of its Services is an important element of this Agreement. Consultant shall perform all Services as expeditiously as is consistent with professional skill and care in the orderly progress of the Services.
- 2.03 Consultant shall commence the Services as soon as practical after receiving a notice to proceed from City.



**SECTION 3. Compensation**

3.01 City agrees to compensate Consultant as follows for performing all Duties:

Task #1 Survey Services.....	\$32,000
Task #2 Geotechnical Investigation.....	\$30,000
Task #3 Preliminary Study and Pavement Alternatives.....	\$25,000
Task #4 Limited Drainage Evaluation.....	\$ 9,000
Task #5 Roadway Design Plans.....	\$80,500
Task #6 Utility Coordination.....	\$ 8,000
Task #7 Permitting.....	\$ 8,000
Task #8 Bid Phase Services.....	\$ 5,000
Task #9 Bid Phase – Additional Information (Hourly).....	As Requested
Reimbursable Expenses (Permit Fees).....	(Allowance) \$ <u>500</u>
<b>TOTAL .....</b>	<b>Lump Sum of \$198,000</b> (plus Task #9 expenses)

3.02 City will compensate Consultant based on the standard hourly rates set forth below and the actual hours worked for hourly tasks performed under Task #9:

Principal.....	\$290
Project Manager.....	\$265
Senior Project Engineer.....	\$205
Project Engineer.....	\$140
Staff Engineer.....	\$110
Project Surveyor.....	\$160
CADD Technician.....	\$110
Survey Crew.....	\$200
Administrative Assistant.....	\$80

**SECTION 4. Payment**

4.01 City shall pay Consultant for each phase of Duties satisfactorily completed under this agreement as Duties progress.

4.02 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

- 4.03 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.
- 4.04 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 subcontractors 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.

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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.

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- 7.02 Consultant understands that City will not carry worker's compensation or any other insurance on Consultant and/or Consultant's employees or subcontractors.
- 7.03 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**

- 9.01 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.

- 9.02 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.
- 9.03 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.
- 9.04 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.

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- 13.01 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.
- 13.02 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.

13.04 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
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- (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**

14.01 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.

14.02 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**

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

15.02 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

15.03 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**

- 16.01 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.
- 16.02 City may terminate this agreement, in whole or in part, in the event of default by Contractor.
- 16.03 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.

<b>City:</b>	<b>Contractor:</b>
City of Goshen, Indiana	Abonmarche Consultants, Inc.
Attention: Goshen Legal Department	Attention: Bradley E. Mosness, PE
204 East Jefferson St., Suite 2	303 River Race Drive, Unit 206
Goshen, IN 46528	Goshen, IN 46526

**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**

- 21.01 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.
- 21.02 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**

- 22.01 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.
- 22.02 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.
- 22.03 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 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

**Abonmarche Consultants, Inc.**

\_\_\_\_\_  
Gina Leichty, Mayor

\_\_\_\_\_  
Bradley E. Mosness, PE, Vice President

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

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

**Redevelopment Commission**

\_\_\_\_\_  
Becky Hutsell, Redevelopment Director

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



**Planning & Zoning Department  
CITY OF GOSHEN**

204 East Jefferson Street, Suite 4 • Goshen, IN 46528-3405

Phone (574) 534-3600 • Fax (574) 533-8626 • TDD (574) 534-3185  
planning@goshencity.com • www.goshenindiana.org

December 3, 2024

Brinkley RV  
Attn: Derek Yoder  
Via Email To: dyoder@brinkleyrv.com

RE: Zoning Verification, 1655 Brinkley Way East, Goshen, Indiana  
Lot 5, Replat of Lot 1A of Replat of East College Avenue Industrial Park  
Parcel 20-11-13-301-001.000-015

Dear Mr. Yoder:

The property located at 1655 Brinkley Way East, Goshen, Indiana, Lot 5, Replat of Lot 1A of Replat of East College Avenue Industrial Park, parcel 20-11-13-301-001.000-015, is zoned Industrial M-1 District.

Sincerely,

A handwritten signature in cursive script that reads "Rhonda Yoder".

