



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

Regular Meeting Agenda

**2:00 p.m., August 29, 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: August 22, 2022**

**Approval of Agenda**

- 1) Organization requests:** Police presence, street closures, barricades and parking for the Goshen High School Marching Band Invitational, Sept. 10, 2022 (Tom Cox)
- 2) Resident request:** Placement of a dumpster in the street in front of 435 North 9<sup>th</sup> Street, Aug. 31-Sept. 9, 2022 (Mable Abbott)
- 3) Legal Department:** Award a contract to Eby Ford Sales, Inc., and approve the agreement for the Police Department to purchase four 2023 Ford Interceptor Hybrid SUVs for \$199,900 (Carla Newcomer)
- 4) Legal Department:** Approve revised contract for Solid Waste Collection Services with Borden Waste Away Service, Inc. (Shannon Marks)
- 5) Legal Department:** Approve an agreement allowing a home to be built at 1914 Woodward Place to discharge groundwater from a basement sump pump to the City's storm sewer system (Brandy Toms)
- 6) Clerk-Treasurer's Office & Cemeteries request:** Agreement with Daniel Boling for Cemeteries Records Database installation, maintenance and update services (Jeffery Weaver)
- 7) Clerk-Treasurer's Office & Utilities Office:** Approve Enterprise Resources Planning software agreement with Tyler Technologies for City of Goshen & Utilities Offices, with one-time costs of \$122,388 and annual costs not to exceed \$70,202 (Jeffery Weaver & Kelly Saenz)
- 8) Engineering Department:** Approve the closure of Jefferson Street, Aug. 31-Sept. 2, 2022 for utility connections to 114 West Jefferson Street



**9) Engineering Department:** Approve the extension of lane restrictions associated with the Wilden Avenue Reconstruction Project

**10) Engineering Department:** Approve the placement of "No Parking" signs along Wakefield Road, between Wilden Avenue and Wakefield Circle

**11) Engineering Department:** Approve the placement of "No Parking" signs on Hillcrest Drive and Fairview Drive near the subdivision entrance from CR 34

**12) Engineering Department:** Approve the placement of a 25 mph speed limit sign and "No Outlet" sign on a single post on Clover Creek Lane west of Northstone Road

**13) Engineering Department:** Approve the removal of the directional control signage along Alley 139

**14) Engineering Department:** Approve Change Order No. 1 of an additional 22 calendar days for the Concrete Paving Project (JN: 2022-0002)

**15) Engineering Department:** Authorize the Mayor to sign a letter allowing Ericsson to file the necessary FAA paperwork necessary for AT&T to add additional signal equipment on the Clinton Water Tower

### **Privilege of the Floor**

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

### ***Adjournment***



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD  
MINUTES OF THE AUGUST 22, 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 2:00 p.m.

**REVIEW/APPROVE MINUTES:** Mayor Stutsman presented the minutes of the Aug. 15, 2022 regular meeting. Board member Mike Landis moved to approve the minutes as presented and the motion was seconded by Board member Barb Swartley. Motion passed 5-0.

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

**1) Event requests: Street closures, traffic control and no parking areas for the 24th Annual Riding to Remember Police, Firefighter and Veteran Charity Ride, Sept. 11, 2022**

**Mary Anne Ballard**, representing the Blue Knights IN VIII Law Enforcement Motorcycle Club, requested street closures, traffic control and designated no parking areas for the 24<sup>th</sup> Annual Riding to Remember Police, Firefighter and Veteran Charity Ride on Sunday, Sept. 11, 2022. This event is a 72-mile police escorted ride arriving in Goshen about 1:40 p.m. on Sept. 11 with an estimated 800-1,000 motorcycles in attendance.

The ride will enter Goshen from the south on State Road 15 (Main Street), turning east on 5th Street, transitioning north on 5th Street. The procession will stop at Lincoln Avenue where riders will park and dismount (30 minutes). The participants will walk to the area in front of Goshen Police Department for a memorial service (2:10 p.m.) that will last about 30 minutes. Upon conclusion of the memorial service, participants will re-mount their motorcycles (20 minutes) for the remainder of the event (3 p.m.). The ride will exit the City of Goshen travelling west on Lincoln Avenue, north on North 3rd Street.

**Ballard** requested: Traffic control for inbound participants at all intersections from the southern Goshen city limits to Lincoln Avenue on State Road 15 (Main Street); traffic control and a street closure (with NO PARKING signage) and motorcycle parking only on 5th Street north of East Madison Street to Lincoln Avenue, with motorcycles arriving at approximately 1:40 p.m. and overflow parking on 5th Street, south of East Madison Street to Purl Street; traffic control and road closure (with NO PARKING signs) at the memorial venue (Goshen Police Department) on East Jefferson Street between South Main Street and 5th Street (100 block of east Jefferson Street); and for outbound participants, traffic control and road closure at all intersections leaving Goshen west on Lincoln Avenue and turning north on North 3rd Street (SR 15) until all riders exit the northern city limits.

**Mayor Stutsman** asked **Chief José Miller** if the Police Department had the staffing to be able to block all street intersections as requested. **Chief Miller** said he would need to consult with his Division Chief, who was working on the request, and would verify if this could be done. Mayor Stutsman said it was a big request for City staff.



**Board member Landis** asked if this was the same request as in previous years or the same request. **Ballard** said it was the same request. **Clerk-Treasurer Aguirre** reminded Mayor Stutsman that last year's request was granted contingent on organizers working out traffic issues with the Police Department. **Mayor Stutsman** said he would suggest the same condition be required this year with the hope all issues could be worked out.

**Landis/Swartley** moved to approve the requested street closures, traffic control and designated no parking areas for the 24th Annual Riding to Remember Police, Firefighter and Veteran Charity Ride on Sept. 11, 2022 contingent on organizers working out the details with the Police Department. Motion passed 5-0.

**2) Business request: Closure of City parking lot north of Janus Motorcycles in the 200 block of Fifth Street, Sept. 30-Oct. 2, 2022, for the annual owners rally**

**Jamie Morrow of Janus Motorcycles, 211 Fifth Street in downtown Goshen**, asked the Board to approve the closure of the parking north of its building for its annual owners rally, from Sept. 30 until Oct. 2, 2022. Morrow also asked for the use of 10 City street barricades.

**Morrow** said she was aware that the four marked spaces in the lot reserved for the City Utilities Office for customers would need to stay open. But at the close of regularly scheduled hours (5 p.m.) on Sept. 30, Janus was requesting that the full parking lot be barricaded off until noon on Sunday, Oct. 2. Morrow said the parking lot would be gated off, but the alley would not be blocked in any way.

Asked by **Mayor Stutsman** if she had contacted businesses that rely on the parking lot, **Morrow** said she has done so or will do so. There were no staff concerns as long as the lot was available for Utilities Office customers until 5 p.m. on Sept. 30.

**Landis/Swartley** moved to approve the closure of the parking north of its building for its annual owners rally, from 5 p.m. on Sept. 30 until noon on Oct. 2, 2022. Motion passed 5-0.

**3) Legal Department: Resolution 2022-27, Hardship Collection Services Policy**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department**, asked the Board to adopt Resolution 2022-27, Hardship Collection Services Policy.

**Marks** said Resolution 2022-27, Hardship Collection Services Policy, establishes the procedure in which the occupant(s) of an eligible residence that is/are physically unable to move their waste cart and recycle cart to and from the designated street side or alley collection location may apply to the City for hardship collection services.

