

# CITY OF GOSHEN, INDIANA



## INVITATION FOR BIDS SPECIFICATION DOCUMENTS

**Description:** Purchase of two (2) Chassis/Cab units

**Department:** Water & Sewer Department

**Due Date and Time:** April 25, 2024 at 3:45 P.M.

**Contact:** Brandy L. Toms

**Email:** [brandytoms@goshencity.com](mailto:brandytoms@goshencity.com)

**Telephone Number:** (574) 537-3816

**CITY OF GOSHEN INVITATION FOR BIDS**  
**FOR THE PURCHASE OF TWO (2) CHASSIS/CAB**  
**UNITS**

The City of Goshen Board of Public Works and Safety is soliciting sealed offers for two (2) 2024 or newer chassis/cab units for use in the City of Goshen’s Water & Sewer Department. The Board of Public Works and Safety is hereinafter referred to as “City”.

The Specification Documents may be obtained from the City of Goshen’s Clerk-Treasurer’s Office, 202 South Fifth St., Goshen, IN 46528 or the City of Goshen’s current Bidding Opportunities portal at <https://goshenindiana.org/bidding-opportunities>. The City shall not be responsible for documents obtained from any other source.

Offers shall be submitted in accordance with the Instructions to Bidders and all contractual terms and conditions that are included in the Specification Documents. In addition to price, offers will be evaluated based on whether the Bidder is responsible, and if the Bidder’s offer is responsive.

Offers shall be filed with the City of Goshen Clerk-Treasurer’s Office, 202 South Fifth Street, Goshen, IN 46528 until **3:45 p.m. April 25, 2024** at which time all offers received will be taken to the Board of Public Works and Safety meeting to be publicly opened and read aloud. The Board meeting will be held in City Court Room/Council Chambers at the Goshen Police & Court Building, 111 East Jefferson Street, Goshen.

The City of Goshen Board of Public Works and Safety reserves the right to reject any and all offers, delete any portions thereof, to waive any informalities or irregularities in any bid received, and to award a contract, consistent with Indiana law, to the lowest responsible and responsive Bidder. Award of contract is contingent on the availability of funds.

## **INSTRUCTIONS TO BIDDERS**

This section contains instructions regarding the preparation and submittal of offers. Please note these instructions may not contain all applicable requirements. Careful reading of the entire solicitation is critical. Failure to read the solicitation in its entirety or to follow the instructions may lead to the rejection of your offer. For the context of this solicitation, the use of the words contractor, vendor, supplier, or bidder all have the same meaning for the company/business submitting an offer.

### **1. Examination and Representation.**

Before submitting an offer, the bidder shall carefully examine these Specification Documents to fully inform themselves with the limitations and conditions under which the goods, supplies, materials and/or equipment is to be provided/purchased for this project and all other relevant matters that may affect the cost, progress, performance or furnishing of the goods, supplies, materials and/or equipment including applicable local, state, or federal laws and regulations.

The bidder agrees that the bidder shall make no claim against the City of Goshen because of estimates or statements made by any officer or agent of the City, which may prove to be in any respect erroneous, are inconsistent or an addition to any terms or conditions of these written documents. The failure or omission of any bidder to receive or examine any form, instrument, addendum, or other document shall in no way relieve the bidder of any obligations with respect to its offer submitted or contract executed.

### **2. Requests for Clarifications and Addenda.**

All requests for clarification to this solicitation must be received at least two (2) business days before the opening date to allow for the issuance of any addendums determined by the City to be necessary. Requests shall be made in writing and may be directed to the City of Goshen Legal Department, Municipal Building Annex, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, or emailed to the attention of the Legal Department at [legal@goshencity.com](mailto:legal@goshencity.com).

