



Goshen Common Council

6:00 p.m. March 2, 2021 Regular Meeting

Council Chambers, Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

This meeting will be conducted under a declared public health emergency covering all of the State of Indiana. In accordance with Mayor Stutsman's Executive Order 2020-16, this meeting will be held with virtual public access, including opportunity for questions/comments at the appointed times, via Zoom software. Note that free public Wifi is available at Goshen Public Library. For link, see <https://goshenindiana.org/calendar>

Call to Order by Mayor Jeremy Stutsman

Pledge of Allegiance

Roll: Megan Eichorn (District 4) Julia King (At-Large) Jim McKee (District 1)
 Doug Nisley (District 2) Gilberto Pérez, Jr. (District 5) Matt Schrock (District 3)
 Council President Brett Weddell (At-Large) Youth Advisor Hazany Palomino (Non-voting)

Approval of Minutes

Approval of Meeting Agenda

Privilege of the Floor

Elected Official Reports

- I. **Resolution 2021-06** Interlocal Agreement with Elkhart County for Animal Control Services
- II. **Resolution 2021-07** Documenting the Filing of a Petition for Annexation into the City of Goshen
- IIIa. **Resolution 2021-08** Concerning the Purchase of a Tri-axle Dump Truck
- IIIb. **Resolution 2021-09** Concerning the Purchase of a Tri-axle Dump Truck
 - Staff memo re: Resolutions 2021-08 and 2021-09 (Stegelmann)
- IV. **Ordinance 5076** (1st Reading) Additional Appropriations

Adjournment

COUNCIL RESOLUTION 2021-06

Interlocal Agreement with Elkhart County for Animal Control Services

WHEREAS Elkhart County has negotiated a contract with The Humane Society of Elkhart County, Inc. to provide animal shelter management and animal control services for 2021 for certain areas of Elkhart County, including within the corporate boundaries of the City of Goshen.

WHEREAS the City of Goshen agrees to contribute \$77,644 to reimburse Elkhart County for the cost of providing animal shelter management and animal control services within the City of Goshen.

WHEREAS pursuant to Indiana Code § 36-1-7 et seq., a power that may be exercised by one governmental entity may be exercised by one entity on behalf of another entity if the entities enter into a written agreement.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Common Council approves the terms and conditions of the Interlocal Agreement with Elkhart County for animal control services attached to and made a part of this resolution.

PASSED BY THE COMMON COUNCIL on the ____ day of _____, 2021

Jeremy P. Stutsman, Presiding Officer

ATTEST _____
Adam C. Scharf, Clerk-Treasurer

Presented to the Mayor of the City of Goshen, Indiana, on the ____ day of _____, 2021

Adam C. Scharf, Clerk-Treasurer

This resolution approved and signed on the ____ day of _____, 2021

Jeremy P. Stutsman, Mayor

**INTERLOCAL AGREEMENT BETWEEN ELKHART COUNTY, INDIANA
AND CITY OF GOSHEN, INDIANA FOR ANIMAL
CONTROL SERVICES**

This Agreement is made and entered into this 1st day of FEB, 2021, by and between the COUNTY OF ELKHART, INDIANA (hereinafter referred to as the "County"), and the CITY OF GOSHEN, INDIANA (hereinafter referred to as "Municipality"),

WITNESSETH:

WHEREAS County has negotiated with The Humane Society of Elkhart County, Inc. for animal shelter management and animal control services for 2021;

WHEREAS the Contract for Animal Shelter Management and Animal Control Services for 2021 includes the unincorporated areas of Elkhart County and may include the areas within the corporate limits of the Municipality;

WHEREAS the Contract for Animal Shelter Management and Animal Control Services for 2021 has been entered into by County in the form which is attached to as Exhibit A;

WHEREAS the County and Municipality desire to enter into this Agreement in order to provide for the Services within the Municipality and to facilitate the reimbursement to the County by the Municipality for the cost of providing the Services within the Municipality for calendar year 2021;

NOW, THEREFORE in consideration of the foregoing and of the promises and commitments herein contained, the parties hereby agree as follows:

1. Definition of Services. For purposes of this Agreement, the term "Services" shall refer to the animal shelter management and animal control services to be furnished by The Humane Society of Elkhart County, Inc. to the Municipality pursuant to the Contract attached hereto as Exhibit A.

2. Administration. The County shall serve as the lead agency for the Services and assumes and agrees to be responsible for the overall administration of the Services to include, but not be limited to, the following:

a. Contracting with The Humane Society of Elkhart County, Inc. as required by and in compliance with the applicable statutes governing the County and contracts for public services;

b. Administering the contract with The Humane Society of Elkhart County, Inc.;

c. Maintaining the documents, contracts, notices, and other records in connection with the Services, including the financial records and providing a financial summary to the Municipality for all funds expended and received in connection with the Services; and

d. Providing such other general administrative services as are necessary to complete the Services.

3. Municipality Participation.

Municipality shall be responsible for reimbursing and contributing to County the sum of Seventy Seven Thousand Six Hundred Forty Four Dollars (\$77,644.00) for the Services which shall be paid in two (2) installments of Thirty eight Thousand Eight hundred twenty two Dollars (\$38,822.00) each with the first installment becoming due and payable in or before April 1st 2021 and with the second installment being payable on or before August 1st 2021. The Municipality contribution, or changes in amounts thereto, for calendar year 2021 are subject to budget approvals and appropriations by the Municipality.

4. Filing Requirements. Within thirty (30) days after the approval and execution of this Agreement, the County shall have this Agreement recorded and filed with the appropriate governmental offices and agencies as required by Indiana Code.

5. Supplemental Documents. The Municipality and County agree to execute any and all supplementary documents and to take any and all supplementary steps as are reasonable and appropriate to accomplish the purposes and provisions of this Agreement.