**According to Resolution 2022-27:**

- All occupants of the eligible residence must be physically unable to move their waste cart and recycle cart to and from the designated street side or alley collection location.
- The occupant(s) must complete a Hardship Collection Services Application and appear before the Board of Public Works and Safety to request hardship collection services. The Board will review each request for hardship collection services on a case-by-case basis.
- If the City approves the request for hardship collection services, the eligible residence will be permitted to place their waste cart and recycle cart at a door side collection location as designated by a City representative. The eligible residence must ensure that the waste cart and recycle cart can be accessed by the City or the City's contractor by a clear and open pathway in a non-gated/fenced area, and all animals of the eligible residence must be restrained.





- The City will notify the contractor providing solid waste collection services of the address of an eligible residence that has been approved for hardship collection services.
- The City will compensate the contractor for the hardship collection services provided to each eligible residence that is approved for hardship collection services.

**Mayor Stutsman** said this issue came up as the City implemented its new trash collection and recycling services. So, he said the city was providing this option for residents who don't have any other options. He added that before offering this option, City staff checked to determine if the City could absorb these costs. The Mayor added that further adjustments to the policy may be necessary.

**Board member Landis** asked the criteria that the Board will use to determine the hardship cases. **City Attorney Stegelmann** said precise criteria have yet to be developed, but those seeking this service will have to fill out an application and explain why they cannot get their carts to and from the curb. He said it's anticipated that the City staff member who reviews the applications will be able to determine if the request should be approved. Stegelmann said that if the request is rejected, the resident could appeal to the Board of Works, which would determine the facts and circumstances of the request and would have the authority to grant permission for the service.

**Mayor Stutsman** said anyone who doesn't want to take their carts to and from the front curb can pay Borden for this service. However, he said the City isn't interested in paying for this service for those who simply don't want to move the carts. He said this policy is intended to benefit those who cannot physically move carts.

**Stegelmann** said that the City estimates five to 10 residents will be affected, at least initially. If the policy is abused, Stegelmann said the City will consider making modifications.

**Landis** asked what will happen if the policy is being abused and the City is forced to develop stricter criteria to prevent abuse of the service. He asked if those who received the free service, perhaps unjustifiably, would be able to keep the service or it would be revoked. **Stegelmann** said it's anticipated that the service would be reviewed every year in case an applicant's inability to move carts to and from the curb was only a temporary condition. In addition, he said residents who received the service might move, which is also why a yearly check would be helpful.

**Mayor Stutsman** said that depending on the number of applicants, the City may need to modify the policy.

**Landis/Swartley** moved to adopt Resolution 2022-27, *Hardship Collection Services Policy*. The motion passed 5-0.

#### 4) Legal Department: Agreement with Peterson Consulting Services, Inc. to assist the City with financial reporting related to capital assets

**Brandy Toms**, a paralegal with the City Legal Department, asked the Board to approve an agreement with Peterson Consulting Services Inc. to assist the City with its financial reporting related to its capital assets as required by Government Accounting Standards Board Statement No. 34 for the fixed fee of \$5,650 plus reimbursable expenses not to exceed \$250.

Peterson Consulting Services, Inc., which is based in LaGrange, Illinois, specializes in professional accounting services for the reporting of capital assets to the State of Indiana. The company will provide assistance to ensure the City meets the retroactive financial reporting standards related to capital assets and general infrastructure for the fiscal year ending Dec. 31, 2022 as delineated in GASB Statement No. 34.



The company's work will include assisting in the preparation of the capital asset worksheets for fiscal year ending Dec. 31, 2022 for the following asset accounts and functional classifications: Land and rights-of-way; Buildings and land improvements; Equipment and vehicles; Computer software; and General infrastructure: streets, alleys, bridges, sidewalks, traffic signals and storm sewers.

**Landis/Swartley moved to approve an agreement with Peterson Consulting Services Inc. to assist the City with its financial reporting related to its capital assets as required by Government Accounting Standards Board Statement No. 34 for the fixed fee of \$5,650, plus reimbursable expenses not to exceed \$250. Motion passed 5-0.**

**5) Engineering Department: Approve the partial closure of Indiana Avenue, Aug. 24-Sept. 9, 2022, for work by Ancon Construction on the Indiana Avenue Apartments**

**City Director of Public Works & Utilities Dustin Sailor** asked the Board to approve the closure of Indiana Avenue, between Plymouth Avenue and the northwest entrance to the First Baptist Church, from Aug. 24 until Sept. 9, 2022. **Sailor** said Ancon Construction has requested permission to close all lanes of Indiana Avenue, between Plymouth Avenue and the northwest entrance to the First Baptist Church, from Wednesday, Aug. 24 until Friday, Sept. 9. Work during this period will include tying in the water and sanitary pipes to the Indiana Avenue Apartments, removing and replacing the sidewalk, adding a turn lane into the apartment complex, and resurfacing the road. All traffic will be detoured as shown in the traffic control plan included in the Board's agenda packet.

In response to a question from **Mayor Stutsman**, **Sailor** said this would be the last major street closure for this project. In response to a question from **Board member Landis**, **Sailor** said the street will need to remain closed even on the weekend.

**Landis/Swartley moved to approve the closure of Indiana Avenue, between Plymouth Avenue and the northwest entrance to the First Baptist Church, from Aug. 24, 2022, until Sept. 9, 2022. Motion passed 5-0.**

**6) Engineering Department: Approve lane restrictions on Rieth Boulevard, Aug. 23-26 and Aug. 29-Sept. 1, 2022 for Chipotle restaurant work by Ritschard Brothers Construction**

**City Director of Public Works & Utilities Dustin Sailor** asked the Board to approve the lane restriction of the southbound lane of Rieth Boulevard, between U.S. 33 and the entrance to Lowes, from Aug. 23 until Aug. 26, 2022, and a lane restriction of the northeast bound turn lane of Rieth Boulevard from Aug. 29 until Sept. 1, 2022.

**Sailor** said Ritschard Brothers Construction has requested permission to have a lane restriction on the southbound lane of Rieth Blvd coming off of U.S. 33 to the Lowes entrance from Tuesday, Aug. 23 to Friday, Aug. 26. Work during this period will include tying in the sanitary pipe for the new Chipotle Restaurant. Then the following week, Aug. 29 to Sept. 1, there will be a lane restriction in the northeast-bound turn lane of Rieth Blvd. Work during this period will include tying in the water pipe for the new Chipotle restaurant.

**Sailor** clarified for **Landis** that there are two lanes in each direction, but care will need to be taken in the traffic control process for the safety of motorists.

**Landis/Swartley moved to approve the lane restriction of the southbound lane of Rieth Boulevard, between U.S. 33 and the entrance to Lowes, from Aug. 23 until Aug. 26, 2022, and the lane restriction of the northeast bound turn lane of Rieth Boulevard from Aug. 29 until Sept. 1, 2022. Motion passed 5-0.**



**7) Engineering Department: Approve lane restrictions on various streets, Aug. 29-Sept. 2, 2022, for fiber conduit installation by TCS Communications, LLC**

**City Director of Public Works & Utilities Dustin Sailor** asked the Board to approve lane restrictions on North Riverside Boulevard, North Winter Avenue, North Harrison Street, High Street, Alley 256, West Avenue and Indiana Avenue, beginning Aug. 29 through Sept. 2, 2022, for the installation of fiber.

