



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m., February 7, 2022

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 Jeremy Stutsman

Approval of Minutes: Jan. 31, 2022

Approval of Agenda

- 1) Fire Department: Conditional Offer of Employment to Andrew T LoPresti**
- 2) Request by Clerk-Treasurer's Office and Utilities Office to void outstanding warrants**
- 3) Resolution 2022-08: Interlocal Agreement with Elkhart County for Animal Control Services**
- 4) Agreement with Eyedart Studio, LLC for Goshen Arts Council 2022 Project Management and Web Design Maintenance**
- 5) Agreement with Saulo and Kaitlyn Delgado and Team Construction Co. Inc. for the Completion of the Construction Project at 837 Ridgeview Drive**
- 6) Agreement Amendment No. 3 with Donohue and Associates for WWTP Improvements and Rock Run Interceptor Projects (JN: 2019-0025 A &C)**

Privilege of the Floor

Approval of Civil City and Utility Claims

Adjournment



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD
MINUTES OF THE JAN. 31, 2022 REGULAR MEETING**

Convened at 2 p.m. at Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Present: Mayor Jeremy Stutsman and members Mike Landis, Mary Nichols, DeWayne Riouse and Barb Swartley
Absent: None

CALL TO ORDER: Mayor Stutsman called the meeting to order at 2 p.m.

REVIEW/APPROVE MINUTES: Minutes of the Jan. 24, 2022 meeting of the Board of Works & Safety & Stormwater Board were presented. Board member Mike Landis moved to approve the minutes as presented and the motion was seconded by Board member Mary Nichols. Motion passed 5-0.

REVIEW/APPROVE AGENDA: Mayor Stutsman presented the agenda. Board member Landis moved to approve the agenda as submitted. Board member Nichols seconded the motion. Motion passed 5-0.

1) OPENING OF BIDS: Ambulance with 4X2 Chassis for the City of Goshen

Mayor Stutsman opened sealed bids received by the Clerk-Treasurer's Office by today's 1:45 p.m. deadline for the purchase of an ambulance with a 4X2 chassis for the City of Goshen. In addition to cost, the proposals will be evaluated based on whether the bidder/quoter/offeror is responsible and if the bidder/quoter/offeror's proposal is responsive. Bids were received from the following companies with the following lump sum prices:

- **Crossroads Ambulance Sales & Service, LLC**, 52886 State Road 15, Middlebury, IN, **\$302,063**;
- **Horton Emergency Vehicles**, 3800 McDowell Road, Grove City, Ohio, **\$297,516**;
- **Medix Specialty Vehicles**, 3008 Mobile Drive, Elkhart, IN, **\$251,146**;

Stutsman/Nichols moved to accept the bids and refer them to the City Legal Department and the City Fire Department for review. Motion passed 5-0.

2) Resolution 2022-06: Declaring Surplus and Authorizing the Disposal of Personal Property

Shannon Marks, a paralegal with the City Legal Department, asked the Board to pass Resolution 2022-06, Declaring Surplus and Authorizing the Disposal of Personal Property. Marks said the City wants to dispose of personal property that is no longer needed. The property in question includes old computers, monitors, printers, hard drives and other electronic items. Resolution 2022-06 declares the property as surplus and authorizes its disposal in accordance with the provisions of Indiana Code § 5-22-22-8 by demolishing or junking the property that is worthless or of no market value. The surplus property will be donated for recycling where possible

Landis/Nichols moved to pass Resolution 2022-06, Declaring Surplus and Authorizing the Disposal of Personal Property. Motion passed 5-0.

3) Agreement with Eyedart Studio, LLC for Good of Goshen 2022 Marketing Services



Carla Newcomer, a paralegal with the City Legal Department, asked the Board to approve and execute the agreement with Eyedart Studio, LLC, d.b.a. Eyedart Creative Studio, for Good of Goshen 2022 Marketing Services. Newcomer said Eyedart Creative Studio, LLC will be paid \$27,360.00 for the services, which will include project management, content management for social channels and an event calendar, writing/editing, an email newsletter, photography, website design and maintenance, and a Sprout Social subscription. **Mayor Stutsman** said the amount was smaller than it has been in the past and that the City is cutting back on some of the items.

Landis/Nichols moved to approve and execute the agreement with Eyedart Studio, LLC, d/b/a Eyedart Creative Studio, for Good of Goshen 2022 Marketing Services in the amount of \$27,360. Motion passed 5-0.

4) Agreement with Peerless Midwest, Inc. for Phase II 5 Year Wellhead Protection

Carla Newcomer, a paralegal with the City Legal Department, asked the Board approve and execute the agreement with Peerless Midwest, Inc. for Hydrological Services completing the Phase II 5 Year Wellhead Protection (WHP). Peerless Midwest, Inc., which is based in Mishawaka, will be paid \$7,000.00 for the services, which will include: providing the Indiana Department of Environmental Management (IDEM) with pumping data for the Water Department's production wells and obtaining a determination on whether an update to the WHP area delineation is required; updating WHP area maps with current aerial photographs; updating the potential contamination source inventory tables and maps; providing updated land use maps; reviewing management tasks completed and updating if required; updating the Contingency Plan; updating property owner information and notifying where required; and preparing the 5-year update letter report and application and submitting the documentation to IDEM for approval. In response to a question from **Landis, Goshen Director of Public Works and Utilities Dustin Sailor** clarified the scope of the work required by the agreement.

Landis/Nichols moved to approve and execute the agreement with Peerless Midwest, Inc. for Hydrological Services completing the Phase II 5 Year Wellhead Protection (WHP) for \$7,000.00. Motion passed 5-0.

5) Agreement Amendment with Peerless Midwest, Inc. for Well 6A Cleaning and Maintenance

Carla Newcomer, a paralegal with the City Legal Department, asked the Board to approve and execute the agreement with Peerless Midwest, Inc. for Additional Well 6A Cleaning and Maintenance. Peerless Midwest, Inc., which is based in Mishawaka, will be paid \$15,440.00 for the work, which will include: contacting the Indiana Department of Environmental Management (IDEM) and exploring the possibility and feasibility of a replacement well located at the current wellfield; and cleaning Well #6A with a test pump. The contractor will use a Rossum Sand Tester to quantify the presence of sand, if any is present.

Landis/Nichols moved to approve and execute the agreement with Peerless Midwest, Inc. for Additional Well 6A Cleaning and Maintenance in the amount of \$15,440.00. Motion passed 5-0.

6) Agreement with Baker Tilly to prepare RFP for City of Goshen banking services (Clerk-Treasurer)

City of Goshen Clerk-Treasurer Richard R. Aguirre asked the Board to approve and authorize the Clerk-Treasurer to execute an engagement letter and agreement with Baker Tilly Investment Services for services related to the preparation, issuance and review of a Request for Proposal (RFP) for banking services for the City of Goshen. Aguirre said that for the past four years Interra Credit Union has provided comprehensive banking services for the City. He said the initial agreement was executed in 2017 and renewed in 2019.



