

MINUTES of Board of Public Works & Safety and Stormwater Board

Held at Council Chambers, 111 E. Jefferson St., at 2:00 p.m. June 8, 2020

PRESENT: Mayor Jeremy Stutsman, Board Member Mike Landis, Board Member Mary Nichols

ABSENT:

Minutes of the meeting of April 27, 2020, were presented. On motion of Board Member Landis and second by Board Member Nichols, the minutes were approved as presented.

Changes to the agenda: Mayor Stutsman moved to add Item #7 Yolo Vox Agreement. Second by Board Member Landis and Items #7 was added.

ANNOUNCEMENT

Clerk Treasurer Adam Scharf read the following statement:

“We begin this meeting during a declared public health emergency covering all of the State of Indiana. Board members Landis and Nichols are participating in this meeting by electronic communication pursuant to Governor Holcomb’s Executive Orders 20-04, 20-09, 20-25 and 20-30, as well as guidance from Indiana Public Access Counsellor Luke Britt. Board member Mayor Jeremy Stutsman is physically present in City Council Chambers as we begin this meeting.”

REQUEST TO PROMOTE—JONATHAN D. MCKALIPS GPD

Police Chief Jose Miller requested Board approval to promote Jonathan D. McKalips from the rank of Sergeant to the rank of Lieutenant. Chief Miller read the memo from the packet.

Board Member Landis moved to approve the request to promote Officer McKalips, effective June 5th, 2020. Second, by Board Member Nichols and motion passed unanimously.

REQUEST TO PROMOTE—MANUEL ALDANA GARCIA GPD

Police Chief Jose Miller requested Board approval to promote Manuel Aldana Garcia from the position of Probationary Patrol Officer to the rank of Patrol Officer. Chief Miller read the memo from the packet.

Board Member Landis moved to approve the request to promote Officer Aldana, effective June 10th, 2020. Second, by Board Member Nichols and motion passed unanimously.

OPEN BIDS FOR DEMOLITION OF 217 WEST WILDEN AVENUE

Mayor Stutsman opened the following bids for the demolition of 217 West Wilden Avenue. Below are the quotes received:

COMPANY	TOTAL
B & E	\$17,250
Jerry Reed Excavating	\$12,600
John Ward Concrete	\$13,600
Advanced Excavating, LLC	\$14,800

Mayor Jeremy Stutsman moved to refer the bids to the Legal Department for review and recommendation. Second by Board Member Landis and motion passed unanimously.

AWARD BIDS FOR EAST GOSHEN WATER MAIN REPLACEMENT (JN: 2019-0037)

Administrative Engineer Bryce Gast requested Board approval to award the contract to Selge Construction. All bids received are shown below:

COMPANY	TOTAL
TGB Unlimited	\$1,296,000.00 A) \$315,000.00 B) \$350,000.00
CV Excavating	\$1,951,000.00 A) \$364,182.28 B) \$388,002.14
Selge Construction	\$766,029.75 A) \$253,041.00 B) \$272,198.50
HRP Construction	\$1,089,000.00 A) \$168,992.50 B) \$192,286.50

Board Member Landis moved to approve the request for Goshen Engineering to approve the Contract with Selge Construction for construction of the E. Goshen Water Main Replacement project for Base Bid plus Alt. B in the amount of \$1,038,228.25. Second by Board Member Nichols and motion passed unanimously.

ROAD CLOSURE REQUEST- WILDEN AVENUE BRIDGE

Administrative Engineer Bryce Gast requested Board approval for the road closure of Wilden Avenue at the bridge over Rock Run Creek on Monday, July 13, 2020, for Elkhart County to perform maintenance. Memo included in packet.

Board Member Landis moved to approve the closure of Wilden Avenue at the bridge over Rock Run Creek on Monday, July 13, 2020, for Elkhart County to perform maintenance. Second by Board Member Nichols and motion passed unanimously.

ROAD CLOSURE REQUEST- S. 7th ST.

Resident Julia Gautsche requested approval of the board for the closure of S. 7th St. immediately south of Purl St. for the width of the first two (2) residential lots. The request is for 1pm to 7pm on Saturday, September 5, 2020 for a private wedding.

Board Member Landis moved to approve the request to close S. 7th St immediately south of Purl St. for the width of the first two (2) residential lots on September 5, 2020 for a private wedding from 1pm to 7pm. Second by Board Member Nichols and motion passed unanimously.