6. Non-Discrimination. Pursuant to Indiana Code § 22-9-1-10, neither the County nor any of its contractors or subcontractors shall discriminate against any employee or applicant for employment, to be employed in the performance of any work under this Agreement with respect to hire, tenure, terms or conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, disability, national origin, ancestry or veteran status. Breach of this covenant may be regarded as a material breach of this Agreement.

7. Miscellaneous.

a. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual written consent of the parties, by the adoption of a resolution approving said amendment as provided by law, and by the execution of said amendment by the parties.

b. No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations, and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

c. Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements, or portions of this Agreement, and to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

d. Indiana Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

e. Notice. Any notices required or permitted under this Agreement shall be given to the parties at their respective mailing addresses provided below by deposit in the United State mail, certified mail, return receipt requested, with proper postage affixed thereto, and which notices shall be effective three (3) days after date of mailing:

County: Board of Commissioners of the County of Elkhart, Indiana
Elkhart County Administration Building
117 North Second Street
Goshen, IN 46526

Municipality: City of Goshen
C/O Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, IN 46528

With copies to: Craig Buche, Elkhart County Attorney
Yoder, Ainlay, Ulmer & Buckingham, LLP
P.O. Box 575
130 North Main Street
Goshen, IN 46527

And _____

The parties may change their respective mailing addresses by providing written notice of the new address in accordance with the terms and provisions of this paragraph.

8. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that this Agreement may not be assigned without the express written consent of the non-assigning party.

9. Counterparts. This Agreement may be executed in multiple counterparts and with multiple but separate signature pages with the multiple counterparts and multiple and separate signature pages constituting one single and unified Agreement when combined.

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

BOARD OF COMMISSIONERS OF THE
COUNTY OF ELKHART, INDIANA

By Suzanne Weirick
Suzanne Weirick, President

By Frank Lucchese
Frank Lucchese, Vice President

By Brad Rogers
Brad Rogers, Member

ATTEST: Patricia A. Pickens
Patricia A. Pickens, Elkhart County Auditor

CITY OF GOSHEN, INDIANA

By: _____

Print: Jeremy Stutsman, Mayor

ATTEST:

By: _____
Title: Clerk-Treasurer
Adam C. Scharf

STATE OF INDIANA,)
) SS:
COUNTY OF ELKHART)

Before me, a Notary Public in and for said County and State, this ____ day of _____, 2021, personally appeared the Board of Commissioners of Elkhart County, Indiana and Patricia A. Pickens, Elkhart County Auditor, and acknowledged that as said Commissioners and Auditor, they respectively executed the foregoing Interlocal Agreement for and on behalf of, and in the name of Elkhart County, for the uses and purposed therein mentioned, and that they were authorized so to do.

WITNESS my hand and notarial seal.

Notary Public
Resident of Elkhart County, IN

My Commission Expires:

STATE OF INDIANA)
) SS:
COUNTY OF ELKAHRT)

Before me, a Notary Public in and for said County and State, this ____ day of _____, 2021, personally appeared Jeremy Stutsman, Mayor and Adam C. Scharf, Clerk-Treasurer, and acknowledged that as said representatives, they respectively executed the foregoing Inerlocal Agreement for and on behalf of, and in the name of the City of Goshen, Indiana, for the uses and purposed therein mentioned, and that they were authorized so to do.

WITNESS my hand and notarial seal.

Notary Public Shannon Marks
Resident of Elkhart County, IN

My Commission Expires:
May 17, 2021
Commission Number NP 0685467

APPROVAL

The Elkhart County Council hereby approves of the above and foregoing Interlocal Agreement this 13th day of February, 2021.

ELKHART COUNTY COUNCIL

By Thomas W. Stump
Thomas Stump, President

ATTEST:

Patricia A. Pickens
Patricia A. Pickens, Elkhart County Auditor

EXHIBIT A

CONTRACT FOR ANIMAL SHELTER MANAGEMENT AND ANIMAL CONTROL SERVICES

This contract made effective this 1st day of January, 2021 by and between the County of Elkhart, State of Indiana, hereinafter called the "County" and The Humane Society of Elkhart County, Inc., 54687 County Road 19, Bristol, Indiana, 46507, or its successors, executors, administrators and assignees, hereinafter called the "Contractor";

WITNESSETH:

WHEREAS, the Contractor is a not-for-profit corporation organized for the purpose of caring for and sheltering animals within Elkhart County, Indiana and has the personnel, facilities and equipment to aid the County with these services;

WHEREAS, the County desires to contract with the Contractor for animal control and shelter service, and the Contractor desires to provide the County with such services;

NOW, THEREFORE, in consideration of the premises and payments set forth in Section IV below, and the mutual promises herein, the parties agree as follows:

I. CONTRACT DOCUMENTS

The parties hereby agree to the following contract requirements. Where there is a conflict between the requirements of State and County law and the requirements set forth below, the requirements of State and County law shall take precedence and govern.

II. CONTRACTOR WORK REQUIREMENT

It is agreed that the service to be performed under this Contract is to provide animal shelter management services and animal control services in accordance with the terms, conditions and specifications contained or referenced herein.

The Contractor agrees that all animal shelter management services and animal control performed for the County shall be performed in full compliance with the applicable Federal, State and County laws, regulations and guidelines for such services.

The Contractor agrees that it shall provide the following animal shelter management services and animal control services:

A. Operation of the Animal Shelter

1. The Contractor shall operate and maintain the Animal Shelter located at 54687 County Road 19, Bristol, Indiana 46507 (the "Shelter").