Aguirre said the Clerk-Treasurer's Office now wishes to issue a Request for Proposal for the City of Goshen's banking needs and to seek proposals from various banking institutions. He said the Clerk-Treasurer's Office would like to contract with Baker Tilly Investment Services, a division of Baker Tilly Wealth Management, to serve as an adviser to the Clerk-Treasurer in preparing, issuing and analyzing the proposals resulting from a Request for Proposal at a cost not to exceed \$10,000 and payable from the Board of Works & Safety contractual services budget line. Asked by **Landis** if the City has contracted for this type of service before, **Aguirre** said that was the case in 2017. **Landis** asked if the City believes it will find something different or if something triggered this request or if this was a routine procedure that should be done regularly. **Aguirre** responded that in its latest renewal proposal, Interra lowered its interest rate and maintained the current fees for services, which did not seem justified. So, Aguirre said he owed it to taxpayers to determine if the City could reach an agreement for higher interest rates and lower fees with another bank. **Mayor Stutsman** said that when the City last changed banks, it got a higher interest rates. **Mayor Stutsman** added that this proposal should be considered due diligence by the City and should not be interpreted as reflecting on the services Interra has provided. **Aguirre** thanked the Mayor for adding that comment. **Landis/Nichols moved to approve and authorize the Clerk-Treasurer to execute an engagement letter and agreement with Baker Tilly Investment Services for services related to the preparation, issuance and review of a Request for Proposal (RFP) for banking services for the City of Goshen. Motion passed 5-0.**

7) Request to remove "no parking" restrictions on 1st Street, between Wilkinson Street & River Avenue
Goshen City Traffic Engineer Josh Corwin asked the Board to remove parking restrictions along the 1st Street corridor between Wilkinson Street and River Avenue. Corwin said the Engineering Department received a request to remove the "No Parking" restriction along 1st Street north of the post office. While most houses along the corridor have off-street parking either along 1st or off the alley to the east, the resident stated that most of the houses have multiple cars and multiple drivers. He also noted that the road is significantly wide enough (about 30 feet) to allow for parking. Corwin said nothing was found in the engineering files that helped to determine the original intent or purpose for the parking restrictions. Corwin said the City Street Department has not had any issues in the block to the north between the restricted parking area and the railroad. This block has the same cross section as the currently restricted section. At the January meeting, the city Traffic Commission considered and unanimously supported the removal of the parking restrictions along the 1st Street corridor and north of the post office property. After the January meeting, Streets and Engineering determined that post office delivery vehicles typically exit the facility onto 1st Street where they proceed north to Wilkinson, east to 2nd St., and then south so they can turn onto Pike at a signalized intersection. Parking restrictions are currently in place on Wilkinson and 2nd Street along this route. Therefore, it was recommended that the parking restrictions south of Wilkinson remain unchanged.
Landis/Nichols moved to remove parking restrictions along the 1st Street corridor between Wilkinson Street and River Avenue. Motion passed 5-0.

8) Request for stop sign at Plymouth and 15th streets & "cross traffic does not stop" sign
Goshen City Traffic Engineer Josh Corwin asked the Board to deny the request for additional stop signs at the Plymouth and 15th intersection and to approve the placement of a "Cross Traffic Does Not Stop" sign on the southbound stop sign. Corwin said that in November, Traffic Commission members considered and tabled a request to make the intersection of Plymouth and 15th a four-way stop pending the results of a warrant analysis.



Corwin reported that the warrant analysis showed that while several of the threshold warrants, or criteria, including crash data and traffic counts were met, others were not. The stop sign request was considered at the January meeting of the Traffic Commission. Commissioners felt the implementation of a four-way stop at that intersection would likely have significant impacts on the level of service of the intersection and the level of congestion along the Plymouth corridor. Corwin said commissioners also felt that the four-way stop would do little to prevent drivers from running the stop signs on 15th or improve the safety of the intersection. Commissioners voted 6-1 against the request to implement the four-way stop. Commissioners then voted unanimously in favor of placing a "Cross Traffic Does Not Stop" sign on the southbound stop sign. This would match the sign on the northbound approach. In response to questions from **Mayor Stutsman** and **Board member Landis**, Corwin clarified the recommendation and the procedures used in the warrant analysis. In response to a comment from the Mayor, **City Attorney Bodie Stegelmann** said that it would be a good practice for the Board to deny the stop sign request when opting to instead order the installation of a "Cross Traffic Does Not Stop" sign.

Landis/Nichols moved to deny the request for additional stop signs at the Plymouth and 15th intersection and approve the placement of a "Cross Traffic Does Not Stop" sign on the southbound stop sign. Motion passed 5-0.

9) Request to alter speed limits on Reliance Road between CR 32 and Peddlers Village Road

Goshen City Traffic Engineer Josh Corwin asked the Board to approve a 45 mph speed limit for Reliance/Old CR 17 for portions within the city limits and south of Bashor Road and approve the placement of a 35 mph speed limit for Reliance/Old CR 17 for portions within the city limits between Bashor Road and U.S. 33. Corwin said the City Engineering Department received a request from Elkhart County Highway Department to coordinate speed limits for the Reliance Road/Old CR 17 corridor between CR 32 and Peddlers Village Road. He said the Sheriff's Department asked the County Highway Department to post a speed limit of 45 mph on Old CR 17 from CR 32 to Peddlers Village Road/CR 28 because the current speed limit is 55 mph. The section of Old 17 /Reliance Road just north of this (Peddler's Village to US 33) is posted at 35 mph, and the section just south of this (CR 32 to SR 119/Plymouth Ave) is posted at 45 mph. The southern half of this segment, Old 17 from CR 32 to CR 30, has an ordinance in effect for a speed limit of 45 mph but the speed limit signs have been missing for some time. The Highway Department intends to replace the missing 45 mph signs on this segment. The County was unable to find an ordinance for the segment from CR 30 to Peddlers Village, but performed a study on the segment and found that a speed limit of 45 was appropriate. The County wanted to be sure to coordinate with the City on this because the north end of this segment is within City Limits. The County asked about posting 45 mph speed limit signs for the entire segment from Peddler's Village/CR 28 to CR 30. City staff clarified that: roads on the city boundary are considered to be in the jurisdiction of the City; the county ordinance would not apply to areas within the Goshen city limits; areas that could be considered "urban districts" could technically already have a speed limit of 30 mph; and the majority of streets within the City limits do not currently have ordinances establishing speed limits other than the default 55 mph. The County's request was considered at the January meeting of the Traffic Commission. Commissioners voted unanimously for the 45 mph limit for the portion within the city between Clinton and Bashor. However, considering the nature of the corridor and the improvements currently proposed at the intersection of Reliance and Peddler's Village, the commissioners recommended signing the portion of the road north of Bashor and within the city limits at 35 mph. Corwin said this would match the existing signs for the segment between Peddler's Village and U.S. 33 (Elkhart Road).



In response to questions **Landis, Corwin** clarified the speed limits in the area and intended signage.