**Sailor** said TCS Communications, LLC, working for Frontier Communication, has requested lane restrictions for the purpose of installing fiber conduit. The existing utilities will be exposed in the roadway to insure no damage while boring across the street. Location of street crossings:

- 1) North Riverside Blvd., N. Winter Ave., N. Harrison St. and High St. along south side of Clinton St.
- 2) Alley 256 and West Ave. along west side of Dewey Avenue.
- 3) Indiana Avenue, along the south side of Lincoln Avenue and along the north side of Berkey Avenue.

**Sailor** said current MUTCD traffic control standards are to be used. These traffic controls will include signs, cones and flaggers as required. The contractor will be allowed one lane to work within at any one time. In response to a question from **Mayor Stutsman**, **Sailor** said the company has been doing a good job.

**Landis/Swartley** moved to approve lane restriction on North Riverside Boulevard, North Winter Avenue, North Harrison Street, High Street, Alley 256, West Avenue and Indiana Avenue, beginning Aug. 29 through Sept. 2, 2022, for the installation of fiber. Motion passed 5-0.

**8) Clerk-Treasurer's Office: Approve the City of Goshen's banking services agreement with 1st Source Bank for 2022-2024**

**City Clerk-Treasurer Richard R. Aguirre** asked the Board to approve and authorize the Clerk-Treasurer to execute an agreement, on behalf of the City of Goshen, with 1st Source Bank for banking services, from Oct. 1, 2022 to Sept. 30, 2024.

**Aguirre** said this agreement has been a long time coming. He acknowledged the assistance of **City Attorney Bodie Stegelmann** and **City Water & Sewer Utilities Business Office Manager Kelly Saenz** as well as **Bill Burton**, the regional president of 1st Source Bank and **Dave Cripe**, 1st Source's business banker in Goshen.

**Aguirre** said that for the past four-and-a-half years, Interra Credit Union has provided banking services for the City of Goshen. The City's original two-year agreement with Interra was executed in 2017 and renewed in 2019. The agreement has remained in effect, on a month-to-month basis, in 2022. He said at the start of the year, Interra's monthly bank fees to the City were increased to \$1,500.

**Aguirre** said on Jan. 31, 2022, the Board of Works approved agreement with Baker Tilly Investment Services for services related to the preparation, issuance, review and advice regarding a Request for Proposal (RFP) for banking services for the City of Goshen. The RFP was issued in February 2022 and proposals were received from Campbell and Fetter Bank, 1st Source Bank, Key Bank, Interra Credit Union, Lake City Bank and Teachers Credit Union. With assistance and guidance from Baker Tilly, **Aguirre** said a committee consisting of City Attorney Bodie Stegelmann, City Water & Sewer Utilities Business Office Manager Kelly Saenz, Deputy Clerk-Treasurer Jeffery Weaver, Accounts Payable Clerk Rhonda Peacock and the Clerk-Treasurer reviewed the proposals and selected two finalists: 1st Source Bank and Lake City Bank. After careful consideration of many factors, the committee selected 1st Source Bank as the City's provider of choice in early May.



For the past three months, **Aguirre** said City and 1<sup>st</sup> Source staff have engaged in extensive negotiations and frank discussions over terms of an agreement. Attached to the agenda packet were the results of those discussions – a Treasury Master Services Agreement and an Addendum to the Treasury Master Services Agreement, which sets forth additional terms and conditions. He said committee members believe the agreement will be beneficial to the City of Goshen and its residents as well as to 1st Source Bank.

**Aguirre listed the following highlights of the agreement:**

- With 1st Source, the City will be banking with the largest independent financial institution in the region and one offering good compatibility with the City's systems, and with deep connections to the community.
- 1<sup>st</sup> Source will coordinate with Superior Press to purchase remote deposit scanners on the City's behalf and the bank will cover 50% of the cost of up to six scanners.
- The City's accounts will be charged 1st Source's fees at a 75% discount or \$930 a month. Currently, the City is paying \$1,500 a month in fees to Interra. However, \$930 won't actually be deducted from the City's accounts because the City will benefit from an earnings credit. Essentially, a separate account will be set up and interest on those earnings will pay the fees.
- Finally, the balance the City will maintain in its accounts will earn an interest rate of the Federal Funds Effective Rate (H.15) plus 20 basis points. That will provide the City with substantially more than the approximately \$29,000 in interest income the City was projected in May to earn on its Interra accounts over a year. The current estimate is that the City will have net monthly earnings of just under \$114,000 (or \$1.3 million a year).

**Aguirre** cautioned that the federal interest rate is variable and it will eventually go down. Still, and until it does, he said the City would have more financial resources to serve Goshen's residents.

**Aguirre** added that in a few weeks he would be seeking the Board's support for an agreement with Baker Tilly Investment Services for an investment program for a portion of the City's funds that would ensure additional interest income for the City.

**Mayor Stutsman** thanked Clerk-Treasurer **Aguirre** and the committee for their work for the City, which he said he appreciated. **Board members Swartley** also expressed her compliments.

**Landis/Swartley** moved to approve and authorize the Clerk-Treasurer to execute an agreement, on behalf of the City of Goshen, with 1st Source Bank for banking services, Oct. 1, 2022 to Sept. 30, 2024. The motion passed 5-0.

## CITY OF GOSHEN STORMWATER BOARD

Regular Meeting Agenda  
2:00 p.m., August 22, 2022

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

Members: Mayor Jeremy Stutsman, Mike Landis and Mary Nichols



Mayor Stutsman convened the Stormwater Board meeting at 2:30 p.m. to consider the following item:

9) Stormwater Department: Accept post-construction stormwater management plan for Ecko Transit, LLC  
City Director of Public Works & Utilities Dustin Sailor asked the Board to accept post-construction stormwater management plan for Ecko Transit, LLC as it has been found to meet the requirements of City Ordinance 4329. Sailor said the developer of Ecko Transit, LLC, affecting one (1) or more acres of land and located at 1810 Reliance Road, has submitted a sufficient post-construction plan that is compliant with Ordinance 4329, "Uniform Requirements for Post-Construction Stormwater Management."  
Landis/Nichols moved to accept post-construction stormwater management plan for Ecko Transit, LLC as it has been found to meet the requirements of City Ordinance 4329. Motion passed 3-0.

With the Stormwater Board agenda item completed, Mayor Stutsman closed the Stormwater Board meeting at 2:31 p.m. and resumed the Board of Works & Safety meeting.

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

Mayor Stutsman opened Privilege of the Floor at 2:31 p.m.

There were no public comments, so Mayor Stutsman closed Privilege of the Floor at 2:31 p.m.

As all matters before the Board of Public Works & Safety were concluded, Mayor Stutsman/Board member Landis moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 5-0.

Mayor Stutsman adjourned the meeting at 2:32 p.m.