WATER & SEWER UNPAID FINAL ACCOUNTS

Utility Billing Office Manager Kelly Saenz requested board approval to move uncollected final accounts from active to Collection, Sewer Liens and Write-offs. Memo included in packet.

Board Member Landis moved to approve the request to move the uncollected finalized accounts from active to Collection, Sewer Liens and Write Offs, accounts final thru Tuesday, December 31, 2019 for the amount of \$6,277.03. Second by Board Member Nichols and motion passed unanimously.

CONTRACTUAL WRITE-OFFS (2016)

Fire Chief Dan Sink requested board approval for the Contractual Write-offs for ambulance services. Collection rate is 74% (correction from info in packet). Memo included in packet.

Board Member Landis made a motion to approve the request for permission to write off the contractual amounts and bad debts for January 01, 2016 thru December 31, 2016 for the amount of \$843,485.07. Second by Board Member Nichols and motion passed unanimously.

CONTRACTUAL WRITE-OFFS (2017)

Fire Chief Dan Sink requested board approval for the Contractual Write-offs for ambulance services. Collection rate is 63%. Memo included in packet.

Board Member Landis made a motion to approve the request for permission to write off the contractual amounts and bad debts for January 01, 2017 thru December 31, 2017 for the amount of \$412,442.70. Second by Board Member Nichols and motion passed unanimously.

RESOLUTION 2020-20

City Attorney Bodie Stegelmann requested board approval for the Quit Claim Deed for Real Estate located at 716 N. 5th St. Memo included in packet.

Board Member Landis made a motion to approve Resolution 2020-20 and the execution of the Quit Claim Deed for real estate at 716 N. 5th St. Second by Board Member Nichols and motion passed unanimously.

AGREEMENT WITH YOLO VOX

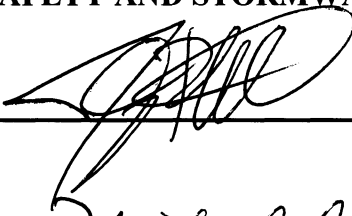
Mayor Jeremy Stutsman requested board approval for the Agreement with Yolo Vox to provide Spanish language video regarding COVID-19. Memo attached.

Board Member Landis made a motion to approve the agreement with Yolo Vox to provide Spanish Language video at a cost not to exceed \$2,980.00 and that shall be completed within 2 weeks from receipt of a notice to proceed. Second by Board Member Nichols and motion passed unanimously.

Mayor Stutsman moved to process civil city and utility claims and to adjourn. Second by Board Member Landis and motion passed unanimously.

BOARD OF PUBLIC WORKS AND SAFETY AND STORMWATER BOARD:

CHAIR JEREMY STUTSMAN



BOARD MEMBER MICHAEL LANDIS



BOARD MEMBER MARY NICHOLS



ATTEST



CLERK-TREASURER ADAM SCHARF



**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

June 8, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Agreement with Yoloxochitl Lopez Demarco d/b/a Yolo Vox

The City wishes to contract with Yoloxochitl Lopez Demarco d/b/a Yolo Vox to create a Spanish language video to reach the City's Hispanic community relative to the need to guard against the spread of the COVID-19 virus.

Work on the project shall be completed within 2 weeks from receipt of a notice to proceed and the total cost for all work shall not exceed \$2,980.00

Suggested motion: Move to enter into an agreement with Yoloxochitl Lopez Demarco d/b/a Yolo Vox to provide a Spanish language video at a cost not to exceed \$2,980.00 and that shall be completed within 2 weeks from receipt of a notice to proceed.

AGREEMENT

Spanish Language Safety Video Relative to COVID-19 Virus

THIS AGREEMENT is entered into on this ____ day of _____, 2020, between Yoloxochitl Lopez Demarco d/b/a Yolo Vox, hereinafter referred to as “Consultant”, and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as “City”.

WHEREAS, the City wishes to reach the City’s Hispanic community relative to the need to guard against the spread of the COVID-19 virus.

WHEREAS, the City desires to contract with Consultant, and Consultant agrees to create a Spanish language video

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

SCOPE OF SERVICES

Consultant shall provide all labor, equipment, materials, tools, supplies, insurance, supervision, work and all other items necessary to perform and complete in a professional manner a Spanish language video to reach the City’s Hispanic community on the importance of physical distancing relative to guard against the spread of the COVID-19 virus.

Consultant shall design, create and implement one (1) complete 60 second video campaign in Spanish for Goshen's local Hispanic community and from that 60 second video, use the content to make one (1) 30 second version. The 30 second version shall be a rearrangement of shots from the 60 second video so that it appears to be slightly different from the 60 second video. Once the videos are produced, Consultant shall export in audio formats for further use in Spanish media and radio stations.