Landis/Nichols moved to approve a 45 mph speed limit for Reliance/Old CR 17 for portions within the city limits and south of Bashor Road and approve the placement of a 35 mph speed limit for Reliance/Old CR 17 for portions within the city limits between Bashor Road and U.S. 33. Motion passed 5-0.

10) Approval & acceptance of infrastructure: Rock Run Sewer Improvements (2019-0025C)

Goshen Director of Public Works and Utilities Dustin Sailor asked the Board to approve the acceptance of infrastructure for the Rock Run Sewer Improvement Project. The installation of infrastructure (sanitary and storm sewer, curb and asphalt) has been satisfactorily completed by Selge Construction for the project. The Engineering Department recommended that the infrastructure be accepted for maintenance. As this was an SRF (State Revolving Fund) project it did not require a maintenance bond. A copy of the asset values was attached to the agenda packet.

Landis/Nichols moved to approve the acceptance of infrastructure for the Rock Run Sewer Improvement Project. Motion passed 5-0.

11) Agreements for completion of construction project: 1936 Lighthouse Lane (JN: 2006-2057)

Goshen Stormwater Specialist Mattie Lehman asked the Board to approve and authorize the Mayor to execute the agreements with Sharon and Michael Price and Granite Ridge Builders for the Completion of the Construction Project at 1936 Lighthouse Lane. The home at 1936 Lighthouse Lane has passed its final building inspection and the project is substantially complete except for exterior concrete work, seeding and stabilization, and landscaping requirements. These final requirements cannot be completed at this time due to weather conditions. The property owners, Sharon and Michael Price, have agreed to plant three trees and the property owners, in conjunction with Granite Ridge Builders, agreed to complete all concrete work and stabilize the lawn with seed and a temporary stabilization measure by June 15, 2022. The expected cost of work is \$6,790 and a surety check for that amount has been remitted to the Clerk-Treasurer's Office.

Landis/Nichols moved to approve and authorize the Mayor to execute the agreements with Sharon and Michael Price and Granite Ridge Builders for the Completion of the Construction Project at 1936 Lighthouse Lane. Motion passed 5-0.

12) Agreement for completion of construction project: 502 River Race Drive

Goshen Stormwater Specialist Mattie Lehman asked the Board to approve and authorize the Mayor to execute the Agreements with Roland Weaver for the Completion of the Construction Project at 502 River Race Drive. The home at 502 River Race Drive has passed its final building inspection and the project is substantially complete except for exterior concrete work, seeding and stabilization, and landscaping requirements. These final requirements cannot be completed at this time due to weather conditions. The Stormwater Department submitted Agreements for the Completion of the Construction Project for approval and authorization for the Mayor to execute. The property owner, Roland Weaver, agrees to complete all concrete work, landscaping requirements, and lawn stabilization with seed and a temporary stabilization measure by June 15, 2022. The expected cost of work is \$9,930 and a surety check for that amount has been remitted to the Clerk-Treasurer's Office.

Landis/Nichols moved to approve and authorize the Mayor to execute the Agreements with Roland Weaver for the Completion of the Construction Project at 502 River Race Drive. Motion passed 5-0.



Privilege of the Floor:

Mayor Stutsman opened Privilege of the Floor at 2:27 p.m. No one else asked to speak, so the Mayor closed Privilege of the Floor at 2:27 p.m.

**CITY OF GOSHEN STORMWATER BOARD
MINUTES OF THE Jan. 24, 2022 REGULAR MEETING**

Convened at 2 p.m. at Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Present: Mayor Stutsman and members Mike Landis and Mary Nichols

At 2:27 p.m., Mayor Stutsman recessed the Board of Works & Safety meeting and convened the Stormwater Board to consider one agenda item.

1) Presentation: Stormwater Department annual report for 2021

City of Goshen Stormwater Coordinator Jason Kauffman and City Stormwater Specialist Mattie Lehman presented the Department's annual report for 2021. They provided a printed 2021 Stormwater Report a PowerPoint presentation, both of which were included in the packet for the Stormwater Board. They noted this was the first-of-its-kind annual report covering Stormwater Department operations and included a "looking ahead" section.

Lehman explained the key functions and responsibilities of the Stormwater Department and its establishment in 2005. She said that at the end of 2021, the Indiana Department of Environmental Management released its first major Municipal Separate Storm Sewer (MS4) permit updates since the City program began operating. Lehman said the updates required the issuance of an annual report and education and engagement with stormwater boards and elected officials. That, she said, motivated today's report.

During their PowerPoint presentation, **Kauffman** and **Lehman** discussed: primary and secondary partnerships; City Department stormwater functions; Stormwater Board and Board of Works roles; and activity planned for 2022.

Lehman discussed Stormwater Department functions, including pollution prevention and such "Good Housekeeping Goals" as preventing harmful chemicals and sediment from entering local waterways. **Kauffman** and **Lehman** discussed the roles of the Stormwater Board and the Board of Works & Safety, including the review and approval of post-construction stormwater management plans and final stabilization and completion agreements as well as illicit discharge and construction enforcement and supporting drainage public works projects.

In the year ahead, **Kauffman** said the Stormwater Department expects to take on bigger projects in partnership with others, will respond to new regulations and technical standards and has issued a call for artists for a new storm drain art project to educate the community about the importance of clean water.

Mayor Stutsman thanked Kauffman and Lehman for their report and their work throughout the year.

Landis asked who was responsible for maintaining the Carter Road Drainage Swale Improvement Project.

Kauffman said it was the property owner's responsibility, but said it shouldn't be too difficult to maintain.

Landis also asked about the health of the Elkhart River, noting a recent newspaper report on high levels of E. coli in ditches that flow into the river. **Kauffman** said that biological activity in the river indicates it is a healthy system, but he added that the E. coli pollution needs to be addressed.

Landis/Nichols moved to accept the Stormwater Department's 2021 annual report. Motion passed 3-0.



As the matters before the Board of Public Works & Safety and Stormwater Board were concluded, Mayor Stutsman/Landis moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 5-0. The Mayor adjourned the meeting at 2:46 p.m.

APPROVED

Jeremy Stutsman, Chair

Michael Landis, Member

Mary Nichols, Member

Barb Swartley, Member

DeWayne Riouse, Member

ATTEST

Richard R. Aguirre, Clerk-Treasurer



CITY OF GOSHEN LEGAL DEPARTMENT

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

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February 7, 2022

To: Board of Public Works and Safety
From: Shannon Marks
Subject: Fire Department Conditional Offer of Employment to Andrew T. LoPresti

On behalf of the Fire Department, it is recommended that the Board extend a conditional offer of employment to Andrew T. LoPresti, as well as approve and authorize the Mayor to execute the attached Conditional Offer of Employment Agreement.

The agreement sets forth the conditions that the prospective employee must meet prior to beginning employment with the Fire Department as a probationary firefighter, and requires Andrew to successfully complete all training requirements once employed and serve as an active paramedic. The agreement also provides for the payment of a hiring bonus as Andrew is currently a certified paramedic.

The Fire Department will request the Board to confirm the offer of employment when a position opening becomes available in the Department.