Inquiries should reference the applicable section, paragraph, and/or page number. Interpretations or clarifications determined necessary by the City in response to such questions will be issued by addenda mailed, faxed or otherwise delivered to all parties recorded by the City as having received Specification Documents. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

### **3. Specifications and Exceptions.**

Unless stated otherwise in this solicitation, the goods, supplies, materials and/or equipment requested shall be that which is under standard production at the time of the order, and no used or refurbished items will be accepted. Unless specifically stated otherwise in the solicitation, the name of a certain brand, model or manufacturer referenced in the specification is not intended to restrict competition, but is to indicate the general style, type, character, and quality of the product desired. A bidder may offer any brand, model or manufacturer which meets or exceeds that named in the specifications, provided the bidder can demonstrate that the exception will meet or exceed the needs of the City.

The goods, supplies, materials and/or equipment described in the Specification Documents establish minimum requirements or a standard of required function, dimension, appearance or quality. It is not the intent of the City to write out manufacturers or Suppliers of the goods, supplies, materials and/or equipment that are equal or better than what is specified.

The bidder shall indicate their compliance with the detailed specifications by indicating either YES or NO after each applicable section on the 'Detailed Specifications' section. Indicating YES shall mean that the bidder fully complies with the specifications as written; indicating NO shall mean an exception is being taken.

The bid shall clearly detail in writing any deviation from or exception taken to the stated specifications. Any product, materials or method that the City of Goshen, in its sole discretion, determines to be equal or better to that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended will be considered, provided the bidder submits information that details how the method, goods, supplies, materials and/or equipment offered for substitution will meet or exceed the minimum requirements of criteria and quality to that named in the Specification Documents. In the absence of any stated deviation or exception, the bid will be accepted as in strict compliance with all terms, conditions and specifications, and the bidder shall be held liable for strict compliance.

**4. Voluntary Alternates.**

If a bidder has an alternate offer that the bidder believes would meet the needs of the City of Goshen, the bidder may submit the alternate offer in addition to an offer based on the City's Specification Documents. An alternate offer will be individually considered as a voluntary alternate and will be subject to the approval and acceptance of the City. A voluntary alternate will not, however, be considered in the determination of the lowest responsible and responsive bidder unless City deems such an alternate to be equal or better than the requirements of the Specification Documents.

**5. Descriptive Literature.**

Bidders shall submit with their offer the manufacturer's name of the product to be furnished, type, model numbers, manufacturer's descriptive bulletins and specifications. It is the Supplier's responsibility to clearly identify the goods, supplies, materials and/or equipment being offered and to provide sufficient descriptive literature, catalog cuts, technical data, etc. to enable the City to determine if the goods, supplies, materials and/or equipment offered meets the requirements of the solicitation. Failure to furnish adequate data for evaluation purposes may result in deeming your offer non-responsive.

**6. Qualification of Bidders.**

- A. Bidders submitting offers shall be limited to individuals, partnerships and corporations actively engaged in provision/production of goods, supplies, materials and/or equipment comparable to what is described in these Specification Documents.
- B. Bidders must demonstrate their qualifications and suitability to carry out the terms of the Specification Documents., and must have in their possession or available to them by formal agreement all labor, equipment, supplies and operational facilities which are necessary to provide the goods, supplies, materials and/or equipment as outlined in these Specification Documents. The City reserves the right to request additional proof of these qualifications, and reserves the right to reject any offer where an investigation of the evidence or information submitted by a bidder does not satisfy the City that the bidder is qualified to carry out the terms of the Specification Documents.

**7. Trusts.**

In accordance with Indiana Code 5-22-3-5, an offer submitted by a trust (as defined by Indiana Code 30-4-1-1) must identify the beneficiary of the trust and the settlor empowered to revoke or modify the trust.

**8. Business Certification.**

The bidder must complete the Business Certification page to identify the form of business organization the bidder is operating under (i.e., sole proprietor, partnership, corporation, etc.)

A foreign (out-of-state) corporation must be registered with the Indiana Secretary of State to do business in the State of Indiana. A foreign corporation not currently registered with the Indiana Secretary of State must agree to become registered as a contingency of being awarded a contract. Failure to register with the Secretary of State's Office may result in a determination that a corporation is non-responsible and a

contract awarded to that corporation may be canceled.