APPROVED

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Jeremy Stutsman, Chair

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Michael Landis, Member



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Mary Nichols, Member

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DeWayne Riouse, Member

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Barb Swartley, Member

ATTEST

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Richard R. Aguirre, City of Goshen Clerk-Treasurer

# CRIMSON MARCHING BAND

Goshen High School (574) 533-8651 Ext. 5120

Tom Cox, Director

[tcox@goshenschools.org](mailto:tcox@goshenschools.org)

401 Lincolnway E.

August 11, 2022

Dear Board of Works,

This letter and attached document are a formal request from the Band Boosters of Goshen High School. We are requesting the closure of certain streets for our upcoming Marching Band Invitational held at Goshen High School. We are making this request for the safety of the students that will be attending this event. Since we utilize the entire campus for this invitational, students' movement across these streets is necessary. This event will be held on September 10, 2022, and will begin approximately at 5:00 pm. The bands will arrive around 1:00 p.m., and with other pre-event preparations, we request street closure no later than 11:00 a.m. The event will conclude shortly after 9:30 pm, with all participants leaving no later than 11:00 p.m. We hope to have a police officer present before, during, and after the event.

The streets that we request closure on are as follows:

1. East Purl Street from 9<sup>th</sup> Street east to the school campus.
2. 10<sup>th</sup> Street from the intersection of 10<sup>th</sup> and US 33 to East Reynolds Street.
3. We would also like to request, like normal, the use of the grassy knoll area between Douglas and Plymouth Ave for parking. We know this will most likely be unavailable to us in the future as we know it is the site for possible future construction.

We will make sure that we have a member of the Boosters present at the Board of Works meeting to answer any questions you may need. Any questions before the meeting may be directed to me at (574) 536-7031. Thank you in advance for your consideration.

Sincerely,

Kristy Nissley

President

Goshen High School Band Boosters





E Madison St

Miller's Barber Shop

General Crafts Corporation

S 10th St

Lincolnway E

E Madison St

Goshen Community Schools: Bus Parking

Goshen Adult Basic Education

Goshen High School

y School

E Monroe St

Plank's Printing Services

S 10th St

E Monroe St

Lincolnway Sales & Service

Goshen Community Schools Superintendent

E Purl St

E Purl St

14th St

La Fashion Goshen

Eighth Street Mennonite Church

Pride's Ex

Maplewood Property Management Group

E Reynolds St

E Reynolds St



**Richard Aguirre, City Clerk-Treasurer**  
**CITY OF GOSHEN**

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

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

[richardaguirre@goshencity.com](mailto:richardaguirre@goshencity.com) • [www.goshenindiana.org](http://www.goshenindiana.org)

**To:** City of Goshen Board of Works & Safety  
**From:** Clerk-Treasurer Richard R. Aguirre  
**Date:** August 29, 2022  
**Subject:** Mable Abbott request to place a dumpster in the street in front of 435 North 9th Street, Aug. 31-Sept. 9, 2022

**Mable Abbott**, the owner of a home at 435 North 9<sup>th</sup> Street in Goshen, is seeking the Board's permission to place an open-top dumpster in the street in front of her residence for the disposal of items from inside the home. She is seeking permission for the dumpster to be placed on the street from Aug. 31 to Sept. 9, 2022.

**Mrs. Abbott** said she has rented a 30-yard dumpster from Castaway Metal in South Bend. She further indicated that she owns two other homes adjacent to 435 North 9th Street and that the dumpster will not interfere with vehicles normally parked on the street.

**Mrs. Abbott** said she would be present for the Board's meeting.

**Suggested motion:** Approve the request from Mable Abbott to place a dumpster in the street in front of 435 North 9th Street from Aug. 31-Sept. 9, 2022 contingent on any conditions from the Street and Engineering Departments.



## 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](http://www.goshenindiana.org)

August 29, 2022

**To:** Board of Public Works and Safety  
**From:** Carla Newcomer  
**Subject:** Quote for Purchase of 2023 Police Pursuit Vehicles

The City solicited quotes for the purchase of four (4) 2023 Police Hybrid Pursuit SUVs in accordance with Indiana Code § 5-22-8-3. The only quote was submitted by Eby Ford Sales, Inc. for Forty-Nine Thousand Nine Hundred Seventy-Five Dollars (\$49,975.00) per unit for a total cost of One Hundred Ninety-Nine Thousand Nine Hundred Dollars (\$199,900.00).:

### **Suggested Motion:**

Award a contract to Eby Ford Sales, Inc., as the only responsible and responsive offeror and approve the agreement for the purchase of four (4) 2023 Ford Interceptor Hybrid SUVs for \$49,975.00 per unit for a total cost of One Hundred Ninety-Nine Thousand Nine Hundred Dollars (\$199,900.00).

**PURCHASE OF FOUR (4) FORD INTERCEPTOR  
HYBRID PURSUIT SUV(S)**

THIS CONTRACT is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as “City,” and Eby Ford Sales, Inc., hereinafter referred to as “Vendor.”

WITNESSETH, that the City and the Vendor mutually agree as follows:

**PURCHASE:**

Vendor agrees to provide the City with four (4) 2023 Ford Interceptor Hybrid Pursuit SUV(s)

Vendor shall warranty the 2023 Hybrid Pursuit SUV(s)

**TERM OF THE AGREEMENT:**

This contract shall become effective on the date of execution and approval by both parties.

Vendor shall provide the vehicles to the City within 30 weeks from the date of the agreement.

The vehicles to be purchase shall be delivered to the City’s Central Garage, 230 Steury Avenue, Goshen, Indiana.

**COMPENSATION:**

The City agrees to compensate Vendor for the equipment in this Purchase Contract in the amount of Forty-Nine Thousand Nine Hundred Seventy-Five Thousand Dollars (\$49,975.00) for each of the four (4) vehicles for a total amount of One Hundred Ninety-Nine Thousand Nine Hundred Dollars (\$199,900.00).

**INDEPENDENT CONTRACTOR STATUS**

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

**NON-DISCRIMINATION**

The vendor agrees that it will comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. The Vendor agrees the Vendor or any subcontractors, or any other person acting on behalf of the Vendor or their subcontractor, shall not discriminate against any employee or applicant for employment to be employed in the performance of a contract with respect to 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 will be a material breach of the contract.

## **INDEMNIFICATION**

The Vendor agrees to indemnify and hold harmless the City of Goshen, its agents, officers, and employees from any and all liability, obligations, claims, and suits, including court cost, attorney's fees, and other expenses, caused by an act or omission of the Vendor and its agents, officers, and employees or resulting from or related to the Vendor's performance or failure to perform as specified in this contract.

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

## **DEFAULT.**

- A. If Vendor
- B. fails to deliver the equipment or comply with the provisions of this contract, then Vendor may be considered in default.
- C. It shall be mutually agreed that if Vendor fails to deliver the equipment or comply with the provisions of this contract, City shall issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Vendor 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 equipment in any manner deemed proper by the City, and Vendor shall be liable to the City for any excess costs incurred.
- D. Vendor may also be considered in default by the City if any of the following occur:
  - 1. There is a substantive breach by vendor of any obligation or duty owed under the provisions of this Contract.
  - 2. Vendor is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - 3. Vendor becomes insolvent or in an unsound financial condition so as to endanger performance under the Contract.

4. Vendor 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 vendor or any of vendor's property.
6. Vendor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders vendor unable to provide the equipment described under these Specification Documents.
7. The contract or any right, monies or claims are assigned by vendor without the consent of the City.

#### **TERMINATION**

- A. The contract may be terminated in whole or in part, at any time, by mutual written consent of both parties. Vendor shall be paid for all equipment provided and expenses reasonably incurred prior to notice of termination.
- B. The City may terminate this contract, in whole or in part, in the event of default by vendor. City shall first issue written notice of default to vendor and give vendor the opportunity to cure.
- 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 contract.