Suggested motions:

- (1) Move to extend a conditional offer of employment to Andrew T. LoPresti as a probationary firefighter.
- (2) Move to approve and authorize the Mayor to execute the Conditional Offer of Employment Agreement with Andrew T. LoPresti which includes the payment of a paramedic hiring bonus.

**GOSHEN FIRE DEPARTMENT
CONDITIONAL OFFER OF EMPLOYMENT AGREEMENT**

THIS AGREEMENT is entered into on February _____, 2022, which is the date of the last signature set forth below, by and between **Andrew T. LoPresti** ("LoPresti") and the **City of Goshen, Indiana**, acting through the Goshen Board of Public Works and Safety ("City").

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

PREREQUISITES TO BEGINNING EMPLOYMENT

City conditionally offers LoPresti employment as a probationary firefighter of the Goshen Fire Department. LoPresti accepts City's conditional offer of employment. City does not have a current position available in the Goshen Fire Department. City and LoPresti understand and agree that the offer of employment is contingent upon the following:

- (1) A personnel vacancy in the Goshen Fire Department rank and file must exist. LoPresti understands that currently no vacancy exists in the rank and file of the Fire Department. Although the Fire Department is initiating the pension physical and psychological testing, LoPresti understands that no permanent employment will be offered until such time that a personnel vacancy is available and/or additional staffing is hired to increase the number of firefighters.
- (2) LoPresti must and agrees to submit a complete application for membership to the Indiana Public Retirement System (InPRS) and the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). LoPresti understands that the application for membership requires the completion of a comprehensive medical history and the administration and successful passage of the baseline statewide physical examination and baseline statewide mental examination.
- (3) City agrees to pay the initial cost for LoPresti to complete the baseline statewide physical examination and baseline statewide mental examination as required by Indiana Code §§ 36-8-8-7(a) and 36-8-8-19. In the event that InPRS requires any additional reports and/or testing to establish physical and mental fitness beyond the baseline statewide physical examination and baseline statewide mental examination requirements, such costs for the additional reports and/or testing shall be at LoPresti's expense.
- (4) InPRS will determine whether LoPresti has any Class 3 excludable conditions. LoPresti understands that if InPRS finds that LoPresti has any Class 3 excludable conditions, LoPresti will be prevented from receiving certain Class 3 impairment benefits for a certain period of time and will be disqualified from receiving disability benefits from the 1977 Fund throughout LoPresti's employment if the disability is related to the Class 3 excludable

condition. In addition, City will review the InPRS findings to determine whether the City's conditional offer of employment will be withdrawn.

- (5) City and LoPresti understand that the board of trustees of the InPRS must approve the application for membership to the 1977 Fund. City will confirm its offer of employment to LoPresti if the board of trustees of the InPRS approves the application for membership to the 1977 Fund. City's confirmation will occur when a position opening becomes available in the Goshen Fire Department. In the event that approval is not given by the board of trustees of the InPRS, City withdraws this conditional offer of employment, and LoPresti accepts City's withdrawal and this agreement shall be terminated.

AGREE TO SERVE AS A PARAMEDIC

- (1) LoPresti currently possesses an Indiana paramedic certification/license. LoPresti acknowledges that as a condition of employment, LoPresti agrees to serve City as an active paramedic in accordance with the requirements set forth in the contract between the City of Goshen and the Goshen Firefighters Association, Local No. 1443, as amended from time to time, and to maintain LoPresti's paramedic certification/license as long as LoPresti is required to serve City as a paramedic.
- (2) If LoPresti is a first time employee of the Goshen Fire Department, City agrees to pay LoPresti a bonus payment of Seven Thousand Five Hundred Dollars (\$7,500) payable in equal amounts over LoPresti's first three (3) years of employment with City. The first payment of Two Thousand Five Hundred Dollars (\$2,500) will be made upon LoPresti's first employment anniversary date with City and satisfactory completion of the probationary period. The second payment of Two Thousand Five Hundred Dollars (\$2,500) will be made on LoPresti's second employment anniversary date with City. The third and final payment of Two Thousand Five Hundred Dollars (\$2,500) will be made on LoPresti's third employment anniversary date with City.
- (3) If LoPresti fails to serve City as an active paramedic for any of the first three (3) full years of employment, LoPresti shall not be entitled to the any portion of the annual bonus payment for a partial year of service.

AMENDMENT

This agreement may be amended only by the mutual written consent of the parties and approval by the Goshen Board of Public Work and Safety.

SEVERABILITY

The provisions of this agreement are severable, and if any provision shall be held invalid or unenforceable, in whole or in part, then such invalidity or unenforceability shall affect only such provision, and shall not affect any other provision of this agreement.

INDIANA LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Proper venue to enforce the terms and conditions of this agreement shall be in Elkhart County, Indiana.

BINDING EFFECT

This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings between the parties concerning, the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates as set forth below.

Jeremy P. Stutsman, Mayor

Andrew T. LoPresti

Date: _____

Date: _____



**City Clerk-Treasurer
CITY OF GOSHEN**

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

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

clerktreasurer@goshencity.com • www.goshenindiana.org

TO: Board of Public Works & Safety and Stormwater Board

FROM: Jeffery Weaver, CPA, Deputy Clerk-Treasurer

RE: Outstanding Warrants

DATE: February 7, 2022

Attached are lists of outstanding warrants from the City Clerk-Treasurer's office and the City Utilities office that are dated on or before December 31, 2019. Pursuant to IC 5-11-10.5-3 through 5, we request permission to void the attached warrants and record receipts back into the funds from which they were drawn.

Schedule A reflects the Utilities Accounts Payable through December 31, 2019, totaling \$363.88.

Schedule B reflects the City Accounts Payable through December 31, 2019, totaling \$1,429.98.

Requested Motion:

Move to allow the Clerk-Treasurer's Office and Utilities Office to void \$1,793.86 in outstanding warrants dated on or before December 31, 2019.