### **9. Non-Collusion.**

All bidders must sign and have notarized the Non-Collusion Affidavit to certify that the bidder has not entered into a combination or agreement relative to the price to be offered by any person; to prevent a person from quoting; or to induce a person to refrain from quoting; and that the bidder's offer is made without reference to any other bid. Any offer found to be collusive will be rejected. Should the City discover that the successful bidder's affidavit is false, the City shall declare the contract forfeited and award a new contract.

### **10. Preparation and Submittal of Offers.**

- A. Bidders must complete and submit all pages/forms requesting information that are included with this solicitation. Offers shall be typed or legibly printed in ink. The offer must be signed by an authorized representative of the bidder. An offer may be rejected if any required forms or information requested are incomplete or omitted and/or if an offer contains any alterations or erasures that are not initialed by the person signing the offer.
- B. All offers shall be submitted in a sealed envelope. The envelope must be labeled with the following information:
  1. Bidder's name and address;
  2. The words, "**Two (2) 2024 chassis/cab units**"; and
  3. Date and time of opening (as indicated on the Invitation for Bids).
- C. If an offer is sent through the mail or other delivery system, the sealed envelope should be enclosed in a separate envelope with the notation "**BID ENCLOSED**" on the face of the outer envelope.
- D. In order to protect the integrity of the sealed quoting process, failure to properly identify an offer according to these instructions may result in a disqualification of an offer from consideration.
- E. Offers shall be filed with the City of Goshen Clerk-Treasurer's Office, 202 South Fifth Street, Goshen, Indiana 46528 by the specified opening date and time. Offers arriving after the specified time will not be accepted. The City of Goshen is not responsible for late or lost offers due to mail service inadequacies, traffic or other similar reasons.
- F. No facsimiles or emails of offers will be accepted.
- G. All offers submitted become the property of the City and are a matter of public record.
- H. Response to this solicitation is an offer to contract with the City of Goshen.

### **11. Withdrawal or Modification of Offers.**

Any modifications made to an offer before submittal must be initialed in ink by the bidder's authorized representative. A bidder may, upon written request, modify or withdraw their offer at any time prior to the opening date and time. A request to modify or withdraw an offer must be signed by the same person or persons who signed the original offer submitted. No offer may be modified or withdrawn after the opening of the offers.

### **12. Alteration or Variation of Terms.**

The terms and conditions of the award will be those listed in this solicitation package and the resulting contract. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this solicitation or resulting contract shall be binding unless specifically agreed to in writing by the City. Further, no oral understanding or agreement shall be binding unless specifically agreed to in writing by the City.

### **13. Opening of Offers.**

The offers received will be opened in public by the Board of Public Works and Safety at the time and place shown on the Invitation for Bids. The reading of the offers, however, does not determine the award of the contract.

### **14. Award.**

- A. The City of Goshen reserves the right to reject any and all offers, delete any portions of the project, or to waive any informalities or irregularities in any offer received.
- B. In evaluating offers, the City may consider:
  - (1) Whether the bidder has submitted an offer that conforms in all material respects to the Specification Documents.
  - (2) Whether the bidder has submitted an offer that complies specifically with the Specification Documents.
  - (3) Whether the bidder has complied with all applicable statutes, ordinances, resolutions, or rules pertaining to the award of a contract.
  - (4) The qualifications of the bidder, including the ability and capacity of the bidder to provide the goods, supplies, materials and/or equipment described in the Specification Documents; the integrity, character, and reputation of the bidder; and the competence and experience of the bidder.
  - (5) Cost of the goods, supplies, materials and/or equipment to be purchased, including which alternate is most advantageous to the City where alternate offers are submitted.
- C. If a contract is awarded, the City will award a contract to the lowest responsible and responsive bidder provided a mutually agreed to contract is negotiated that is consistent with the terms and specifications of the Specification Documents.
- D. The bidder to whom a contract is awarded will be required to execute a written contract (See sample in Exhibit A) within fourteen (14) calendar days after award by the Board of Public Works and Safety.

