



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

Regular Meeting Agenda

**4:00 p.m., May 8, 2025**

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:** May 1, 2025 Regular Meeting

### **Approval of Agenda**

**1) Police Department request:** Approve the temporary closure of the 100 block of East Jefferson Street on Tuesday, May 13, 2025, from 10 a.m. until 2 p.m., for a National Police Week Ceremony by the Goshen Police Department

**2) Cortado Café request:** Approve blocking public parking spaces with a 20-yard dumpster in the parking lot behind Snyder's Men's Shop for two days during the week of May 11, 2025 to dispose of trash from 132 South Main Street

**3) Maple City Market request:** Approve the closure of the sidewalk and three parking spaces at Maple City Market, 314 South Main St., starting May 9, to replace a sidewalk slab

**4) Business request:** Approve sewer relief for Donald L. Shaum, partner, DJSJ, LLC

**5) Legal Department request:** Approve the Maintenance Agreement with Cherry Creek, LLC as presented, and authorize the Mayor to execute the Agreement on the City's behalf

**6) Legal Department request:** Approve and authorize the Mayor to execute the Amended and Restated Client Service Agreement with Utility Associates, Inc. for the supply of equipment, software and services for use of the Goshen Police Department for a yearly cost of \$107,857.60

**7) Legal Department request:** Approve and authorize Mayor Leichty to execute the agreement with H2O Towers LLC for the Cleaning of Sherk Water Tower at a cost of \$7,450

**8) Engineering Department request:** Authorize the Mayor to sign the professional service agreement with JPR for \$15,785 for the development of the City's standard specifications

### **Privilege of the Floor**

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

### **Adjournment**



## **BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD**

### **MINUTES OF THE MAY 1, 2025 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 MINUTES:** Mayor Leichty presented the minutes of the April 24, 2025 Regular Meeting as prepared by Clerk-Treasurer Aguirre. Board member Mike Landis made a motion to approve the minutes as presented. Board member Barb Swartley seconded the motion. The motion passed 5-0.

**REVIEW/APPROVE AGENDA:** Mayor Leichty presented the agenda with two additions proposed by the Clerk-Treasurer: agenda item #9, *Brinkley RV request: Approve the installation of a 16'x39' temporary stone drive at 2482 Century Drive* and agenda item #10, *Maple City Market request: Approve City-provided temporary fencing for Spring/Summer events*. Board member Landis made a motion to approve the agenda as presented. Board member Swartley seconded the motion. The motion passed 5-0.

#### **1) Fire Department request: Approve the partial closure of five downtown streets for the Memorial Day Parade (Monday, May 26, 2025)**

**City Fire Chief Anthony Powell** asked the Board for permission for the annual Memorial Day Parade on Monday, May 26, 2025 on behalf of the local Veterans of Foreign Wars and the Disable American Veterans. The parade will begin between 10 and 10:15 a.m.

**Chief Powell** said the parade route will remain the same as in previous years – starting on Jefferson Street, at the City Police Department, and proceeding along Main Street, Pike Street, North First Street to Oakridge Cemetery. In addition, for the staging of vehicles and apparatus, the Chief requested the temporary closure of these streets: 100 and 200 blocks of East Jefferson Street and South 5th Street, between Washington and Madison streets.

**Landis/Swartley made a motion to approve the annual Memorial Day Parade on downtown streets on Monday, May 26, 2025 and the closures of the 100 and 200 blocks of East Jefferson Street and the 5th Street, between Washington and Madison streets, during the time of the parade. Motion passed 5-0.**

After the vote, **Mayor Leichty** asked **Chief Powell** to extend an invitation to the Board for a special event on Friday.

**Chief Powell** said that on May 2, 2025, the Fire Department will commemorate the two-year anniversary of the death of **Assistant Fire Chief Bruce A. Nethercutt**, 53, of Goshen. His passing was a “line of duty death” recognized by the State of Indiana and the International Association of Firefighters. His name is on the Indiana Law Enforcement and Firefighter's Memorial in Indianapolis and the Fallen Firefighters Memorial in Colorado Springs, Colorado.

**Chief Powell** said the City will be renaming Station 3, 1203 College Avenue, The Nethercut Memorial Station. Nethercutt was stationed there as the station captain for several year. Nethercutt is the only line of duty in Goshen's history. Chief Powell said the ceremony will be at 3 p.m. Friday and that all were invited.

#### **2) Jeanette Post request: Approve closure of the alley in the 600 block of South Third Street, from noon to 6 p.m. on May 24, 2025, to safely hold a graduation open house**

**Jeanette Post** of 620 South 3rd Street, Goshen asked the Board for permission to temporarily close the alley directly adjacent to her home from noon to 6 p.m. on May 24, 2025.

**Post** said her oldest daughter will be celebrating her Goshen High School graduation with an open house, and it would be ideal if traffic was eliminated in such close proximity to the family garage, where the party will be held.



In response to a question from the **Mayor**, **Post** said she has spoken to neighbors on the opposite side of the alley, Jesse and Amanda Sensenig, and they have given permission for the closure. She provided her written proposal signed by her neighbors. **Post** requested two barricades, which the Street Department agreed to provide.

**Landis/Swartley made a motion to temporarily close the alley directly adjacent to 620 South 3rd Street, from noon to 6 p.m. on May 24, 2025. The motion passed 5-0.**

**3) Center for Healing & Hope request: Approve the use of a City parking lot for the annual Festival of Hope, July 26, 2025**

**Daniel Tackett, the Director of Marketing and Development for the Center for Healing & Hope**, asked the Board to allow the use of the easternmost portion of the City parking lot located just north of Goshen Brewing Company, at 315 West Washington Street, for the Center's 5th annual Festival of Hope from 5-9 p.m. on July 26, 2025. He said the center held this event in the same location last year with great success.

**Tackett** asked for closure of the lot from midnight to 11 p.m. on July 26 to set up tents, tables, and chairs for nonprofits, children's activities, food vendors, and marketplace vendors and allow for foot traffic throughout this area of the parking lot. Goshen Brewing Company will be hosting the event and Interra, another sponsor, has offered the use of parking lot for festival parking; The event will begin long after the Goshen Farmers Market has closed.

**Tackett** requested street barricades and orange safety cones to clock off areas for the event. He requested "no parking" signs to be posted at all parking spots in the requested area the night before. He also requested access to the City-owned electrical outlets at the north end of the lot.

In response to questions from the **Board**, **Tackett** clarified the requested time for the lot closure and said he has contacted neighboring business owners about the event.

**Landis/Swartley made a motion to allow the use of a portion of the City parking lot located just north of Goshen Brewing Company, at 315 W. Washington, for the Center's 5th annual Festival of Hope. Motion passed 5-0.**

**4) Lacasa request: Approve the placement of a temporary roll-off dumpster in four spaces in the public lot to the east of The Shoots Apartments, 112 E Lincoln Ave., May 5 through Oct.1, 2025, with no dumpster present at times and the reopening of the parking spots**

**Brad Hunsberger, the Vice President for Real Estate Development at Lacasa, Inc.**, requested the temporary placement of a roll-off dumpster in four parking spaces in the public lot to the east of The Shoots Apartments, 112 E Lincoln Ave., May 5 through Oct.1, 2025. He said at times the dumpster would be gone at times.

**Hunsberger** said he obtained permission from the *Goshen News* to use its parking lot for incidental uses throughout the project like parking lifts in the evening and dropping off materials from time to time during the project.

**Hunsberger** said Lacasa will close the dumpster each evening and clean up all debris/trash from the pathway between the dumpster and the building. Lacasa notified adjacent building owners and commercial tenants.

**Board member Landis** said Lacasa's use of Lincoln Avenue parking spaces has been well managed. He said the dumpster hasn't always been present when work was not being done and he appreciated that.

**Landis/Swartley made a motion to approve the temporary placement of a roll-off dumpster in four parking spaces in the public lot to the east of The Shoots Apartments, 112 E Lincoln Ave., May 5 through Oct.1, 2025. The motion passed 5-0.**

**5) Goshen College request: Approve the closure of Kenwood Place for a campus-wide block party, from 12 p.m. until 9 p.m., on May 6, 2025**



**Arleth Martinez**, a Goshen College student, asked the Board to approve the closure of Kenwood Place, between Main and 8<sup>th</sup> streets, on May 6, 2025 from noon until 9 pm. The college is planning a campus-wide “block party” event between the college-owned Howell House and Kenwood House.

In a written request, college staff wrote that it would be in the best interests of students and community members if the road between the two houses were blocked off. He added that the street closure would also enhance a feeling of cohesion between the two houses, giving the event a true block party feel. Martinez confirmed that the college has been in touch with neighbors about the closure.

**Landis/Swartley made a motion to approve the closure of Kenwood Place, between Main and 8th streets, on May 6, 2025 from noon until 9 pm., for a block party. Motion passed 5-0.**

**6) Planning Department request: Accept the subdivision plats for The Crossing Second and The Crossing Third, with dedications and easements, and to release an existing utility easement from the first plat, The Crossing, Plat Book 32, Page 37, as shown on The Crossing Third Sheet 1**

**City Planning & Zoning Administrator Rhonda Yoder** told the Board/ that the final two sections of The Crossing residential subdivision have been submitted, The Crossing Second and The Crossing Third, has a total of 64 lots for attached single unit residential development, zoned Residential R-3PUD (Planned Unit Development).

**Yoder** said the final subdivision sections meet the Zoning and Subdivision Ordinance and Crossing PUD requirements. A subdivision drainage plan was accepted by the Board of Works on Oct. 31, 2024.

**Yoder** said the developer opted to proceed with infrastructure construction (water, sewer, streets, etc.) without posting a performance bond/surety, which requires infrastructure construction to be completed and accepted for maintenance by the City of Goshen, with the required maintenance bond, before secondary approval may be granted. Secondary approval must be granted and the subdivision plats recorded before house construction may proceed. Acceptance by the Board of Works precedes secondary approval, so the Board of Works may accept the subdivision plats and City staff will hold for secondary approval until infrastructure construction is completed and accepted for maintenance, as confirmed by Goshen Engineering.

**Yoder** said the two plats include dedication of right of way, for the extension and connection of Lighthouse Lane, and for new streets of Big Sable Point and Pentwater Place, along with a number of easements. The Crossing Third also includes release of an existing utility easement from the first plat, The Crossing, Plat Book 32, Page 37, as shown on Sheet 1, that is being relocated, and Board of Works action will include release of this easement.

**Yoder** asked the Board to accept The Crossing Second and The Crossing Third subdivision plats with dedications and easements, and release an existing utility easement from the first plat, The Crossing, Plat Book 32, Page 37, as shown on The Crossing Third Sheet 1.

**Landis/Swartley made a motion to accept the subdivision plats for The Crossing Second and The Crossing Third, with dedications and easements, and to release an existing utility easement from the first plat, The Crossing, Plat Book 32, Page 37, as shown on The Crossing Third Sheet 1. The motion passed 5-0.**

**7) Water & Sewer Office request: Move \$4,404.21 in uncollected finalized accounts from active to collection, sewer liens and write offs**

**Kelly Saenz, Manager of the Goshen City Utilities Office**, told the Board that the original amount of unpaid final Water/Sewer accounts, for the period through Jan. 22, 2025 was \$6,206.90. Collection letters were sent out and payments of \$1,802.69 were collected.

The uncollected amount was \$4,404.21. So, **Saenz** asked the Board to move the office’s uncollected final accounts from active to Collection, Sewer Liens and Write offs for the period. Of the uncollected amounts, \$1,106.85 came from water accounts and \$3,297.36 came from sewer accounts.



**Landis/Swartley made a motion to move the Goshen Water and Sewer Office's \$4,404.21 in uncollected finaled accounts for this period from active to Collection, Sewer Liens and Write offs. Motion passed 5-0.**

**8) Engineering Department request: Approve the agreement with Square 1 Excavating and authorize Dustin Sailor to execute Square 1 Excavating's proposal for \$4,332.00 to upgrade the existing 18-inch A-2000 storm sewer pipe to RCP pipe**

**City Director of Public Works & Utilities Dustin Sailor** told the Board that the Barak Group is building out the remainder of the Crossing Subdivision infrastructure. While constructing the new infrastructure, Barak's contractor, Square 1 Excavation, damaged an existing 18-inch stormwater pipe (Pipe ID-20887) in multiple locations. The existing A-2000 plastic stormwater pipe was installed in 2008 at a shallow depth. In the current design, the now damaged pipe was to remain in place and would remain shallow.

**Sailor** said that with the damaged pipe needing to be replaced, Square 1 Excavation presented an offer for the City to participate in the pipe's replacement and they would install a reinforced concrete pipe (RCP) that is better suited for shallow installation. Through negotiation, Goshen city staff agreed to a proposal where the City would pay for half of the RCP material and the contractor would pay the remainder of the pipe cost and for all of the pipe's installation. Half of the RCP material cost is \$4,332.

Goshen Engineering requested permission for Dustin Sailor, the Director of Public Works and Utilities, to sign Square 1 Excavation's proposal for a participation cost of \$4,332.

**Landis/Swartley made a motion to approve the agreement with Square 1 Excavating and authorize Dustin Sailor to execute Square 1 Excavating's proposal for \$4,332 to upgrade the existing 18-inch A-2000 storm sewer pipe to RCP pipe. The motion passed 5-0.**

**9) Brinkley RV request: Approve the installation of a 16'x39' temporary stone drive at 2482 Century Drive and agenda item**

On behalf of Brinkley RV, **Cullen S. Stanger, Project Manager for DJ Construction**, requested permission to install a 16 foot x 39 foot temporary stone drive at 2482 Century Drive, located at the southeast corner of the building. Brinkley RV utilizes the south half of the building (125,000 SF) for receiving and distribution of their RV parts.

**Stanger** said parts are received and distributed on flatbed trucks, requiring driving access in and out of the building. Currently there is only one at-grade overhead door located on the south wall toward the west side of the building, adjacent to offices space, while Brinkley's shipping and receiving process is on the southeast portion of the building.

**Stanger** indicated that that on March 17, 2025, representatives of Brinkley RV, DJ Construction and Abonmarche met with the City's Engineering, Stormwater, Planning, and Building Department staff members to discuss exterior improvements Brinkley RV is making at 2482 Century Drive, along with remodeling the north side of the building. The exterior improvements will include a permanent hard surface (concrete or asphalt) at the southeast corner of the building where we are requesting permission on a temporary drive.

Since the March 17th meeting, Brinkley RV has entered into an agreement with Abonmarche to perform civil design services reviewed and discussed with City Departments on March 17. Abonmarche's goal is to submit Tech Review drawings to the city for this project on either May 7 or May 21, 2025. The permanent surface would be placed by November 2025.

**Landis/Swartley made a motion to allow the installation of a 16 foot x39 foot temporary stone drive at 2482 Century Drive. It will be replaced by a permanent drive by November. The motion passed 5-0.**

**10) Maple City Market request: Approve City-provided temporary fencing for Spring/Summer events**

**Carrie Lee Bland-Kendall, Marketing Coordinator for Maple City Market**, 314 South Main Street, requested event fencing for several upcoming events this spring and summer.





**Bland-Kendall** requested fencing for the following dates and estimated fencing footage: May 2 – First Friday, 25 feet; June 6 – First Friday, 25 feet; July 4 – First Friday, 100 feet; Aug.1 – First Friday, 25 feet; Aug. 23 – Saturday (50th Anniversary Celebration), 100 feet; Sept. 5 – First Friday, 25 feet; and Oct. 3 – First Friday, 100 feet.

**Bland-Kendall** said these events will take place in the Maple City Market front entrance and patio and/or parking lot. She said the market experienced great success using City-provided fencing during last year's Fall Faire, and hopes to maintain that same safe and welcoming atmosphere this season. She added that the City Street Department did an excellent job training Maple City Market staff last fall, and employees feel well-prepared to handle the fencing. Volunteers and staff and volunteers are available to work on the setup.

**Bland-Kendall** provided a map of the parking lot and event area. She indicated the goal will be to have fencing in place by approximately 3 p.m. on each event day to allow for the necessary inspection by the Elkhart County Health Department. Events are scheduled to conclude by 9 p.m. the same evening.

**Bland-Kendall** said she incorporated feedback from and received approval for the proposed fenced areas from **City Engineering Project Manager Andrew Lund and Street Commissioner David Gibbs**. She described the proposed sizes of the fencing areas and noted that a neighbor supports the request.

In response to a request from **Mayor Leichty**, **Gibbs** described the type of fencing to be used and who would be responsible for the set up. There was no additional staff feedback.

**Landis/Swartley** made a motion to grant permission for City-provided event fencing as requested for upcoming events this spring and summer, including Goshen First Fridays and the market's 50th Anniversary Celebration. The motion passed 5-0.

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

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

**APPROVAL OF CIVIL & UTILITY CLAIMS**

**Mayor Leichty** made a motion to approve Civil City and Utility claims and adjourn the meeting. Board member **Swartley** seconded the motion. The motion passed 5-0.

**ADJOURNMENT**

**Mayor Leichty** adjourned the meeting at 4:24 p.m.

**EXHIBIT #2:** A one-page memorandum to the Board, on behalf of Brinkley RV, by Cullen S. Stanger, Project Manager for DJ Construction. Stanger requested permission to install a 16 foot 'x39 foot temporary stone drive at 2482 Century Drive, located at the southeast corner of the building. Brinkley RV utilizes the south half of the building (125,000 SF) for receiving and distribution of their RV parts. The permanent surface driveway is to be placed by November 2025. The memo was accompanied by a site drawing.

**EXHIBIT #3:** A one-page memorandum to the Board, on behalf of Maple City Market, by Carrie Lee Bland-Kendall, the Maple City's Marketing Coordinator. Bland-Kendall requested event fencing for several upcoming events this spring and summer, including Goshen First Fridays and the market's 50th Anniversary Celebration. These events will take place at the Maple City Market front entrance and patio and/or parking lot. The memo was accompanied by two diagrams showing the locations of the proposed fencing.



**APPROVED:**

\_\_\_\_\_  
**Mayor Gina Leichty**

\_\_\_\_\_  
**Mike Landis, Member**

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

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

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

**ATTEST:**

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



**Jose' D. Miller**

**Chief of Police**

111 E Jefferson St  
Goshen, Indiana 46528

TO: Goshen Board of Public Works & Safety  
Mayor Gina Leichty  
Member Mike Landis  
Member Mary Nichols  
Member Barb Swartley  
Member Orv Myers

Date: May 8<sup>th</sup>, 2025

From: Jose' Miller, Chief of Police

Reference: Police Week – Peace Officer Memorial Day

I respectfully request approval for a temporary road closure of the 100 Block of East Jefferson Street on Tuesday, May 13<sup>th</sup>, 2025, from 10:00 AM until 2:00 PM. This closure is necessary to accommodate a ceremony being conducted by the Goshen Police Department in observance of National Police Week, which will take place in front of the Goshen Police Department headquarters.