CITY OF GOSHEN, INDIANA

SCHEDULE A -

UTILITIES OUTSTANDING WARRANTS AS OF DECEMBER 31, 2019

| <u>Warrant Date</u> | <u>Warrant Number</u> | <u>Description</u> | <u>Amount</u> | <u>Fund</u> |
|---------------------|-----------------------|----------------------|------------------|-------------|
| 1/7/2019 | 68693 | BERKEY, THOMAS W | \$ 15.19 | 601-Water |
| 1/14/2019 | 68697 | MINGUCHA, ALVARO O | 12.15 | 601-Water |
| 1/18/2019 | 68816 | BEADLE, AUBREY L | 21.76 | 601-Water |
| 1/18/2019 | 68817 | TOLER, MARGARETE | 9.61 | 601-Water |
| 2/4/2019 | 68886 | MOLES, JUSTIN | 11.54 | 601-Water |
| 2/25/2019 | 69031 | OWEN, SETH A | 3.18 | 601-Water |
| 2/26/2019 | 69036 | YODER, TRAVIS J | 34.68 | 601-Water |
| 3/18/2019 | 69186 | GOSHEN RENTALS LLC | 1.46 | 601-Water |
| 3/25/2019 | 69199 | KAUFFMAN, MYRNA E | 30.28 | 601-Water |
| 4/22/2019 | 69384 | THAXTON, ALEXIS M | 12.72 | 601-Water |
| 5/20/2019 | 69583 | SIMONS, KATHRYN M | 5.68 | 601-Water |
| 5/28/2019 | 69639 | RUBIO, BRYAN | 17.07 | 601-Water |
| 6/10/2019 | 69783 | GRABER, ABIGAIL L | 6.49 | 601-Water |
| 6/10/2019 | 69785 | ESMERALDA MARTINEZ | 1.46 | 601-Water |
| 6/24/2019 | 69830 | PROP MGMT% LUKE IJAM | 7.77 | 601-Water |
| 7/15/2019 | 69931 | MILLER, PHIL W | 47.19 | 601-Water |
| 7/15/2019 | 69957 | LEHMAN, NATHAN D | 15.54 | 601-Water |
| 8/5/2019 | 70113 | EARL, PATRICIA F | 6.53 | 601-Water |
| 8/12/2019 | 70157 | YES COMMUNITIES OP, | 18.05 | 601-Water |
| 8/19/2019 | 70198 | BARRIENTOS, ADRIAN | 1.17 | 601-Water |
| 8/26/2019 | 70246 | KAREN RANGEL | 4.10 | 601-Water |
| 9/30/2019 | 70501 | GODINEZ, FRANCISCO J | 1.55 | 601-Water |
| 10/21/2019 | 70664 | TAYLOR, DYLAN | 1.87 | 601-Water |
| 11/4/2019 | 70772 | HOLLIS, MITCHELL | 7.81 | 601-Water |
| 11/18/2019 | 70858 | SANCHEZ, EDUARDO | 33.14 | 601-Water |
| 12/9/2019 | 71057 | DUMKE, LILA | 35.89 | 601-Water |
| | | TOTAL OUTSTANDING | <u>\$ 363.88</u> | |

CITY OF GOSHEN, INDIANA

SCHEDULE B -
CITY OUTSTANDING WARRANTS AS OF DECEMBER 31, 2019

| <u>Warrant Date</u> | <u>Warrant Number</u> | <u>Description</u> | <u>Amount</u> | <u>Fund</u> |
|---------------------|-----------------------|---------------------------------|--------------------|-------------|
| 2/12/2019 | 5972 | SHELBY COLE | \$ 5.00 | 204-Parks |
| 2/12/2019 | 5994 | MICHELLE HOPKINS | 5.00 | 204-Parks |
| 2/12/2019 | 6003 | TIMBERLY BARTLEY | 5.00 | 204-Parks |
| 3/5/2019 | 6281 | BRYCE SMITH | 57.00 | 204-Parks |
| 5/7/2019 | 6987 | EVERENCE ASSOCIATION, INC. | 71.56 | 101-General |
| 5/14/2019 | 7090 | HALEY WELCH | 50.00 | 204-Parks |
| 5/29/2019 | 7243 | FERN LEHMAN | 5.00 | 204-Parks |
| 6/18/2019 | 7568 | JOANNE MURILLO | 50.00 | 204-Parks |
| 7/9/2019 | 7845 | LARRY GYRION | 50.00 | 204-Parks |
| 8/27/2019 | 8528 | ELKHART COUNTY FIRE CHIEF ASSN. | 100.00 | 101-General |
| 9/3/2019 | 8592 | ELIZABETH GONZALEZ | 50.00 | 204-Parks |
| 10/29/2019 | 9274 | JEREMY D. HOOLEY | 81.82 | 101-General |
| 11/5/2019 | 9344 | CENTER FOR BUSINESS EXCELLENCE | 450.00 | 101-General |
| 11/19/2019 | 9524 | JOHN FULLER | 224.69 | 201-MVH |
| 11/19/2019 | 9532 | JEREMY D. HOOLEY | 92.55 | 101-General |
| 11/26/2019 | 9628 | JEREMY D. HOOLEY | 118.18 | 101-General |
| 12/10/2019 | 9803 | STEVEN WOLF | 14.18 | 201-MVH |
| | | TOTAL OUTSTANDING | <u>\$ 1,429.98</u> | |



CITY OF GOSHEN LEGAL DEPARTMENT

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

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

February 7, 2022

To: Board of Public Works and Safety

From: Shannon Marks, Legal Compliance Administrator

Subject: Resolution 2022-08, Interlocal Agreement with Elkhart County
for Animal Control Services

Attached to Resolution 2022-08 is an Interlocal Agreement with the County of Elkhart for animal control services. The County has negotiated a contract with The Humane Society of Elkhart County, Inc. to provide animal shelter management and animal control services for 2022 for certain areas of the county, including the City of Goshen. Under this agreement, the City would contribute \$85,400 to reimburse the County for the cost to provide animal control services within the Goshen city limits.

Suggested Motion:

Move to adopt Resolution 2022-08, Interlocal Agreement with Elkhart County for Animal Control Services.

**Goshen Board of Public Works and Safety
Resolution 2022-08**

**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 2022 for certain areas of Elkhart County, including within the corporate boundaries of the City of Goshen.

WHEREAS the City of Goshen agrees to contribute \$85,400 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 Board of Public Works and Safety 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.

BE IT FURTHER RESOLVED that the Mayor and Clerk-Treasurer are authorized to execute the Interlocal Agreement on behalf of the Goshen Board of Public Works and Safety and City of Goshen.

PASSED by the Goshen Board of Public Works and Safety on February _____, 2022.

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

DeWayne Riouse, Member

Michael A. Landis, Member

Barb Swartley, Member

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

This Agreement is made and entered into this 15th day of JAN, 2022, 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 2022;

WHEREAS the Contract for Animal Shelter Management and Animal Control Services for 2022 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 2022 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 2022;

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 Eighty Five Thousand Four Hundred Dollars (\$85,400.00) for the Services which shall be paid in two (2) installments of Forty Two Thousand Seven Hundred Dollars (\$42,700.00) each with the first installment becoming due and payable on or before April 1st 2022 and with the second installment being payable on or before August 1st 2022. The Municipality contribution, or changes in amounts thereto, for calendar year 2022 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, President

By 
Frank Lucchese, Vice President

By 
Brad Rogers, Member

ATTEST: 
Patricia A. Pickens, Elkhart County Auditor

CITY OF GOSHEN, INDIANA

By: _____

Print: Jeremy Stutsman, Mayor

ATTEST:

By: _____

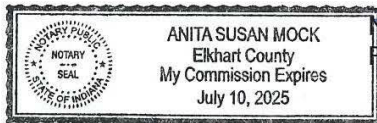
Title: Clerk-Treasurer
Richard R. Aguirre

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

Before me, a Notary Public in and for said County and State, this 4th day of JANUARY, 2022, 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.