## GENERAL INFORMATION

### **IN GENERAL:**

The purpose of this document is to provide minimum specifications for two (2) 2024 or newer chassis/cab units that meets the needs and desires of the City of Goshen Water & Sewer Department. It establishes essential criteria for the design, performance, equipment, and appearance of the two (2) chassis/cab units. The objective is to provide two (2) chassis/cab units that are in accordance with nationally recognized guidelines.

The chassis/cab units, devices, accessories, and equipment to be delivered under this contract shall be standard commercial products tested and certified to meet or exceed the requirements of this specification and all applicable local, state and federal regulations and standards. The chassis/cab units and equipment shall comply with all applicable laws in effect at date of contract for purchase.

At a minimum, the Supplier shall guarantee the two (2) chassis/cab units to be warranted free from defective materials and workmanship bumper to bumper for a period of at least three (3) years or 36,000 miles and the power train warranty is five (5) years or 60,000 miles, from the date the two (2) chassis/cab units are put into service by the city. Under this guarantee, the Supplier agrees to make good without delay and at the Supplier's own expense any failure of the equipment due to faulty components, parts or construction. A description of the warranty is required on the equipment.

Offered price shall include delivery to Goshen Central Garage, 320 Steury Ave., Goshen IN.

Delivery shall be on or before one (1) year from receipt of a notice to proceed from the City.

These are minimum specifications. Bidder must address compliance section. If any part of an item that is not in compliance than that item must be marked "no" an explanation can be provided on a separate sheet with the benefits of that item to the city. A no will not automatically exclude a bid. It will be up to the purchaser's discretion on what items will be termed equal. Any items not listed on the exception sheet will be assumed to be part of the unit. Bidders must submit with their bid a complete specification on the unit they purpose to furnish. Original copies of vehicle specifications and literature must be provided with the bid. Fax copies or unreadable copies of literature or specifications will not be allowed.

**DETAILED SPECIFICATIONS  
2024 CHASSIS CAB**

<b>Exterior:</b>	Yes	No
Standard Cab		
Front tow hooks		
Heated mirrors		
Exterior color to be Red		
Fuel tank to be 40 gallons aft of rear axle		
7 wire trailer wiring with blunt cuts at rear of frame		
Back-up alarm		
Skid plates		
Cab entry steps		
<b>Mechanical:</b>		
V-8 gas engine		
10 speed automatic transmission with PTO provision		
4 Wheel drive with manual locking hubs		
Rear locking differential (4:88 gear ratio)		
Snow plow prep		
Spare tire and wheel		
19,500 GVW		
165-inch wheel base		
C/A to be 84 inches		
Dual alternators		
Dual Batteries		
4 Wheel disc brakes		
<b>Interior:</b>		
Convenience package		
Rubberized floor covering		
HD Vinyl seat coverings 40/20/40 split bench		
Integrated trailer brake controller		
Back-up camera kit for upfitter		
2 extra keys (no fobs)		
AM/FM Radio hands free capable		
Upfitter switches (6 total)		



# ITEMIZED BID

## PURCHASE OF TWO (2) CHASSIS/CAB UNITS

The original signed proposal must be submitted to the City of Goshen Clerk-Treasurer's Office, 202 South 5th Street, Goshen, Indiana 46528, by the specified due date and time to receive consideration. The Supplier certifies that the information provided by it in its offer is accurate and complete. The execution of this proposal is certification that the undersigned individual represents the Supplier and has read and understands the instructions, terms, conditions and specifications of this solicitation, and agrees to fulfill the requirements of any awarded contract at the prices offered. By executing this offer, the undersigned individual further certifies that they are duly authorized to execute contracts on behalf of the Supplier and have obtained all necessary or applicable approvals to make this contract fully binding upon the Supplier.

**Supplier:**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**Address:** \_\_\_\_\_

**Telephone Number (s): Business:** \_\_\_\_\_ **Cell:** \_\_\_\_\_

**Acknowledgement of Addenda Number(s):** \_\_\_\_\_

The above bidder hereby submits the following offer to meet all of the requirements in the Specification Documents for the following cost:

ITEM NO.		TOTAL BID:
1	<b>2024 or newer chassis/cab unit (x2)</b> Year: _____ Make: _____ Model: _____	

**DELIVERY:** The goods, materials and/or equipment to be purchased for this project shall be delivered within one (1) calendar year from receipt of a notice to proceed from the City. (Please refer to page 7, General Terms and Conditions, #1 Delivery; Liquidated Damages of this Specifications Document.)