The ceremony will begin promptly at **12:00 PM**, and we are extending an invitation to the general public to attend this observance as we honor the service and sacrifice of law enforcement officers.

To ensure the safety of participants and the public, we respectfully request:

- **Placement of barricades** at each end of the 100 Block of East Jefferson.
- **No Parking signs** installed for the block during the duration of the closure (10:00 AM – 2:00 PM).

Thank you for your consideration and continued support.

Respectfully,

Jose' Miller #116

Chief of Police

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

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

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

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





**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:** May 8, 2025  
**Subject:** Request to place dumpster in City parking lot

**On May 5, 2025, the Clerk-Treasurer's Office received the following email request:**

My name is **Victoria Brenneman**. I am starting a new cafe called Cortado at 132 South Main Street. Would you please add the following request for this Thursday's agenda...

I am requesting permission to block public parking spaces with a 20-yard dumpster in the parking lot behind Snyder's Men's shop. We have cleaned out the basement and the entire back of the building is filled with trash bags of junk. The dumpster is to be rented from Budget Dumpster and would arrive toward the beginning of the week of May 11 and be removed by no later than Friday, May 16. We plan to have it for a total of 2 days. The exact day it will be delivered is unknown but we know it will arrive next week.

The dumpster is a 20 yard size with the following dimensions: 22' long, 7'6" wide and 4'6" tall. I propose putting it across 5 or so spots facing Snyder's rear entrance and the other downtown businesses OR it could be placed the long way across two lengths of spots. See in this image where the Gray truck is parked, plus the one directly in front of it. This parking lot is catty corner to the rear of our building.

If I receive permission to move forward, I will get a permit from the Engineering Department. Thanks for your help,

**~Victoria**

My contact information:

Victoria Brenneman

574.320.3784

[victoria@cortadogoshen.com](mailto:victoria@cortadogoshen.com)

**Address of business:** 132 S. Main St., Goshen, IN 46526



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So I am proposing either from the green Ford truck toward the car or from the green Ford truck and forwards. It would likely need part of the two spots behind it toward the tree as well.





**Richard Aguirre, City Clerk-Treasurer**  
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**To:** City of Goshen Board of Public Works & Safety  
**From:** Clerk-Treasurer Richard R. Aguirre  
**Date:** May 8, 2025  
**Subject:** Request to close sidewalk & parking spaces for repair work

**On May 5, 2025, the Clerk-Treasurer's Office received the following request via email:**

Hello Board of Works. We are planning to replace a single sidewalk slab in front of Maple City Market at 314 S Main Street, which has heaved up due to the adjacent tree root system.

Upon applying for a right of way permit with the City, we were informed that the work may require sidewalk and parking restrictions.

Below is additional clarification regarding our request to the Board of Works:

- We expect to commence work as early as Friday, May 9th and that the work will be completed within no more than 10-days (likely much sooner).
- Sidewalk usage will be restricted from the time at which the existing concrete slab is removed until the concrete is poured and dried. We aim to pour the slab within 2-3 days after the slab is removed.
- We will need 2-3 parking spaces to allow for the concrete truck directly in front of the slab to be replaced. The concrete pour should last less than a 2-hour time period. We will aim for an early morning pour so as to avoid our peak customer traffic hours.
- We plan to use our own orange cones to restrict pedestrian traffic on the sidewalk and also to block off the parking spaces when needed.

The approved permit application, with drawing and photo are attached.



**Richard Aguirre, City Clerk-Treasurer**  
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Could we please be included on the agenda for the upcoming Board of Works meeting on May 8th?

Please let me know if you have additional questions. Thanks for your help.

**Brad Alstrom**

General Manager

Maple City Market

314 S Main St., Goshen, IN 46526

store (574) 534-2355

[brad@maplecitymarket.coop](mailto:brad@maplecitymarket.coop)

----- Forwarded message -----

**From:** <[goshen@davengis.net](mailto:goshen@davengis.net)>

**Date:** Mon, May 5, 2025 at 2:07 PM

**Subject:** Permit 314 S Main St

**To:** <[gm@maplecitymarket.coop](mailto:gm@maplecitymarket.coop)>

The sidewalk application has been reviewed for 314 S Main Street and found sufficient as noted. Once the permit fee has been paid, we can then issue the permit.

Also, this will most likely require sidewalk and parking space restrictions which are required to be approved by the Board of Public Works. Their next meetings are May 8th and May 22nd. To get on the agenda, items are due by 8am Tuesday mornings prior to the Thursday meeting. Therefore, if you'd like to get on the agenda for the May 8th meeting, please email your request to the [clerktreasurer@goshencity.com](mailto:clerktreasurer@goshencity.com) soon.



**Richard Aguirre, City Clerk-Treasurer**  
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## **Pay Fees**

- » Log onto the City's permitting portal: <https://cityportal.goshencity.com/>
- » Select *Your Items*
- » Under the address of the project, select *Pay Fees*
- » Select *Continue*
- » Follow the prompts on the PayGov website to make a payment. There is a 3% convenience fee, \$1 minimum.
- » A receipt from the City of Goshen will then be available for you to print and a copy will also be available for you to access at any time through the portal. PayGov will also email you a receipt that will include the convenience fee information. Thank you!

Regards,

Tara Hetler  
Engineering Department  
204 E Jefferson Street, Suite 1  
Goshen, IN 46528  
Ph: 574-534-2201



Maple City Market

314 S Main St., Goshen, IN

Tax Lot Parcel Diagram, 10/4/2017

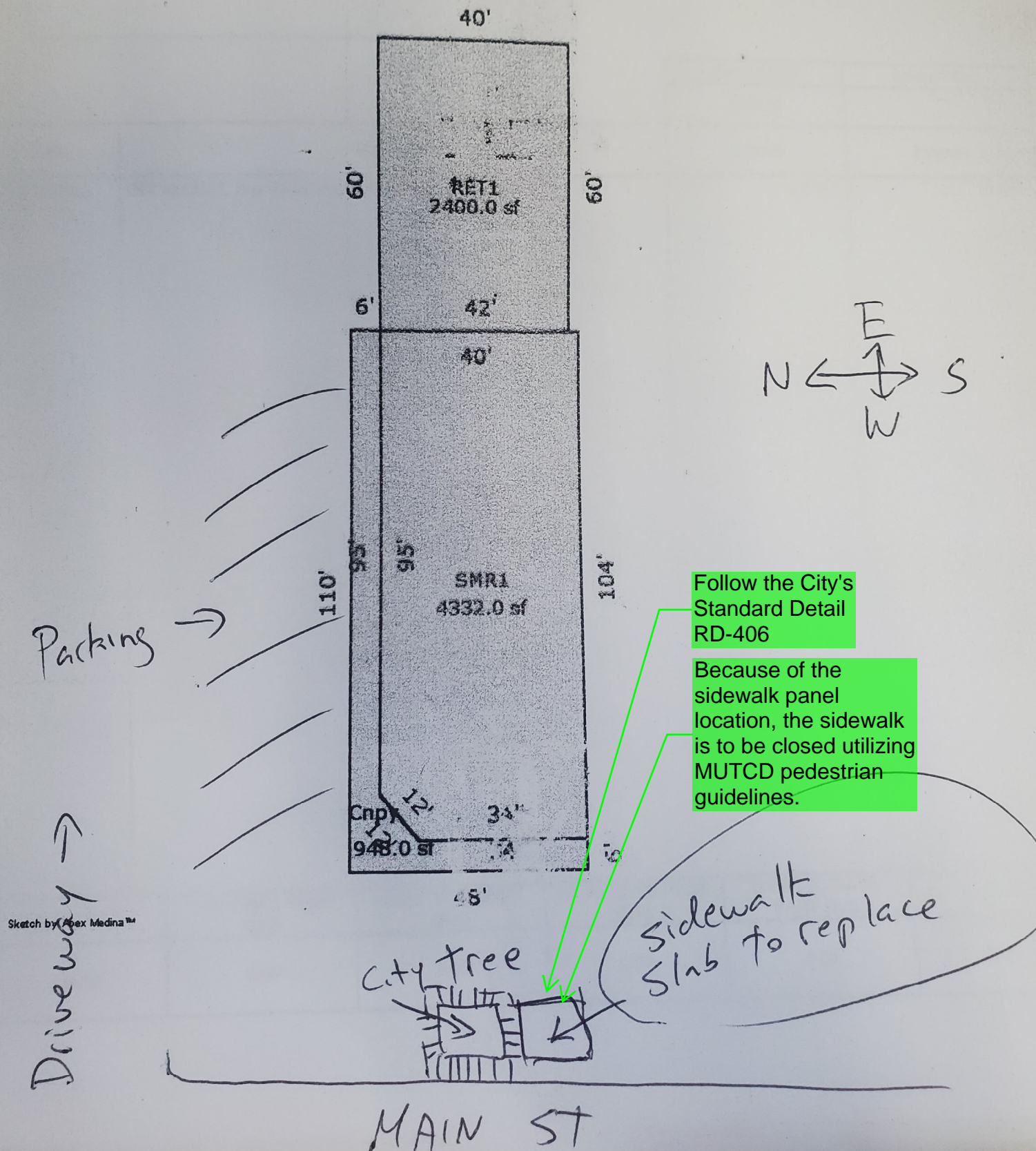
<https://elkhartin.elevatemaps.io/prc.html?pin=20-11-09-454-006.000-015&appId=56a2182b12c7416c1ce9e362>

## CITY OF GOSHEN REVIEW ENGINEERING

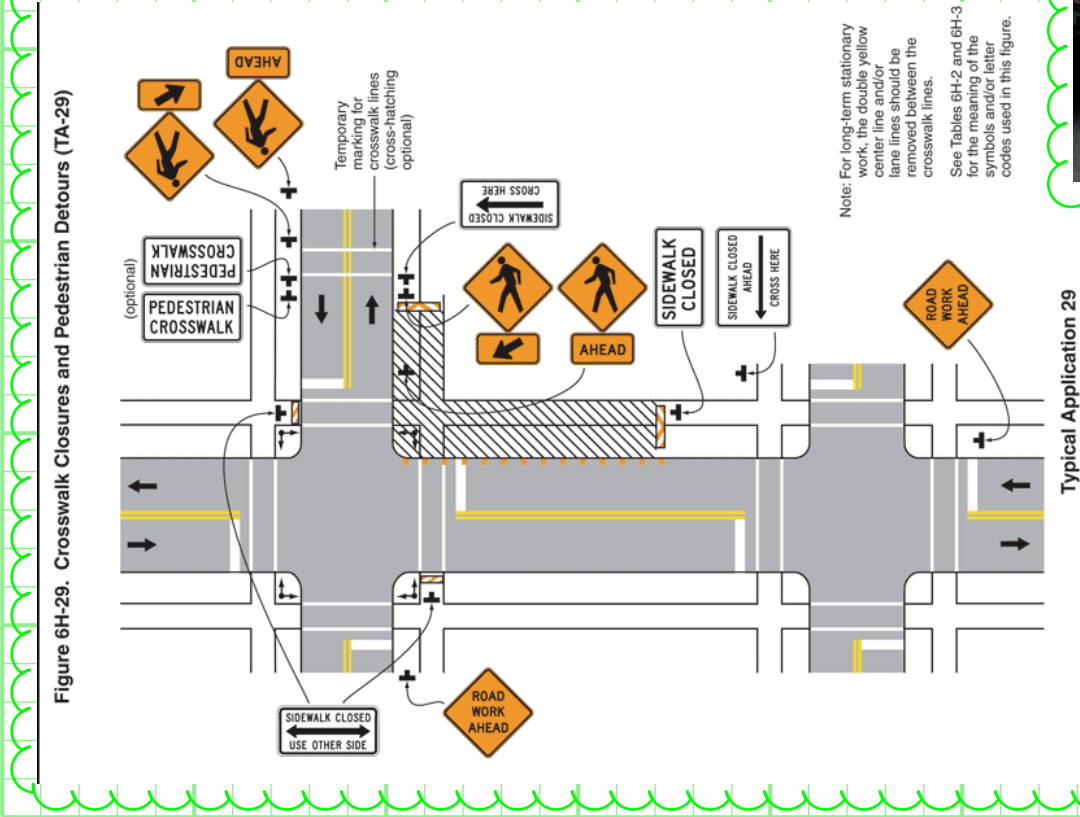
REVIEWED BY: D. SAILOR, P.E.

REVIEW DATE: 05/05/2025

REVIEW STATUS: SUFFICIENT  
AS NOTED









May 5, 2025

DJSJ, LLC  
PO Box 70  
Bristol IN 46507

To whom it may concern:

Goshen Water and Sewer, we would like to contest the water bills #292-2510-02 (\$1,209.94) and #292-2500-02 (\$1254.05).

This is a vacant building. No one is in the building on a daily basis to use this amount of water.

Sincerely,

Donald L. Shaum, Jr.  
Partner  
DJSJ, LLC.

Office Address:  
22040 C.R. 20      Goshen      IN      46528

Phone: (574)-215-1476  
Fax: (574)-264-9470

**Goshen Water & Sewer**

203 S. Fifth Street  
Goshen, IN 46528  
www.goshenindiana.org



\*\*AUT0\*\*MIXED AADC 750 14 MAAD 151615AA24-A-1  
3536 1 MB 0.617



DJSJ LLC  
PO BOX 70  
BRISTOL IN 46507-0070

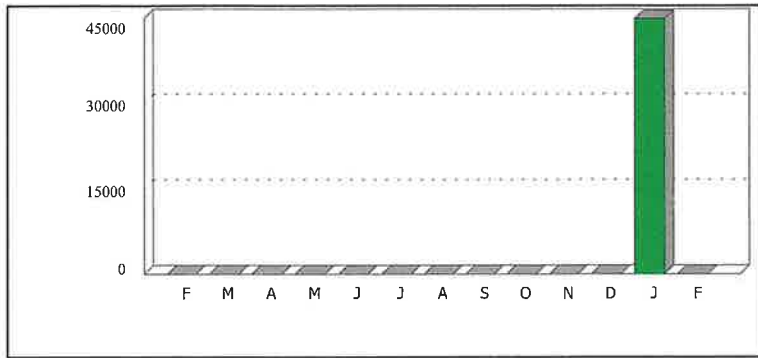
For inquiries call:

Business phone: (574) 533-9399

Office hours: Monday - Friday, 8 a.m. - 5 p.m.

Closed Saturday, Sunday & holidays

Telecommunications device for the deaf: (574) 534-3185

**YOUR MONTHLY USAGE IN CUBIC FEET****SPECIAL MESSAGE**

The City of Goshen has an electronic billing and payment service with Invoice Cloud. Utility customers can create accounts, enroll in auto pay, schedule payments and go paperless. To register:  
[www.invoicecloud.com/cityofgoshenin](http://www.invoicecloud.com/cityofgoshenin) Utility Phone payments:  
1-888-458-8868

# Statement

**ACCOUNT INFORMATION**

LAST PAYMENT: \$0.00  
ACCOUNT: 292-2510-02  
SERVICE ADDRESS: 1423 LINCOLNWAY EAST SPRK  
SERVICE PERIOD: 02/01/25 TO 03/01/25  
BILLING DATE: 03/24/2025  
DUE DATE: 04/21/2025

**CURRENT CHARGES**

Meter	Previous	Current	Usage	Amount
02712833	1042	1042	0	
WATER ADMIN. CHARGE				\$17.15
SALES TAX				\$1.20

**AMOUNT DUE**

PAST-DUE BALANCE (DUE IMMEDIATELY): \$1,209.94  
TOTAL CURRENT CHARGES: \$18.35  
TOTAL AMOUNT DUE BY: 04/21/25 \$1,228.29  
TOTAL AMOUNT DUE AFTER: 04/21/25 \$1,230.13  
NOTE: PENALTY IS 10% OF CURRENT UNPAID BALANCE

IF YOUR PAYMENT IS RETURNED TO US BY THE BANK, THERE IS A CHARGE OF \$30.00.

A customer drive up payment box is located south of 203 S. Fifth Street, next to the postal mail boxes.