#### **SUBCONTRACTING OR ASSIGNMENT OF CONTRACT.**

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

#### **AMENDMENTS.**

No alteration or variation of the terms in this contract including the scope of purchase, provision of the purchase and compensation, and no alteration or variation of the conditions of this contract shall be binding unless specifically agreed to in writing by the parties. Any modification or amendment to the terms and conditions of the contract shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the contract shall be of no force and effect.

#### **WAIVER OF RIGHTS.**

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

#### **APPLICABLE LAWS.**

The vendor 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.

**MISCELLANEOUS**

- A. Any provision of this contract 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 contract.
- B. 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. Any special conditions included with this solicitation which varies from these General Terms and Conditions shall have precedence.
- C. These documents shall be construed in accordance with and governed by the laws of the State of Indiana, and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.
- D. In the event legal action is brought to enforce or interpret the terms and conditions of these documents, the non-prevailing party will pay all costs and expenses expended or incurred by the prevailing party, including reasonable attorney's fees.

**SEVERABILITY.**

In the event that any provision of this contract 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 contract shall not affect the validity or enforceability of any other provision of the contract.

**AUTHORITY TO BIND.**

Notwithstanding anything in the contract to the contrary, the signatory for the vendor submitting an offer represents that he or she has been duly authorized to execute these documents on behalf of the vendor and has obtained all necessary or applicable approvals to make the offer submitted fully binding upon the vendor when his or her signature is affixed and is not subject to further acceptance.

**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 contract. Notice will be considered given three (3) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

Address for notices to the City:

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

Address for notices to Vendor:

Eby Ford Sales, Inc.  
Attn: Eric Eby  
2714 Elkhart Road  
Goshen, IN 46526



**NO INVESTMENT IN IRAN**

Pursuant to IC 5-22-16.5, vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

**CONTRACTING WITH RELATIVES**

Pursuant to IC 36-1-21, vendor who is an individual who is a relative of an elected official of the City of Goshen or a business entity that is wholly or partially owned by a relative of an elected official of the City of Goshen hereby certifies that they have notified in writing both the elected official of the City of Goshen and the City’s legal department prior to entering into this contract and has obtained all necessary or applicable approvals to make this contract fully binding upon the company/business when his or her signature is affixed and is not subject to further acceptance

**BINDING EFFECT**

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

**ENTIRE AGREEMENT**

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

In witness whereof, the parties have executed this Agreement as set forth below.

**City of Goshen**

**Eby Ford Sales, Inc.**

**Board of Public Works and Safety**

\_\_\_\_\_  
Jeremy P. Stutsman, Mayor

\_\_\_\_\_  
**Eric Eby, Vice President**

\_\_\_\_\_  
Michael A. Landis, Member

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

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

\_\_\_\_\_  
DeWayne Riouse, Member

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

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



## 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](http://www.goshenindiana.org)

August 29, 2022

**To:** Board of Public Works and Safety  
**From:** Shannon Marks, Legal Compliance Administrator  
**Subject:** Contract for Solid Waste Collection Services with Borden Waste Away Service, Inc.

On July 25, a proposed contract, in substantially final form, for solid waste collection services between the City and Borden Waste Away Service, Inc. was presented to the Board for approval. Additional revisions have been made to the contract since that date which are summarized below.

The compensation for residential solid waste collection and disposal with waste cart; recyclable materials collection and disposal with recycle cart; downtown public trash receptacles solid waste collection and disposal; and city buildings and facilities solid waste and recyclable materials collection and disposal, including the supply of containers is based on a unit rate of \$14.96 per month for services to each eligible residence, multiplied by the agreed eligible residence count. The July 25 proposal was based on an eligible residence count of 10,780. However, Borden's is still delivering waste carts and recycle carts to eligible residences (which will be completed by October 1, 2022), and the City and Borden's are still in the process of establishing the agreed eligible residence count. In the interim until the agreed eligible residence count has been established, Borden's will be compensated based on an estimated eligible residence count of 11,000 for services provided. (The City estimated that there are approximately 11,000 eligible residences in its bid solicitation.) In the event the agreed eligible residence count is determined to be less than 11,000, then any excess paid the previous month(s) will be deducted on the invoice that is based on the agreed eligible residence count. Similarly, if the agreed eligible residence count is determined to be more than 11,000, then the deficit due will be paid.

Also added are provisions for hardship collection services to be provided to an approved eligible residence. The compensation is based on a unit rate of \$15.00 per month for each eligible residence that is approved by the City for hardship collection services.

The remaining contract provisions are the same as what was presented to the Board on July 25.

### **Suggested Motion:**

Move to approve and execute the contract for solid waste collection services with Borden Waste Away Service, Inc.

# CONTRACT

## City of Goshen, Indiana Solid Waste Collection Services

THIS CONTRACT is entered into on \_\_\_\_\_, 2022, which is the last signature date set forth below, by and between **Borden Waste Away Service, Inc.** ("Contractor" or "Borden"), whose mailing address is 610 North Wildwood Avenue, Elkhart, IN 46514, 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. Component Parts of this Contract.

1.01 This Contract shall include these terms and conditions, as well as the terms and conditions set forth in the following documents:

- (A) City of Goshen, Indiana Specification Documents for Solid Waste Collection Services dated March 2022 ("Specification Documents") a copy of which are incorporated into and made a part of this Contract by reference.
- (B) Contractor's Proposal as submitted to City, including all attachments prepared by Contractor, a copy of which is incorporated into and made a part of this Contract by reference.
- (C) Contractor's performance deposit or irrevocable letter of credit.
- (D) Contractor's certificate(s) of insurance.

1.02 Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order:

- (A) This Contract;
- (B) The Specification Documents for the services; and
- (C) Contractor's Proposal.

### SECTION 2. Scope of Services.

2.01 Contractor shall provide all services under this Contract as generally described below and as described in further detail in Exhibit A, Scope of Services, attached hereto and fully incorporated into this Contract. The services shall include the Contractor's provision for all labor, equipment, materials, tools, insurance, supervision, and all other items necessary to provide the services described.

- (A) Residential solid waste collection and disposal with waste cart, and recyclable materials collection and disposal with recycle cart.
- (B) Downtown public trash receptacles solid waste collection and disposal.
- (C) City buildings and facilities solid waste and recyclable materials collection and disposal.

- (D) City projects and events electronics waste collection and disposal, including supply of containers, as needed.
- (E) City projects and events expanded polystyrene foam waste collection and disposal including supply of containers, as needed.
- (F) Confidential document collection, destruction and disposal, including supply of containers, as needed.

**SECTION 3. Effective Date; Term; Extension.**

- 3.01 The Contract shall become effective August 1, 2022.
- 3.02 All services under this contract shall commence on August 1, 2022, and continue through July 31, 2029, unless otherwise terminated by either party in accordance with the terms and conditions of the contract.
- 3.03 Upon written approval of the contracting parties, the contract may be extended under the same terms and conditions up to three (3) additional years. Either party shall provide the other party notice in writing at least one hundred eighty (180) days before the expiration of the initial term or any extension if either party desires to extend the contract.