**BUSINESS CERTIFICATION**

Contractor must complete this page to identify the form of business organization the Contractor is operating under.

A limited partnership, limited liability partnership, limited liability company, and corporation is required to be registered with the Indiana Secretary of State to do business in the state of Indiana and with the City of Goshen in order to be considered responsible. If the business entity is not currently registered with the Indiana Secretary of State, the business entity must agree to become registered as a contingency of being awarded a contract. Failure to register with the Indiana Secretary of State within a reasonable period of time may result in a determination that the business entity is non-responsible and a contract awarded may be cancelled. This requirement DOES NOT apply to a sole proprietorship or general partnership.

The Contractor is operating as a (check one):

<input type="checkbox"/> Contractor is a SOLE PROPRIETORSHIP	<input type="checkbox"/> Contractor is a LIMITED LIABILITY PARTNERSHIP
<input type="checkbox"/> Contractor is a GENERAL PARTNERSHIP	<input type="checkbox"/> Contractor is a LIMITED LIABILITY COMPANY
<input type="checkbox"/> Contractor is a LIMITED PARTNERSHIP	<input type="checkbox"/> Contractor is a CORPORATION

The Contractor, excluding a sole proprietorship or general partnership, is organized under the laws of the (complete one):

\_\_\_\_\_ State of \_\_\_\_\_ and is currently registered with the Indiana Secretary of State. The Business ID number for the Contractor is \_\_\_\_\_.

\_\_\_\_\_ State of \_\_\_\_\_ but IS NOT currently registered with the Indiana Secretary of State. By submitting this proposal, the Contractor agrees to register with the Indiana Secretary of State as a contingency of being awarded a contract.

Information concerning registration with the Indiana Secretary of State may be obtained by contacting the Indiana Secretary of State, Business Services Division, 302 W. Washington Street, Room E018, Indianapolis, IN 46204; (317) 234-9768; or <https://inbiz.in.gov/BOS/Home/Index>.

**NEPOTISM DISCLOSURE**

For the purpose of complying with Indiana Code § 36-1-21, identify below whether:

\_\_\_\_\_ Contractor **IS NOT** a relative of a City of Goshen elected official.

\_\_\_\_\_ Contractor **IS** a relative of a City of Goshen elected official. This includes an individual who 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. Please specify the relative(s) below:

Name of elected official: \_\_\_\_\_

Relationship to Contractor: \_\_\_\_\_

**SIGNATURE**

The undersigned certifies that Contractor has read and understands the instructions, terms, conditions and specifications of this solicitation. Contractor agrees to fulfill the requirements of any awarded contract at the prices proposed based on the terms and conditions of all Specification Documents, including all Addenda. The undersigned authorized representative further certifies that he/she is duly authorized to submit this proposal and execute a contract on behalf of Contractor. Signature by the Contractor’s authorized representative constitutes execution of each any every Part of this Proposal.

**SIGNATURE MUST BE NOTARIZED**

Contractor’s Authorized Representative:

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

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

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned Notary Public in and for said County and State, personally appeared the above named \_\_\_\_\_, being known to me or whose identity has been authenticated by me, who affirmed that the statements in the foregoing Contractor’s Proposal are true and correct.

Witness my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public of \_\_\_\_\_ County, \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_

## **EXHIBIT A – Sample Contract**

The following pages are a sample of a contract format that the City has used in past projects. The City and the successful bidder will negotiate a contract incorporating the City's specifications and addressing other legal issues beyond the specifications.