PLEASE RETURN THIS PORTION, ALONG WITH YOUR PAYMENT, AND MAKE YOUR CHECK PAYABLE TO GOSHEN WATER & SEWER

**ACCOUNT INFORMATION**

ACCOUNT: 292-2510-02  
SERVICE ADDRESS: 1423 LINCOLNWAY EAST SPRK  
SERVICE PERIOD: 02/01/25 TO 03/01/25  
BILLING DATE: 03/24/2025

DUE DATE: 04/21/2025

DJSJ LLC  
PO BOX 70  
BRISTOL IN 46507-0070

**AMOUNT DUE**

PAST-DUE BALANCE (DUE IMMEDIATELY): \$1,209.94  
TOTAL AMOUNT DUE BY: 04/21/25 \$1,228.29  
TOTAL AMOUNT DUE AFTER: 04/21/25 \$1,230.13  
NOTE: PENALTY IS 10% OF CURRENT UNPAID BALANCE

**AMOUNT PAID**

SEND PAYMENT TO:



GOSHEN WATER & SEWER  
PO BOX 238  
GOSHEN IN 46527-0238

292-2510-02 0000122829

**Goshen Water & Sewer**

203 S. Fifth Street  
Goshen, IN 46528  
www.goshenindiana.org



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3535 1 MB 0.617



DJSJ LLC  
PO BOX 70  
BRISTOL IN 46507-0070

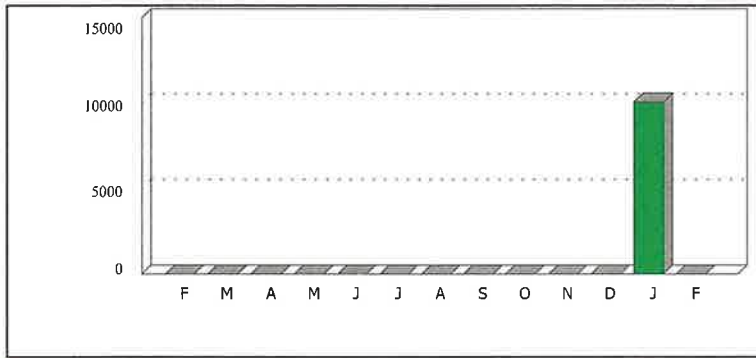
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www.invoicecloud.com/cityofgosheinin Utility Phone payments:

1-888-458-8868

**Statement****ACCOUNT INFORMATION**

LAST PAYMENT: 02/06/2025 (\$40.45)  
ACCOUNT: 292-2500-02  
SERVICE ADDRESS: 1423 LINCOLNWAY EAST  
SERVICE PERIOD: 02/01/25 TO 03/01/25  
BILLING DATE: 03/24/2025  
DUE DATE: 04/21/2025

**CURRENT CHARGES**

Meter	Previous	Current	Usage	Amount
58827654	272140	272140	0	
SEWER ADMIN. CHARGE				\$24.19
WATER ADMIN. CHARGE				\$8.15
PUBLIC FIRE PROTECTION				\$13.20
SALES TAX				\$0.57

**AMOUNT DUE**

PAST-DUE BALANCE (DUE IMMEDIATELY): \$1,207.94  
TOTAL CURRENT CHARGES: \$46.11  
TOTAL AMOUNT DUE BY: 04/21/25 \$1,254.05  
TOTAL AMOUNT DUE AFTER: 04/21/25 \$1,258.67  
NOTE: PENALTY IS 10% OF CURRENT UNPAID BALANCE

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**ACCOUNT INFORMATION**

ACCOUNT: 292-2500-02  
SERVICE ADDRESS: 1423 LINCOLNWAY EAST  
SERVICE PERIOD: 02/01/25 TO 03/01/25  
BILLING DATE: 03/24/2025

DUE DATE: 04/21/2025

DJSJ LLC  
PO BOX 70  
BRISTOL IN 46507-0070

**AMOUNT DUE**

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TOTAL AMOUNT DUE BY: 04/21/25 \$1,254.05  
TOTAL AMOUNT DUE AFTER: 04/21/25 \$1,258.67  
NOTE: PENALTY IS 10% OF CURRENT UNPAID BALANCE

**AMOUNT PAID**


SEND PAYMENT TO:



GOSHEN WATER & SEWER  
PO BOX 238  
GOSHEN IN 46527-0238

292-2500-02 0000125405





Kelly Saenz, Manager  
WATER & SEWER UTILITIES BUSINESS OFFICE  
CITY OF GOSHEN

203 South Fifth Street • Goshen, IN 46528-3713

Phone (574) 533-9399 • Fax (574) 533-6961  
[watersewer@goshencity.com](mailto:watersewer@goshencity.com) • [www.goshenindiana.org](http://www.goshenindiana.org)

To: Board of Public Works & Safety

Date: 4/15/2025

Re: Request for Utility Relief @ 1723 Lincolnway East- Mid-States Construction

Mid-States Construction is requesting relief on the utility bill dated 2/24/25 in the amount of \$1,098.12.

The bill reflects a water leak that occurred at that building on 1/25/25 thru 1/28/25. The Utility Billing Office notified owner, Don Shaum, of the potential leak on 1/28/25. Based on an onsite visit by the water utility staff and confirmation that floor drains exist in the basement, staff cannot directly offer relief or support Mid-States Construction's request.

Should relief be granted by the Board of Works & Safety, the total amount of credit is: \$722.21

**Goshen Water & Sewer**

203 S. Fifth Street  
Goshen, IN 46528  
www.goshenindiana.org



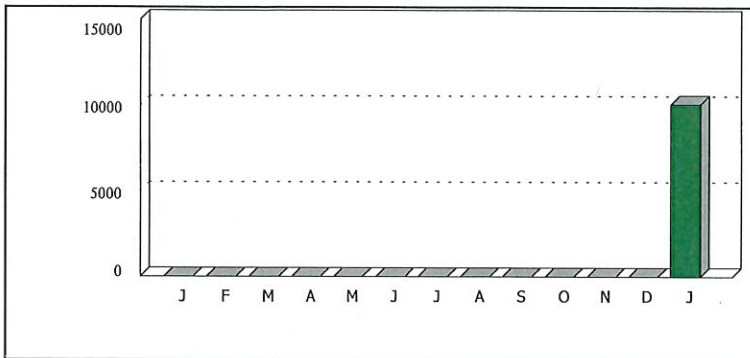
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**ACCOUNT INFORMATION**

ACCOUNT: 292-2500-02  
SERVICE ADDRESS: 1423 LINCOLNWAY EAST  
SERVICE PERIOD: 01/01/25 TO 02/01/25  
BILLING DATE: 02/24/2025  
DUE DATE: 03/17/2025

DJSJ LLC  
PO BOX 70  
BRISTOL IN 46507-0070

**Statement****ACCOUNT INFORMATION**

LAST PAYMENT: 02/06/2025 (\$40.45)  
ACCOUNT: 292-2500-02  
SERVICE ADDRESS: 1423 LINCOLNWAY EAST  
SERVICE PERIOD: 01/01/25 TO 02/01/25  
BILLING DATE: 02/24/2025  
DUE DATE: 03/17/2025

**CURRENT CHARGES**

Meter	Previous	Current	Usage	Amount
58827654	262097	272140	10043	
WATER USAGE				\$257.61
SEWER USAGE			0	\$776.31
SEWER ADMIN. CHARGE				\$24.11
WATER ADMIN. CHARGE				\$8.11
PUBLIC FIRE PROTECTION				\$13.21
SALES TAX				\$18.61

**AMOUNT DUE**

TOTAL CURRENT CHARGES: \$1,098.12  
TOTAL AMOUNT DUE BY: 03/17/25 \$1,098.12  
TOTAL AMOUNT DUE AFTER: 03/17/25 \$1,207.94  
NOTE: PENALTY IS 10% OF CURRENT UNPAID BALANCE

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**AMOUNT DUE**

TOTAL AMOUNT DUE BY: 03/17/25 \$1,098.12  
TOTAL AMOUNT DUE AFTER: 03/17/25 \$1,207.94  
NOTE: PENALTY IS 10% OF CURRENT UNPAID BALANCE

**AMOUNT PAID**


SEND PAYMENT TO:



GOSHEN WATER & SEWER  
PO BOX 238  
GOSHEN IN 46527-0238

292-2500-02 0000109812



Enter or select a date range

01/24/2025 - 01/28/2025

24h 3d 7d 1m 3m 6m 12m

Usage

Alarms 1

Notifications

Details

Actions History

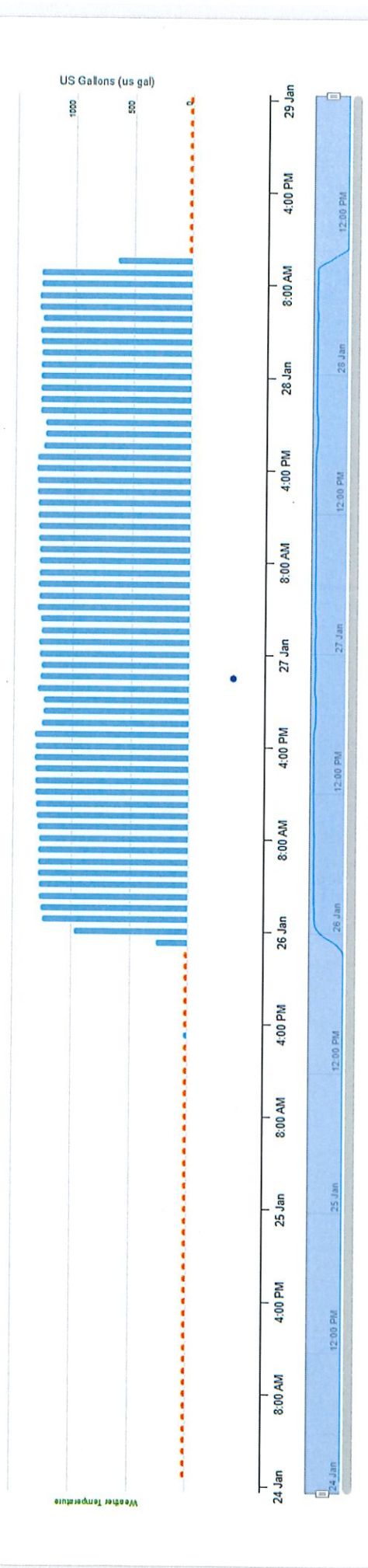
01/24/2025 12:00 AM EST to 01/28/2025 11:59 PM EST

75119.38 US Gallons (us gal)

min: 0 max: 1316.57 avg: 625.995

Zoom

12h 1d All



## Saenz, Kelly

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**From:** Beard, Matt  
**Sent:** Monday, March 31, 2025 11:27 AM  
**To:** Saenz, Kelly; Shepherd, Marv  
**Subject:** 1423 Lincolnway E. Sewer relief

I met with the owner of 1423 Lincolnway East to see if they qualified for sewer relief. In the pics you will see 2 small drains that I'm sure some water made it in the sewer. I told the customer because of this he would not qualify for sewer relief. He stated he had a 2500.00 bill and needed help. I told him he can always go to the BOW and try to dispute this. Just giving you a heads











**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

May 8, 2025

To: Board of Public Works and Safety

From: Don Shuler, Assistant City Attorney

Subject: Maintenance Agreement with Cherry Creek, LLC

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Attached for the Board's consideration is a Maintenance Agreement with Cherry Creek, LLC, which supplements the developer's obligations under the Economic Development Agreement (EDA), dated August 2, 2023, between the City and Cherry Creek, LLC.

The Agreement formalizes Cherry Creek's responsibility for the design, installation, and ongoing maintenance of certain public improvements within the development area, including trailways, stormwater infrastructure, landscaping, street lighting, and snow removal. The Agreement includes enforcement mechanisms in the event of noncompliance and clarifies that no public funds will be used for the developer's responsibilities unless otherwise provided in the EDA.

Suggested Motion: Move to approve the Maintenance Agreement with Cherry Creek, LLC as presented, and authorize the Mayor to execute the Agreement on the City's behalf.

## **MAINTENANCE AGREEMENT**

This Maintenance Agreement (“Agreement”) is entered into as of \_\_\_\_\_, 2025, by and between the City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana, acting through its Board of Public Works and Safety (“City”), and Cherry Creek, LLC, an Indiana limited liability company (“Cherry Creek” or “Developer”), collectively referred to as the “Parties.”

WHEREAS, Cherry Creek, LLC entered into an Economic Development Agreement dated August 2, 2023 (“EDA”) with the City of Goshen for the development of the Cherry Creek project (“Project”), a mixed-use residential and commercial development;

WHEREAS, pursuant to Section 3 of the EDA, Cherry Creek is required to maintain certain public improvements within the Project, including landscaping, drainage and stormwater infrastructure, railways, signs, and lighting;

WHEREAS, this Agreement formalizes and expands upon those maintenance responsibilities, providing specific terms and conditions for ongoing maintenance of public improvements as required under the EDA;

WHEREAS, the Parties acknowledge that the consideration for this Agreement is derived from the commitments and obligations set forth in the EDA and that no additional separate consideration is required;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and Cherry Creek agree as follows:

1. **Incorporation of Terms.**

1.1. This Agreement is intended to supplement and implement the Developer’s maintenance obligations set forth in Section 3 of the EDA. Except as modified by this Agreement, all provisions of the EDA remain in full force and effect.

2. **Subject Real Estate.**



- 2.1. This Agreement concerns the real estate located east of Regent Street, west of Dierdorff Road, and North of Waterford Mills Parkway, known as Cherry Creek Phase One Section One, and more particularly described in Exhibit A and as shown on Exhibit B, both attached to and incorporated into this Agreement (hereinafter the “Project Area”).
- 2.2. The maintenance responsibilities identified herein also concern City owned real estate addressed in Easements from City to Cherry Creek. The first said Easement dated June 11, 2024, from the City of Goshen, Indiana Department of Redevelopment to Cherry Creek, LLC, and recorded on June 21, 2024 in the Office of the Recorder of Elkhart County, Indiana as Document No. 2024-09850 (individually the “Offsite West/North Easement”); the second said Easement dated June 25, 2024, from the City of Goshen, Indiana to Cherry Creek, LLC, and recorded on July 19, 2024 in the Office of the Recorder of Elkhart County, Indiana as Document No. 2024-11681 (individually the “Offsite South Easement”); collectively the Offsite West/North Easement and Offsite South Easement are identified as the “Easement Real Estate.” The Parties agree that all maintenance responsibilities identified in Section 3.3 of this Agreement apply to the Easement Real Estate and that said Section 3.3 is intended to supplement Cherry Creek’s responsibilities as delineated in the referenced Easements identified herein.

### 3. Developer’s Responsibilities.

- 3.1. Developer shall be responsible for the design and installation of all public trailways within the Project Area and any off-site trailways required as part of the Project, including any required on the Offsite West/North Easement. The trailway design and location shall comply with City standards and shall be subject to review and approval by City prior to construction. The trailway system shall include the following elements:
  - 3.1.1. Paved multi-use paths, constructed with asphalt or concrete, with a minimum width of ten (10) feet, unless otherwise approved by City.
  - 3.1.2. Wayfinding, mile markers, and safety signs as may be required by City standards.
  - 3.1.3. Installation of pedestrian-scale lighting for any linear park.
  - 3.1.4. Inclusion of proper grading, culverts, or swales to prevent water accumulation on the trailway.
- 3.2. The Developer shall be responsible for the ongoing maintenance and upkeep of the entire public trailway system located within the Project Area and for the Offsite West/North Easement, including:
  - 3.2.1. Repair and resurfacing of asphalt or concrete paths to prevent cracking, heaving, or other safety hazards.

- 3.2.2. Mowing, trimming, and removal of overgrown vegetation encroaching on the trailway.
  - 3.2.3. Regular clearing of trash, leaves, branches, and other debris from the trail surface and adjacent areas.
  - 3.2.4. Maintenance, repair, and replacement of any wayfinding signs, safety markers, and informational signage.
  - 3.2.5. Routine inspection and maintenance of installed lighting, if applicable, to ensure proper functionality.
  - 3.2.6. Regular clearing of drainage inlets, culvers, and swales to prevent trail flooding or erosion.
  - 3.2.7. Removal of snow and ice from trailway surfaces within 24 hours following any snowfall of two (2) inches or greater.
- 3.3. Developer shall be responsible for the design, installation, and maintenance of all retention ponds and associated stormwater management facilities within the Project Area. The design and construction of all retention ponds shall comply with the City of Goshen Stormwater Management Ordinance, the approved Post-Construction Stormwater Management Plan for the Project Area, and any other requirements set forth by local, state, or federal regulations. The Developer shall obtain all necessary permits and approvals before construction and shall coordinate with the City of Goshen Stormwater Department to ensure compliance with all applicable regulations. Developer shall perform and fund the ongoing inspection, maintenance, and repair of all retention ponds and stormwater facilities, including:
- 3.3.1. Regular mowing, trimming, and removal of excessive vegetation around the pond perimeter to maintain accessibility and prevent overgrowth.
  - 3.3.2. Periodic dredging and removal of accumulated silt, debris, and pollutants to maintain the pond's designed storage capacity.
  - 3.3.3. Inspection and repair of embankment, slopes, and outlet structures to prevent soil erosion and structural failure.
  - 3.3.4. Regular cleaning and maintenance of stormwater inlets, outlet pipes, and control structures to prevent blockages and ensure proper water flow.
  - 3.3.5. Routine removal of floating debris, trash, and organic matter from the water surface and surrounding areas.
- 3.4. Developer shall be responsible for the design and installation of all landscaping within the public right-of-way adjacent to and within the boundaries of the Project Area, subject to prior review and approval by City; said installation shall include mounding with landscaping and grass cover on City owned land along the north side of the Project Area, generally part of Elkhart County Parcel No. 20-11-27-426-027.000-015 All landscaping designs shall conform to the City's landscape design standards and ordinances and must be reviewed and approved by the City before installation. The Developer shall install and maintain, at its own expense, all required landscaping features, which may include, subject to compliance with City standards and ordinances, the following:

- 3.4.1. Street trees along all streets and sidewalks;
  - 3.4.2. Low-growing shrubs and ornamental grasses installed along sidewalks, within medians, and at designated public locations;
  - 3.4.3. Installation of grass, mulch beds, and other approved ground cover to prevent erosion;
  - 3.4.4. Tree lawns and berms.
- 3.5. The Developer shall be responsible for the ongoing maintenance and upkeep of all landscaped areas within the public right-of-way and the Easement Real Estate, including:
- 3.5.1. Regular mowing, edging, and trimming of all grassy areas;
  - 3.5.2. Pruning, fertilization, pest control, and disease management for all trees and shrubs.
  - 3.5.3. Annual replenishment of mulch in designated planting areas.
  - 3.5.4. Routine cleaning of landscaped areas to remove trash, leaves, and other debris.
  - 3.5.5. As necessary, Developer shall replace dead or diseased plants, ensuring the landscaping remains in compliance with approved plans.
- 3.6. Developer shall be responsible for the design, procurement, installation, and initial operation of all street lighting within the public right-of-way. The type, height, and placement of streetlights shall comply with City standards and shall be approved by City prior to installation. The Developer shall be responsible for routine maintenance and repair of all streetlights within the public right-of-way within the Project Area until the City accepts the dedication of those streetlights as part of the dedication of the Public Infrastructure as contemplated in the EDA. Until such dedication, such maintenance and repair shall include:
- 3.6.1. Ensuring all fixtures remain operable by replacing bulbs or LED modules as needed.
  - 3.6.2. Inspecting and repairing damaged poles, fixtures, and electrical components.
  - 3.6.3. Maintaining underground wiring and connections to ensure reliable operation.
  - 3.6.4. Cleaning light fixtures and poles to remove dirt, debris, and vandalism.
- 3.7. Developer shall be responsible for the ongoing snow removal of all parking areas located within the public right-of-way throughout the Project Area, ensuring safe and accessible conditions for vehicles and pedestrians. This includes:
- 3.7.1. Plowing and clearing of snow accumulation to maintain clear driving lanes and parking spaces. Snow removal operations shall commence within twelve (12) hours after any snowfall event accumulating two (2) inches or more.
  - 3.7.2. Sidewalk and pedestrian access maintenance in parking areas to ensure unobstructed walkways.

3.7.3. Ice control and de-icing using appropriate materials to prevent hazardous conditions.

3.7.4. Pushing, hauling, or redistributing snow to designated areas to avoid obstructing roadways, driveways, pedestrian paths, fire hydrants, stormwater drains, ADA-accessible spaces, or blocking sightlines at intersections.

Pursuant to the EDA, the City shall be responsible for plowing the public streets within the Project Area.

#### 4. Indemnity and Insurance.

4.1. Developer 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 Developer or any of Developer's agents, officers, and employees during the performance of this Agreement. Such indemnity shall include reasonable attorney's fees and other expenses incurred by City, and shall not be limited by reason of insurance coverage.