Rhonda Yoder  
Zoning Administrator





STORMWATER DEPARTMENT  
CITY OF GOSHEN  
204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405  
Phone (574) 534-2201 • Fax (574) 533-8626  
stormwater@goshencity.com • www.goshenindiana.org

## MEMORANDUM

**TO:** City of Goshen Stormwater Board

**FROM:** Stormwater Department

**RE:** **POST-CONSTRUCTION PLAN APPROVAL**  
**BRINKLEY RV – BUILDING #1 ADDITIONAL PARKING (JN: 2024-2014)**

**DATE:** December 5, 2024

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The developer of the Brinkley RV – Building #1 Additional Parking (East College Avenue Industrial Park Amendment #3) project, affecting one (1) or more acres of land and located south of 1655 Brinkley Way East, has submitted a sufficient post-construction plan amendment that is compliant with Ordinance 4329, “Uniform Requirements for Post-Construction Stormwater Management.”

The Stormwater Department requests the Stormwater Board’s acceptance of the plan.

Full document available upon request.

Requested Motion: Accept the post-construction stormwater management plan amendment for Brinkley RV – Building #1 Additional Parking as it has been found to meet the requirements of City Ordinance 4329.

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**CITY OF GOSHEN LEGAL DEPARTMENT**  
**Donald R. Shuler, Assistant City Attorney**

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

donshuler@goshencity.com • www.goshenindiana.org  
Phone (574) 537-3855 • Fax (574) 533-8626 • TDD (574) 534-3185

December 2, 2024

To: Board of Public Works and Safety

From: Don Shuler, Assistant City Attorney

Subject: Review Hearing – 423 N. 5th Street, Goshen, Indiana

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An unsafe building hearing is scheduled for the property located at 423 N. 5th Street, Goshen, Indiana. Attached is the Order of the City of Goshen Building Commissioner concerning the property.

The Board needs to conduct the hearing by receiving evidence and arguments from the Building Department, the property owner, and any other individual who wishes to speak to the property. After receiving the evidence and at the conclusion of the hearing, the Board may do any of the following actions:

1. Continue the matter for further review at a future date.
2. Modify the Order by, for example, providing additional time to complete repairs.
3. Rescind the Order
4. Affirm the Order.
  - a. In addition to affirming the Order, if the Board finds there has been a willful failure to comply with the Building Commissioner's Order, the Board may impose a civil penalty up to \$5,000
  - b. The effective date of the civil penalty may be postponed for a reasonable period to permit repairs to be made.

In taking any of these actions, the Board should make specific findings of fact to support to its action.

**CITY OF GOSHEN BUILDING COMMISSIONER  
UNSAFE BUILDING ENFORCEMENT AUTHORITY  
ORDER**

October 8, 2024

IN RE: Violation of Goshen City Code  
Property Address: 423 N. 5th Street, Goshen, Indiana  
Property Tax Code: 20-11-09-213-007.000-015  
Property Owner: Ronald E. Davidhizar  
Substantial Property Interest of Record: None

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**Section 1.**

You are hereby notified that you are in violation of the City of Goshen Neighborhood Preservation Ordinance, codified at Goshen City Code § 6.3.1. The violations exist at property owned by you, as evidenced by the tax records of the Elkhart County Auditor, property tax code numbers 20-11-09-213-007.000-015; commonly known as 423 N. Fifth Street, Goshen, Indiana, and more particularly described as follows:

The North half of Lot Numbered 3 in Chamberlain's Second Addition to the City of Goshen, Indiana, excepting therefrom forty-two (42) feet off and from the South side thereof.

**Section 2.**

The following violations of Goshen City Code Title 6, Article 3, Chapter 1 exist at the residential structure at the real estate identified in Section 1:

1. The structure's foundation has not been kept reasonably weather tight and in good repair, nor is it firmly supported and free from open cracks and breaks, a violation of