2. The Contractor shall abide by all laws of the State of Indiana and all local ordinances designed to prevent cruelty to animals, and to enforce those laws and ordinances where it has the lawful authority to do so. The Contractor shall be entitled to rely in good faith upon the opinion of legal counsel as to whether it has such lawful authority.
3. Subject to paragraph IV (B) below but excluding the incorporated areas of the City of Nappanee and the Town of Millersburg, the Contractor shall lawfully pick up, capture, impound, accept, care for, board, maintain and dispose of animals within the incorporated and unincorporated areas of Elkhart County, Indiana in the following instances: 1) the Contractor shall, during its regular business hours on Mondays through Fridays, pick up all observed or reported stray, confined, domestic animals; and 2) the Contractor shall, during other hours, pick up all observed or reported stray, confined, domestic animals where an animal is observed or reported as sick or injured, or where the animal is observed or reported to have bitten a human.
4. At a minimum, the Contractor shall operate the Shelter and keep the Shelter open to the public from 9 a.m. through 4 p.m. Monday through Saturday, except for Federal, State and County holidays when the Shelter may be closed to the public.
5. The Contractor shall provide an adequately trained animal technician staff of sufficient size to provide all the services required under this Contract.
6. The Contractor shall provide adequate food, water, shelter, space, care, treatment and transportation to all animals housed at the Shelter.
7. The Contractor shall provide a system to monitor medical and other information on each sheltered animal.
8. The Contractor shall be responsible for publicizing the hours of operation and the services of the Shelter.

B. Impoundment of Animals

1. The Contractor shall be responsible for enforcement of the quarantine for a 10 day period of any stray domestic animal which has bitten or is suspected to have bitten a person or as directed by the Elkhart County Health Department or County officials.
2. The Contractor shall be responsible for the humane euthanasia of any animal using methods approved by the State Veterinarian, if euthanasia is

required for reasons of public safety or welfare. The County acknowledges that nothing in this Contract shall be deemed to preclude the euthanasia of any animal by the Humane Society of Elkhart County, Inc. In the event the Humane Society of Elkhart County, Inc. performs euthanasia of any animal for reasons other than public safety or welfare, or other than in satisfaction of the County's legal obligations, if any, the Humane Society of Elkhart County, Inc., shall be responsible for, shall defend against and shall indemnify and hold the County harmless against any and all suits, claims, demands, losses or actions made against the County based upon, arising from, or incident to the performance of such euthanasia.

3. The Contractor shall not be responsible for the collection and disposal of the carcasses of dead animals.
4. The Contractor shall maintain all necessary records and reports of animals impounded at the Shelter.
5. The Contractor shall, upon request, furnish law enforcement agencies of Elkhart County and the Elkhart County Health Department all information in its possession about animals which have been impounded due to cruelty, neglect, bite cases or contagious diseases and shall cooperate with the said officials in the enforcement of laws prohibiting animal cruelty and supporting public safety.
6. Whenever the ownership of an impounded animal is ascertained, the Contractor shall make a reasonable effort to notify the owner of the animal's impoundment within the next business day after the animal is initially confined.
7. The Contractor shall collect, secure and deposit all fees, fines and costs due, including the cost of providing veterinary care for an animal, from owners of impounded animals in accordance with applicable laws. County shall not be responsible for such obligations.

C. Animal Control Officers

1. The Contractor shall employ individuals to enforce the provisions of, and to perform as animal control officers ("Animal Control Officers").
2. The Contractor shall be responsible for all continuing education training of Animal Control Officers to assure their continued compliance with State and local educational and training requirements.

D. Public Service Programs

In consideration of the award of this contract to the Contractor, the Contractor shall provide at its sole cost and expense, the following services:

1. A volunteer program to encourage support for the Contractor and its operations of the Shelter; provided that all volunteers shall execute, as a condition of their participation, a waiver of liability, in form and content acceptable to the Contractor;
2. Events designed to promote animal adoptions and to educate the public about animal welfare; and
3. The adoption program shall be conducted to ensure humane, permanent homes for animals. The Contractor must maintain a documented adoption procedure and maintain complete records of all adoption attempts and placements.

E. Cost of Operation, Expenses of Contractor and Expenses of County

1. The Contractor shall maintain at all times adequate supplies for the performance of its obligations under this Contract, including without limitation, the lawful duties of the Animal Control Officers.
2. All donations of any kind, made to the Humane Society of Elkhart County, Inc., will be considered the sole property of the Contractor, and if received by the County will be promptly forwarded to the Contractor.

F. Meetings and Other Requirements

The County shall appoint an individual to serve as liaison with the Contractor for the purpose of reviewing any matters relative to this Contract. To ensure adequate communication and coordination among all County agencies, the Contractor shall direct all notices required or permitted under this Contract through the contract administrator. In the case of an event requiring notification of County agencies other than the Sheriff Department, the Contractor shall inform the contract administrator or designee in a timely manner.

III. PERIOD OF CONTRACT PERFORMANCE

The term of this Contract is from January 1, 2021 through December 31, 2021. County may renew this Contract for calendar years 2022 and 2023 subject to the mutual agreement with the Contractor as to the Contract costs for said years.

IV. CONTRACT COSTS

- A. The Contractor at its own proper cost and expense shall do all the work necessary to carry out its obligations set forth in this Contract to the full extent as set forth herein and to the satisfaction of the County.**

- B. For calendar year 2021, County shall pay the total sum of Two Hundred Thousand Dollars [\$200,000.00] to Contractor to perform all services under this Contract in accordance with the terms, conditions, and specifications contained or referenced herein with respect to the unincorporated areas in Elkhart County, Indiana. Said amount shall be payable by County to Contractor as follows: County shall pay One Hundred Ten Thousand Dollars (\$110,000.00) to Contractor on or before February 15, 2021, the balance of Ninety Thousand Dollars [\$90,000.00] shall be payable by County to Contractor in three (3) quarterly installments of Thirty Thousand Dollars [\$30,000.00] on April 1, 2021, July 1, 2021 and October 1, 2021. In consideration of the advancement of the One Hundred Ten Thousand Dollars (\$110,000.00) on or before February 15, 2021, Contractor agrees to provide all of the services to be performed under this Contract in accordance with the terms, conditions, and specifications contained or referenced herein both in the incorporated and unincorporated areas of Elkhart County, Indiana, but excluding the incorporated areas of the City of Nappanee and the Town of Millersburg.**

After March 31, 2021, Contractor shall not be required to provide the services to be performed under this Contract in the incorporated areas of Elkhart County, Indiana unless County agrees to pay an additional amount for any or all of the following incorporated areas respectively:

<u>Municipality</u>	<u>Amount</u>
City of Elkhart	\$126,500
City of Goshen	\$77,644
Town of Middlebury	\$5,400.
Town of Wakarusa	\$6,000
Town of Bristol	\$4,000.