*[This space intentionally left blank]*

# SAMPLE CONTRACT

## PURCHASE AGREEMENT OF TWO (2) 2024 OR NEWER CHASSIS/CAB UNITS

THIS PURCHASE AGREEMENT (“Agreement”) is entered into on \_\_\_\_\_, 2023, which is the last signature date set forth below, by and between **OtherParty** (“Supplier”), whose mailing address is \_\_\_\_\_, 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:

### Effective Date

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

### Purchase;

- (A) Subject to the terms and conditions set forth in this Agreement, Supplier shall provide to City the items, goods, materials, or equipment (hereinafter referred to as “Supplies”) as specified in accordance with the attached Specifications entitled “Detailed Specifications” attached as Attachment A.
- (B) In the event of any conflict between the terms of this Agreement and the terms contained in the Specifications (Attachment A) or Supplier’s Proposal (Attachment B), the documents shall be given precedence in order as listed (this Agreement first, Specifications second, and Proposal third).

### Delivery

- (A) Supplier agrees to deliver all supplies within one (1) calendar year from the effective date of this agreement.
- (B) The Supplies shall be delivered FOB Destination to the following address:
  - City of Goshen Central Garage
  - 230 Steury Ave
  - Goshen, IN 46528
- (C) All deliveries shall be made Monday through Friday, excluding holidays, during normal business hours unless other prior arrangements are made with City.
- (D) Delivery date shall be the date the complete items, goods, materials, or equipment (“Supplies”), installed and/or ready to operate (if applicable), has been delivered to City.

- (E) To be accepted, the Supplies must successfully pass an inspection by City. The inspection shall include an operational test (if applicable) to ensure the Supplies meet both the specifications and are operable. Unless otherwise noted in the specifications, the inspection will be completed within fifteen (15) calendar days of the delivery date. Unless otherwise noted in the specifications, the warranty for the Supplies shall become effective on the date of acceptance. Acceptance also requires the delivery of all manuals, ownership papers, and a certificate of origin, if required, for the Supplies.

**Purchase Price; Payment**

- (A) City agrees to compensate Supplier for the Supplies provided in accordance with Supplier's proposal the sum of \$\_\_\_\_\_. This compensation is based on a purchase price of \$\_\_\_\_\_ for the Supplies and a trade in allowance of \$\_\_\_\_\_.
- (B) The invoice shall be sent to the following address, or at such other address as City may designate in writing.

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

**Inspection**

- (A) Supplier shall conduct final inspections on all Supplies prior to delivery to City. City has the right to inspect the Supplies to the extent practicable, at any time and place. If City determines as a result of inspection that the Supplies do not conform to all requirements of this Agreement, City may at City's sole option and discretion:
  - (1) require Supplier, at Supplier's sole cost, promptly to correct the defects to the non-conforming Supplies where practicable; or
  - (2) reject the non-conforming Supplies and require Supplier, at Supplier's sole cost, to complete the order by delivering conforming Supplies.
- (B) When the defects for any Supplies cannot be corrected practicably, City may at City's sole option and discretion:
  - (1) by contract or otherwise, correct the defects and charge Supplier any costs incurred by City directly related to the cost of correcting the defects; or
  - (2) reduce the Agreement compensation to reflect the reduced value of the Supplies.
- (C) If Supplier fails to correct performance or take necessary action to ensure future performance, in conformity with Agreement requirements, or when the defects for any Supplies cannot be corrected practicably, City may:

- (1) require Supplier to take necessary action to ensure that future performance conforms to Agreement requirements; and/or
- (2) terminate the Agreement for default.
- (D) If, for any reason, City rejects the Supplies delivered by Supplier, City shall not be responsible for any shipping, restocking, or similar charges incurred by Supplier.
- (E) Any remedy provided by this section shall not limit City's other remedies available under this Agreement or as provided by applicable law.

### **Workmanship and Quality; Warranty**

Unless otherwise stated in the Specifications, Supplier shall guarantee the Supplies for a period of one (1) year from date of acceptance. Failure of any portion of the Supplies due to improper materials or workmanship, materials of construction or design may result, at City's option, in a refund to City of the purchase price of that portion which failed or, in the alternative, in replacement of that portion which failed at no cost to City, in addition to all other remedies provided by law and by this Agreement. City shall be the sole judge of the sufficiency of workmanship and quality of materials.