- Section 6.3.1.1(b). There are areas in the basement where the foundation is beginning to separate. The basement wall is showing signs of failure and in danger of collapse.
2. The structure's ceilings have not been kept reasonably weather tight and in good repair, a violation of Section 6.3.1.1(b). There are multiple ceilings with holes or where it has been removed.
  3. The structure's walls have not been kept reasonably weather tight and in good repair, a violation of Section 6.3.1.1(b). There are walls with holes or walls that have been removed.
  4. The structure's floors have not been kept in good repair, a violation of Section 6.3.1.1(b). All floor beams are showing signs of possible termite damage or other forms of deterioration.
  5. The structure's painted surfaces are not properly coated and weather tight, and metal and wood surfaces throughout, including window frames, doors, door frames, cornices, porches, and trim have not been maintained in good condition, a violation of Section 6.3.1.1(g). There is chipping and peeling paint on multiple surfaces throughout the structure.
  6. The electrical system has not been maintained in a satisfactory working condition nor in a manner that will permit safe operation, a violation of Section 6.3.1.1(a). The electrical panel has been tampered with and the entire electrical system needs assessment due to current condition.
  7. The heating and mechanical system has not been maintained in a satisfactory working condition, a violation of Section 6.3.1.1(a). There is loose hanging duct work and rusted out duct work in need of repair or replacement.

The residential structure located on the real estate is unsafe within the meaning of I.C. § 36-7-9-4(a)(5) and (6). Goshen City Code Title 6, Article 3, Chapter 1's requirements are the minimum standards for all structures for purposes of health and safety. Therefore, the structure is dangerous to person or property because of a violation of a statute or ordinance concerning building condition or maintenance. Further, the structure is vacant and not maintained in a manner that would permit human habitation, occupancy, or use under Goshen City Code.

### **Section 3.**

You are hereby **ORDERED** to complete the necessary actions and repairs to the residential structure to bring the property into compliance with the minimum housing standards that permit human habitation, occupancy, or use under the Neighborhood Preservation Ordinance. Said actions and repairs, among other considerations, must include the following:

- The structure's foundation needs to be properly repaired to remove all indications of failure; areas where the foundation is beginning to separate need to be properly tuck pointed and properly repaired to ensure the integrity of the structure.
- The holes in the walls and ceilings to need to be properly repaired with appropriate coverings installed.
- All floor beams showing signs of termite damage and other forms of deterioration need to be repaired and/or replaced.



- All painted surfaces need to be properly coated; chipped and peeling paint needs to be properly eliminated and surfaces repainted.
- The electrical panel needs to be replaced by licensed electrician and the entire electrical system needs assessment by a licensed electrician and repaired/upgraded as necessary.
- All rusted out duct work needs to be replaced and all loose hanging duct work needs to be repaired and/or replaced to ensure proper and safe functioning of the heating and mechanical system.

You are hereby **FURTHER ORDERED** to complete all said work within thirty (30) days.

**Section 4.**

You are hereby notified that failure to comply with this Order may result in the City of Goshen taking action to complete the required demolition and bill you for the costs of such work, including, the actual costs of the work performed and an amount equal to the average processing expense the City will incur in pursuing this matter. Such amounts can become a lien upon the real estate and can ultimately be enforced in the same manner as any other judgment. In addition, failure to comply with the Order may result in the City of Goshen Building Commissioner issuing a civil penalty pursuant to I.C. § 36-7-9-7.5 or pursuing civil action remedies pursuant to I.C. § 36-7-9-17.

**Section 5.**

**You are further notified that this Order becomes final ten (10) days after notice is given, unless you request a hearing in writing and deliver such written request for hearing to the City of Goshen Building Commissioner prior to the expiration of said ten (10) days.**

**Section 6.**

You are hereby notified that as a result of this Order being issued you may not transfer or agree to transfer any property interest in the parcel described in Section 1 of this Order, unless you have complied with all requirements of Indiana Code § 36-7-9-27, which are as follows:

1. You must supply full information regarding this Order to the person or persons taking or agreeing to take any interest in the parcel described in Section 1 of this Order.
2. You must supply in writing to the City of Goshen Building Department, within five (5) days of any actions to transfer the interest, the following:
  - a. The full name, address, and telephone number of the person or persons taking interest in the property described in Section 1 of this Order; and

- b. A copy of the legal instrument under which the transfer of the interest is accomplished.

**Section 7.**

You are hereby notified that failure to comply with Section 6 of this Order may result in a judgment of liability against you in accordance with Indiana Code § 36-7-9-27.

**Section 8.**

This Order is issued by the City of Goshen Building Commissioner, Myron Grise, in accordance with the Indiana Unsafe Building Law and the City of Goshen Neighborhood Preservation Ordinance. The address of the Building Commissioner is 204 E. Jefferson Street, Suite 5, Goshen, Indiana 46528, and the telephone number is 574-534-1811.

This Order of the City of Goshen Building Commissioner is issued on October 8, 2024.