4.2. Prior to commencing work pursuant to this Agreement, Developer 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 for the duration of this Agreement with City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Developer shall specifically include coverage for the City of Goshen as an additional insured for General Liability and Automobile Liability.

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

4.2.2. Developer shall at least include the following types of insurance with the following minimum limits of liability:

4.2.2.1. Workers Compensation and Employer's Liability – Statutory Limits

4.2.2.2. General Liability – Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and \$2,000,000 aggregate

4.2.2.3. Automobile Liability – Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and \$2,000,000 aggregate

4.2.2.4. Excess Umbrella Coverage - \$4,000,000 each occurrence

#### 5. No Public Funds.

5.1. The parties agree that no public funds will be used in connection with the performance of Developer's obligations pursuant to this Agreement, except as

otherwise provided herein or under the terms of the EDA. Developer shall bear all costs associated with its performance hereunder.

6. Notice.

- 6.1. 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. 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)

Developer: Cherry Creek, LLC  
Attn: Tonya Detweiler  
1630 Timberline Drive  
Goshen, IN 46526  
Email: [tonya@bluediamondcommunities.com](mailto:tonya@bluediamondcommunities.com)

7. Default, Notice, and Enforcement.

- 7.1. Developer shall be deemed in default under this Agreement if it fails to perform any of its obligations as set forth herein, including but not limited to:
- 7.1.1. Failure to perform routine or major maintenance as required under Section 3.
  - 7.1.2. Failure to correct deficiencies within the notice and cure period provided herein.
  - 7.1.3. Failure to comply with any other material terms of this Agreement.
  - 7.1.4. Developer is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - 7.1.5. Developer becomes insolvent or in an unsound financial condition so as to endanger performance under the Agreement.
  - 7.1.6. Developer becomes the subject of any proceeding under law relating to bankruptcy, insolvency, or reorganization, or relief from creditors and/or debtors.
  - 7.1.7. A receiver, trustee, or similar official is appointed for Developer or any of Developer's property.

7.1.8. Developer is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Developer unable to perform its obligations required under the Agreement.

7.2. If the City determines that Developer has failed to perform required maintenance or otherwise is in default, the City shall provide written notice to Developer specifying the deficiency and required corrective action. Developer shall have thirty (30) days from receipt of the notice to cure the deficiency, unless the nature of the deficiency requires more time, in which case Developer must commence corrective action within thirty (30) days and diligently pursue completion. If Developer fails to take appropriate corrective action within the cure period, the City may proceed with enforcement as outlined in Section 7.3.

7.3. If Developer does not remedy a default within the applicable cure period, the City may, at its discretion, take corrective action, including but not limited to:

7.3.1. Performing the required maintenance or repairs.

7.3.2. Contracting third parties to perform the necessary work.

7.3.3. Undertaking any other actions necessary to restore compliance with this Agreement

7.4. The City may recover all costs incurred due to Developer's failure to perform, including administrative costs, through special assessment, lien, or other legal means against Developer's property.

7.5. If the City determines that the failure to maintain the public improvements as required by this Agreement presents an immediate risk to public health, safety, or welfare, the City may take immediate corrective action without prior notice. In such cases, the City shall notify Developer as soon as practicable and provide an accounting of actions taken and costs incurred. The City shall be entitled to full reimbursement of emergency action costs as provided in Section 7.4.

## 8. Miscellaneous.

8.1. 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 provisions of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement.

8.2. 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.



- 8.3. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, or any other agreement between the Parties, the most stringent or legally binding requirements shall govern.
- 8.4. 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.
- 8.5. 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 attorney's fees.
- 8.6. 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.
- 8.7. All provisions, covenants, terms, and conditions of this Agreement apply to and bind the parties and their legal heirs, representatives, successors, and assigns.
- 8.8. The undersigned affirm that all steps have been taken to authorize execution of this Agreement, and upon the undersigned's execution, bind their respective organization to the terms of the Agreement.

**City of Goshen, Indiana**

**Cherry Creek, LLC**

Goshen Board of Public Works and Safety

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

\_\_\_\_\_  
Tonya Detweiler, CEO

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF INDIANA       )  
  ) SS:  
COUNTY OF ELKHART    )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Gina M. Leichty, Mayor for the City of Goshen, Indiana, and on behalf of the City of Goshen Board of Public Works and Safety, this \_\_\_\_\_, 2025, and acknowledged that in said capacity she executed the foregoing instrument for and on behalf of the City of

Goshen, Indiana, for the uses and purposes therein mentioned, and that she was authorized to do so.

WITNESS my hand and notarial seal.

---

Notary Public

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF ELKHART        )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Tonya Detweiler, Member for Cherry Creek, LLC, the Developer in the foregoing Agreement, and on behalf of Cherry Creek, LLC, this \_\_\_\_\_, 2025, acknowledged that in said capacity she executed the foregoing instrument for and on behalf of Cherry Creek, LLC, for the uses and purposes therein mentioned, and that she was authorized to do so.

WITNESS my hand and notarial seal.

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Notary Public

This instrument was prepared by Donald R. Shuler, Attorney No. 26587-71, 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 (Donald R. Shuler).

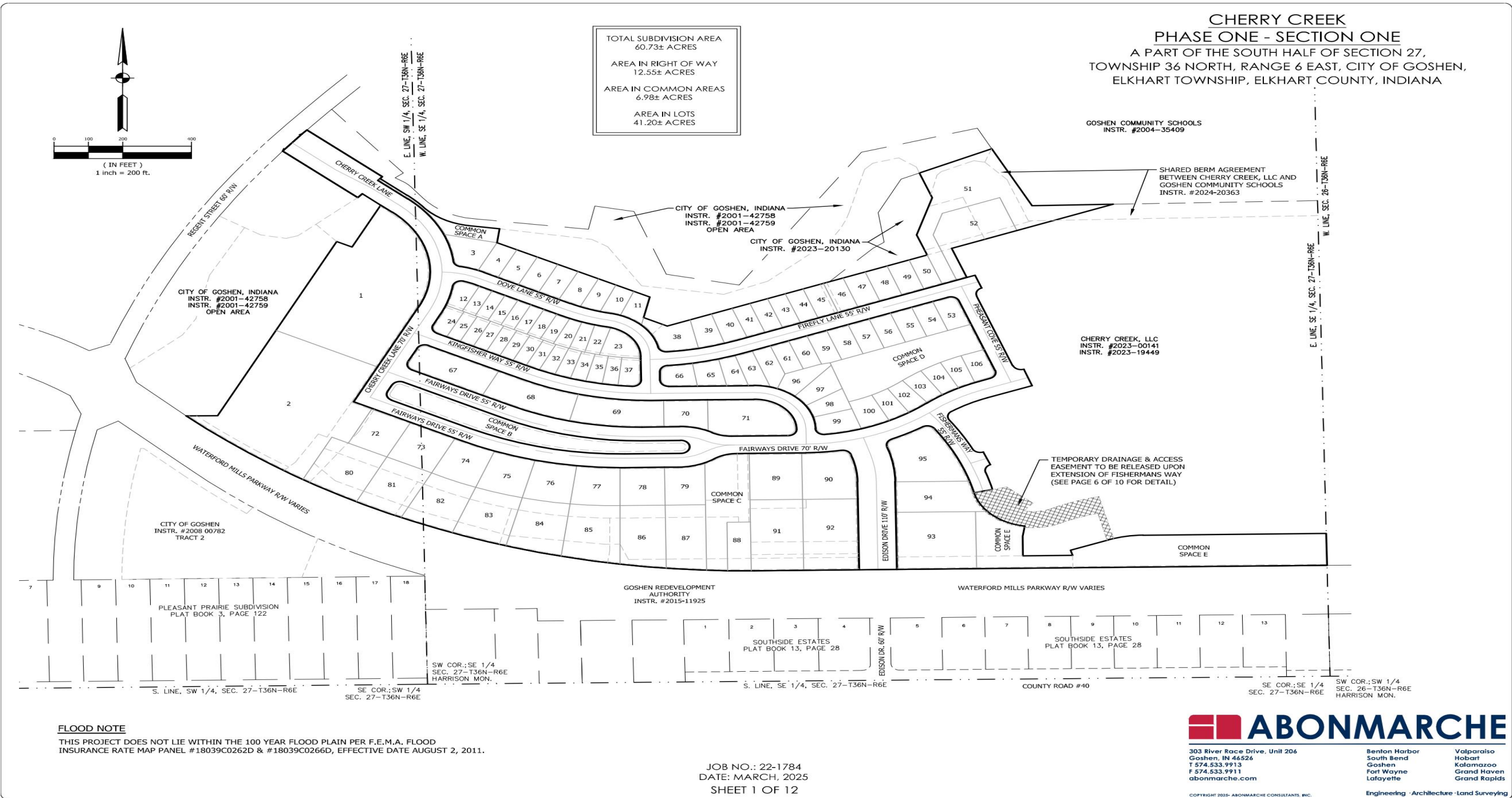
### **Exhibit A – Legal Description**

A PART OF THE SOUTH HALF SECTION 27 IN TOWNSHIP 36 NORTH, RANGE 6 EAST, CITY OF GOSHEN, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A STONE MARKING THE EAST QUARTER-CORNER OF SAID SECTION 27; THENCE SOUTH 01°05'12" EAST (BASED ON THE INDIANA G.C.S., ELKHART COUNTY PROJECTION) ALONG THE EAST LINE OF A PARCEL OF LAND CONVEYED TO THE GOSHEN COMMUNITY SCHOOLS AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2004-35409 AND THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 27, A DISTANCE OF 735.01 FEET TO THE SOUTHEAST CORNER OF SAID GOSHEN COMMUNITY SCHOOLS PARCEL; THENCE SOUTH 88°35'15" WEST ALONG THE SOUTH LINE OF SAID GOSHEN COMMUNITY SCHOOLS PARCEL, 595.02 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 69°22'02" WEST, 501.92 FEET; THENCE SOUTH 20°37'53" EAST, 125.00 FEET; THENCE NORTH 69°22'02" EAST, 25.00 FEET; THENCE SOUTH 20°37'58" EAST, 55.00 FEET TO THE POINT OF A CURVE, CONCAVE TO THE SOUTHEAST; THENCE SOUTHWESTERLY AN ARC DISTANCE OF 39.27 FEET, ALONG SAID CURVE HAVING A RADIUS OF 25.00 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 24°22'04" WEST, 35.35 FEET; THENCE SOUTH 20°37'53" EAST, 298.36 FEET TO THE POINT OF A CURVE, CONCAVE TO THE NORTHEAST; THENCE SOUTHEASTERLY 39.19 FEET ALONG SAID CURVE HAVING A RADIUS OF 25.00 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 65°32'27" EAST, 35.30 FEET; THENCE SOUTH 20°27'01" EAST, 70.00 FEET; THENCE SOUTH 69°32'59" WEST, 139.73 FEET TO THE POINT OF A CURVE, CONCAVE TO THE SOUTHEAST; THENCE SOUTHWESTERLY 114.77 FEET ALONG SAID CURVE HAVING A RADIUS OF 465.00 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 62°28'44" WEST, 114.48 FEET TO THE POINT OF CURVE, CONCAVE TO THE SOUTHEAST; THENCE SOUTHWESTERLY 37.12 FEET ALONG SAID CURVE HAVING A RADIUS OF 25.00 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 12°52'06" WEST, 33.81 FEET; THENCE SOUTH 29°40'17" EAST, 77.94 FEET TO THE POINT OF A CURVE, CONCAVE TO THE SOUTHWEST; THENCE SOUTHEASTERLY 58.52 FEET ALONG SAID CURVE HAVING A RADIUS OF 827.50 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 27°38'44" EAST, 58.51 FEET TO THE POINT OF A CURVE, CONCAVE TO THE NORTHEAST; THENCE SOUTHEASTERLY 37.73 FEET ALONG SAID CURVE HAVING A RADIUS OF 25.00 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 68°51'15" EAST, 34.25 FEET; THENCE SOUTH 22°05'20" EAST, 55.00 FEET TO THE POINT OF A CURVE, CONCAVE TO THE SOUTHEAST; THENCE SOUTHWESTERLY 37.73 FEET ALONG SAID CURVE HAVING A RADIUS OF 25.00 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 24°40'36" WEST, 34.25 FEET TO THE POINT OF A CURVE, CONCAVE TO THE SOUTHWEST; THENCE SOUTHEASTERLY 71.07 FEET ALONG SAID CURVE HAVING A RADIUS OF 827.50 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 16°05'52" EAST, 71.04 FEET; THENCE SOUTH 76°21'45" WEST, 55.00 FEET TO THE POINT OF A CURVE, CONCAVE TO THE NORTHEAST; THENCE SOUTHEASTERLY 211.96 FEET ALONG SAID CURVE HAVING A RADIUS OF 177.50 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 47°50'50" EAST, 199.59 FEET; THENCE SOUTH 07°56'35" WEST, 40.97 FEET; THENCE SOUTH 00°25'02" EAST, 78.56 FEET; THENCE NORTH 89°14'54" EAST, 144.58 FEET; THENCE NORTH 16°23'14" WEST, 21.42 FEET; THENCE NORTH 69°41'30" EAST, 118.39 FEET TO THE POINT OF A CURVE, CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY 102.02 FEET ALONG SAID

CURVE HAVING A RADIUS OF 300.00 FEET AND SUBTENDED BY A LONG CHORD BEARING OF NORTH 79°26'00" EAST, 101.52 FEET; THENCE NORTH 89°10'30" EAST, 533.44 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 27; THENCE SOUTH 01°05'12" EAST ALONG SAID EAST LINE, 128.25 FEET TO THE NORTH RIGHT OF WAY LINE OF WATERFORD MILLS PARKWAY; THENCE SOUTH 89°14'54" WEST ALONG SAID NORTH RIGHT OF WAY LINE, 1,667.06 FEET TO THE POINT OF A CURVE, CONCAVE TO THE NORTHEAST; THENCE NORTHWESTERLY 1,807.70 FEET ALONG SAID CURVE AND NORTH RIGHT-OF-WAY HAVING A RADIUS OF 2,425.00 FEET AND SUBTENDED BY A LONG CHORD BEARING OF NORTH 69°23'46" WEST, 1,766.14 FEET TO THE SOUTHERLY CORNER OF A PARCEL OF LAND CONVEYED TO THE CITY OF GOSHEN, INDIANA AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2001-42758 AND 2001-42759; THENCE NORTH 89°25'12" EAST ALONG THE EAST LINE OF SAID CITY OF GOSHEN PARCEL, 90.92 FEET; THENCE NORTH 26°22'22" EAST ALONG SAID EAST LINE, 780.53 FEET; THENCE SOUTH 63°37'38" EAST ALONG SAID EAST LINE, 50.00 FEET; THENCE NORTH 26°22'22" EAST ALONG SAID EAST LINE, 187.64 FEET; THENCE NORTH 49°27'59" WEST ALONG THE NORTH LINE OF SAID CITY OF GOSHEN PARCEL, 70.77 FEET; THENCE SOUTH 40°32'01" WEST ALONG SAID NORTH LINE, 20.00 FEET; THENCE NORTH 49°27'59" WEST ALONG SAID NORTH LINE, 287.32 FEET TO THE EAST RIGHT OF WAY LINE OF REGENT STREET AND THE POINT OF A CURVE, CONCAVE TO THE SOUTHEAST; THENCE NORTHEASTERLY 90.07 FEET ALONG SAID CURVE AND SAID EAST RIGHT-OF-WAY HAVING A RADIUS OF 2,801.82 FEET AND SUBTENDED BY A LONG CHORD BEARING OF NORTH 39°30'45" EAST, 90.07 FEET; THENCE NORTH 40°38'46" EAST ALONG SAID EAST RIGHT OF WAY LINE OF REGENT STREET, 19.95 FEET TO THE SOUTH LINE OF A PARCEL OF LAND CONVEYED TO THE CITY OF GOSHEN, INDIANA AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2001-42758 AND 2001-42759; THENCE (THE FOLLOWING 15 COURSES ALONG THE SOUTH LINE OF SAID CITY OF GOSHEN PARCEL) SOUTH 49°27'59" EAST, 288.89 FEET; THENCE SOUTH 40°32'01" WEST, 10.00 FEET; THENCE SOUTH 49°27'59" EAST, 103.84 FEET TO THE POINT OF A CURVE, CONCAVE TO THE SOUTHWEST; THENCE SOUTHEASTERLY 67.05 FEET ALONG SAID CURVE HAVING A RADIUS OF 395.00 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 44°36'13" EAST, 66.97 FEET TO THE POINT OF CURVE, CONCAVE TO THE NORTHEAST; THENCE SOUTHEASTERLY 154.35 FEET ALONG SAID CURVE HAVING A RADIUS OF 210.00 FEET AND SUBTENDED BY A LONG CHORD BEARING OF SOUTH 60°47'50" EAST, 150.90 FEET; THENCE SOUTH 81°51'12" EAST, 90.76 FEET; THENCE SOUTH 07°10'19" WEST, 56.04 FEET; THENCE SOUTH 63°52'06" EAST, 495.03 FEET; THENCE SOUTH 12°27'21" WEST, 84.58 FEET; THENCE SOUTH 63°37'38" EAST, 76.55 FEET; THENCE NORTH 69°22'02" EAST, 808.80 FEET; THENCE NORTH 20°54'01" WEST, 86.62 FEET; THENCE NORTH 16°55'17" EAST, 156.23 FEET; THENCE NORTH 20°38'00" WEST, 105.60 FEET; THENCE NORTH 65°07'34" EAST, 231.86 FEET TO THE WESTERLY LINE OF A PARCEL OF LAND CONVEYED TO THE GOSHEN COMMUNITY SCHOOLS AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN INSTRUMENT NUMBER 2004-35409; THENCE SOUTH 27°14'25" EAST ALONG THE WESTERLY LINE OF SAID GOSHEN COMMUNITY SCHOOLS PARCEL, 257.28 FEET; THENCE NORTH 88°35'15" EAST, 235.87 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION. CONTAINING 60.73 ACRES, MORE OR LESS. BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND PUBLIC RIGHTS OF WAY OF RECORD.

Exhibit B







## **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)

May 8, 2025

To: Board of Public Works and Safety

From: Shannon Marks, Legal Compliance Administrator

Subject: Amended and Restated Client Service Agreement with Utility Associates, Inc.

In December 2019, the City of Goshen entered into a Service Agreement with Utility Associates, Inc. to provide video recording cameras and related equipment for Police Department officers, vehicles, and interview rooms, along with software, secure cloud storage, employee training, warranties and technical support. The City and Utility Associates, Inc. wish to renew the Service Agreement for an additional 5-year term to begin June 1, 2025 through May 31, 2030, for an annual cost of \$107,857.60. Attached is Amended and Restated Client Service Agreement for this purpose.