County intends to seek Interlocal Agreements with each of these listed municipalities to cover the additional costs specified above for each municipality. If such Interlocal Agreements are entered, County shall give written notice to Contractor on or before March 31, 2021 of which incorporated areas are to be covered by the services to be performed under this Contract by Contractor after March 31, 2021. County's notice may provide by its election to have Contractor

provide the services under this Contract in any or all of the municipalities listed above. For each municipality to be provided the services under this Contract after March 31, 2021, County shall pay to Contractor the additional amount specified above for that municipality which amounts shall be payable in three (3) quarterly installments paid on April 1, 2021, July 1, 2021 and October 1, 2021. Should any of the municipalities increase or decrease the amounts specified above the County will adjust the quarterly obligation to reflect the increase or decrease in funding from the municipalities in 2021.

- C. The parties reserve the right to negotiate mutually agreed rates for other future specified services. If the Contractor reasonably believes that any work it is requested to perform under this Contract is not, or may not be, within the scope of the Contract, or represents, or may represent a material change in the Contract, the Contractor shall immediately notify the Contract Administrator that the work is beyond the scope of the Contract or represents a material change in the Contract, and if the County desires the work to be undertaken, then the Contractor shall be fully compensated for performing the work; provided that a written change order to this Contract must have been made pursuant to Section V, B prior to the work being performed in order for such additional compensation to be paid to the Contractor.

V. PERSONNEL AUTHORIZED TO REPRESENT THE PARTIES

A. Authorized Contract Administrators

- 1. Contract Administrator for the County shall be:

T. Jeffery Taylor
Elkhart County Administrator
117 N. Second Street
Goshen, IN 46528-3298
574-534-3541 FAX 574-535-6747

- 2. Contract Administrator for the Contractor shall be:

Director
Humane Society of Elkhart County, Inc.
54687 County Road 19
Bristol, IN 46507
574-848-4225 FAX 574-848-5453

B. Contracting Officer

County and Contractor's Administrator must authorize changes made to this Contract throughout the Contract period in writing.

VI. STATE LAW CERTIFICATION PROVISIONS

- A. Pursuant to Indiana Code §22-9-1-10, Contractor and its subcontractors, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of this Contract.
- B. Contractor certifies that, except for de minimis and non-systematic violations, it has not violated the terms of I.C. 24-4.7, I.C. 24-5-12, or I.C. 24-5-14 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law and that Contractor will not violate the terms of I.C. 24-4.7 for the duration of this Contract, even if I.C. 24-4.7 is preempted by federal law. Contractor further certifies that any affiliate or principal of Contractor and any agent acting on behalf of Contractor or on behalf of any affiliate or principal of Contractor, except for de minimis and non-systematic violations, has not violated the terms of I.C. 24-4.7, in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law, and will not violate the terms of I.C. 24-4.7 for the duration of this Contract, even if I.C. 24-4.7 is preempted by federal law.
- C. Investment Activity. Pursuant to Indiana Code §5-22-16.5, Contractor certifies that Contractor is not engaged in investment activities in Iran.
- D. E-Verify Program. Pursuant to Indiana code §22-5-1.7-11 Contractor agrees to and shall enroll in and verify the work eligibility status of all newly hired employees of the Contractor after the date of the Agreement through the E-Verify Program as defined in Indiana Code §22-5-1.7-3; provided, however, Contractor is not required to verify the work eligibility status of all newly hired employees after the date of this Agreement through the E-Verify Program if the E-Verify Program no longer exists. Contractor further represents and certifies subject to pain and penalties of perjury that it does not knowingly employ an unauthorized alien.

VII. TAX REQUIREMENTS

By executing this Contract, the Contractor agrees to comply with the laws, regulations, and rulings of the United States Internal Revenue Service related to the requirements for filing information statements, including IRS Form 1099.

VIII. DEFAULT

- A. Upon Contractor's failure to cure a default (i.e., non-performance or violation of contract terms) within fifteen (15) days of written notice of such default from the County to the Contractor (provided, if such default cannot be cured within such 15 day period, and the Contractor commences the cure within such 15 day period, the cure period shall be extended to 30 days after the initial written notice of such default), this Contract may be canceled or annulled by the County or its designee in whole or in part by written notice of default to the Contractor. Upon default, an award may be made to another contractor and the Contractor shall be liable to the County for costs incurred in excess of the costs provided for in this Contract.
- B. Rights, obligations, or liabilities of both parties, which arise prior to the suspension or termination of this Contract shall survive the suspension or termination of this Contract.

IX. ASSIGNMENT

Contractor shall not assign, transfer, convey or otherwise dispose of any or all of its right, title or interest in this Contract, without the prior written consent of County.

X. GOVERNING LAW

This Contract shall be governed in all respects by the laws of the State of Indiana and the County of Elkhart.

XI. INDEMNIFICATION, LIMITATION OF LIABILITY AND NOTICE

- A. Contractor shall be responsible for, shall defend against, and shall indemnify and hold the County harmless from any and all suits, claims, demands, losses or actions made against the County based upon, arising from, or incident to the provision of services by the Contractor under this Contract. This indemnification does not include indemnification for claims based upon the alleged unconstitutionality or invalidity of any provision of the state or county codes pursuant to which the Contractor acts or an alleged invalidity of the delegation, if any, to the Contractor under this Contract or the authority to enforce the state and county animal control laws and animal cruelty laws.
- B. The County shall notify the Contractor of any suit, claim, demand, loss or action made or files against the County within ten days after the County's receipt or learning of it.