**SECTION 4. Compensation.**

- 4.01 **Residential solid waste collection and disposal with waste cart; Recyclable materials collection and disposal with recycle cart; Downtown public trash receptacles solid waste collection and disposal; and City buildings and facilities solid waste and recyclable materials collection and disposal, including the supply of containers.**
  - (A) City shall pay Contractor on a monthly basis for the services provided the previous calendar month. Compensation shall be based on a unit rate of Fourteen and 96/100 Dollars (\$14.96) per month for services to each eligible residence, multiplied by the agreed eligible residence count. Contractor shall pay all disposal costs for the services.
  - (B) After the initial delivery of waste carts and recycle carts by Contractor, City and Contractor shall establish the agreed eligible residence count upon which compensation for services shall be based under paragraph (A). All waste carts and recycle carts must be delivered to each eligible residence no later than October 1, 2022.
  - (C) For services provided prior to the establishment of the agreed eligible residence count, City shall pay Contractor for the services provided the previous calendar month based on an estimated eligible residence count of eleven thousand (11,000) multiplied by a unit rate of Fourteen and 96/100 Dollars (\$14.96) per month for a total of One hundred sixty-four thousand five hundred sixty and 00/100 Dollars (\$164,560.00) per month. If the agreed eligible residence count is then determined to be less than eleven thousand (11,000), then any excess paid by City for the previous month(s) will be deducted on the invoice that is based upon the agreed eligible residence count. If the agreed eligible residence count is then determined to be more than eleven thousand (11,000), then any deficit due Contractor for the previous month(s) will be added on the invoice that is based upon the agreed eligible residence count.

- (D) The agreed eligible residence count shall be made by written amendment to this Contract signed by both City and Contractor. Any adjustments made to the eligible residence count shall be made in accordance with Exhibit A, Section 6, Subsection 6.02(C), and by a written amendment to this Contract signed by both City and Contractor.
- (E) City will pay Contractor on a monthly basis for hardship collection services provided to each approved eligible residence the previous calendar month. Compensation shall be based on the unit rate of Fifteen and 00/100 Dollars (\$15.00) per month for each eligible residence approved for hardship collection services. This compensation is in addition to the unit rate under paragraph (A).

4.02 **City projects and events electronics waste collection and disposal, including supply of containers, as needed.**

- (A) City shall pay Contractor based on the unit rates set forth below for the supply of various sizes of containers and transport of the electronic waste to a recycling facility plus a rate per ton for disposal of the electronic waste.
  - (1) Four Hundred Fifty-five and 00/100 Dollars (\$455.00) per 20-, 30-, or 40-cubic yard container.
  - (2) Six Hundred and 00/100 Dollars (\$600.00) per ton electronic waste disposal.

4.03 **City projects and events expanded polystyrene foam waste collection and disposal including supply of containers, as needed.**

- (A) City shall pay Contractor based on the unit rates set forth below for the supply of various sizes of containers and transport of the expanded polystyrene foam waste to a recycling facility plus a rate per ton for disposal of the expanded polystyrene foam waste.
  - (1) Four Hundred Fifty-five and 00/100 Dollars (\$455.00) per 20-, 30-, or 40-cubic yard container.
  - (2) Zero Dollars (\$0.00) per ton expanded polystyrene foam disposal.

4.04 **Confidential document collection, destruction and disposal, including supply of containers, as needed.**

- (A) City shall pay Contractor based on the unit rates set forth below for the supply of a container plus a rate for the periodic collection, destruction and disposal of the documents.
  - (1) Zero Dollars (\$0.00) per month for a 36" by 21" by 16" console container.
  - (2) Twenty-five and 00/100 Dollars (\$25.00) per collection, destruction and disposal of documents.

**SECTION 5. Adjustment to Contract Rates.**

- 5.01 Beginning April 1, 2024, upon written request of either party, the rates may be adjusted up or down based on the Consumer Price Index.
- 5.02 An adjustment shall be based on and not exceed the reported annual percentage change for the previous calendar year as set forth in the Consumer Price Index for All Urban

Consumers for the Midwest urban area. The series title shall be for All Items, not seasonally adjusted, with an index base period of 1982-84=100.

- 5.03 A price adjustment may be made no more frequently than once every April 1st, and shall be made in writing and signed by both parties.

**SECTION 6. Payment.**

- 6.01 Upon receipt of a detailed invoice and required reports and/or dump tickets, City shall pay Contractor for the applicable services provided the previous calendar month under this Contract. Contractor shall send invoices, reports and/or dump tickets for services provided to City at the following address, or at such other address as City may designate in writing:

City of Goshen, Indiana  
c/o Clerk-Treasurer's Office  
202 South Fifth Street, Suite 2  
Goshen, IN 46528

- 6.02 Provided there is no dispute on amounts due, payment will be made to Contractor within forty-five (45) days following City's receipt of the detailed invoice and required reports and/or dump tickets. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- 6.03 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 7. Extra Services.** (See also Exhibit A, Section 6, Subsection 6.11)

- 7.01 In conjunction with the services for residential solid waste collection with waste cart and residential recyclable materials collection with recycle cart, Contractor may provide additional services for an eligible residence at the request of the resident for items not covered under the contract with the City. Such extra services may include the following:
- (A) Additional waste cart;
  - (B) Additional bag of solid waste;
  - (C) Additional recycle cart;
  - (D) Additional large item collection; and
  - (E) Electronic waste collection.
- 7.02 Contractor will be responsible for billing and collecting payment for the extra service from the resident at the contracted rate, as may be amended from time to time. City shall in no way be a party to such arrangements or responsible for non-payment by a resident for extra services provided.

**SECTION 8. Performance Deposit.**

- 8.01 Contractor agrees to provide City a performance bond or irrevocable letter of credit in a form approved by City in the amount of One Hundred Thousand Dollars (\$100,000). The

performance deposit shall remain in full force and effect during the term of the contract and any extension of the contract term.

- 8.02 The performance deposit shall be conditioned on the full, complete and faithful performance of the services in accordance with this Contract and the Specifications Documents. The performance deposit must specify that a modification, omission or addition to the terms and conditions of the Contract or Specification Documents; a defect in the Contract; or a defect in the proceedings preliminary to the letting and award of the Contract shall not in any way affect or operate to release or discharge the surety.

**SECTION 9. Independent Contractor.**

- 9.01 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.
- 9.02 Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors. 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 10. Non-Discrimination.**

- 10.01 Contractor and any subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to the employee or applicant'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 will be regarded as a material breach of Contract.

**SECTION 11. Employment Eligibility Verification.**

- 11.01 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.
- 11.02 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 Contractor subsequently learns is an unauthorized alien.
- 11.03 Contractor shall require their subcontractors, who perform work under this contract, to certify to 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.



11.04 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 12. Indemnification.**

12.01 Contractor agrees to indemnify, defend and hold harmless the City of Goshen and City's agents, officers, and employees from and against any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties, injuries, or accidental deaths caused by any intentional, reckless, or negligent act or omission by Contractor or any of Contractor's agents, officers, and employees during the performance of this contract. Such indemnity shall include reasonable attorney's fees and other expenses incurred by City, and shall not be limited by reason of insurance coverage required by this contract.

12.02 Contractor shall be responsible for all injuries to persons and for all damages to the property of City or others, caused by or resulting from the negligence of Contractor or any of Contractor's agents, officers, and employees during the performance of services under this contract. Contractor agrees to promptly repair damages caused to building, structures, yards, driveways, sidewalks, curbs, streets, alleys, etc.

**SECTION 13. Insurance.**

13.01 Prior to commencing work, Contractor shall furnish City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the contract and any extension of the contract term the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Failure of Contractor to provide insurance in the limits listed below will be regarded as a material breach of contract.