### **Suggested motion:**

Approve and authorize the Mayor to execute the Amended and Restated Client Service Agreement with Utility Associates, Inc. for the supply of equipment, software and services for use of the Goshen Police Department.



## **Amended and Restated Client Service Agreement**

### **INTRODUCTION**

This Amended and Restated Service Agreement (“Service Agreement”) defines the levels of service that the 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 (“Client”) will receive from Utility Associates, Inc. (“UA” or “Supplier”). This Service Agreement amends and restates the Attachment B – Service Agreement (“Original Service Agreement”) executed by the Client on December 23, 2019.

### **Recitals**

**WHEREAS**, the Client and UA entered into the Original Service Agreement for UA to provide, maintain, and support certain IT equipment, software, and services (the “System”) for the use of the Goshen Police Department;

**WHEREAS**, due to no fault of either party, initial deployment was delayed, and the initial five (5) year term of the Original Service Agreement was adjusted to begin on June 1, 2020;

**WHEREAS**, the Term, as defined herein, of the Original Service Agreement will end on May 31, 2025, and will thereafter renew on an annual basis;

**WHEREAS**, the Client and UA wish to amend and restate the Original Service Agreement to enable the Term to renew for a subsequent five (5) year period to begin June 1, 2025;

**WHEREAS**, on or about February 6, 2025, UA provided Client Sales Quote #134566, dated July 17, 2024, (“Quote”) detailing the scope of the System to be provided to the Client from June 1, 2025, through May 31, 2030, and an associated Payment Schedule;

**WHEREAS**, the Client wishes to renew pursuant to the terms of this Service Agreement and the associated Quote; and,

**WHEREAS**, any modification or amendment to the terms and conditions of the Original Service Agreement shall be made in writing and signed by both parties.

**NOW, THEREFORE**, in consideration of the terms, conditions, and mutual covenants to be kept and performed under this Service Agreement, the parties agree as follows:

### **Purpose**

The Client depends on IT equipment, software and services (the “System”) that are provided, maintained and supported by the Supplier. Some of these items are of critical importance to the Client’s business.

This Service Agreement sets out what levels of availability and support the Client is guaranteed to receive for specific parts of the System.

This Service Agreement forms an important part of the contract between the Client and the Supplier. It aims to enable the two parties to work together effectively.

### **SCOPE**

#### **Parties**

This Service Agreement is between:

<b>The Client:</b>	<b>The Supplier:</b>
City of Goshen, Indiana	Utility Associates Inc.
Goshen Police Department 111 East Jefferson Street Goshen, Indiana 46528	250 E. Ponce De Leon Avenue Suite 700 Decatur, GA 30030
Key Contact: Ron Lambdin Technology Department 574-533-8661 <a href="mailto:ronlambdin@goshencity.com">ronlambdin@goshencity.com</a>	Key Contact: Amanda A. Havice 800-597-4707 <a href="mailto:contracts@utility.com">contracts@utility.com</a>

## Dates and Reviews

This Service Agreement begins on June 1, 2020 (the “Effective Date”) and will run for the Term of the Service Agreement which may be amended, altered, extended or renewed as set forth herein. The date indicated on an offer letter provided to Client by UA shall not function as an effective date.

It may be revised at any point by mutual written agreement of the parties, including if there are any changes to the Client’s system.

## Equipment, Software and Services Covered

This Service Agreement covers only the equipment, software and services in the table below. This list may be updated at any time, with the written agreement of both the Client and Supplier.

Item Type	Number of Items	Item Priority
EOS™ & ROCKET™ In-Car Video System Hardware Bundle	Qty. 49 Supplied by UA	1
Bluetooth Media Controller	Qty. 49 Supplied by UA	2
Holster Activation Sensor	Qty. 49 Supplied by UA	1
AvailWeb	Qty. Unlimited Licenses Supplied by UA	1
ROCKET™ IoT Control Unit	Qty. 49 Supplied by UA	2
ROCKET™ Front & Rear Facing In-Vehicle Cameras (2 Per Vehicle)	Qty. 49 Supplied by UA	1
Rugged Tablet Interface	Qty. 49 Supplied by UA	2
BodyWorn-Ready Uniforms	Qty. Based on Uniform Type, Per Officer, Supplied by UA	3
ROCKET™ IoT Interview Room	Qty. 5 Supplied by UA	2
Smart WayPoint	Qty. 1 Supplied by UA	1
This table is not meant to limit the identification of the items UA shall provide to Client, which may be amended in writing from time to time. Items to be provided are also described generally in Attachment A (Quote #12027), and in the Offer Letter dated October 21, 2019, as amended by Quote #134566, dated July 17, 2024, all attached to and made a part of this Service Agreement.		



## Exclusions

This Service Agreement is written in a spirit of partnership. The Supplier will always do everything possible to rectify every issue in a timely manner.

However, there are a few exclusions. This Service Agreement does not apply to:

- Any equipment, software, services or other parts of the System not listed above, except as may be amended in writing from time to time.
- Software, equipment or services not purchased via and managed by the Supplier

Additionally, this Service Agreement does not apply when:

- The problem has been caused by using equipment, software or services in a way that is **not recommended (defined as intentional neglect, misuse, or destruction of the equipment)**
- The Client has made **unauthorized changes** to the configuration or set up of affected equipment, software or services. Unauthorized changes are defined as changes made by any party other than the Supplier to the software, hardware, or firmware that alter the System's ability to record, upload, or view data.
- The Client has prevented the Supplier from **performing required maintenance and update** tasks.
- The issue has been caused by **unsupported** equipment, software or other services of the Client.

This Service Agreement does not apply in circumstances that could reasonably be said to be beyond the Supplier's control. For instance: floods, war, acts of God and so on.

Regardless of the circumstances, the Supplier aims to be helpful and accommodating at all times and will do its absolute best to assist the Client wherever possible.

## RESPONSIBILITIES

### Supplier Responsibilities

The Supplier will provide and maintain the System used by the Client. This Service Agreement between the Supplier and the Client includes full details of these responsibilities.

Additionally, the Supplier will do the following:

- SaaS will be maintained at 99% uptime/availability or greater 24/7/365
- Ensure relevant software, services and equipment are available to the Client including an appropriate level of spares
- Respond to support requests within the timescales listed below
- Take steps to escalate and resolve issues in an appropriate, timely manner
- Maintain good communication with the Client at all times

### Client Responsibilities

The Client will use the Supplier-provided System as intended.

The Client is responsible for maintaining power and internet connectivity at all video offload locations on the network. For offload via a Client approved third party or Supplier provided access point, the Client has the option of either (a) organizing an independent internet connection via its local provider with a minimum upload speed of 50 Mbps, or, (b) connecting the access point to its own network having a minimum internet upload speed of 50 Mbps. Upon execution of this Service Agreement, as part of the deployment process, a network assessment will be conducted of the Client's upload speed for the transmission of data to the CJIS Compliant Cloud. In most cases, the Client should budget for an increase to their upload speed with their local carrier.

Additionally, the Client will:

- Notify the Supplier of issues or problems in a timely manner
- Provide the Supplier with access to equipment, software and services for the purposes of maintenance, updates and fault prevention
- Maintain good communication with the Supplier at all times

## GUARANTEED RESPONSE TIMES

When a Client raises a support issue with the Supplier, the Supplier promises to respond in a timely fashion.

### Response Times

UA provides a 99% uptime/availability commitment. All systems have health monitoring that assures that issues are typically addressed 24/7/365 by UA personnel before they become an impact to the performance of the service. For support provided to the Client directly, UA has a tiered response to support that will escalate the level of support depending on the situation. Tier 1 would be on-site support by the Client's department staff after they have been trained by UA, which will alleviate most day-to-day issues that may pop up. Problems beyond Tier 1 scope will be escalated to Tier 2, which is phone-based support, and from there to Tier 3, which is on-site technical support from a UA field engineer. The cost of the response time is included in this Service Agreement.

While most support calls are handled immediately, Tier 2 issues have guaranteed response times as shown below:

Item Priority	Fatal	Severe	Medium	Minor
1	1 Hour	1 Hour	2 Hours	3 Hours
2	2 Hours	2 Hours	4 Hours	6 Hours
3	4 Hours	4 Hours	8 Hours	16 Hours

### Severity Levels

The severity levels shown in the tables above are defined as follows:

- **Fatal:** Complete degradation – **all users and critical functions affected.** Item or service completely unavailable.
- **Severe:** Significant degradation – **large number of users or critical functions affected.**
- **Medium:** Limited degradation – **limited number of users or functions affected.** Business processes can continue.
- **Minor:** Small degradation – **few users or one user affected.** Business processes can continue.

## RESOLUTION TIMES

The Supplier will always endeavor to resolve problems as swiftly as possible. It recognizes that the Client's systems are key to daily functions and must be functional in the field.

However, UA is unable to provide guaranteed resolution times. This is because the nature and causes of problems can vary.

In all cases, the Supplier will make its best efforts to resolve problems as quickly as possible. It will also provide frequent progress reports to the Client.





## SCOPE OF SERVICES

1.1.1 Access to Software. UA is the developer and owner of, or has rights to, certain enterprise mobile device tracking and messaging software known as “AVaiL™”, “AVaiL™ Web”, “Polaris™”, “Vehicle Diagnostics”, and “RFID Tracking” and related content to be provided to Client; such software, its related content and any related documentation provided by UA, and the means used to provide the software to Client and the services described herein are collectively referred to as the “Service”. Subject to Client’s payment of the applicable fees and Client’s compliance with the terms of this Service Agreement, Client, its affiliates and its and their employees (“Licensed Users”) shall have the right to access and use the Service solely for Client’s and its affiliates’ internal business purposes. UA will issue to one Licensed User (“Client Administrator”) an individual login identifier and password (“Administrator Login”) for purposes of administering the Service. Using the Administrator’s Login, the Client Administrator shall assign each Licensed User a unique login identifier and password (“User Login”) and provide such information to the Licensed Users and UA via the Service. Client shall not provide a User Login to any individual or entity that is not a Licensed User to use the Service. Client shall be responsible to ensure, by written agreement or otherwise, that each Licensed User will: (a) be responsible for the security and/or use of his or her User Login; (b) not disclose such login identifier or password to any person or entity; (c) not permit any other person or entity to use his or her User Login; (d) use the Service only in accordance with the terms and conditions of this Service Agreement and on the workstation software from which the Service is accessed. UA shall have the right to deactivate, change and/or delete User Logins of Licensed Users who have violated this Service Agreement and to deny or revoke access to the Service, in whole or in part, if UA reasonably believes Client and/or its Licensed Users are in material breach of this Service Agreement. Client shall be solely responsible for ensuring that the access to the Service by a Licensed User who ceases to be an employee of Client or one of its affiliates is terminated. UA shall have no responsibility for managing, monitoring, and/or overseeing Client’s and its Licensed Users’ use of the Service. Client acknowledges that the Service may contain devices to monitor Client’s compliance with the terms and restrictions contained herein and Client’s obligations hereunder.

1.1.2 Operating Environment. Client is solely responsible for acquiring, installing, operating and maintaining the hardware and software environment necessary to access and use the Service remotely via the Internet.

1.1.3 Changes to Service. UA may upgrade, modify, change or enhance (“Change”) the Service and convert Client to a new version thereof at any time in its sole discretion so long as such Change does not materially diminish the scope of the Service, in which event Client shall have the right to terminate this Service Agreement upon thirty (30) days written notice to UA. During the term of this Service Agreement, if UA upgrades the version of the Service Client is using under this Service Agreement, Client will not be charged an upgrade fee. Should UA offer additional optional software modules in the future that complement the software, Client may elect to purchase the optional software modules for an additional fee; however, Client has no obligation to do so.

1.1.4 Help Desk. UA shall provide 24/7 Client support in the form of a Help Desk. Clients reporting issues through email will receive confirmation of the issue within a reasonable time and will receive a callback the same business day if practical. The Help Desk is always subject to availability of our technical staff and clause 1.1.5 below.

1.1.5 Uptime Commitment.

a. Availability. The Service will be made available to Client and its Licensed Users twenty-four hours a day, seven days a week less the period during which the Service are not available due to one or more of the following events (collectively, the “Excusable Downtime”):

- (i) Scheduled network, hardware or service maintenance;
- (ii) The acts or omissions of Client or Client’s employees, agents, contractors, vendors, or anyone gaining access to the Service by means of a User Login;
- (iii) A failure of the Internet and/or the public switched telephone network;
- (iv) The occurrence of any event that is beyond UA’s reasonable control, or
- (v) At Client’s direction, UA restricting Client’s and its Licensed Users access to the Service.

b. Commitment. Client is responsible for promptly notifying UA in the event of a suspected Service failure. For the purposes of establishing uptime herein, downtime begins upon such notification and ends upon restoration of Service. Subject to Client satisfying its obligations herein, UA guarantees that the Service will be available to Client and its Licensed Users at least 99% of the time during each calendar month, excluding Excusable Downtime (“Uptime



Commitment"). If UA fails to satisfy the Uptime Commitment during a month, then UA will credit to Client a prorated portion of the Fees in the first month of the next succeeding calendar quarter following the failure. For purposes of this Section, "prorated portion of the Fees" means the product obtained by multiplying the applicable Fees during the month of the failure by a fraction, the numerator of which will be the number of hours that the Service did not satisfy the Uptime Commitment, and the denominator of which will be the total number of hours during the month that such failure occurred less Excusable Downtime.

1.1.6 Uniforms. UA's Eos Solution is the only body camera system available to law enforcement that features direct integration of camera hardware into the officer's/deputy's uniform. As part of the Service Agreement, UA will furnish the following allotments and services within 90 days of the Effective Date. Such allotments and services may no longer be available after the expiration of the 90-day period, subject to UA's discretion.

a. Retrofits of existing uniforms. A quantity of five (5) standard uniform garments, per Eos camera purchased, will be modified to Eos ready status, for the purposes of product integration with our camera hardware solution. UA will provide the Client with both uniform retrofit vouchers and packing slip templates. Note, both uniform vouchers and accurately completed packing slips are required for all retrofit requests being sent to UA for processing. Failure to provide accurate uniform information may result in delays of processing the Client's request.

b. Retrofits of Standard garment types. Acceptable garment installation types offered at no-additional charge, as part of the initial project launch with a multiyear Service Agreement, include the following:

- (i) Duty shirts (long or short sleeve)
- (ii) Soft outer carrier vest
- (ii) Standard soft-shell jacket

c. Retrofits of Non-standard garment types. Non-standard garment types that may still be modified to Eos ready status at an additional charge, include the following: (please see table 1.2.1, for pricing details)

- (i) Polo shirts
- (ii) Commando style sweaters
- (ii) Tactical vest or outer plate carriers
- (iv) Leather jackets

1.2.1 Uniform Retrofit Pricing Schedule. Prices effective May 2023.

a. Eos - **standard** garment retrofit service table

Example Model	Description	Price (ea).
Blauer 8670, 8675, 8446	Duty Shirt, Eos Ready	\$13
Blauer 8780, 8370, 8375, 8470 (XP Series)	Carrier Vest Mount, Eos Ready	\$23
Blauer 343, 343R	Traffic Safety Vest, Eos Ready	\$23
Blauer 8780, 8370, 8375, 8470	Carrier Vest Zipper Mount, Eos Ready	\$23
Spiewak	Carrier Vest Mount, Eos Ready	\$33



Duty Jacket (Charge per Layer)	All Jackets (Except Leather – Estimate Only)	\$23
All Standard Uniform Types	Grommet Swap Out	\$10

b. Eos **non-standard** garment retrofit service table. Due to the complicated nature of retrofitting non-standard garments, all prices provided below are considered estimates. Final pricing will be assessed at the time of services rendered. For additional questions, comments or concerns please email UA at: [uniforms@utility.com](mailto:uniforms@utility.com).

Description	Price (ea).
Carrier Vest – Horizontal Mounting (Ex. Blauer 8340, 8375)	\$33
Tactical Vest or Load Bearing Vest (LBV) – All Styles	\$53
Polo Shirt	\$43
Polo Carrier – Horizontal Zipper	\$43
Leather Jacket / Coat.	Estimate Only
Patches	
Single	\$5
Pair	\$6
Name Tape - Includes Embroidery and Velcro	\$10

Motor unit jackets must be quoted via design consult, please contact [uniforms@utility.com](mailto:uniforms@utility.com) to schedule.

## USE OF THE SERVICE

2.1 Scope of Use. Subject to the terms and conditions of this Service Agreement, including, without limitation, Section 2.2 and 2.3 hereof and Client's payment of all applicable Fees, UA hereby grants to Client a limited, a non-exclusive, non-assignable, non-transferable license (the "License"), without the right to sublicense, to access and use the Service, during the Term, over the Internet for Client's and its affiliates' internal business purposes, on a computer or a computer network operated by Client, only by Licensed Users and only using the User Logins provided to UA for such Licensed Users for such use.



2.2 End User License Agreements. The Licensed software may incorporate software under license from a third party. If the third party requires Client's notification of such use through an End User License Agreement ("EULA"), UA will provide such notification to the Client. In order to use the Service, the Client agrees to be bound by all EULA(s) provided at the time of delivery whether by hardcopy or displayed upon Installation or use of the Service. Client's use of the Service subsequent to such notice(s) shall constitute Client's acceptance of the EULA(s).

2.3 Restrictions. Client and its Licensed Users shall not: (a) copy the Service or any portion thereof other than as required to use the Service remotely as intended by this Service Agreement; (b) translate, decompile or create or attempt to create, by reverse engineering or otherwise, the source code from the object code of the Service; (c) modify, adapt, translate or create a derivative work from the Service; (d) use the Service to track more than the number of tracked asset units for which Fees have been paid pursuant Article 3 below; (e) sell, lease, loan, license, assign, sublicense, rent, transfer, publish, disclose, divulge, display, make available to third parties on a time-sharing or service bureau basis or otherwise make available for the benefit of third parties all or any part of the Service, including, without limitation, by transmitting or providing the Service, or any portion thereof, over the Internet, or otherwise, to any third party; (f) interfere or attempt to interfere with the operation of the Service in any way; (g) remove, obscure or alter any label, logo, mark, copyright notice, trademark or other proprietary rights notices affixed to or contained within the Service; (h) create any frames or other references at any other web sites pertaining to or using any of the information provided through the Service or links to the Service; or (i) engage in any action that constitutes a material breach of the terms and conditions of this Service Agreement. All rights not expressly granted hereunder are reserved to UA.