XII. WARRANTIES

Each party to this Contract warrants the following:

- A. This Contract constitutes a valid, binding and enforceable agreement of the party;
- B. The execution of this Contract and the performance of its obligations are within the party's powers; have been authorized by all necessary action on behalf of the party; do not constitute a breach by the party of any agreement with another party; and will not cause a breach by the party of any duty arising at law or in equity; and
- C. The party possesses the financial capacity to perform all of its obligations under this Contract.

The parties agree that the failure of any of the above representations and warranties to be true during the term of this Contract shall constitute a material breach of this Contract, and the non-breaching party shall have the right, upon notice to the breaching party, to immediately terminate this Contract. All amounts outstanding hereunder shall be immediately due and payable. Court costs and other costs and expenses, including reasonable attorney's fees incurred in the collection of any amounts due hereunder, may also be recovered by the non-breaching party.

XIII. SEVERABILITY

Should any provision of this Contract be declared invalid for any reason, such decision shall not affect the validity of any provisions, which other provisions shall remain in force and effect as if this Contract had been executed with the invalid provision(s) eliminated, and it is hereby declared the intention of the parties that they would have executed the other provisions of this Contract without including therein such provision(s) which may for any reason be hereafter declared invalid.

XIV. NON-WAIVER

The failure of the Contractor or the County to exercise any right, power or option arising under this Contract, or to insist upon strict compliance with the terms of this Contract, shall not constitute a waiver of the terms and conditions of this Contract with respect to any other or subsequent breach thereof, nor a waiver by Contractor or the County of their rights at any time thereafter to require exact and strict compliance with all the terms hereof

XV. SURVIVABILITY OF PAYMENT OBLIGATIONS, RIGHTS AND REMEDIES

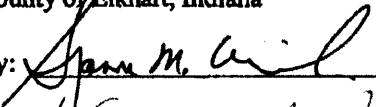
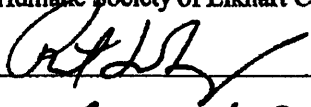
Provided the Contractor has not defaulted in the performance of its obligations under this Contract, the obligation of the County to make payments as herein set forth shall continue until fully performed. Any rights and remedies the County or Contractor may have with respect to each other arising out of either party's performance of services or obligations hereunder shall survive the expiration or termination of this Contract.

XVI. RELATION TO COUNTY

In performing services under this Contract, the Contractor shall be an independent contractor for the County, and neither the Contractor nor its employees, shall under any circumstances be considered employees, servants or agents of the County. The County shall not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents while performing under this Contract.

XVII. SIGNATORIES

Please type or print the following information, with the exception of the signature.

COUNTY	CONTRACTOR
County of Elkhart, Indiana	The Humane Society of Elkhart County, Inc.
By: <u></u>	By: <u></u>
Printed: <u>SUZANNE M. WEIRICH</u>	Printed: <u>ROBERT LARoy</u>
Title: <u>President</u>	Title: <u>EXECUTIVE DIRECTOR</u>
Date: <u>2-1-2021</u>	Date: <u>1/26/2021</u>

COUNCIL RESOLUTION 2021-07

Documenting the Filing of a Petition for Annexation into the City of Goshen

WHEREAS the City of Goshen received a Petition for Annexation into the City of Goshen seeking the annexation of approximately 136 acres of real estate along County Road 36 located outside, but contiguous to the corporate limits of the City of Goshen.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Common Council documents the filing of the Petition for Annexation into the City of Goshen, a copy of which is attached to this resolution.

PASSED BY THE COMMON COUNCIL on the ____ day of _____, 2021

Jeremy P. Stutsman, Presiding Officer

ATTEST _____
Adam C. Scharf, Clerk-Treasurer

Presented to the Mayor of the City of Goshen, Indiana, on the ____ day of _____, 2021

Adam C. Scharf, Clerk-Treasurer

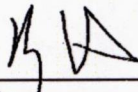
This resolution approved and signed on the ____ day of _____, 2021

Jeremy P. Stutsman, Mayor

PETITION FOR ANNEXATION INTO THE CITY OF GOSHEN

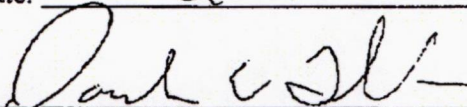
COMES NOW the undersigned, hereinafter collectively referred to as "Petitioner," and petitions the Goshen Common Council to annex certain real estate located outside, but contiguous to the corporate limits of the City of Goshen. In support of this Petition, the Petitioner alleges and says:

- (1) The real estate sought for annexation into the City of Goshen, hereinafter referred to as the "Subject Real Estate", is generally located on County Road 36 east of the rail road and west of County Road 31 as depicted on the map attached as Exhibit A and more particularly described in Exhibit B.
- (2) At least one-eighth (1/8) or (12.5%) of the aggregate external boundaries of the Subject Real Estate are contiguous with the corporate limits of the City of Goshen.
- (3) Petitioner represents one hundred percent (100%) of the owners of the Subject Real Estate.
- (4) Petitioner requests that the Goshen Common Council adopt an ordinance to annex the Subject Real Estate described in this petition into the City of Goshen.