Anita Susan Mock
Notary Public
Resident of Elkhart County, IN



My Commission Expires:
7-10-2025

STATE OF INDIANA)
) SS:
COUNTY OF ELKAHRT)

Before me, a Notary Public in and for said County and State, this ____ day of _____, 2022, personally appeared Jeremy Stutsman, Mayor and Richard R. Aguirre, Clerk-Treasurer, and acknowledged that as said representatives, they respectively executed the foregoing Interlocal 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
Resident of Elkhart County, IN

My Commission Expires:

APPROVAL

The Elkhart County Council hereby approves of the above and foregoing Interlocal Agreement this 8th day of JANUARY, 2022.

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, 2022 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 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, 2022 through December 31, 2022. County may renew this Contract for calendar years 2023 and 2024 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 2022, County shall pay the total sum of Two Hundred Twenty Thousand Dollars [\$220,000.00] 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 Thirty Thousand Dollars (\$130,000.00) to Contractor on or before February 15, 2022, 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, 2022, July 1, 2022 and October 1, 2022. In consideration of the advancement of the One Hundred Thirty Thousand Dollars (\$130,000.00) on or before February 15, 2022, 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 Town of Millersburg.

After March 31, 2022, 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 | \$139,150 |
| City of Goshen | \$85,400 |
| Town of Middlebury | \$5,940 |
| Town of Wakarusa | \$6,600 |
| Town of Bristol | \$4,400 |
| Town of Nappanee | \$11,535 |

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, 2022 of which incorporated areas are to be covered by the services to be performed under this Contract by Contractor after March 31, 2022. 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, 2022, 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, 2022, July 1, 2022 and October 1, 2022. 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 2022.

- 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

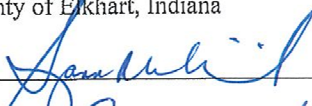
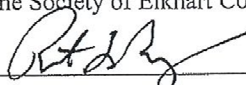
Provided the Contractor has not defaulted in the performance of its obligations under this Contract, the obligation of the County to make payments as herein set forth shall continue until fully performed. Any rights and remedies the County or Contractor may have with respect to each other arising out 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 | Humane Society of Elkhart County, Inc. |
| By: <u></u> | By: <u></u> |
| Printed: <u>SUZANNE M WEIRICH</u> | Printed: <u>ROBERT LARoy</u> |
| Title: President | Title: <u>EXECUTIVE DIRECTOR</u> |
| Date: <u>1-4-2022</u> | Date: <u>12/16/21</u> |



CITY OF GOSHEN LEGAL DEPARTMENT

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

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

February 4, 2022

To: Board of Public Works and Safety

From: Carla Newcomer

Subject: Agreement with Eyedart Studio, LLC for Goshen Arts Council 2022 Project Management and Web Design Maintenance

Attached for the Board's approval and execution is an agreement with Eyedart Studio, LLC for Goshen Arts Council 2022 Project Management and Web Design Maintenance. Eyedart Studio, LLC will be paid \$32,000.00 for the services.

Suggested Motion:

Approve and execute the agreement with Eyedart Studio, LLC for Goshen Arts Council 2022 Project Management and Web Design Maintenance.

Agreement

Goshen Arts Council 2022 Project Management and Web Design Maintenance

THIS AGREEMENT is entered into on _____, 2022, which is the last signature date set forth below, by and between **Eyedart Studio, LLC d/b/a Eyedart Creative Studio** (“Contractor”), whose mailing address is 324 S. Fifth Street, Goshen Indiana, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Contractor shall provide City the services for Project Management, Web Design and Maintenance, which services are more particularly described in Contractor’s October 11, 2021 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.

Contractor’s Duties under this agreement include:

- (A) Project Management for Goshen Arts Council
- (B) Content Management
- (C) Graphic Design
- (D) Writing and Editing
- (F) Web Design and Maintenance
- (G) Social Engagement
- (H) Email Marketing

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.

Section 3. Compensation

- (A) City agrees to compensate Contractor an amount not to exceed of Thirty-Two Thousand Dollars (\$32,000.00) for performing all Duties.

Section 4. Payment

- (A) City shall pay Contractor for each phase of Duties satisfactorily completed under this agreement as Duties progress.
- (B) Payment shall be upon City’s receipt of a detailed invoice from Contractor. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

City of Goshen
c/o Mayor’s Office
202 S. 5th Street
Goshen, IN 46528

- (C) Payment will be made within forty-five (45) days following City's receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (D) Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

Section 5. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively "Documents") prepared by Contractor or Contractor's employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Contractor may retain a copy of the Documents for its records, including electronic files, as instruments of professional service. Nevertheless, the final documents prepared under this agreement shall become the property of City upon completion of the services and payment in full of all monies due to Contractor.

Section 6. Licensing/Certification Standards

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

Section 7. Independent Contractor

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

Section 8. Non-Discrimination

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

Section 9. Employment Eligibility Verification

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

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

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

Section 10. Contracting with Relatives

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

Section 11. No Investment Activities in Iran

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

Section 12. Indemnification

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

Section 13. 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

Contractor: Eyedart Studio LLC d/b/a Eyedart Creative Studio
324 S. 5th Street
Goshen, IN 46528

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 Bind Contractor

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**

Jeremy P. Stutsman, Mayor

Michael A. Landis, Member

Mary Nichols, Member

DeWayne Riouse, Member

Barb Swartley, Member

Date Signed: _____

Eyedart Studio LLC d/b/a Eyedart Creative Studio

Printed: _____

Title: _____

Date Signed: _____



Stormwater Department

CITY OF GOSHEN

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

Phone (574) 534-2201 • Fax (574) 533-8626

stormwater@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Board of Works and Public Safety

FROM: Stormwater Department

RE: **AGREEMENT FOR THE COMPLETION OF THE CONSTRUCTION PROJECT
837 RIDGEVIEW DRIVE
(JN: 2005-2070)**

DATE: February 4, 2022

The home at 837 Ridgeview Drive has passed its final building inspection and the project is substantially complete except for exterior concrete work, seeding and stabilization, and landscaping requirements. These final requirements cannot be completed at this time due to weather conditions.

The Stormwater Department thus submits an Agreement for the Completion of the Construction Project for approval and authorization for the Mayor to execute.

The property owners, Saulo and Kaitlyn Delgado, and the builder, Team Construction, agree to complete all concrete work, plant the required tree, and stabilize the lawn with seed and a temporary stabilization measure by June 15, 2022. The expected cost of work is \$5,945 and a surety check for that amount has been remitted to the Clerk Treasurer's office.

Requested Motion: Approve and authorize the Mayor to execute the Agreement with Saulo and Kaitlyn Delgado and Team Construction Company Inc. for the Completion of the Construction Project at 837 Ridgeview Drive

**AGREEMENT FOR THE COMPLETION
OF THE CONSTRUCTION PROJECT**

THIS AGREEMENT is entered into on February 3, 2022, between the City of Goshen, Indiana, by and through the Goshen Board of Public Works and Safety, hereinafter referred to as "Goshen," and

Property Owner: Saulo and Kaitlyn Delgado

and, if the builder is responsible for completing the remaining work,

Builder: Team Construction Company Inc

No Builder

hereinafter referred to individually or collectively, if applicable, as "Permittee."