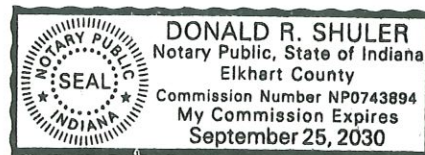
City of Goshen Building Department

  
\_\_\_\_\_  
Myron Grise, Building Commissioner

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF ELKHART        )

Before me, the undersigned, a Notary Public in and for said county and State, this October 8, 2024, personally appeared Myron Grise, Building Commissioner for the City of Goshen, Indiana, who acknowledged execution of the foregoing Order for and on behalf of the City of Goshen, Indiana Building Department, as his voluntary act for the purposes stated therein, and who, having been duly sworn, stated that the representations contained therein are true.

  
\_\_\_\_\_  
Notary Public



**Certificate of Service**

The undersigned hereby certifies that the foregoing Order of the City of Goshen Building Commissioner for the premises at 423 N. 5th Street, Goshen, Indiana was served by sending a copy by certified mail, return receipt requested and by regular first-class mail to the last known address of the following persons to be notified on October 9, 2024:

Ronald E. Davidhizar  
203 Middlebury Street  
Goshen, Indiana 46528



---

Donald R. Shuler, #26587-71  
Assistant City Attorney  
City of Goshen Legal Department  
204 East Jefferson Street, Suite 2  
Goshen, Indiana 46528

I affirm under the penalties for perjury that I have taken reasonable care to redact each social security number in this document, unless required by law (Donald R. Shuler).

This document prepared by Donald R. Shuler, Assistant City Attorney, City of Goshen Legal Department, 204 E. Jefferson Street, Suite 2, Goshen, IN 46526; Ph: 574.537.3855.



**CITY OF GOSHEN LEGAL DEPARTMENT**  
**Donald R. Shuler, Assistant City Attorney**

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

donshuler@goshencity.com • www.goshenindiana.org  
Phone (574) 537-3855 • Fax (574) 533-8626 • TDD (574) 534-3185

December 2, 2024

To: Board of Public Works and Safety

From: Don Shuler, Assistant City Attorney

Subject: Review Hearing – 511 N. 5th Street, Goshen, Indiana

---

An unsafe building hearing is scheduled for the property located at 511 N. 5th Street, Goshen, Indiana. Attached is the Order of the City of Goshen Building Commissioner concerning the property.

The Board needs to conduct the hearing by receiving evidence and arguments from the Building Department, the property owner, and any other individual who wishes to speak to the property. After receiving the evidence and at the conclusion of the hearing, the Board may do any of the following actions:

1. Continue the matter for further review at a future date.
2. Modify the Order by, for example, providing additional time to complete repairs.
3. Rescind the Order
4. Affirm the Order.
  - a. In addition to affirming the Order, if the Board finds there has been a willful failure to comply with the Building Commissioner's Order, the Board may impose a civil penalty up to \$5,000
  - b. The effective date of the civil penalty may be postponed for a reasonable period to permit repairs to be made.

In taking any of these actions, the Board should make specific findings of fact to support to its action.



**CITY OF GOSHEN BUILDING COMMISSIONER  
UNSAFE BUILDING ENFORCEMENT AUTHORITY  
ORDER**

October 8, 2024

IN RE: Violation of Goshen City Code

Property Address: 511 N. 5th Street, Goshen, Indiana

Property Tax Code: 20-11-09-211-016.000-015

Property Owner: Ronald E. Davidhizar

Substantial Property Interest of Record: None

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**Section 1.**

You are hereby notified that you are in violation of the City of Goshen Neighborhood Preservation Ordinance, codified at Goshen City Code § 6.3.1. The violations exist at property owned by you, as evidenced by the tax records of the Elkhart County Auditor, property tax code numbers 20-11-09-211-016.000-015; commonly known as 511 N. Fifth Street, Goshen, Indiana, and more particularly described as follows:

Lot Number Fourteen (14) in Mayfield's Second Addition to the city of Goshen, Indiana; said Plat being recorded in Deed Record 44, page 249 in the Office of the Recorder of Elkhart County, Indiana.