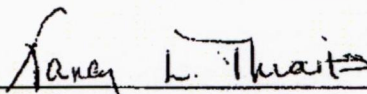
Ryan Thwaites

Date: 2-24-21



Douglas W. Thwaites

Date: 2-24-21



Nancy L. Thwaites

Date: 2/24/21

Exhibit A

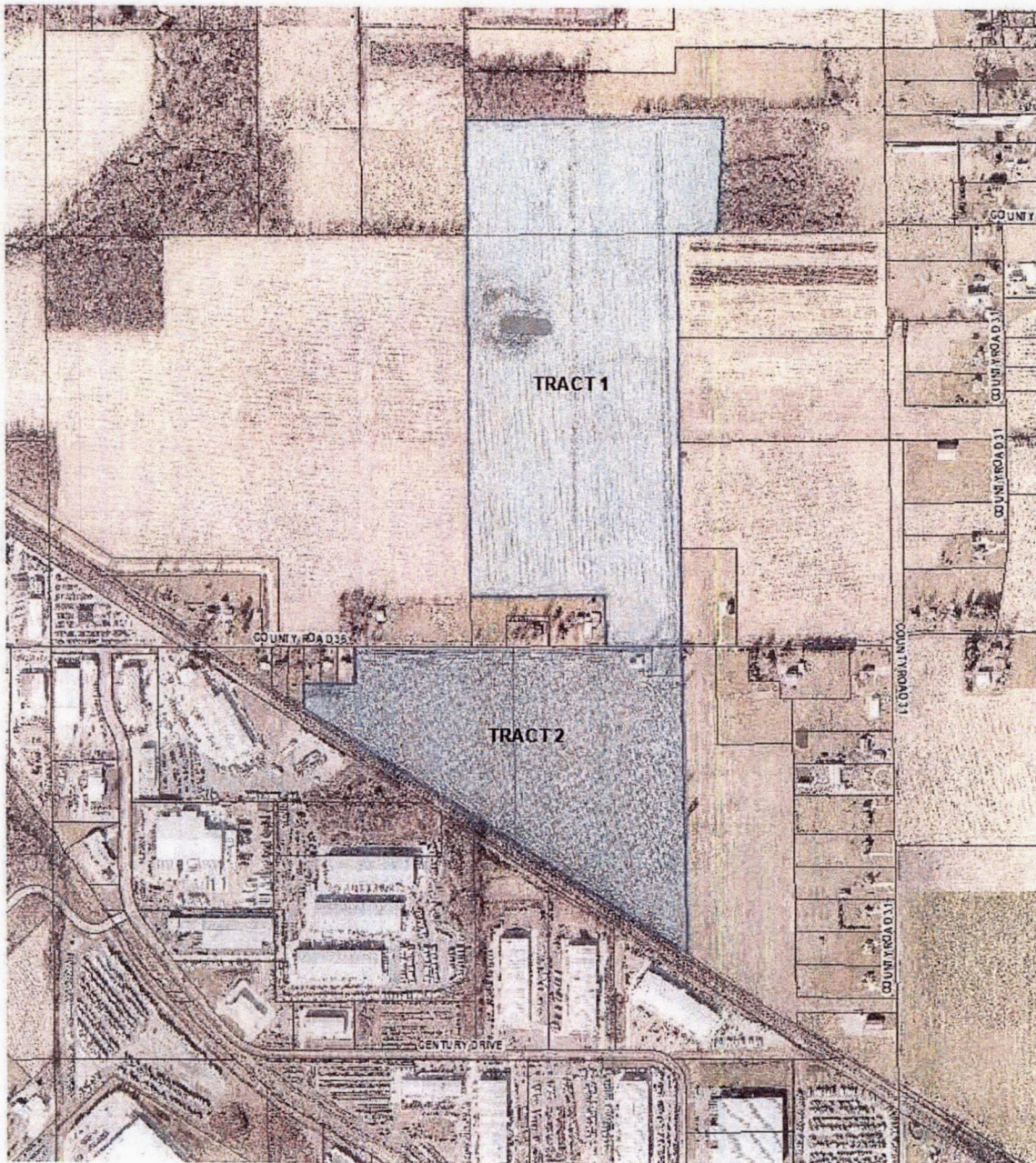


Exhibit B

TRACT 1 (Parcel 20-11-13-200-005.000-014 and 20-11-13-400-006.000-014)

A PART OF THE NORTHEAST AND SOUTHEAST QUARTERS OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA, SURVEYED BY RONNIE L. JUSTICE, REGISTRATION NUMBER 80900004, WITH ADVANCED LAND SURVEYING OF NORTHERN INDIANA INC., AS SHOWN ON PROJECT NUMBER 201101 CERTIFIED ON NOVEMBER 3, 2020, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (BEARINGS IN THIS DESCRIPTION ARE BASED ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 13 HAVING A BEARING OF NORTH 89 DEGREES 39 MINUTES 12 SECONDS EAST): COMMENCING AT A HARRISON MONUMENT MARKING THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 6 EAST; THENCE NORTH 00 DEGREES 22 MINUTES 23 SECONDS WEST WITH THE EAST LINE OF A TRACT OF LAND CONVEYED TO RYAN THWAITS AND LARRY SCHROCK IN ELKHART COUNTY DEED RECORD 2020-11865, A DISTANCE OF 320.49 FEET TO A #5 REBAR FOUND AT THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 00 DEGREES 22 MINUTES 23 SECONDS WEST WITH SAID LINE, A DISTANCE OF 2327.58 FEET TO A THREE QUARTER INCH REBAR FOUND AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 13 AND BEING THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO VERNON AND WANDA SCHLABACH IN ELKHART COUNTY DEED RECORD 2017-07742; THENCE NORTH 00 DEGREES 28 MINUTES 34 SECONDS WEST, WITH THE EAST LINE OF SAID SCHLABACH LAND, A DISTANCE OF 732.81 FEET TO A THREE QUARTER INCH REBAR AT THE SOUTHWEST CORNER OF A TRACT OF LAND CONVEYED TO DANA L. MILLER IN ELKHART COUNTY DEED RECORD 93003206; THENCE NORTH 89 DEGREES 29 MINUTES 51 SECONDS EAST WITH SAID MILLER LAND, A DISTANCE OF 1607.17 FEET TO A REBAR; THENCE SOUTH 03 DEGREES 14 MINUTES 28 SECONDS WEST, WITH SAID MILLER LAND, A DISTANCE OF 739.44 FEET TO A REBAR WITH CAP STAMPED BRADS-KO ON THE NORTH LINE OF A TRACT OF LAND CONVEYED TO SPRINGVIEW LAND HOLDINGS, LLC IN ELKHART COUNTY DEED RECORD 2019-06807; THENCE SOUTH 89 DEGREES 40 MINUTES 59 SECONDS WEST, WITH THE NORTH LINE OF SAID LAND, A DISTANCE OF 247.27 FEET TO A REBAR; THENCE SOUTH 00 DEGREES 25 MINUTES 47 SECONDS EAST, WITH THE WEST LINE OF SAID LAND, A DISTANCE OF 2021.27 FEET TO A REBAR WITH CAP STAMPED PCB AT THE NORTHWEST CORNER OF A TRACT OF LAND CONVEYED TO MOLAR MANAGEMENT, LLC IN ELKHART COUNTY DEED RECORD 2020-22405; THENCE SOUTH 00 DEGREES 42 MINUTES 10 SECONDS EAST, WITH THE WEST LINE OF SAID LAND, A DISTANCE OF 626.09 FEET TO A SURVEY MARK SPIKE ON THE SOUTH LINE OF SAID SOUTHEAST QUARTER; THENCE SOUTH 89 DEGREES 39 MINUTES 12 SECONDS WEST, ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 472.08 FEET TO A SURVEY MARK SPIKE AT THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED TO TRI-COUNTY LAND TRUSTEE CORPORATION IN ELKHART COUNTY DEED RECORD 2013-06108; THENCE NORTH 00 DEGREES 20 MINUTES 44 SECONDS WEST WITH THE EAST LINE OF SAID LAND, A DISTANCE OF 320.49 FEET TO A #5 REBAR AT THE NORTHEAST CORNER OF SAID LAND; THENCE SOUTH 89 DEGREES 39 MINUTES 16 SECONDS WEST, WITH THE NORTH LINE OF