2.4 Client Data Ownership and Retention. The System captures, generates and creates images, video and other related media ("Data"). Except as otherwise stated herein, Client shall retain all right, title and interest in Data captured, generated or created by or through the Client's use of the System for its internal business purposes ("Client Data"). Client shall be solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of all Client Data. Client shall implement a record retention and classification policy for managing and, as applicable, storing Client Data. The default retention period for Data shall be twelve (12) months from the Data's date of capture, generation or creation after which time it shall be deleted. UA reserves the right, in its sole discretion, to transfer Data and Client Data into archival storage without notice to the Client after three (3) or more months from the date of such Data's or Client Data's capture, generation, or creation. Client's access to Data and Client Data in archival storage may be delayed up to 24 hours from the time of Client's request for access. Any amendment or modification of this Section by the parties may result in the imposition of an additional fee or charge which shall be the responsibility of the Client.

2.4.1 ALPR Data. Vehicle detection data created and/or generated by the System's Automated License Plate Reader ("ALPR") functionality shall be a separately defined and classified type of Data ("ALPR Data"). Client shall retain all right, title and interest in ALPR Data captured, generated or created by or through the Client's use of the System for its internal business purposes ("Client ALPR Data"). Client shall implement a record retention and classification policy for managing and, as applicable, storing Client ALPR Data. Client shall also implement a record retention policy for the management of ALPR Data. Prior to the implementation of Client's ALPR Data retention policy, the default retention period for ALPR Data shall be twelve (12) months from the ALPR Data's date of generation or creation after which time ALPR Data shall be deleted.

2.4.2 ALPR Data Sharing. ALPR Data shall be made available to other law enforcement agency clients under contract or agreement with UA within Client's state ("Other LEAs"). Client shall similarly have access to ALPR Data created and/or generated by Other LEAs within Client's state. Access to additional, out-of-state ALPR Data may be provided upon Client's request and Other LEA's acceptance.

2.4.3 ALPR Data Sharing Consent. Client, in its sole discretion, hereby grants Other LEAs a limited right to access and use its ALPR Data as authorized, defined and/or restricted by any applicable federal, state and/or local laws, regulations and/or policies. Other LEAs may grant a limited right to Client to access and use their own ALPR Data which Client shall access and use in full compliance with any applicable federal, state and/or local laws, regulations and/or policies. Client may restrict access to its ALPR Data and restrict its access to Other LEAs' ALPR Data at any time by submitting written notice to UA. UA shall restrict access to Client's ALPR Data and Client's access to Other LEAs' ALPR Data no later than five (5) business days after receipt of such notice from Client.



- 2.4.4 ALPR Data Indemnification. Client agrees to indemnify and hold harmless UA against any damages, losses, liability, settlements and expenses (including without limitation costs and attorney's fees) in connection with any claim or action that arises from Client's sharing, use or access of ALPR Data in connection with its use of the System including, but not limited to, any claim that such action violates any applicable federal, state and/or local law, regulation and/or policy or third party right.

## **FEES AND PAYMENT TERMS**

3.1 Fees. As a condition to the License granted pursuant to Section 2.1 above, Client shall pay annual Service usage fees ("Fees"). Client is exempt from most federal, state and local taxes, and will provide UA a sales tax exemption certificate upon request. Client will not be responsible for any taxes levied on UA as a result of this Service Agreement. Client shall pay Fees within thirty (30) days of the Client's receipt of the invoice. If Client fails to pay any undisputed Fees within thirty (30) calendar days of the Client's receipt of the invoice, the Service shall be suspended until all outstanding Fees have been paid. All Fees shall be non-refundable except as otherwise set forth herein. Should Client have a billing dispute, Client must provide notice to UA in writing within thirty (30) days of Client's receipt of the invoice with an explanation of the disputed invoiced amount or else Client will waive the right to dispute the amount set forth on the invoice. Client is still obligated to pay undisputed amounts. UA shall send invoices to Client at the "Bill To" address on the attached Quote, or at such other address as City may designate in writing from time to time.

3.2 Time-and-Materials Service. If Client requests and UA agrees to provide services that are outside the scope of the Service, such services shall be provided at UA's then-current hourly service rates as established within a separate agreement addressing these specific requests.

## **REPRESENTATIONS AND WARRANTIES**

4.1 Expressed Warranty. Products manufactured by UA are warranted to be free from defects in material and workmanship under normal use and service. This warranty is applicable to any of UA's products that Client returns to UA during the Term of the Service Agreement. All equipment issued, including Eos™ devices and peripherals, and Rocket IoT™ in-vehicle systems and peripherals, are warranted for the Term of the Service Agreement and will be repaired or replaced at UA's cost with an appropriate Request to Merchant Authorization (RMA). Failure to return warranty replacement items in the time specified by UA may result in additional fees or surcharges assessed at UA's sole discretion. UA's obligations, with respect to such applicable warranty returns, are limited to repair, replacement, or refund of the purchase price actually paid for the product, at UA's sole option. UA shall bear round-trip shipment costs of defective items found to be covered by this warranty. Defective products or parts thereof may be replaced with either new, factory refurbished, or remanufactured parts. Defective parts, which have been replaced, shall become the UA's property. This warranty does not extend to any product sold by UA which has been subjected to malicious intent, neglect, accident, improper installation by a non-authorized 3<sup>rd</sup> party, or a use for purposes not included or not in accordance with operational maintenance procedures and instructions furnished by UA, or which has been repaired or altered by persons other than UA or which has been damaged by secondary causes, including but not limited to, improper voltages, adverse environment conditions, improper handling, or products which have had their serial number or any part thereof altered, defaced, or removed. UA liability does not cover normal wear and tear or deterioration. Uniforms or modified uniforms provided with the service have a 1-year warranty and are limited to defects in material workmanship that prevent the user from capturing video and/or using the Service. The Expressed Warranty does not include changes to the color or appearance of the uniform that result from normal wear and tear.

4.2 UA and Client Responsibilities. Each party (the "Representing Party") represents and warrants to the other that: (a) it has the authority to enter this Service Agreement and to perform its obligations under this Service Agreement; (b) the execution and performance of this Service Agreement does not and will not violate any agreement to which the Representing Party is a party or by which it is otherwise bound; and (c) when executed and delivered, this Service Agreement will constitute a legal, valid and binding obligation of the Representing Party, enforceable in accordance with its terms. In addition to the foregoing: UA warrants that the software provided as part of the Service will materially conform to the applicable then-current documentation relating to the Service when used in an operating environment that complies with the then-current documentation relating to the Service. Client's sole and exclusive remedy for defects, errors or malfunctions of the Software as a Service shall be a pro rata refund (for the unexpired portion of the applicable Term) of the Fees paid to UA hereunder. Client represents and warrants to UA that Client





and its Licensed Users (i) will use the Service only for lawful purposes; (ii) will not interfere with or disrupt the operation of the Service or the servers or networks involved with the operation of the Service; (iii) will not attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through any other means; or (iv) will not interfere with another user's use and enjoyment of the Service.

4.3 Export Restrictions. Client represents and warrants that it and all Licensed Users will comply with all applicable laws, rules and regulations in the jurisdiction from which they access the Service, including those laws, rules and regulations which apply to the access, import, use and export of controlled technology or other goods. Client also agrees that it and all Licensed Users will comply with the applicable laws, rules and regulations of the jurisdictions from which UA operates the Service (currently, the United States of America). In particular, Client represents, warrants and covenants that it shall not, without obtaining prior written authorization from UA and, if required, of the Bureau of Export Administration of the United States Department of Commerce or other relevant agency of the United States Government, access, use, export or re-export, directly or indirectly, the Service, or any portion thereof or any Confidential Information of UA (including without limitation information regarding the use, access, deployment, or functionality of the Service) from the United States to (a) any country destination to which access, use, export or re-export is restricted by the Export Administration Regulations of the United States Department of Commerce; (b) any country subject to sanctions administered by the Office of Foreign Assets Control, United States Department of the Treasury; or (c) such other countries to which access, use, export or re-export is restricted by any other United States government agency. Client further agrees that it is solely responsible for compliance with any import laws and regulations of the country of destination of permitted access, use, export or re-export, and any other import requirement related to a permitted access, use, export or re-export.

4.4 Warranty Disclaimer. CLIENT ACKNOWLEDGES THAT, EXCEPT AS PROVIDED HEREIN, THE SERVICE IS PROVIDED HEREUNDER WITH NO WARRANTY WHATSOEVER. CLIENT ACKNOWLEDGES THAT ITS USE OF THE SERVICE IS AT ITS OWN RISK. EXCEPT AS EXPRESSLY PROVIDED HEREIN, (a) THE SERVICE IS PROVIDED SOLELY ON AN "AS-IS" BASIS, AND (b) UA MAKES, AND CLIENT RECEIVES, NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE. UA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND/OR NON INFRINGEMENT AND ALL DUTIES AND OBLIGATIONS IMPLIED IN LAW. UA DOES NOT WARRANT THAT THE SERVICE SHALL BE OPERABLE, SHALL PROPERLY STORE DATA, SHALL OPERATE UNINTERRUPTED OR ERROR FREE, SHALL BE SECURE, SHALL KEEP DATA CONFIDENTIAL, SHALL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR SHALL MEET CLIENT'S NEEDS.

## **CONFIDENTIAL INFORMATION**

5.1 Confidential Information. As used herein, the term "Confidential Information means all technical, business and other information relating to the Service, which (i) is possessed or hereafter acquired by UA and disclosed to Client or Licensed Users, (ii) derives economic value from not being generally known to persons other than UA and its Clients, and (iii) is the subject of efforts by UA that are reasonable under the circumstances to maintain its secrecy or confidentiality. Confidential Information shall include, but shall not be limited to, oral or written (including, without limitation, storage in electronic or machine readable media) information with respect to UA's trade secrets, know-how, proprietary processes, operations, employees, contractors, prospects, business plans, product or service concepts, business methods, hardware, software, codes, designs, drawings, products, business models and marketing strategies, in each case relating to the Service. Confidential Information shall not include any information which Client can demonstrate (a) has become generally available to and known by the public (other than as a result of a disclosure directly or indirectly by Client, any of its affiliates or any of its or their respective employees, contractors or agents), (b) has been made available to Client on a non-confidential basis from a source other than UA, provided that such source is not and was not bound by a confidentiality agreement with UA or any other legal obligation of non-disclosure, or (c) has been independently acquired or developed by Client without violating any of its obligations under this Service Agreement.

5.2 Non-Disclosure of Confidential Information. Client shall hold confidential all Confidential Information (as defined in Section 5.1) of UA and shall not disclose or use (except as expressly provided in this Service Agreement) such Confidential Information without the express written consent of UA. Confidential Information of UA shall be protected by the Client with the same degree of care as Client uses for protection of its own confidential information,



but no less than reasonable care. Client may disclose Confidential Information only to those of its employees who have a need to know the Confidential Information for purposes of performing or exercising rights granted under this Service Agreement and only to the extent necessary to do so. At any time upon the request of UA, the Client shall promptly, at the option of UA, either return or destroy all (or, if UA so requests, any part) of the Confidential Information previously disclosed and all copies thereof, and the Client shall certify in writing as to its compliance with the foregoing. Client agrees to secure and protect the Confidential Information in a manner consistent with the maintenance of UA's rights therein and to take appropriate action by instruction or agreement with its Licensed Users to satisfy its obligations hereunder. Client shall use its reasonable commercial efforts to assist UA in identifying and preventing any unauthorized access, use, copying or disclosure of the Confidential Information, or any component thereof. Without limitation of the foregoing, Client shall advise UA immediately in the event Client learns or has reason to believe that any person has violated or intends to violate these confidentiality obligations or the proprietary rights of UA. In the event Client is required to disclose any Confidential Information by law or court order, it may do so, provided that UA is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that the Client apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information. In such event, Client shall not be liable for such disclosure unless such disclosure was caused by, or resulted from, in whole or in part, a previous disclosure by Client, any of its affiliates or any of its or their respective employees, contractors or agents, not permitted by this Service Agreement. UA Confidential Information shall not include information which can be demonstrated by Client: (i) to have become part of the public domain except by an act or omission or breach of this Service Agreement on the part of Client, its employees, or agents; (ii) to have been supplied to Client after the time of disclosure without restriction by a third party who is under no obligation to UA to maintain such information in confidence; or (iii) required to be disclosed by law or court order, provided that UA is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that Client apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information. Notwithstanding the foregoing, UA may publish the fact of the existence of this Service Agreement and/or the business relationship created hereby, and may include reference to it in its marketing collateral.

5.3 Non-Disclosure of Client Confidential Information. Notwithstanding any provision of this Service Agreement to the contrary, UA shall hold confidential all information disclosed to UA (a) concerning the business affairs or proprietary and trade secret information of Client, (b) any information that derives economic value from not being generally known to persons other than Client and its employees, and (c) any information that is the subject of efforts by Client that are reasonable under the circumstances to maintain its secrecy or confidentiality, whether disclosed to UA by Client in oral, graphic, written, electronic or machine readable form ("Client Confidential Information") and shall not disclose or use such Client Confidential Information without the express written consent of Client. Client Confidential Information shall be protected by UA with the same degree of care as UA uses for its own confidential information, but no less than reasonable care. UA may disclose Client Confidential Information only to those of its employees who have a need to know the Client Confidential Information for purposes of performing or exercising rights granted under this Service Agreement and only to the extent necessary to do so. At any time upon the request of Client, UA shall promptly, at the option of Client, either return or destroy all (or, if Client so requests, any part) of the Client Confidential Information previously disclosed and all copies thereof, and UA shall certify in writing as to its compliance with the foregoing. UA agrees to secure and protect the Client Confidential Information in a manner consistent with the maintenance of Client's rights therein and to take appropriate action by instruction or agreement with its employees to satisfy its obligations hereunder. UA shall use reasonable commercial efforts to assist Client in identifying and preventing any unauthorized access, use, copying or disclosure of the Client Confidential Information, or any component thereof. Without limitation of the foregoing, UA shall advise Client immediately in the event UA learns or has reason to believe that any person has violated or intends to violate these confidentiality obligations or the proprietary rights of Client, and UA will, at UA's expense, cooperate with Client in seeking injunctive or other equitable relief in the name of UA or Client against any such person. Client Confidential Information shall not include information which can be demonstrated by UA: (i) to have become part of the public domain except by an act or omission or breach of this Service Agreement on the part of UA, its employees, or agents; (ii) to have been supplied to UA after the time of disclosure without restriction by a third party who is under no obligation to Client to maintain such information in confidence; or (iii) required to be disclosed by law or court order, provided that Client is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that UA apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information.

5.4 Passwords. Any and all login identifiers and passwords provided hereunder are deemed Confidential Information of UA. Client and Licensed Users are responsible for maintaining the confidentiality of such login



identifiers and passwords. Client agrees to (a) notify UA of any unauthorized use of such login identifiers or passwords or any other breach of security pertaining to the Service when it became known to the Client, and (b) ensure that Licensed Users exit from their accounts at the end of each session. UA cannot and will not be liable for any loss or damage arising from Client's or any Licensed User's failure to comply with this Section 5.4.

5.5 Term. With regard to Confidential Information that constitutes trade secrets, the obligations in this Section shall continue for so long as such information constitutes a trade secret under applicable law. With regard to all other Confidential Information, the obligations in this Section shall continue for the term of this Service Agreement and for a period of five (5) years thereafter.

## **INDEMNIFICATION AND LIABILITY**

6.1 UA shall indemnify, defend and hold the Client and its officials, agents and employees harmless from and against any and all claims, damages, losses, injuries and expenses (including reasonable attorneys' fees), relating to or arising out of: (i) any act or omission of UA, its officers, employees, subcontractors, or agents in connection with the performance of the Services; (ii) any breach of a covenant, representation or warranty made by UA under this Contract; and (iii) use by UA of any intellectual property in connection with the Services (whether such intellectual property is owned by UA or a third party) or the incorporation by UA of intellectual property into the Services.

6.2 EXCEPT FOR BREACHES OF SECTIONS 2 OR 5, IN NO EVENT WILL: (I) EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS SERVICE AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS SERVICE AGREEMENT EXCEED THE TOTAL ANNUAL AMOUNT PAID BY CLIENT TO UA UNDER THIS SERVICE AGREEMENT. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION. THIS SECTION WILL BE GIVEN FULL EFFECT EVEN IF ANY REMEDY SPECIFIED IN THIS SERVICE AGREEMENT IS DEEMED TO HAVE FAILED IN ITS ESSENTIAL PURPOSE.

## **PROPRIETARY RIGHTS**

7.1 Proprietary Rights. No right (except for the License right granted in Article 2), title or interest in any intellectual property or other proprietary rights are granted or transferred to Client hereunder. UA and its third-party licensors and service providers retain all right, title and interest, including, without limitation, all patent, copyright, trade secret and all other intellectual property and proprietary rights, inherent in and appurtenant to the Service and all derivative works connected therewith.

## **TERM AND TERMINATION**

8.1 Term; Termination. The term of this Service Agreement (the "Term") shall commence on the Effective Date and shall continue for an initial term of Five (5) years thereafter, unless terminated earlier or renewed as set forth herein, and shall automatically renew for additional Five (5) years (the "Renewal Term") unless either party provides written notice of termination ninety (90) days prior to the expiration of the initial Term or then current Renewal Term. Either party may immediately terminate this Service Agreement in the event that:

- (a) the other party breaches any material obligation, warranty, representation or covenant under this Service Agreement and does not remedy such failure within thirty (30) days after its receipt of written notice of such breach or,
- (b) the other party becomes insolvent or is unable to pay its debts as due, enters into or files (or has filed or commenced against it) a petition, arrangement, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or similar laws of any other jurisdiction or transfers all of its assets to another person or entity.



If timely payment of Fees is not received by its due date, UA reserves the right to either suspend or terminate Client's or Licensed User's access to the Service. Upon termination or expiration of this Service Agreement for any reason, the License and the Service shall terminate, Client will be obligated to pay any and all Fees due hereunder up through the effective date of the termination or expiration and UA shall have no further obligations to Client. If Client has already paid the annual Fees for Service, UA shall refund the pro rata share of all Fees not owing past the effective date of termination. Sections 2.2, 2.3, and 4.3 and Articles 5, 6, 7, 8, and 9 hereof shall survive the expiration or termination of this Service Agreement for any reason.

## MISCELLANEOUS

9.1 Notices. Any written notice required or permitted to be delivered pursuant to this Service Agreement will be in writing and will be deemed delivered: (a) upon delivery if delivered in person; (b) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, postage prepaid; (c) upon transmission if sent via telecopier/facsimile, with a confirmation copy sent via overnight mail; (d) one (1) business day after deposit with a national overnight courier;

9.2 Governing Law and Venue. This Service Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Service Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Indiana. Any suit or proceeding relating to this Service Agreement shall be brought in the courts, state and federal, located in Elkhart County, Indiana.