Permittee obtained a building permit for the construction of a building on the real estate at

Site: 837 Ridgeview Drive, Goshen, Indiana, hereinafter referred to as "Site."

The construction project is substantially complete except for:

- certain exterior work that cannot be completed due to weather conditions.
- the installation of certain parts or equipment which are not currently available.

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

1. **WORK.** Permittee agrees to complete the following remaining item(s) of work, hereinafter referred to as "Work," as soon as conditions permit, but no later than June 15, 2022, unless an earlier date is specified below:

Permanently stabilize the Site which shall include grading, adding topsoil where needed, seeding and mulching of the grounds. This shall specifically include stabilization of approximately 12,000 square feet of disturbed area with seed and a temporary stabilization measure such as anchored mulch, hydromulch, or erosion control blankets. In addition, all adjacent and/or affected inlets shall be kept covered until the Site has been completely and permanently stabilized.

Plant all required landscaping at the Site according to the plan submitted to the Goshen Planning and Zoning Department. This shall include planting: one large (> 40 ft at maturity) tree

Install the hard surface driveway for the Site.

- Permittee agrees to install a temporary gravel driveway, and Goshen will permit the installation of the temporary gravel driveway until such time as the permanent hard surface driveway can be installed. The temporary gravel driveway shall be installed prior to occupancy of the building, but no later than _____, 20_____.
- Install the hard surface parking lot for the Site.
- Permittee agrees to install a temporary gravel parking lot, and Goshen will permit the installation of the temporary gravel parking lot until such time as the permanent hard surface parking lot can be installed. The temporary gravel parking lot shall be installed prior to occupancy of the building, but no later than _____, 20_____.
- Install all required parking lot striping for parking spaces at the Site.
- Install approximately 300 square feet of concrete sidewalk and/or curbing at or adjacent to the Site parallel to the following public street: Ridgeview Drive
- Install approximately _____ of concrete sidewalk at the Site to the building entrance.
- Install the following certain parts or equipment at the Site: _____
- Other: _____

2. **SURETY.** Permittee is required to provide Goshen a surety to guarantee the timely and proper completion of the Work if the cost of the Work is estimated by Goshen to be at least Two Thousand Dollars (\$2,000), or if the Work includes the installation of a driveway, parking lot, sidewalk, curbing or other hard surface improvement, regardless of cost.

- Permittee agrees to provide Goshen a surety in the amount of five thousand nine hundred and forty five Dollars (\$ 5,945.00) to guarantee the timely and proper completion of the Work under the terms of this agreement. The surety may be in the form of a surety bond, letter of credit, or cash bond, including a cashier's check or corporate check (which City Clerk-Treasurer will cash). The surety is to guarantee the timely and proper completion of the obligations under this agreement and is not intended for the benefit of any third party, including Permittee's contractors or subcontractors. Upon satisfactory completion of the Work, Goshen will release the surety. If the surety is in the form of cash or a check, the Permittee must have a current W-9 on file with the City Clerk-Treasurer so a check may be issued to refund the surety.
- Permittee is not required to provide Goshen a surety to guarantee the timely and proper completion of the Work.

3. **CERTIFICATE OF OCCUPANCY.** Except for the Work yet to be completed as set forth in Section 1 above, once the construction project complies with all applicable City ordinances and requirements, Goshen will issue a Certificate of Occupancy for the Site on the condition that Permittee complies with the terms of this agreement. **It is Permittee's obligation to contact the Goshen Building Department to obtain the Certificate of Occupancy prior to occupying the building.**
4. **FORCE MAJEURE.** If Permittee's performance under this agreement is prevented because of an occurrence that is beyond the control of the Permittee which could not have been avoided by exercising reasonable diligence, Permittee's time for performance will be extended. Such extension shall be for no longer than necessary given the nature of the occurrence which causes the delay. Examples of such occurrences are tornadoes, floods, or more than a typical number of days where rainfall prohibits the performance required of the Permittee.

If Permittee is delayed, Permittee shall immediately notify Goshen in writing describing the nature of the event delaying performance. Permittee shall make every effort to resume performance as soon as possible.

5. **DEFAULT.** It is mutually agreed that if Permittee fails to perform or comply with the terms of this agreement, Goshen may declare the agreement to be in default without notice to Permittee.

Upon declaration of default, Goshen may take such action as is necessary to complete Permittee's obligations although Goshen is not obligated to do so. If Surety is provided under this agreement, Goshen may use the Surety to pay for the completion of any of Permittee's obligations. Goshen may seek any other remedy available at law or equity in addition to or instead of any remedy provided for in this agreement.

Goshen shall have the right to correct any defect in the Work, and Goshen shall have the right to stabilize the Site in accordance with the Goshen City Construction Site Stormwater Runoff Control Ordinance. The Surety, if required, and/or Permittee shall pay all of Goshen's costs and expenses incurred in taking such actions including, but not limited to engineering, legal and other costs, together with any damages either direct or consequential which Goshen may sustain on account of Permittee's failure to fulfill Permittee's obligations under this agreement.

6. **SUBCONTRACTING OR ASSIGNMENT OF CONTRACT.** Permittee shall not subcontract or assign any right or interest under the agreement without having prior written approval from the Goshen Board of Public Works and Safety, provided, however, that Permittee shall be permitted to independently engage any contractors, subcontractors, or laborers to perform the Work, and such engagement shall not be considered to be an impermissible subcontracting or assignment by Permittee of any right or interest under this agreement. Except as provided herein, any attempt by Permittee to subcontract or assign any portion of the agreement shall not be construed to relieve Permittee from any responsibility to fulfill Permittee's obligations.
7. **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 and such modification is approved by the Goshen Board of Public Works and Safety. Any verbal representations or modifications concerning the agreement shall be of no force and effect.

8. **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.
9. **NOTICES.** All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in this agreement. Notice will be considered given five (5) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

Address for Goshen: City of Goshen, Indiana
 Attention: Goshen Legal Department
 204 East Jefferson Street, Suite 2
 Goshen, IN 46528

Address for Permittee:

Property Owner: Saulo and Kaitlyn Delgado
 907 Galen Ct.
 Goshen, IN 46526

Builder: Team Construction Company Inc
 1849 W Lincoln Ave
 Goshen, IN 46526

No Builder

10. **APPLICABLE LAWS.** Permittee agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances.

In the event of a conflict between this agreement and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.

This agreement shall be construed in accordance with and governed by the laws of the State of Indiana, and suit, if any, must be brought in a court of competent jurisdiction in Elkhart County, Indiana.

11. **ATTORNEY FEES.** In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the non-prevailing party will pay all costs and expenses expended or incurred by the prevailing party, including reasonable attorneys' fees.
12. **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.
13. **BINDING EFFECT.** All provisions, covenants, terms and conditions of the agreement apply to bind the parties and their legal heirs, representatives, successors and assigns.

14. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement between the parties and supersedes all other agreements or understandings between Goshen and Permittee.