SAID LAND, A DISTANCE OF 845.97 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 100.36 ACRES, MORE OR LESS.

TRACT 2 (20-11-24-201-001.000-014, 20-11-24-126-011.000-014 and 20-11-24-201-002.000-014)

Part of the Northwest and Northeast Quarters of Section 24, Township 36 North, Range 6 East, Elkhart Township, Elkhart County, Indiana, surveyed by Ronnie L. Justice, Registration Number 80900004, with Advanced Land Surveying of Northern Indiana Inc., as shown on Project Number 210101 certified on January 7, 2021, and being more particularly described as follows (bearings in this description are based on the north line of the Northeast Quarter of said Section 24 having a bearing of North 89 degrees 39 minutes 12 seconds East): Beginning at a Harrison monument marking the North Quarter corner of Section 24, Township 36 North, Range 6 East; thence North 89 degrees 39 minutes 12 seconds East, along the north line of the Northeast Quarter of said Section 24, a distance of 1320.73 feet to a mag nail at the northwest corner of a tract of land conveyed to the Stanley D. Miller Revocable Trust dated the 18th day of July 2007; thence South 00 degrees 42 minutes 25 seconds East with the west line of said Miller land, a distance of 1979.96 feet to a rebar with cap (Justice 900004) on the north right of way of the Norfolk Southern Railway Company; thence North 56 degrees 31 minutes 53 seconds West, with the north right of way with the Norfolk Southern Railway Company, a distance of 2857.74 feet to a rebar found at the southeast corner of a tract of land conveyed to Kathleen S. Emery in Elkhart County Deed Record 2014-08913; thence North 00 degrees 43 minutes 38 seconds West, with the east line of said Emery land, a distance of 164.93 feet to a rebar at the southwest corner of a tract of land conveyed to David and Sarah Lambright in Elkhart County Deed Record 2020-05774; thence North 89 degrees 40 minutes 10 seconds East, with the south line of said Lambright land, the south line of a tract of land conveyed to Reese Schmucker in Elkhart County Deed Record 2018-05528 and the south line of a tract of land conveyed to Six Mile Lake Investments, LLC in Deed Record 2016-13337, a distance of 314.95 feet to a rebar at the southeast corner of the Six Mile Lake Investments, LLC property; thence North 00 degrees 54 minutes 25 seconds West, with the east line of said land, a distance of 224.93 feet (225 feet recorded) to a mag nail on the north line of the Northwest Quarter of said Section 24; thence North 89 degrees 40 minutes 30 seconds East, along the north line of said Northwest Quarter, a distance of 729.93 feet to the point of beginning of this description, containing 62.69 acres, more or less.



**Legal Department
CITY OF GOSHEN**

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To: Common Council of the City of Goshen, IN
From: Bodie J. Stegelmann
Date: February 25, 2021
Re: Purchase of Tri-Axle Dump Truck

The City seeks to purchase a tri-axle dump truck for its Utilities Department. City staff solicited sealed bids for the purchase of a tri-axle dump truck and two (2) bids were responsible and responsive. While the bid specifications required the dump truck to be manufactured in the United States, the lowest responsive, responsible bidder indicated that their dump truck is assembled in Mexico, of components that are largely manufactured in the United States. Indiana Code 5-22-15-21 and Ordinance 3828 require the City to specify and purchase supplies manufactured in the United States unless it is determined that:

1. The supplies are not manufactured in the United States in reasonably available quantities; or
2. The price of the supplies manufactured in the United States exceeds by an unreasonable amount the price of available and comparable supplies manufactured outside the United States; or
3. The quality of the supplies manufactured in the United States are substantially less than the quality of comparably priced available supplies manufactured outside the United States; or
4. The purchase of supplies manufactured in the United States is not in the public interest.

The applicable statute and ordinance do not define "manufacture," and no reported court cases define this term.

The other responsive, responsible bidder cannot provide their dump truck within the ninety days specified in the bid specifications.

I prepared two (2) resolutions for your consideration. The first resolution could be used if the Council determines that the dump truck that is subject to the lowest responsive, responsible bid is "manufactured" in the United States. In such case, there would be no need for further consideration. If the Council determines that the subject dump truck is not "manufactured" in the U.S., then the Council can make a finding of one (1) of the four (4) factors described above, from I.C. 5-22-15-21, to approve the purchase.

COUNCIL RESOLUTION 2021-08

Concerning the Purchase of a Tri-axle Dump Truck

WHEREAS, Indiana Code 5-22-15-21 and Ordinance 3828 provide that the City shall promote the purchase of supplies manufactured in the United States unless the governing body makes a determination otherwise.