Consultant shall maintain ongoing communications with the City throughout the project and shall assist and advise the City with media relations including marketing and distribution and other on-going tasks.

Consultant’s services shall also include:

Pre-production:

- Provide the City a minimum of two (2) different scripts for City’s approval.
- Create the video treatment/story board and needed strategies.
- Recruit and hire local talent at Consultant’s own expense.
- Coordinate the production schedule.

Production:

- Organize scenes for the actors and run the equipment on the days of the shoot
- Provide high quality sound and footage
- Set up the equipment, shoot and tear down

Post-production:

- Complete rough edits of each video for City’s review.
- Incorporate City’s feedback and provide for up to two (2) reviews and re-edits of the videos by the City.
- Add special motions/graphics, licensed music for proper usage of video.

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

TERM OF THE AGREEMENT

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

Consultant's services shall begin as soon as practical after receiving a notice to proceed from the City and the videos and audio formats shall be completed within two (2) weeks from receipt of a notice to proceed.

COMPENSATION

The City agrees to compensate Consultant for the services in this agreement in accordance with Consultant's quoted fee schedule as set forth in the table below based on hours actually worked on the project for an amount not exceed Two Thousand Nine Hundred Eighty Dollars (\$2,980.00).

Task	Est Hours	Rate	Cost
Pre-production (quick turnaround)	31	\$40/hr	\$1,240.00
Production	5	\$100/hr	\$500.00
Post-production	9	\$100/hr	\$900.00
Assistance with media relations, video	6	\$40/hr	\$240.00
Equipment depreciation cost			<u>\$100.00</u>
			\$2,980.00

Mileage reimbursement \$0.58/mile to and from film spots if outside of TBD Goshen

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

INDEPENDENT CONTRACTOR

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

NON-DISCRIMINATION

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

INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its agents, officers, and employees from any and all liability, obligations, claims actions, causes of action, judgments, liens, damages, penalties or injuries arising out of any intentional, reckless or negligent act or omission by Consultant or any of their officers, agents, officials, and employees, during the performance of services under this Agreement with the City of Goshen. Such indemnity shall include attorney's fees and all costs and other expenses incurred by the City, and shall not be limited to insurance required under the provisions of this Agreement.

INSURANCE

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

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

General Liability Combined Bodily Injury and Property Damage
\$1,000,000 Each Occurrence and \$2,000,000 Aggregate

Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a change in the policy that would not meet the minimum limits of liability set forth above.

FORCE MAJEURE

Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.

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

BREACH

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

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

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

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

TERMINATION

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

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

Upon termination for any reason, the City shall be entitled to the use of all plans, drawings, specifications and other documents and videos pertaining to the project prepared by Consultant under this Agreement.

OWNERSHIP OF DOCUMENTS

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

ASSIGNMENT

Neither party shall subcontract or assign any right or interest under the contract, including the right to payment, without having prior written approval from the other. Such approval shall not be unreasonably withheld. Any attempt by either party to subcontract or assign any portion of the contract shall not be construed to relieve that party from any responsibility to fulfill all contractual obligations.

MODIFICATIONS

It is mutually understood and agreed that no alteration or variation of the terms in this Agreement including the scope of services, completion of services and compensation, and that no alteration or variation of the conditions of this Agreement shall be binding unless specifically agreed to in writing by the parties. Any modification or amendment to the terms and conditions of the Agreement shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the Agreement shall be of no force and effect.

NOTICES

All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in the Agreement. Notice will be considered given three (3) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

Address for notices to the City:

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

Address for notices to Consultant:

Yolo Vox
Attention: Yolo Lopez DeMarco
PO Box 1063
Goshen IN 46526

APPLICABLE LAWS

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

MISCELLANEOUS

- A. Any 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 requirements shall govern.
- B. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.
- C. In the event legal action is brought to enforce or interpret the terms and conditions of this Agreement, the non-prevailing party will pay all costs incurred by the prevailing party including reasonable attorney's fees.

CONTRACTING WITH RELATIVES

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

SEVERABILITY

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

BINDING EFFECT

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

ENTIRE AGREEMENT

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

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

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

**Yoloxochitl Lopez DeMarco
d/b/a Yolo Vox**

Jeremy P. Stutsman, Mayor

Yoloxochitl Lopez DeMarco

Mary Nichols, Member

Date: _____

Michael Landis, Member

Date: _____