9.3 UCITA Disclaimer. THE PARTIES AGREE THAT THE UNIFORM COMPUTER TRANSACTIONS ACT OR ANY VERSION THEREOF, ADOPTED BY ANY STATE, IN ANY FORM ("UCITA"), SHALL NOT APPLY TO THIS SERVICE AGREEMENT. TO THE EXTENT THAT UCITA IS APPLICABLE, THE PARTIES AGREE TO OPT OUT OF THE APPLICABILITY OF UCITA PURSUANT TO THE OPT-OUT PROVISION(S) CONTAINED THEREIN.

9.4 Assignment. Client will not assign, sublicense or otherwise transfer this Service Agreement, in whole or in part, nor delegate or subcontract any of its rights or obligations hereunder, without UA's prior written consent, except in the event of an assignment to an affiliate.

9.5 Force Majeure. Neither party shall have any liability to the other or to third parties for any failure or delay in performing any obligation under this Service Agreement due to circumstances beyond its reasonable control including, without limitation, acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances or terrorism, or power, communications, satellite or network failures; provided, however, this Section 9.5 shall not apply to Client's obligation to pay any of the Fees in accordance with Article 3 hereof.

9.6 Modifications. Except for Changes, as set forth in Section 1.1.3, which shall not require the mutual written authorization of the parties hereto, all amendments or modifications of this Service Agreement shall be in writing signed by an authorized representative of each party hereto. The parties expressly disclaim the right to claim the enforceability or effectiveness of: (a) any amendments to this Service Agreement that are not executed by an authorized representative of UA and Client; (b) any oral modifications to this Service Agreement; and (c) any other amendments based on course of dealing, waiver, reliance, estoppel or similar legal theory. The parties expressly disclaim the right to enforce any rule of law that is contrary to the terms of this Section.

9.7 Waiver. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under this Service Agreement will not be deemed to be a waiver or modification by such party of any of its rights under this Service Agreement.

9.8 Severability. If any provision of this Service Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, in whole or in part, such holding shall not affect the validity or enforceability of the other provisions of this Service Agreement.

9.9 Headings. The headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.



9.10 Entire Service Agreement. This Service Agreement (including the Schedules and any addenda hereto) contains the entire agreement of the parties with respect to the subject matter of this Service Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter.

IN WITNESS WHEREOF, UA and Client have executed this Service Agreement as of the date set forth below. All signed copies of this Service Agreement shall be deemed originals.

**Signed on behalf of The Client:**

**Signed:** \_\_\_\_\_

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

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

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

**Signed on behalf of The Supplier:**

**Signed:** \_\_\_\_\_

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

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

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





October 21, 2019

Chief Jose Miller  
Goshen Police Department  
111 East Jefferson Street  
Goshen, Indiana 46528

Dear Chief Miller,

Utility Inc. is honored that your Department is considering our Company to provide its Officers with the BodyWorn™ and Rocket IoT™ solution. We take great pride in our Law Enforcement Partnerships and look forward to adding your Department to the growing family of Departments and Agencies who have deployed BodyWorn and Rocket IoT – the industry's smartest technology for first responders.

Please allow this letter to serve notice that Utility Inc. agrees to the following provisions as part of the service agreement that the Goshen Police Department intends to enter into with our Company:

1. Price Proposal:

- a. Body Camera and Vehicle Video & Communications Systems to Support a Total of 49 Officers, 49 Vehicles with In-Car Video & High-Speed Communications, and 5 Interview Rooms
- b. Period of Agreement = 5 Years
- c. Total System Price, Inclusive of all Hardware, Software Licenses, Data Storage/Retrieval, Warranty, Support, and Rebates of (-\$159,740) for a period of Five (5) Years for: **\$471,900**
- d. In addition, a credit of (-\$50,000) with the return of all Digital Ally systems and components to Utility
- e. Furnishing of the above listed rebate of (-\$50,000) for Digital Ally (DA) systems is contingent upon receipt of all (DA) hardware to Utility Associates, Inc. (UA)
- f. Attachment A - (Quote #12027) outlines the details of the price proposal, with part numbers and associated quantities

2. Bill of Materials Included with the Offer: As part of the annual subscription price for Five (5) years, each system will include the following:

*BodyWorn and Rocket IoT Vehicle Video/Communications/Camera triggers - Includes AVaiLWeb™ SaaS, Training and Configuration, Warranty (Attachment – B. Section 4) and Technical Support with Unlimited Video Storage and Download.*

Every Officer (Qty. 49) will be equipped with the following:

- a. One (1) BodyWorn™ Camera and Mount
- b. Three (3) Duty Shirts per Officer, BodyWorn-Ready
- c. One (1) Bluetooth BodyWorn Wrist/Belt Trigger
- d. One (1) Holster Activation System
- e. BodyWorn Hardware Refresh at 37<sup>th</sup> Month of Contract
- f. AvailWeb Video Management Software and Mapping Interface License
- g. Unlimited Download & Storage – Based on Department's Retention Policy
- h. Smart Redaction Software License

- i. Installation and Training – Onsite and Online Training Included
- j. Full Warranty
- k. 24/7 Technical Support for the Life of the Contract (60 months)

Every Vehicle (Qty. 49) will be equipped with the following:

- a. Rocket IoT™ Vehicle Control Unit, DVR, and Communications Hub
- b. BodyWorn Vehicle Triggers
- c. Front and Rear HD Cameras (Qty. Total, 2 Per Vehicle)
- d. Tablet Video Interface
- e. Installation, Validation, and Configuration
- f. Full Warranty
- g. 24/7 Technical Support for the Life of the Contract (60 Months)

Every Interview Room (Qty. 5) will be equipped with the following:

- a. Rocket IoT™ Control Unit, DVR, and Communications Hub
- b. One HD Corner Use Camera
- c. Integrated Microphone System
- d. One HD Covert Camera (Smoke Detector or Height Stick)
- e. Wall Switch
- f. Setup, Installation, Validation, Configuration
- g. Full Warranty
- h. 24/7 Technical Support for the Life of the Contract (60 Months)

For high speed wireless video offload, Utility Inc. will provide one (1) Smart WayPoint. Normally, this is deployed at the primary offload location, or Headquarters. Should the Department wish to have alternate offload locations, additional Smart WayPoints can be purchased, installed, for \$3,500/ea. See (6) below for details about Smart WayPoint connectivity.

### 3. Installation Services:

In the event that Goshen Police Department wishes to move from one vehicle to another the equipment provided under this agreement after the initial installation of the equipment, the following charges will apply if Goshen Police Department ask Utility to perform the installation:

- a. Installation, Validation, and Configuration of Rocket IoT In-Car System: \$400/ea. with a Minimum of Ten (10) Vehicle Installs, per Scheduled Visit.
- b. Daily Rate Charges of \$1359 are Applied at a Minimum of Two (2) Days, for Installs of less than Ten (10) Vehicles, per Scheduled Visit.

### 4. Service Level Agreement (SLA) and Termination for Convenience:

- a. The Service Level Agreement asserts 99% uptime with 24/7 Technical Support. This includes After Hours Call Back on any issues requiring immediate attention. On/Off Hour call backs will be provided on all issues directed to the 24/7 support team; this includes issues related to the upload and access to video, and any troubleshooting needed while an Officer(s) is/are on duty.
- b. Details of the SLA are provided in Attachment (B).

5. Payment Terms and Options for Procurement of Goods: In consideration of the potential partnership between Utility and the Goshen Police Department we would like to extend the following special payment terms from Utility with a five-year term and annual billing.

**Finance Payment Option:**

Utility is pleased to partner with LCA Inc. to offer The Goshen Police Department the option to completely upgrade its entire fleet and officer corps with the most advanced technology available to first responders; while spreading the cost over five equal annual payments at **0% Interest**.

- Annual Payments in Years 1 through 5: **\$94,380/Year**

To exercise this option, please complete and submit the application (Attachment C) to the following recipient at LCA:

LCA Inc., Attn: Joe Galo, ph: (800) 800-8098 x5110, email: [jgalo@leasecorp.com](mailto:jgalo@leasecorp.com)

6. Network Connectivity Via Smart WayPoint (Utility Access Point): The Department is responsible for maintaining power and internet connectivity to the provided Smart WayPoint(s). The Department has the option of either (a) organizing an independent internet connection via its local provider with a minimum upload speed of 50 Mbps, or, (b) connecting the Smart WayPoint to its own network. Upon execution of the contract, as part of the deployment process, a network assessment will be conducted of the Department's upload speed for the transmission of data to the CJIS Compliant Cloud. In most cases, the Department should budget for an increase to their upload speed with their local carrier.

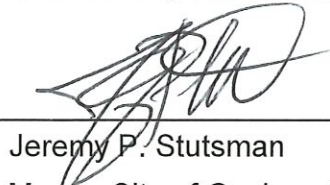
We are privileged to work with your Department on this project. Should you have any questions, at any time, please feel free to call or email me at: (678) 799 – 0640 / e-mail: [vhiera@utility.com](mailto:vhiera@utility.com)

Respectfully,



Vincent Chiera Jr., Inside Sales Manager

Offer Acceptance by Authorized Official:

  
\_\_\_\_\_  
Jeremy P. Stutsman

Title:

Mayor, City of Goshen, Indiana

Date:

December 23, 2019

cc. Mark Wood, National Sales Director  
John Watson, Business Manager





# UTILITY

## Attachment A

## SALES QUOTE

Utility Associates Inc  
250 East Ponce De Leon Avenue  
Suite 700  
Decatur GA 30030  
(800) 597-4707  
www.utility.com

**Customer**  
Goshen IN Police

**Date**  
**Sales Quote #**

10/21/2019  
12027

**Expires**  
**Sales Rep**

12/31/2019  
Watson, John

**PO #**  
**Terms**

### Bill To

Goshen IN Police  
111 E. Jefferson Street  
Goshen IN 46528

### Ship To

Goshen IN Police  
111 E. Jefferson Street  
Goshen IN 46528

Item	Description	Qty	Price Each	Amount
BWI-S-4005	AVail Web SaaS and Warranty with 24/7 Technical Support for BodyWorn and Rocket IoT In-Car - 5 Years	49	9,600.00	470,400.00
BWI-H-4001	BodyWorn and Rocket IoT In-Car Video System Hardware Bundle	49	3,260.00	159,740.00
DISCOUNT	Discount for Multi-Year SaaS Agreement	49	(3,260.00)	(159,740.00)
BWH-H-4001	BodyWorn Holster Sensor	49	300.00	14,700.00
DISCOUNT	Discount with Multi-Year SaaS Agreement	49	(300.00)	(14,700.00)
BodyWorn Refresh	BodyWorn Hardware Refresh at the 37th month of the Contract	49	0.00	0.00
IOTRM-H-4001	Rocket IoT Interview Room- 5 years	5	9,600.00	48,000.00
SWP-H-4001	SmartWay Point Access Point	1	3,500.00	3,500.00
REBATE	Discount with Utility 5 Year SaaS Agreement and Receipt of Original DA Equipment to:  Utility Associates, Inc. 250 E Ponce De Leon Ave STE 700 Decatur, GA 30030		(50,000.00)	(50,000.00)

**Total** \$471,900.00





# Quote

Utility Associates Inc  
250 East Ponce De Leon Avenue  
Suite 700  
Decatur GA 30030  
(800) 597-4707  
[www.utility.com](http://www.utility.com)

Customer	Goshen IN Police
Date	7/17/2024
Sales Quote#	134566
Expires	4/28/2025
Sales Rep	Dahlia Blake
PO#	
Terms	Net 30

## Bill To

City of Goshen Police Department  
ATTN: Accounts Payable  
111 East Jefferson Street  
Goshen, IN 46528  
[police@goshencity.com](mailto:police@goshencity.com)

## Ship To

Goshen IN Police  
111 E. Jefferson St.  
goshen IN 46528  
United States

Item	Description	Quantity	Price Each	Amount
<b>Description</b>	<b>BASE SERVICES ***</b>			
EOS-ICV-H/S-5	EOS Camera and Mount, Rocket In-Car Video System Hardware Bundle, POLARIS SaaS, Warranty, and 24/7 Technical Support - 5 Years: The coverage period is 6/1/2025 through 5/31/2030 (60 mos.)	49		\$943,740.00
	SO#18123 / Inv#30842 / PO# Offer Letter			
IR-TITAN-H	Titan Interview Room HaaS	5	\$2,800.00	\$14,000.00
IR-TITAN-S-5	Titan Interview Room SaaS - 5 Year: The coverage period is 6/1/2025 through 5/31/2030 (60 mos.)	5	\$18,120.00	\$90,600.00
SWP-H/S-5	High-Speed Data Access Point, POLARIS SaaS, Warranty, and 24/7 Technical Support, Training - 5 Years: The coverage period is 6/1/2025 through 5/31/2030 (60 mos.)	1		\$15,800.00
	SO#18123 / Inv#30842 / PO# Offer Letter			
EOS-H/S-5	EOS Camera and Mount, POLARIS SaaS, Warranty, and 24/7 Technical Support, Training - 5 Years: The coverage period is 6/1/2025 through 5/31/2030 (60 mos.)	14		\$88,480.00
	SO#20944 / Inv#33232 / PO# Signed Quote			

This transaction is subject to the terms and conditions laid forth in the Client's executed Agreement with Utility Associates, Inc.  
Please forward all inquiries to [clientsuccess@utility.com](mailto:clientsuccess@utility.com)



# Quote

Utility Associates Inc  
250 East Ponce De Leon Avenue  
Suite 700  
Decatur GA 30030  
(800) 597-4707  
[www.utility.com](http://www.utility.com)

Customer	Goshen IN Police
Date	7/17/2024
Sales Quote#	134566
Expires	4/28/2025
Sales Rep	Dahlia Blake
PO#	
Terms	Net 30

## Bill To

City of Goshen Police Department  
ATTN: Accounts Payable  
111 East Jefferson Street  
Goshen, IN 46528  
[police@goshencity.com](mailto:police@goshencity.com)

## Ship To

Goshen IN Police  
111 E. Jefferson St.  
goshen IN 46528  
United States

Item	Description	Quantity	Price Each	Amount
EOS-H/S-5	EOS Camera and Mount, Media Controller, USB-C Breakaway Charging Cable, POLARIS SaaS, Warranty, 24/7 Technical Support, Training - 5 Years: The coverage period is 6/1/2025 through 5/31/2030 (60 mos.)	1		\$6,320.00
	*New (Additional Unit)			
EOS-Refresh	BodyWorn Hardware Refresh - Includes Charging Cables, Case, Holster, and Screen Protector	63	\$900.00	\$56,700.00
	*This refresh will depend on the EXO T&E. They client may choose to go with the new EXO (external device).			
EOS-SPARE	EOS Intelligent Body Camera HaaS - Spare Pool	6	\$0.00	\$0.00
Description	NEW UAI CAPABILITIES ***			
CAD-S-5	CAD Activation SaaS - 5 Years: The coverage period is 6/1/2025 through 5/31/2030 (60 mos.)	63	\$900.00	\$56,700.00
ALPR-S-5	ROCKET ALPR SaaS - 5 Years: The coverage period is 6/1/2025 through 5/31/2030 (60 mos.)	2	\$7,677.53	\$15,355.06
ALPR-H	ROCKET ALPR HaaS	2	\$1,497.44	\$2,994.88
EOS-BT-8000025	EOS Accessory: Media Controller 2.0	63	\$0.00	\$0.00
RIOT-H-Q151-FrontCam	ACTI Front Camera (4mm)	49	\$0.00	\$0.00

This transaction is subject to the terms and conditions laid forth in the Client's executed Agreement with Utility Associates, Inc.  
Please forward all inquiries to [clientsuccess@utility.com](mailto:clientsuccess@utility.com)



# Quote

Utility Associates Inc  
250 East Ponce De Leon Avenue  
Suite 700  
Decatur GA 30030  
(800) 597-4707  
www.utility.com

Customer	Goshen IN Police
Date	7/17/2024
Sales Quote#	134566
Expires	4/28/2025
Sales Rep	Dahlia Blake
PO#	
Terms	Net 30

## Bill To

City of Goshen Police Department  
ATTN: Accounts Payable  
111 East Jefferson Street  
Goshen, IN 46528  
police@goshencity.com

## Ship To

Goshen IN Police  
111 E. Jefferson St.  
goshen IN 46528  
United States

Item	Description	Quantity	Price Each	Amount
RIOT-H-8000024-KIT	UTILITY UPS for XLE Battery Back-Up	49	\$0.00	\$0.00
TAB-H	ROCKET Tablet HaaS	49	\$0.00	\$0.00
RIOT-H-8000024-KIT	UTILITY UPS for XLE Battery Back-Up	49	\$0.00	\$0.00
POLARIS-TRANSCRIP	Polaris Transcription and Translation - 1,500 Minutes	10	\$150.00	\$1,500.00
	*15,000 Minutes			
Description	Payment Schedule: Paid to UAI Over the Life of this Agreement:			
	Payment 1 - Due NET 30 From Signature/ PO Issuance Date: \$107,857.60			
	Payment 2: Due on June 1, 2026: \$107,857.60			
	Payment 3: Due on June 1, 2027: \$107,857.60			
	Payment 4: Due on June 1, 2028: \$107,857.60			
	Payment 5: Due on June 1, 2029: \$107,857.60			
	Total: \$539,288			

This transaction is subject to the terms and conditions laid forth in the Client's executed Agreement with Utility Associates, Inc.  
Please forward all inquiries to [clientsuccess@utility.com](mailto:clientsuccess@utility.com)



# Quote

Utility Associates Inc  
250 East Ponce De Leon Avenue  
Suite 700  
Decatur GA 30030  
(800) 597-4707  
www.utility.com

Customer	Goshen IN Police
Date	7/17/2024
Sales Quote#	134566
Expires	4/28/2025
Sales Rep	Dahlia Blake
PO#	
Terms	Net 30

**Bill To**

City of Goshen Police Department  
ATTN: Accounts Payable  
111 East Jefferson Street  
Goshen, IN 46528  
[police@goshencity.com](mailto:police@goshencity.com)

**Ship To**

Goshen IN Police  
111 E. Jefferson St.  
goshen IN 46528  
United States

Item	Description	Quantity	Price Each	Amount
Signature Line	Signature:_____			
	Name:_____			
	Date:_____			
	PO:_____			

<b>Subtotal</b>	\$1,292,189.94
<b>Discount</b>	(\$752,901.94)
<b>Subtotal</b>	\$539,288.00
<b>Sales Tax (%)</b>	\$0.00
<b>Total</b>	\$539,288.00

This transaction is subject to the terms and conditions laid forth in the Client's executed Agreement with Utility Associates, Inc.  
Please forward all inquiries to [clientsuccess@utility.com](mailto:clientsuccess@utility.com)



## **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)

May 8, 2025

To: Board of Public Works and Safety

From: Brandy L. Toms, Paralegal

Subject: Agreement with H2O Towers LLC for the Cleaning of Sherk Water Tower

It is recommended that the Board approve and authorize Mayor Leichty to execute the attached agreement with H2O Towers LLC for the Cleaning of Sherk Water Tower. H2O Towers LLC will be paid \$7450 for this service.