WHEREAS, the Goshen Wastewater Department is interested in acquiring a tri-axle dump truck.

WHEREAS, the City solicited sealed bids for the purchase of a tri-axle dump truck and two (2) bidders were responsible and responsive.

WHEREAS, the tri-axle dump truck offered by the lowest responsible and responsive bidder contains components mainly manufactured in the U.S. with some parts manufactured in Mexico, and is assembled in Mexico.

WHEREAS, there is no definition of the term “manufactured” under I.C. 5-22-15-21, or Ordinance 3828.

WHEREAS, questions remain with City staff as to whether the tri-axle dump truck that is the subject of the lowest responsive and responsible bid, that is assembled in Mexico of largely U.S. manufactured components, is manufactured in the United States under I.C. 5-22-15-21.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Goshen, Indiana, after being fully advised in the premises, that the tri-axle dump truck that is the subject of the lowest responsive, responsible bid, that is assembled in Mexico of largely U.S. manufactured components, is manufactured in the United States under I.C. 5-22-15-21, and therefore the remaining provisions of I.C. 5-22-15-21 do not apply.

PASSED BY THE COMMON COUNCIL on the ____ day of _____, 2021

Jeremy P. Stutsman, Presiding Officer

ATTEST _____
Adam C. Scharf, Clerk-Treasurer

Presented to the Mayor of the City of Goshen, Indiana, on the ____ day of _____, 2021

Adam C. Scharf, Clerk-Treasurer

This resolution approved and signed on the ____ day of _____, 2021

Jeremy P. Stutsman, Mayor

COUNCIL RESOLUTION 2021-09

Concerning the Purchase of a Tri-axle Dump Truck

WHEREAS, Indiana Code 5-22-15-21 and Ordinance 3828 provide that the City shall promote the purchase of supplies manufactured in the United States unless the governing body makes a determination otherwise.

WHEREAS, the Goshen Wastewater Department is interested in acquiring a tri-axle dump truck.

WHEREAS, the City solicited sealed bids for the purchase of a tri-axle dump truck and two (2) bidders were responsible and responsive.

WHEREAS, the tri-axle dump truck offered by the lowest responsive bidder contains components mainly manufactured in the US. with some parts manufactured in Mexico, and is assembled in Mexico.

WHEREAS, there is no definition of the term "manufactured" under I.C. 5-22-15-21, or Ordinance 3828.

WHEREAS, in reviewing literature from the manufacturer, the Wastewater Department and Central Garage believe that the quality of the components used in the manufacturing process in Mexico will be acceptable.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Goshen, Indiana, that the City shall not be limited to purchasing a tri-axle dump truck manufactured in the United States because:

_____The tri-axle dump truck specified is not manufactured in the United States in reasonably available quantities.

_____The price of the tri-axle dump truck manufactured in the United States exceeds by an unreasonable amount the price of available and comparable tri-axle dump truck manufactured outside the United States.

_____The quality of the tri-axle dump truck is substantially less than the quality of comparably priced available supplies manufactured outside the United States.

_____The purchase of tri-axle dump truck manufactured in the United States is not in the public interest.

PASSED BY THE COMMON COUNCIL on the ____ day of _____, 2021

Jeremy P. Stutsman, Presiding Officer

ATTEST _____
Adam C. Scharf, Clerk-Treasurer

Presented to the Mayor of the City of Goshen, Indiana, on the ____ day of _____, 2021

Adam C. Scharf, Clerk-Treasurer

This resolution approved and signed on the ____ day of _____, 2021

Jeremy P. Stutsman, Mayor

ORDINANCE 5076

Additional Appropriations

WHEREAS, it has been determined that it is now necessary to appropriate more money than was appropriated in the annual budget.

WHEREAS, the Goshen Police Department received grant funding for COVID-19-safe alcohol breath testing devices in an amount higher than anticipated in the annual budget.

WHEREAS, the Unsafe Building Fund has not been appropriated as part of recent annual budgets, and has consequently been identified through audit as having been overdrawn, a remedy for which is appropriation by the Common Council.

WHEREAS, for the 2021 annual budget, substantial portions of the complex compilation and data entry process were shifted from external consultants to the internal Department of Finance in order to save taxpayer dollars.

WHEREAS, during internal control and verification procedures, a few manual data entry errors/omissions into the State of Indiana’s Gateway website were identified, requiring correction in order to fully and accurately reflect Mayor Stutsman’s intended 2021 annual budget proposal.

Now, THEREFORE, be it ordained by the Common Council of the City of Goshen, Elkhart County, Indiana, that for the expenses of the taxing unit the following additional sums of money are hereby appropriated out the funds named and for the purposes specified, subject to the laws governing the same:

General Fund

101-510-10-433.0101	ENGINEER/Other Printing & Advert	\$400
101-510-10-436.0201	ENGINEER/Equipment Repairs	\$1,600
101-520-12-445.0201	AMBULANCE/Other Equipment	\$20,000
101-520-12-445.0502	FIRE/Other Equipment	\$50,000

Economic Development Income Tax Fund

218-560-00-431.0101	EDIT/Redevelopment	\$50,000
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Federal State Grants Fund

230-510-00-444.2010	FSGR/Drug Free Comm Funds	\$28,567
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Unsafe Building Fund

241-500-00-439.0000 UNSAFE BLDG/Other Serv Chrg \$50,000

LECE 2 Public Safety Fund

280-520-00-431.0501 LECE2/Firearms \$2,000

PASSED BY THE COMMON COUNCIL on the ____ day of _____, 2021

Jeremy P. Stutsman, Presiding Officer

ATTEST _____
Adam C. Scharf, Clerk-Treasurer

Presented to the Mayor of the City of Goshen, Indiana, on the ____ day of _____, 2021

Adam C. Scharf, Clerk-Treasurer

APPROVED and ADOPTED on the ____ day of _____, 2021

Jeremy P. Stutsman, Mayor