**Section 2.**

The following violations of Goshen City Code Title 6, Article 3, Chapter 1 exist at the residential structure at the real estate identified in Section 1:

1. The structure's foundation has not been kept in good repair, free from cracks and breaks, capable of supporting all nominal loads and resisting all load effects, a violation of Section 6.3.1.1(b). The foundation wall in the basement has begun to collapse in areas causing wash out.
2. The ceilings have not been kept in good repair, a violation of Section 6.3.1.1(b). Ceiling tiles have been removed throughout the property and there are other areas where the ceilings have or are collapsing.
3. The floor and supports for the rear porch have not been kept in good repair, a violation of Section 6.3.1.1(b). The rear porch supports are leaning and detaching. The rear porch floor has a large area where its missing flooring.
4. The structure's painted surfaces are not properly coated and weather tight, and metal and wood surfaces throughout, including window frames, doors, door frames, cornices, porches, and trim have not been maintained in good condition, a violation

- of Section 6.3.1.1(g). There is chipping and peeling paint on multiple surfaces throughout the structure.
5. The roof of the garage on the real estate is not sound, tight, and free of defects that admit rain, a violation of Section 6.3.1.1(c). The garage roof has a large hole permitting weather and animals to enter the structure.
  6. The electrical system has not been maintained in a satisfactory working condition nor in a manner that will permit safe operation, a violation of Section 6.3.1.1(a). There are exposed electrical wires hanging free throughout the structure.
  7. The heating and mechanical system has not been maintained in a satisfactory working condition, a violation of Section 6.3.1.1(a). The furnace and mechanical system is in need of assessment.
  8. The plumbing system has not been maintained in a satisfactory working condition nor in a manner that will permit safe operation, a violation of Section 6.3.1.1(a). There are plumbing pipes that have rusted out or not connected properly.

In addition, the residential structure is filled with trash, storage of accumulated materials, and debris that makes it uninhabitable in its current condition. The residential structure has not been kept in a clean and sanitary condition that would permit human habitation, occupancy, or use under the City of Goshen's Neighborhood Preservation Ordinance.

Therefore, the residential structure and garage located on the real estate is unsafe within the meaning of I.C. § 36-7-9-4(a)(5) and (6). Goshen City Code Title 6, Article 3, Chapter 1's requirements are the minimum standards for all structures for purposes of health and safety. Therefore, the structure is dangerous to person or property because of a violation of a statute or ordinance concerning building condition or maintenance. Further, the structure is vacant and not maintained in a manner that would permit human habitation, occupancy, or use under Goshen City Code.

### **Section 3.**

You are hereby **ORDERED** to complete the necessary actions and repairs to the residential structure to bring the property into compliance with the minimum housing standards that permit human habitation, occupancy, or use under the Neighborhood Preservation Ordinance. Said actions and repairs, among other considerations, must include the following:

- The residential structure's foundation needs to be properly repaired to remove all indications of failure and collapse, and to ensure the integrity of the structure.
- The residential structure's ceilings need to be properly repaired.
- The rear porch needs to be repaired properly to prevent possible collapse, both the supports and the floor.
- All painted surfaces need to be properly coated; chipped and peeling paint needs to be properly eliminated and surfaces repainted.
- The electrical system needs assessment by a licensed electrician and repaired/upgraded as necessary.
- The heating and mechanical system needs assessment by a licensed contractor and repaired/upgraded as necessary.

- The plumbing system needs assessment by a licensed plumber and repaired/upgraded as necessary, and all rusted out or improperly connected plumbing pipes need to be repaired and/or replaced.
- The garage roof needs to be repaired.
- The interior of the residential structure shall have all trash, debris, and accumulated materials removed so that same permits human habitation, occupancy, or use under the Neighborhood Preservation Ordinance.

You are hereby **FURTHER ORDERED** to complete all said work within thirty (30) days.

**Section 4.**

You are hereby notified that failure to comply with this Order may result in the City of Goshen taking action to complete the required demolition and bill you for the costs of such work, including, the actual costs of the work performed and an amount equal to the average processing expense the City will incur in pursuing this matter. Such amounts can become a lien upon the real estate and can ultimately be enforced in the same manner as any other judgment. In addition, failure to comply with the Order may result in the City of Goshen Building Commissioner issuing a civil penalty pursuant to I.C. § 36-7-9-7.5 or pursuing civil action remedies pursuant to I.C. § 36-7-9-17.