### **Independent Contractor**

Supplier shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Supplier shall be under the sole and exclusive direction and control of Supplier and shall not be considered employees, agents or subcontractors of City. As such, Supplier is solely responsible for all taxes and none shall be withheld from the sums paid to Supplier. Supplier acknowledges that Supplier is not insured in any manner by City for any loss of any kind whatsoever. Supplier has no authority, express or implied, to bind or obligate City in any way.

### **Non-Discrimination**

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

### **Employment Eligibility Verification**

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



exist. Supplier is not required to participate in the E-Verify program if Supplier is self-employed and does not employ any employees.

- (B) Supplier shall not knowingly employ or contract with an unauthorized alien, and Supplier shall not retain an employee or continue to contract with a person that the Supplier subsequently learns is an unauthorized alien.
- (C) Supplier shall require their subcontractors, who perform work under this contract, to certify to the Supplier 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. Supplier agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- (D) City may terminate the contract if Supplier fails to cure a breach of this provision no later than thirty (30) days after being notified by City of a breach.

### **Contracting with Relatives**

Pursuant to Indiana Code § 36-1-21, if the Supplier 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 Supplier certifies that Supplier 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.

### **No Investment Activities in Iran**

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

### **Indemnification**

Supplier shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against (1) 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 Supplier or any of Supplier's agents, officers and employees; or (2) any defect in materials or workmanship of any supply, material, mechanism, or other product or service which Supplier or any of Supplier's officers, agents, employees, or subcontractors has supplied to City or has used in connection with this Agreement. Such indemnity shall include reasonable attorney's fees and all reasonable litigation costs and other expenses incurred by City only if Supplier 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, if any, under this Agreement.

### **Insurance**

- (A) Prior to commencing work, the Supplier 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. Supplier 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) Supplier shall at least include the following types of insurance with the following minimum limits of liability:
  - (3) Workers Compensation and Employer's Liability - Statutory Limits
  - (4) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
  - (5) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
  - (6) Professional Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
  - (7) Excess Umbrella Coverage - \$1,000,000 each occurrence

### **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.

### **Default**

- (A) If Supplier fails to provide the Supplies or comply with the provisions of this Agreement, then Supplier may be considered in default.
- (C) It shall be mutually agreed that if Supplier fails to provide the Supplies or comply with the provisions of this Agreement, City may procure the same or similar items, goods, materials, or equipment from the open market. If the market price of those items, goods, materials, or equipment is greater than the Agreement price, Supplier shall be liable to City for the difference between the market price and the Agreement price, plus Supplier shall be liable to City for any incidental or consequential damages incurred by City as a result of Supplier's breach.
- (D) Supplier may also be considered in default by the City if any of the following occur:
  - (1) There is a substantive breach by Supplier of any obligation or duty owed under the provisions of this contract.

- (2) Supplier is adjudged bankrupt or makes an assignment for the benefit of creditors.
- (3) Supplier becomes insolvent or in an unsound financial condition so as to endanger performance under the Agreement.
- (4) Supplier 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 Supplier or any of Supplier's property.
- (6) Supplier is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Supplier unable to provide the Supplies described under this contract.
- (7) The contract or any right, monies or claims are assigned by Supplier without the consent of City.

**Termination**

- (E) The Agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties.
- (F) City may terminate this Agreement, in whole or in part, in the event of default by Supplier.
- (G) 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.

**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

Supplier: OtherParty  
 \_\_\_\_\_  
 \_\_\_\_\_

**Subcontracting or Assignment**

- (A) Supplier 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 Supplier to subcontract or assign any portion of the Agreement shall not be construed to relieve Supplier from any responsibility to fulfill all contractual obligations.

- (B) In the event that City approves of any such subcontracting, assignment or delegation, Supplier shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Supplier shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Supplier from any responsibility to fulfill all contractual obligations.

### **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.

### **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.

### **Applicable Laws**

- (A) Supplier 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) Supplier 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.

### **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.

**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.

**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.

**Entire Agreement**

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

**Authority to Bind Supplier**

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**  
**Board of Public Works and Safety**

**Supplier's name**

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date