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

13.03 Contractor shall at least include the following types of insurance with the following minimum limits of liability:

- (A) Workers Compensation – Statutory Limits
- (B) Employer's Liability - \$1,000,000
- (C) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and \$2,000,000 aggregate
- (D) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
- (E) Excess Umbrella Coverage - \$1,000,000 each occurrence

13.04 Contractor shall specifically include coverage for the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability.

**SECTION 14. Force Majeure.**

14.01 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, including adverse weather conditions, or decrees of governmental bodies not the fault of the affected party.

- 14.02 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.
- 14.03 If the period of non-performance exceeds fifteen (15) 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 15. Default.**

- 15.01 It shall be mutually agreed that if Contractor fails to provide services in accordance with the provisions of the Specification Documents for a period of at least seven (7) calendar days, except under conditions of force majeure, Contractor may be considered in default.
- 15.02 Contractor may also be considered in default by the City if any of the following occur:
- (A) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of the contract.
  - (B) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - (C) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.
  - (D) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
  - (E) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.
  - (F) 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 work described under the contract and Specification Documents.
  - (G) The contract is subcontracted by Contractor without the consent of City.
  - (H) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.
- 15.03 City shall also be entitled as a matter of right to an injunction against any breach of the provisions of the contract.

#### **SECTION 16. Termination.**

- 16.01 The contract may be terminated in whole or in part, at any time, by mutual written consent of both parties.
- 16.02 City may terminate this contract, in whole or in part, in the event of default by Contractor. In such event, City may issue Contractor a written notice of default and provide a period of time not less than seven (7) days in length in which Contractor will be given the

opportunity to cure. If the default is not cured by Contractor within the time period allowed, the contract may be terminated. City is not required to give Contractor the opportunity to cure if due to the nature of the default, the opportunity to cure is not feasible as reasonably determined by City.

- 16.03 In the event of default and termination, City may purchase or otherwise secure similar services. Contractor shall be liable to City for any costs incurred. If such provisions are made by City, Contractor shall be responsible for any and all costs incurred by City, and such amounts shall be deducted from amounts City may owe Contractor. If the costs exceed the amounts owed to Contractor, Contractor is liable to reimburse City for any such costs. Additionally, City may make demands under the terms of the performance deposit.
- 16.04 Notwithstanding all other terms and conditions, the contract is subject to the appropriation of funds by the Goshen Common Council. City administration covenants to include funds for the contract in its annual budget proposals during the term of the contract and to use its best efforts to secure approval by the Common Council. In the event that funds are not appropriated or otherwise available to support the continuation of performance of this contract, the same shall terminate without penalty.
- 16.05 Upon termination, Contractor shall be compensated for services rendered prior to the effective date of termination, subject to any liquidated damages or reimbursements due to City by reason of default.
- 16.06 The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**SECTION 17. Notices.**

17.01 Any notice required or desired to be given under this Contract 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.

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

Notices to Contractor: Borden Waste Away Service, Inc.  
Attention: Christopher Himes, Vice President  
PO Box 1218  
Elkhart, IN 46515-1218

and

Borden Waste Away Service, Inc.  
Attention: Ken Himes, Registered Agent  
605 North Wildwood Avenue  
Elkhart, IN 45615

**SECTION 18. Subcontracting or Assignment of Contract.**

18.01 Contractor shall not subcontract or assign any right or interest under the contract, including the right to payment, without having prior written approval from City. Any attempt by

Contractor to subcontract or assign any portion of the contract shall not be construed to relieve Contractor from any responsibility to fulfill all contractual obligations.

- 18.02 For the purposes of this contract, the Contractor's selection of a disposal facility does not require written approval from City.

**SECTION 19. Amendments.**

- 19.01 Any modification or amendment to the terms and conditions of the contract, including a change order, shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the contract shall be of no force and effect.

**SECTION 20. Waiver of Rights.**

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

**SECTION 21. Compliance with Laws.**

- 21.01 Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances, and all provisions required to be included in this contract are incorporated by reference.
- 21.02 The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of the contract shall be reviewed by City and Contractor to determine whether the provisions of the contract require formal modification.
- 21.03 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 maybe deemed a material breach of contract.

**SECTION 22. Conflicts.**

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

**SECTION 23. Governing Laws; Legal Fees.**

- 23.01 These documents shall be construed in accordance with and governed by the laws of the State of Indiana and any suit shall be brought in a court of competent jurisdiction in Elkhart County, Indiana.
- 23.02 In the event legal action is brought to enforce or interpret the terms and conditions of these documents, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

**SECTION 24. Severability.**

24.01 In the event that any provision of the contract 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 contract shall not affect the validity or enforceability of any other provision of the contract.

**SECTION 25. Binding Effect.**

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

**SECTION 26. Entire Agreement.**

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

**SECTION 27. Authority to Execute.**

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

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

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

**Borden Waste Away Service, Inc.**

\_\_\_\_\_  
Jeremy P. Stutsman, Mayor

\_\_\_\_\_  
Christopher Himes, Vice President

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

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

\_\_\_\_\_  
DeWayne Riouse, Member

\_\_\_\_\_  
Michael A. Landis, Member

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

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

# EXHIBIT A

## SCOPE OF SERVICES

The following Scope of Services set forth in this Exhibit A are taken from the Specification Documents, and have been modified to be specific to this Contract. The Scope of Services include additional information to supplement and/or clarify the services to be provided by Contractor.

### SECTION 5. SERVICES, IN GENERAL

5.01 **Services All Inclusive.** Contractor shall provide all services under this contract which shall include the provision for all labor, equipment, materials, tools, insurance, supervision, and all other items necessary to provide the described services.

5.02 **Disposal Facility; Disposal Costs.**

- (A) Contractor shall transport to and dispose all solid waste collected at a properly licensed disposal facility.
- (B) Contractor shall transport to and dispose all recyclable materials collected at a properly licensed processing facility. Contractor shall have the responsibility for the marketing and sale of the recyclable materials collected.
- (C) Contractor shall be responsible for payment of all disposal costs associated for the solid waste and recyclable materials collected *except* City will pay Contractor for the disposal of the electronic waste collected and the disposal of expanded polystyrene foam collected when Contractor provides City roll-off containers for the collection of such waste. In such event, Contractor shall submit to City a copy of each dump ticket for each roll-off container transported to the recycling facility.