15. **AUTHORITY TO EXECUTE.** Each person executing this agreement represents that he or she is duly authorized and has legal authority to execute and deliver this agreement on behalf of the respective party, and upon execution and delivery of this agreement, bind the respective party to the terms and conditions of the agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates as set forth below.

Permittee:¹

Property Owner:

Signature: Saulo Delgado

Printed: Saulo Delgado

Title (if any): _____

Date: 2/3/22

Signature: Kaitlyn Delgado

Printed: Kaitlyn Delgado

Title (if any): _____

Date: 02/03/2022

Builder:

Signature: Bill Hooley

Printed: Bill Hooley

Title: Project Manager

Date: 2-3-22

Goshen:

Jeremy P. Stutsman, Mayor

Date: _____

¹ The Property Owner is required to execute the agreement. If the Builder is responsible for completing the remaining work or if the Builder is providing the surety under the agreement (if required), the Builder is also required to execute the agreement.



**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

RE: **WWTP IMPROVEMENTS AND ROCK RUN INTERCEPTOR PHASE I PROJECTS
(A & C) PROFESSIONAL SERVICE AGREEMENT AMENDMENT NO. 3
(JN: 2019-0025 A & C)**

DATE: February 4, 2022

The Wastewater Treatment Project has taken longer than was anticipated and contracted, and the City's onsite construction supervision consultant, Donohue and Associates, has exhausted their project budget.

The City is having regular discussions with the contractor about their construction progress, but at this time, we anticipate needing the services of Donohue and Associates up through April 15, 2022. To extend Donohue and Associate's contract through this date, they have offered an amended service fee of \$128,869 minus \$9,794 for a total fee of \$119,075. The new not-to-exceed value of Donohue and Associates contract, with approval of this amendment, will be \$3,384,471.

Requested Motion: *Move to approve Agreement Amendment No. 3 with Donohue and Associates in the amount of \$119,075 for a new not to exceed contract amount of \$3,384,471.*

AMENDMENT NO. 3

CONSULTING SERVICES AGREEMENT Wastewater Treatment Plant Improvement and Rock Run Interceptor Phase I Improvement Projects (Projects A and C)

THIS AMENDMENT is entered into on _____, 2022, which is the last signature date set forth below, by and between **Donohue and Associates** (“Consultant”), whose mailing address is 101 West Ohio Street, Suite 1650, Indianapolis, IN 46258, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

RECITALS

- (A) City and Consultant entered into an Agreement on November 26, 2018 for consulting services for the Wastewater treatment Plant Improvement and Rock Run Interceptor Phase I Improvement Projects.
- (B) The parties wish to amend the terms of the original agreement as noted in the attached proposal prepared by Consultant dated January 27, 2022.
- (C) Any modification or proposal to the terms and conditions of the Agreement shall be made in writing and signed by both parties.

In consideration of the terms, conditions and mutual covenants to be kept and performed under the original Agreement, and under the terms, conditions and mutual covenants of this Proposal, the parties agree as follows:

Section 1. Scope

The Agreement shall be amended by revising and adding additional tasks memorialized in the attached Proposal dated by January 27, 2022.

Section 2. Effective Date; Term

- (A) The Amendment shall become effective on the day of execution and approval by both parties.
- (B) The Agreement shall be extended as outlined in the attached Proposal.

Section 3. Compensation

Compensation for the additional scope of services set forth set forth in this Amendment shall be increased by **\$128,869 minus a reduction of \$9,794** for the Request for Proposal (RFP) No. 23 price. This results in the total contract amount increasing by **\$119,075** from a not to exceed amount of \$3,265,396 as per Agreement Amendment No. 2 to a not to exceed amount of **\$3,384,471**.

Section 4. Original Agreement

In all respects, all other provisions of the original Agreement not affected by this Amendment shall remain in full force and effect.

Section 5. Authority to Execute

The undersigned affirm that all steps have been taken to authorize execution of this Amendment, and upon the undersigned's execution, bind their respective organizations to the terms of the Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment on the dates as set forth below.

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

Donohue & Associates

Jeremy P. Stutsman, Mayor

Steven P. Gress, PE, Vice President

Date Signed: _____

Date Signed: _____



**AMENDMENT NO. 3 to
CONSULTANTING SERVICES AGREEMENT
Wastewater Treatment Plant Improvement and Rock Run Interceptor Phase I Improvement
Projects (Project)
Original Agreement Executed November 26, 2018**

This Amendment is by and between:

City of Goshen by its Board of Public Works and Safety (City)
202 S. 5th Street
Goshen, Indiana 46258

And,

Donohue & Associates, Inc. (Consultant)
101 West Ohio Street, Suite 1650
Indianapolis, IN 46204

Who agree to amend the original Agreement, as follows:

SCOPE OF SERVICES

The scope of services have been modified to include the following revised and additional tasks:

4. Item No. 4 - Construction Phase Consultant Services for WWTP Improvements – Project A and Rock Run Sewer Improvements – Project C

4.2. *PER Amendment.* Modify this scope of services to read as follows: prepare a PER amendment to delete the addition to the Maintenance Building at the WWTP and to remove Project B from the selected project scope in the PER.

4.26. *Correspondence with Equipment Manufacturers to Troubleshoot Problems.* Provide correspondence and coordination services with equipment manufacturers to resolve manufacturing, startup and operational problems not being addressed by Contractor.

7. Item No. 7 - Scope of Services Assumptions

7.2. RPR services and once a week visits to the Project Site by Jim Miller shall only be performed thru April 15, 2022.

7.3. Additional Services are based on the Contractor achieving substantial completion of treatment process facilities, overall substantial completion, and readiness for final payment by the revised dates listed herein under the Term for Construction Phase Services.

TERM

Construction Phase Services

- 6. The construction schedule shall be revised as follows:
 - 6.1. A new partial substantial completion date for treatment process facilities shall be April 1, 2022.
 - 6.2. Overall substantial completion date shall be revised from December 13, 2021 as was listed in the Notice to Proceed (NTP) to June 13, 2022.
 - 6.3. Readiness for final payment revised form January 24, 2022 as was listed in the NTP to July 5, 2022.

COMPENSATION TO CONSULTANT

Compensation for the additional scope of services set forth set forth in this Amendment shall be increased by **\$128,869 minus a reduction of \$9,794** for the Request for Proposal (RFP) No. 23 price. This results in the total contract amount increasing by **\$119,075** from a not to exceed amount of \$3,265,396 as per Agreement Amendment No. 2 to a not to exceed amount of **\$3,384,471**.

**APPROVED FOR CITY
BOARD OF PUBLIC WORKS AND SAFETY**

By: _____
Jeremy P. Stutsman, Mayor

By: _____
Michael Landis, Member

By: _____
Mary Nichols, Member

By: _____
DeWayne Riouse, Member

By: _____
Barb Swartley, Member

Date: _____

APPROVED FOR CONSULTANT

By: Steven P. Gress

Printed Name: Steven P. Gress, PE

Title: Vice President

Date: January 27, 2022