### **Suggested Motion:**

Approve and authorize Mayor Leichty to execute the attached agreement with H2O Towers LLC for the Cleaning of Sherk Water Tower at a cost of \$7450.



# **AGREEMENT WITH H2O TOWERS LLC FOR THE EXTERIOR CLEANING OF THE SHERK WATER TOWER**

THIS AGREEMENT is entered into on \_\_\_\_\_, 2025, which is the date of the last signature set forth on the signature page, by and between **H2O Towers LLC** (“Contractor”), whose mailing address is PO Box 398, Saline, MI 48176, and **City of Goshen, Indiana** (“City”), a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety.

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

## **Section 1.     Scope of Services**

Contractor shall provide City all labor and materials necessary in order to clean the exterior elevated water storage tank located at 2109 Caragana Court, which services are more particularly described in Contractor’s April 25, 2025 proposal attached as Exhibit A (hereinafter referred to as “Duties”).

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

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

- (A)     The agreement shall become effective on the day of execution and approval by both parties.
- (B)     Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (C)     Contractor shall commence the Duties as soon as practical after receiving a notice to proceed from City.
- (D)     Contractor shall complete all Duties within sixty (60) calendar days of the date of the notice to proceed.

## **Section 3.     Compensation**

- (A)     City agrees to compensate Contractor the sum of Seven Thousand Four Hundred Fifty Dollars (\$7450) for performing all Duties.

## **Section 4.     Payment**

- (A)     City shall pay Contractor for Duties satisfactorily completed under this agreement.
- (B)     Contractor shall submit to City a detailed invoice upon completion of the Duties to the following address, or at such other address as City may designate in writing:

City of Goshen  
c/o Goshen Water and Sewer Department  
308 N. 5<sup>th</sup> Street  
Goshen, IN 46528  
Email is also acceptable at [marvshepherd@goshencity.com](mailto:marvshepherd@goshencity.com)

- (C) Provided there is no dispute on amounts due, payment will be made to Contractor within forty-five (45) days following City's receipt of a detailed invoice for all Duties satisfactorily completed. 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. Licensing/Certification Standards**

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

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

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City. City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of Contractor and/or Contractor's employees, agents or subcontractors.
- (B) Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors.
- (C) Contractor is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

### **Section 7. Non-Discrimination**

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

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

- (A) Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Contractor is

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

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

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

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

## **Section 10. No Investment Activities in Iran**

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

## **Section 11. Indemnification**

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

## **Section 12. 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.
- (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 \$2,000,000 aggregate. The City of Goshen is to be named as an additional insured.
  - (3) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and \$2,000,000 aggregate. The City of Goshen is to be named as an additional insured.
  - (4) Professional Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
  - (5) Excess Umbrella Coverage - \$4,000,000 each occurrence

### **Section 13. Force Majeure**

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

### **Section 14. Default**

- (A) If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the services or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
- (C) Contractor may also be considered in default by the City if any of the following occur:
- (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this contract.
  - (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.

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

### **Section 15. Termination**

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

### **Section 16. Notice**

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

#### **City:**

City of Goshen, Indiana  
Attention: Goshen Legal Department  
204 East Jefferson St., Suite 2  
Goshen, IN 46528  
Email: brandytoms@goshencity.com

#### **Contractor:**

H2O Towers LLC  
Attention: Bob Santure  
PO Box 398  
Saline, MI 48176  
Email: bob@h2Otowers.com

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

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



## **Section 18. Amendments**

Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the agreement shall be of no force and effect.

## **Section 19. Waiver of Rights**

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

## **Section 20. Applicable Laws**

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

## **Section 21. Miscellaneous**

- (A) Any provision of this agreement or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the agreement. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.
- (B) This agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.
- (C) In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

## **Section 22. Severability**

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

## **Section 23. Binding Effect**

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

**Section 24. Entire Agreement**

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

**Section 25. Authority to 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

**H2O Towers LLC**

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

\_\_\_\_\_  
Bob Santure, Owner

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

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

H2O TOWERS LLC

PO Box 398  
Saline, MI 48176  
Bob Santure  
734-368-1730

Estimate

Date	Estimate #
4/25/2025	2697

Name / Address
City of Goshen 308 N 5th St Goshen, IN 46528 Marv Shepherd 574-534-5701 marvshepherd@goshencity.com

			Project
Description	Qty	Cost	Total
H2O Towers will supply all labor and materials necessary, in order to: Clean the exterior of the City of Goshen's 1,500,000 gallon, 130' high Composite Elevated Water Storage Tank (Caragana Court) located at 2109 Caragana Court.  Apply fungicide (from high side walls to the concrete) using United Weather-Zyme 727 cleaner in order to kill mildew spores and remove atmospheric carbons. (1 part United Weather-Zyme 727, 3 part chlorine and 1 part water).  The Tank will be pressure washed cleaned (high side walls to the concrete).  The Tank will be rinsed with water.  Owner to supply water.  Our 15 story man-lift will be used to clean your Composite Elevated Tank.		7,450.00	7,450.00
		<b>Total</b>	\$7,450.00

Customer Signature \_\_\_\_\_



**Engineering Department  
CITY OF GOSHEN**

204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405

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

## MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

FROM: Dustin Sailor, P.E., Director of Public Works & Utilities

RE: **JPR PROFESSIONAL SERVICES AGREEMENT – CONSTRUCTION  
STANDARDS (JN: 2014-0025)**

DATE: 05.06.2025

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In April 2025, the Board of Works and Safety approved new construction standard details for the city of Goshen. A remaining task is the development of the City's standard specifications. For the assembly of the standard specifications, Goshen Engineering requests permission to retain the professional services of JPR for a lump sum fee of \$15,785.00.

Once approved, the specifications are anticipated to be complete within three (3) months.

**Requested Motion:** Move to authorize the Mayor to sign the professional service agreement with JPR in the amount of \$15,785.00 for the development of the City's standard specifications.



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

April 21, 2025

Becky Hutsell  
Redevelopment Director  
City of Goshen  
204 E Jefferson St, Ste 1  
Goshen, IN 46528

**RE: PROJECT SERVICES AGREEMENT  
PROFESSIONAL SERVICES FOR DEVELOPMENT OF STANDARD SPECIFICATIONS**

Dear Becky:

Thank you for contacting Jones Petrie Rafinski, Corp. ("JPR") to provide professional services. JPR is pleased to present this Project Services Agreement ("Agreement") to the City of Goshen ("Client") to provide professional services for development of the City's Standard Specifications. We have prepared this Project Services Agreement to match the scope of the work as we understand it.

**Project Understanding:**

JPR understands that the City wishes to fully develop a Standard Specification specifically in support of the newly approved Standard Construction Detail Drawings. When complete, the compiled document will provide consistent design elements, guidance, and practices for developers, contractors, utilities and other private parties performing work within the City limits or affected Rights-of-Ways.

JPR understands the City wishes to model the Standard Specifications in accordance with the latest version of the MasterFormat developed by the Construction Standards Institute (CSI). The new specifications will be based partly on the traditional general specifications and will be included in the City's bid documents. The specifications will be based in part on elected and appropriate content from standard specifications in use in nearby municipalities. JPR will make recommendations to revise the approved Standard Construction Detail Drawings if necessary to align with the newly developed specifications.

The following are the tasks that JPR will perform.

***Project Definition and Specification Content:***

This work will include:

- JPR will conduct a kick-off meeting with the City Stakeholders to further define the project scope and approach.
- Confirm the City's goals for the updated Standard Specifications as a stand-alone document, to be paired with Standard Construction Drawings, or to be combined with the Standard Construction Drawings into a complete Manual of Practice for the Design of Public Improvements.
- Confirm applicable sections to include in the specifications, (i.e., street, storm sewer, sanitary sewer, water, erosion control, misc.).
- Confirm specifications to be provided in Microsoft Word format using the MasterSpec format developed by the Construction Standards Institute.



*Deliverables: Kick-Off meeting minutes, List of confirmed specifications to be developed*

**Develop Draft Specifications:**

This work will include:

- Based on the information gathered in the project definition phase, the design team will develop draft specifications for the sections identified.
- JPR will use specifications developed for past Goshen public works projects coupled with resources discussed above to develop the draft sections.
- Conduct a design standards review to confirm compliance with ASTM, AWWA, Ten States, and INDOT Standards along with applicable Indiana Code.
- Submit the compiled draft to City staff and legal counsel for review.
- Meet with City stakeholders to review the draft in detail and document necessary revisions.

*Deliverables: 10 hard copy comb bound draft specifications*

**Finalize Standard Specifications:**

This work will include:

- JPR will utilize the feedback gathered from the Draft Specifications to fully develop the specifications.
- Prepare the final draft of specifications and submit to City for review.
- Meet with City stakeholders to obtain concurrence for revised specifications.
- Attend BPW, and Council sessions as necessary to assist with the adoption of standard specifications.

*Deliverables: 10 hard copy 3-ring bound documents, Electronic media as needed, digital document format (pdf) for City website.*

**Anticipated Timeline:**

It is anticipated that the timeline for this project would be as follows from the time notice to proceed is provided:

Project Definition and Specification Content:	2-4 weeks
Develop Draft Specifications:	4-6 weeks
Finalize Standard Specifications:	3-4 weeks

**Compensation:**

The lump sum fees to provide the tasks outlined above is as follows:

Task Name	Fee
Project Definition and Specification Content	\$2,500
Develop Draft Specifications	\$9,000
Finalize Standard Specifications	\$4,285
<b>Total</b>	<b>\$15,785</b>

JPR may adjust its fee schedule each year, on a January 1st to December 31st cycle. The Standard Hourly Rates may be increased by up to 5% annually to reflect equitable changes in the compensation payable to Engineer.

This Agreement represents an offer to perform services. If this offer is not accepted by returning a fully executed copy of this Agreement to JPR within 45 days of the date of this proposal, the offer to perform services as described herein will expire and be deemed to have been revoked.

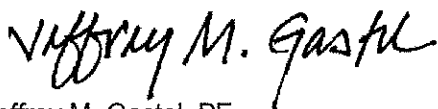
**Clarifications:**

Please be advised that the services and fees quoted above do not include the following activities:

- Out-of-scope services (work will not commence on any out-of-scope services unless and until approved by client)
- Any other service not specifically described within the above scope of work.
- Updating Standard Construction Drawings. (can provide if requested)

Again, thank you for this opportunity and we look forward to being of service.

Sincerely,



Jeffrey M. Gastel, PE  
QAQC Specialist

**AUTHORIZATION & NOTICE TO PROCEED**

I hereby approve the Project Services Agreement provided herein and authorize JPR to proceed with the work and services discussed and included above.

Authorized Signature: \_\_\_\_\_  
Printed Name & Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Billing Contact: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

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## **Billing Labor Rate Table:**

Effective Date: January 1, 2025

<b><u>Staff Type:</u></b>	<b><u>Standard Hourly Rate</u></b>
Principal	\$275
Management Staff I	\$240
Management Staff II	\$215
Senior Licensed Staff	\$210
Professional Engineer	\$175
Professional Architect	\$175
Professional Landscape Architect	\$175
Professional Surveyor	\$175
Professional Geologist	\$175
Graduate Staff I	\$130
Graduate Staff II	\$120
Graduate Staff III	\$105
Technical Support Staff	\$125
Senior Technician	\$140
Environmental Scientist	\$100
Certified Public Accountant	\$175
Clerical & Accounting Staff	\$135
District Administrative Services	\$135
Information Technology Services	\$170
Marketing Services	\$130
Intern	\$85
<b>FIELD SERVICES</b>	
Survey Field Services Technician 1	\$160
Survey Field Services Technician 2	\$125
Resident Project Representative	\$130
<b>SPECIAL EQUIPMENT USAGE (UNIT) CHARGES</b>	
UAV/LIDAR *	\$1500/DAY
UTV/ORV *	\$750/DAY
DRONE *	\$500/DAY
GPR **	\$100/HOUR

\*Minimum charge = 1 DAY

\*\*Minimum charge = 2 HOURS.

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

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



## JPR Corp. - Standard Terms & Conditions

### Page 1 of 1

#### Invoices & Payment:

JPR shall submit invoices monthly or at project completion for services performed and expenses incurred under this Agreement. Payment is due upon Client's receipt of invoice and shall be considered past due if payment is not received within thirty (30) calendar days from date of invoice.

JPR retains the right to assess Client a finance charge of one and one-half percent (1.5%) per month, but not to exceed the maximum rate allowed by law, on invoices that are not paid within thirty (30) calendar days from date of invoice.

The Client's obligation to pay for services performed by JPR shall not be reduced due to the Client's inability to obtain financing, zoning, approval of regulatory agencies, or any other reason.

#### Acceptance:

If Client gives JPR verbal, emailed, or written notification to proceed with services outlined in this Agreement, without providing a signed copy of this Agreement, it will be considered as mutually understood that Client and JPR will be contractually bound by this Agreement, even in the absence of signed written authorization. Client's acceptance of services under this agreement will be deemed approval of the Agreement.

#### Additional Services:

Additional services requested beyond that which is specifically outlined in the Scope of Work may require additional compensation. JPR will provide the Client with a fee amendment for approval prior to performing any additional services. JPR is not responsible for project related delays that result while formal (written) approval of additional services is pending.

#### Schedule:

JPR is not responsible for any loss or damages resulting from any delays for causes outside JPR's control, including, but not limited to inclement weather, governmental or reviewing agency delays, unforeseen or undisclosed project related conditions, natural disasters, or acts of God.

#### Insurance:

JPR agrees to procure and maintain, at its expense, Commercial General Liability Insurance, Professional Liability Insurance, and Automobile Liability Insurance for claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which JPR is legally liable.

#### Ownership and Use of Documents:

The Client agrees that JPR owns all reports, documents, and work products, including all associated copyrights, produced as part of this Agreement. JPR grants to the Client a license to utilize the deliverables (plans, reports, etc.) with respect to the project at hand, but any further use of the same beyond the subject project is done so at the user's sole risk and may be subject to copyright enforcement action.

#### Professional Standard of Care:

The standard of care for all Professional Services performed or furnished by JPR under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

Accordingly, JPR is unable to provide a guarantee, or warranty, expressed or implied, under this Agreement or otherwise, in connection with any services performed or furnished by JPR.

#### Dispute Resolution:

JPR and Client shall resolve all claims and disputes arising out of or related to this Agreement in the following manner:

1. JPR and Client agree to negotiate all disputes in good faith for a period of ten (10) days from the date of notice, prior to invoking mediation.
2. JPR and Client agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question arising out of or relating to this Agreement or the breach thereof ("Disputes") to private mediation. JPR and Client agree to participate in the mediation process in good faith.
3. If the dispute cannot be settled through negotiation or mediation, then such dispute shall be decided by arbitration in accordance with the construction industry arbitration rules of the American Arbitration Association then in effect. The award rendered, if any, by the arbitrator(s) shall be final and binding and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction.

Demand for arbitration must be served in writing on the opposing party no later than one (1) year from the date of substantial completion of JPR's participation in the project.

All mediation or arbitration shall take place in the State of Indiana. Each party shall share equally the fees and expenses of the mediator or arbitrator(s) and other costs incurred by the mediator or arbitrator(s).

#### Environmental Condition of Site(s)

To the fullest extent permitted by law, the Client shall indemnify and hold harmless JPR from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or relating to the presence, discharge, release, or escape of any Hazardous Substance at, on, under or from the project site.

#### Professional Design Services – WITHOUT Construction Phase Services:

Should the Client provide Construction Phase services via either Client's representative(s) or via another consultant, design-builder, or any other 3<sup>rd</sup> party, JPR's services under this agreement shall be considered complete upon completion of the Final Design efforts, and the Client's official acceptance and/or approval of the JPR provided construction documents. (*project plans, specifications, etc.*)

Further, and if the Scope of Services associated with this Agreement does not include Construction Phase Services, such as bidding & negotiation oversight, contract administration, full or part time on-site observation/inspection to ensure compliance with Client accepted plans and specifications, review of progress payment requests, change orders, requests for information or clarification submitted by the Contractor, attendance at or administration of pre-construction or construction progress meetings, coordination with utilities, or any other construction phase services typically provided by Professional Civil Engineers and/or Architects, it is therefore understood and agreed that any/all responsibility associated with these critical functions must be assumed by others.

Accordingly, the Client therefore agrees, to the fullest extent permitted by law, to indemnify and hold harmless JPR, its officers, directors, employees and/or subconsultants against any/all claims arising out of or in any way connected to the performance of such activities, or lack thereof, by others, including the Client itself or other entities/consultants in the employ of the Client, and from any and all claims arising from modifications, clarifications, interpretations, plan revisions, redesigns, adjustments, or changes necessarily made to the Contract Documents resultant of site conditions or parameters that become apparent as part of the construction process itself, information not previously known or disclosed by any local or non-local regulatory agencies, certain design considerations not previously disclosed by the Client, availability or lack thereof of either materials or appropriately skilled labor, or any other reason not specifically associated with or directly resultant of negligence or willful misconduct on the part of JPR.

#### Termination:

The Client or JPR may terminate this Agreement, in whole or in part, by giving seven (7) days written notice if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Upon termination, JPR shall be entitled to invoice Client and receive full payment for all services and reimbursable expenses incurred through the effective date of termination. Where the method of payment is "lump sum" or "fixed fee", the final invoice will be based on the number of hours billed to the project as of the date of termination, a standard hourly rate of \$150 per hour, and incurred reimbursable expenses. An equitable adjustment shall also be made to provide for termination settlement costs. If any, JPR incurs as a result of commitments finalized prior to termination.

#### Entire Agreement:

The terms of this Agreement are final, and any and all prior written or oral agreements or understandings are superseded by this final signed written agreement. Any changes to the written agreement, the scope of services, or terms and conditions, must be made in writing and signed by both JPR and the Client.

#### Severability:

If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties.

#### Controlling Law:

This Agreement shall be governed by the laws of the State of Indiana.