**Section 5.**

**You are further notified that this Order becomes final ten (10) days after notice is given, unless you request a hearing in writing and deliver such written request for hearing to the City of Goshen Building Commissioner prior to the expiration of said ten (10) days.**

**Section 6.**

You are hereby notified that as a result of this Order being issued you may not transfer or agree to transfer any property interest in the parcel described in Section 1 of this Order, unless you have complied with all requirements of Indiana Code § 36-7-9-27, which are as follows:

1. You must supply full information regarding this Order to the person or persons taking or agreeing to take any interest in the parcel described in Section 1 of this Order.
2. You must supply in writing to the City of Goshen Building Department, within five (5) days of any actions to transfer the interest, the following:
  - a. The full name, address, and telephone number of the person or persons taking interest in the property described in Section 1 of this Order; and
  - b. A copy of the legal instrument under which the transfer of the interest is accomplished.



**Section 7.**

You are hereby notified that failure to comply with Section 6 of this Order may result in a judgment of liability against you in accordance with Indiana Code § 36-7-9-27.

**Section 8.**

This Order is issued by the City of Goshen Building Commissioner, Myron Grise, in accordance with the Indiana Unsafe Building Law and the City of Goshen Neighborhood Preservation Ordinance. The address of the Building Commissioner is 204 E. Jefferson Street, Suite 5, Goshen, Indiana 46528, and the telephone number is 574-534-1811.

This Order of the City of Goshen Building Commissioner is issued on October 8, 2024.

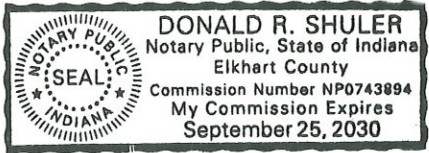
City of Goshen Building Department

  
Myron Grise, Building Commissioner

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF ELKHART        )

Before me, the undersigned, a Notary Public in and for said county and State, this October 8, 2024, personally appeared Myron Grise, Building Commissioner for the City of Goshen, Indiana, who acknowledged execution of the foregoing Order for and on behalf of the City of Goshen, Indiana Building Department, as his voluntary act for the purposes stated therein, and who, having been duly sworn, stated that the representations contained therein are true.

  
Notary Public



**Certificate of Service**

The undersigned hereby certifies that the foregoing Order of the City of Goshen Building Commissioner for the premises at 511 N. 5th Street, Goshen, Indiana was served by sending a copy by certified mail, return receipt requested and by regular first-class mail to the last known address of the following persons to be notified on October 9, 2024:

Ronald E. Davidhizar  
203 Middlebury Street  
Goshen, Indiana 46528



Donald R. Shuler, #26587-71  
Assistant City Attorney  
City of Goshen Legal Department  
204 East Jefferson Street, Suite 2  
Goshen, Indiana 46528

I affirm under the penalties for perjury that I have taken reasonable care to redact each social security number in this document, unless required by law (Donald R. Shuler).

This document prepared by Donald R. Shuler, Assistant City Attorney, City of Goshen Legal Department, 204 E. Jefferson Street, Suite 2, Goshen, IN 46526; Ph: 574.537.3855.



**CITY OF GOSHEN LEGAL DEPARTMENT**  
**Donald R. Shuler, Assistant City Attorney**

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

donshuler@goshencity.com • www.goshenindiana.org  
Phone (574) 537-3855 • Fax (574) 533-8626 • TDD (574) 534-3185

December 2, 2024

To: Board of Public Works and Safety

From: Don Shuler, Assistant City Attorney

Subject: Review Hearing – 513 N. 5th Street, Goshen, Indiana

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An unsafe building hearing is scheduled for the property located at 513 N. 5th Street, Goshen, Indiana. Attached is the Order of the City of Goshen Building Commissioner concerning the property.

The Board needs to conduct the hearing by receiving evidence and arguments from the Building Department, the property owner, and any other individual who wishes to speak to the property. After receiving the evidence and at the conclusion of the hearing, the Board may do any of the following actions:

1. Continue the matter for further review at a future date.
2. Modify the Order by, for example, providing additional time to complete repairs.
3. Rescind the Order
4. Affirm the Order.
  - a. In addition to affirming the Order, if the Board finds there has been a willful failure to comply with the Building Commissioner's Order, the Board may impose a civil penalty up to \$5,000
  - b. The effective date of the civil penalty may be postponed for a reasonable period to permit repairs to be made.

In taking any of these actions, the Board should make specific findings of fact to support to its action.

**CITY OF GOSHEN BUILDING COMMISSIONER  
UNSAFE BUILDING ENFORCEMENT AUTHORITY  
ORDER**

October 8, 2024

IN RE: Violation of Goshen City Code  
Property Address: 513 N. 5th Street, Goshen, Indiana  
Property Tax Code: 20-11-09-211-015.000-015  
Property Owner: Ronald E. Davidhizar  
Substantial Property Interest of Record: None

---

**Section 1.**

You are hereby notified that you are in violation of the City of Goshen Neighborhood Preservation Ordinance, codified at Goshen City Code § 6.3.1. The violations exist at property owned by you, as evidenced by the tax records of the Elkhart County Auditor, property tax code numbers 20-11-09-211-015.000-015; commonly known as 513 N. Fifth Street, Goshen, Indiana, and more particularly described as follows:

Forty-four (44) feet off the South side of Lot Number Fifteen (15) in Mayfields  
Second Addition to the City of Goshen, State of Indiana.

**Section 2.**

The following violations of Goshen City Code Title 6, Article 3, Chapter 1 exist at the residential structure at the real estate identified in Section 1:

1. The structure's foundation has not been kept in good repair, free from cracks and breaks, capable of supporting all nominal loads and resisting all load effects, a violation of Section 6.3.1.1(b). Areas of the foundation have formed holes; bricks around the exterior of the house are crumbling or have fallen.
2. The walls have not been kept in good repair, a violation of Section 6.3.1.1(b). Multiple walls throughout the residential structure have holes.
3. The floor has not been kept in good repair, a violation of Section 6.3.1.1(b). The floor outside of door to basement is sinking. Multiple floor beams show significant signs of decay and possible termite damage.
4. The structure's painted surfaces are not properly coated and weather tight, and metal and wood surfaces throughout, including window frames, doors, door frames, cornices, porches, and trim have not been maintained in good condition, a violation of Section 6.3.1.1(g). There is chipping and peeling paint on multiple surfaces throughout the structure.



5. There is no guardrail installed upstairs around the stairway, a violation of Section 6.3.1.1(f).
6. The electrical system has not been maintained in a satisfactory working condition nor in a manner that will permit safe operation, a violation of Section 6.3.1.1(a). The electrical panel has been tampered.
7. The heating and mechanical system has not been maintained in a satisfactory working condition, a violation of Section 6.3.1.1(a). There is no gas meter and the heating and mechanical system is in need of assessment.
8. The plumbing system has not been maintained in a satisfactory working condition nor in a manner that will permit safe operation, a violation of Section 6.3.1.1(a). There is no water meter at the real estate and has been no water usage for at least two (2) years.

In addition, the residential structure is filled with trash, storage of accumulated materials, and debris that makes it uninhabitable in its current condition. The residential structure has not been kept in a clean and sanitary condition that would permit human habitation, occupancy, or use under the City of Goshen's Neighborhood Preservation Ordinance.

Therefore, the residential structure and garage located on the real estate is unsafe within the meaning of I.C. § 36-7-9-4(a)(5) and (6). Goshen City Code Title 6, Article 3, Chapter 1's requirements are the minimum standards for all structures for purposes of health and safety. Therefore, the structure is dangerous to person or property because of a violation of a statute or ordinance concerning building condition or maintenance. Further, the structure is vacant and not maintained in a manner that would permit human habitation, occupancy, or use under Goshen City Code.

### **Section 3.**

You are hereby **ORDERED** to complete the necessary actions and repairs to the residential structure to bring the property into compliance with the minimum housing standards that permit human habitation, occupancy, or use under the Neighborhood Preservation Ordinance. Said actions and repairs, among other considerations, must include the following:

- The residential structure's foundation needs to be properly repaired, including tuck pointing, to make weather tight and to ensure the integrity of the structure.
- All crumbling or missing bricks need to be replaced.
- All holes in the walls need to be repaired.
- The floor outside the basement door needs to be assessed and properly repaired to prevent further collapse.
- Decaying and damaged floor beams need to be replaced.
- A proper guardrail needs to be installed.
- All painted surfaces need to be properly coated; chipped and peeling paint needs to be properly eliminated and surfaces repainted.
- The electrical system needs assessment by a licensed electrician and repaired/upgraded as necessary.



- The heating and mechanical system needs assessment by a licensed contractor and repaired/upgraded as necessary.
- The plumbing system needs assessment by a licensed plumber and repaired/upgraded as necessary.
- The interior of the residential structure shall have all trash, debris, and accumulated materials removed so that same permits human habitation, occupancy, or use under the Neighborhood Preservation Ordinance.

You are hereby **FURTHER ORDERED** to complete all said work within thirty (30) days.

**Section 4.**

You are hereby notified that failure to comply with this Order may result in the City of Goshen taking action to complete the required demolition and bill you for the costs of such work, including, the actual costs of the work performed and an amount equal to the average processing expense the City will incur in pursuing this matter. Such amounts can become a lien upon the real estate and can ultimately be enforced in the same manner as any other judgment. In addition, failure to comply with the Order may result in the City of Goshen Building Commissioner issuing a civil penalty pursuant to I.C. § 36-7-9-7.5 or pursuing civil action remedies pursuant to I.C. § 36-7-9-17.

**Section 5.**

**You are further notified that this Order becomes final ten (10) days after notice is given, unless you request a hearing in writing and deliver such written request for hearing to the City of Goshen Building Commissioner prior to the expiration of said ten (10) days.**

**Section 6.**

You are hereby notified that as a result of this Order being issued you may not transfer or agree to transfer any property interest in the parcel described in Section 1 of this Order, unless you have complied with all requirements of Indiana Code § 36-7-9-27, which are as follows:

1. You must supply full information regarding this Order to the person or persons taking or agreeing to take any interest in the parcel described in Section 1 of this Order.
2. You must supply in writing to the City of Goshen Building Department, within five (5) days of any actions to transfer the interest, the following:
  - a. The full name, address, and telephone number of the person or persons taking interest in the property described in Section 1 of this Order; and
  - b. A copy of the legal instrument under which the transfer of the interest is accomplished.

**Section 7.**

You are hereby notified that failure to comply with Section 6 of this Order may result in a judgment of liability against you in accordance with Indiana Code § 36-7-9-27.

**Section 8.**

This Order is issued by the City of Goshen Building Commissioner, Myron Grise, in accordance with the Indiana Unsafe Building Law and the City of Goshen Neighborhood Preservation Ordinance. The address of the Building Commissioner is 204 E. Jefferson Street, Suite 5, Goshen, Indiana 46528, and the telephone number is 574-534-1811.

This Order of the City of Goshen Building Commissioner is issued on October 8, 2024.

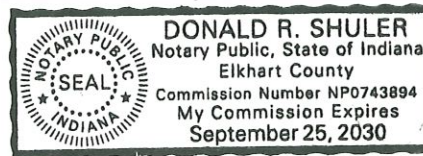
City of Goshen Building Department

  
Myron Grise, Building Commissioner

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF ELKHART        )

Before me, the undersigned, a Notary Public in and for said county and State, this October 8, 2024, personally appeared Myron Grise, Building Commissioner for the City of Goshen, Indiana, who acknowledged execution of the foregoing Order for and on behalf of the City of Goshen, Indiana Building Department, as his voluntary act for the purposes stated therein, and who, having been duly sworn, stated that the representations contained therein are true.

  
\_\_\_\_\_  
Notary Public



**Certificate of Service**

The undersigned hereby certifies that the foregoing Order of the City of Goshen Building Commissioner for the premises at 513 N. 5th Street, Goshen, Indiana was served by sending a copy by certified mail, return receipt requested and by regular first-class mail to the last known address of the following persons to be notified on October 9, 2024:

Ronald E. Davidhizar  
203 Middlebury Street  
Goshen, Indiana 46528



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Donald R. Shuler, #26587-71  
Assistant City Attorney  
City of Goshen Legal Department  
204 East Jefferson Street, Suite 2  
Goshen, Indiana 46528

I affirm under the penalties for perjury that I have taken reasonable care to redact each social security number in this document, unless required by law (Donald R. Shuler).

This document prepared by Donald R. Shuler, Assistant City Attorney, City of Goshen Legal Department, 204 E. Jefferson Street, Suite 2, Goshen, IN 46526; Ph: 574.537.3855.