5.03 **Hours and Days of Collection; Holidays.**

- (A) Contractor shall adhere to the designated boundaries of each daily collection route as shown on the map attached as Exhibit B for residential solid waste collection and residential recyclable materials collection.
- (B) Contractor shall perform solid waste collection services between the hours of 6:30 a.m. and 7:00 p.m. (local time).
- (C) The following holidays may, at the election of Contractor, be observed as non-collection days. Whenever a holiday falls on a regularly scheduled collection day, the collection schedule for that day as well as the rest of the week may be delayed one (1) day if Contractor elects to observe the holiday as a non-collection day.
  - (1) New Year's Day
  - (2) Memorial Day
  - (3) Independence Day
  - (4) Labor Day
  - (5) Thanksgiving Day
  - (6) Christmas Day

- 5.04 **Customer Service Office.** Contractor shall maintain and staff a customer service office with a local or toll-free telephone number through which Contractor may be contacted for information, service calls or complaints. Contractor's office shall have knowledgeable staff available to answer calls from at least 8:00 a.m. to 5:00 p.m. (local time) on all days that Contractor provides Services.
- 5.05 **Contractor's Contact Person.** Contractor shall assign at least one (1) representative who shall have the authority to make decisions concerning day-to-day operations that a City representative may contact regarding Services. Contractor's representative(s) are the following:
- (A) Eric Ivory, Account Representative, 574-293-5001 x565 or 574-612-9006
  - (B) Johnny Bachman, Customer Manager, 574-293-5001 x566 or 574-612-1543
  - (C) Brian Mallo, Operations Manager, 574-293-5001 x587
- Contractor shall notify City in writing should the Contractor's representative(s) or the contact information change.
- 5.06 **Collection Equipment.**
- (A) Contractor shall use equipment that is specifically designed and manufactured for the collection and transportation of solid waste. The equipment shall be enclosed or provided with suitable covers to prevent spillage, leaking and/or littering of waste.
  - (B) Contractor shall maintain all collection equipment in proper operating condition, and equipment shall be maintained to minimize the leaking of fluids, noise pollution and air pollution. Contractor shall also maintain all collection equipment in a reasonably clean and professional appearance.
  - (C) Contractor shall properly license and insure each vehicle.
- 5.07 **Personnel.**
- (A) Contractor's employees shall be reasonably identifiable by wearing a shirt or uniform bearing the company's name when performing Services.
  - (B) Contractor's employees shall be courteous at all times, and shall not use loud or profane language.
  - (C) Contractor's employees shall follow regular walkways, shall not trespass onto private property except to collect properly placed waste, and shall not cross property to adjoining premises or interfere with private property.
  - (D) Contractor's employees assigned to operate a vehicle shall carry an appropriate valid driver's license.
- 5.08 **Spillage or Leaking of Fluids, and/or Littering of Waste.**
- (A) Contractor shall have sufficient tools and materials available in vehicles and shall clean up any spillage or leakage of fluids or littering of wastes from Contractor's vehicles while performing Services.
  - (B) Contractor shall ensure that wastes are not left on public or private property or on public rights-of-way or otherwise scattered during the process of collection or transport of wastes.



- (C) Contractor shall clean up and remove any spillage or leakage of fluids and any wastes left on public or private property or on public rights-of-way as soon as possible but not more than three (3) hours of the earliest of either:
  - (1) the notification to Contractor of the spillage, leakage or littering, or
  - (2) the knowledge of the spillage, leakage or littering by Contractor or Contractor's employees.
- (D) Contractor's failure or refusal to clean up any spillage or leakage of fluids or removal of littered wastes within this time period or Contractor's refusal to rectify the problem may result in the clean-up and removal by City and the costs of such deducted from the payment due to Contractor.

5.09 **Damage to Property.** Contractor shall take all necessary precautions to avoid damaging any property during the performance of Services. Contractor shall repair or replace at Contractor's expense any property that is damaged by the negligence of Contractor or Contractor's employees.

5.10 **Waste Excluded from Collection.**

- (A) Except by a special request from City, Contractor is not required to collect the following wastes in weekly collection:
  - (1) Solid wastes that are not properly contained within a waste cart (unless a large item or the eligible residence purchases extra services from Contractor).
  - (2) Solid wastes in a waste cart that is not placed at an appropriate location for collection.
  - (3) Recyclable materials that are not properly contained within a recycle cart.
  - (4) Recyclable materials in a recycle cart that is not placed at an appropriate location for collection.
  - (5) Large items that exceed the monthly limitations per eligible residence (unless the eligible residence purchases extra services from Contractor).
  - (6) Solid wastes or recyclable materials, including large items that are generated from a different location than where the wastes are to be collected.
  - (7) Solid wastes or recyclable materials generated from a location that is not eligible for collection services (i.e. business, commercial, industrial, or institutional establishments, including a building containing five (5) or more rental residential units).
  - (8) Animal carcasses in excess of twenty (20) pounds.
- (B) Contractor is not permitted to collect the following wastes in weekly collection:
  - (1) Hazardous wastes.
  - (2) Flammable/volatile substances.
  - (3) Whole tires.
  - (4) Car batteries/lithium batteries.
  - (5) Electronics (unless the eligible residence purchases extra services from Contractor).

- (6) Any solid wastes that are specifically excluded by federal, state or local laws from being disposed in a landfill.

5.11 **Comingling of Wastes Prohibited.** Contractor shall not commingle solid wastes and recyclable materials collected.

5.12 **Title to Wastes.**

- (A) If solid waste is collected from a building or facility owned or operated by City, the City shall retain title to the solid waste. In all other circumstances, neither City nor Contractor have title to the solid waste collected.
- (B) Title to recyclable materials collected under this contract shall pass to Contractor when placed in Contractor's collection equipment.

5.13 **Reports.**

- (A) Contractor shall submit City a monthly report for the previous month's service that, at a minimum, shows the dates and tonnage of solid waste and recyclable materials collected under this contract for each vehicle entering the disposal facility. However, recyclable materials collected from City buildings and facilities may be excluded from the total tonnage if impractical to separate and quantify.
- (B) Payment for the previous month's service will not be processed until the monthly reports have been provided.
- (C) Upon request of City's Environmental Resilience Department, Contractor shall provide copies of any reports for a recycled material audit generated by the materials recovery facility to identify the percentages of recycled materials by type and weight found in the audit sample.

## **SECTION 6. RESIDENTIAL SOLID WASTE AND RECYCLABLE MATERIALS COLLECTION.**

6.01 **Service Area.**

- (A) Residential solid waste and recyclable materials collection service shall be provided to each eligible residence within the corporate limits of the City of Goshen. A map designating the current corporate limits is attached as Exhibit B.
- (B) Other areas may be added to the corporate limits through annexation or pending annexation during the term of the contract. City will provide Contractor a written notice with a map showing new areas be added to the corporate limits and when services are to commence.

6.02 **Eligible Residences.**

- (A) City estimates that there are approximately 11,000 eligible residences as of March 2022.
- (B) After the initial delivery of waste carts and recycle carts by Contractor, City and Contractor shall agree to establish the initial eligible residence count upon which compensation for services shall be based. (See main Contract, Section 4, Compensation, Subsection 4.01)
- (C) Beginning the first quarter of 2024 and upon request of either party, City and Contractor agree to review the eligible residence count and adjust the number of eligible residences due to changes in eligible residences occurring as a result of

annexations, new constructions, demolitions or vacancies. Any adjustments shall occur no more frequently than once each calendar year quarter with the adjustment going into effect no earlier than the beginning of the following calendar year quarter for contract payment purposes. Adjustments for new construction shall be based on the City's issuance of a certificate of occupancy, demolition shall be based on City's issuance of a demolition permit, and a vacancy shall be based on the City's removal of a water meter at a location.

**6.03 Service to Each Eligible Residence.**

- (A) Contractor shall collect solid waste, including yard wastes, properly contained in a waste cart from each eligible residence on a **weekly basis**. This service shall include supplying and maintaining one (1) waste cart for each eligible residence.
- (B) Contractor shall collect co-mingled recyclable materials properly contained in a recycle cart from each eligible residence on a **bi-weekly basis**. This service shall include supplying and maintaining one (1) recycle cart for each eligible residence. The recyclable materials to be collected by Contractor are depicted in Exhibit C.
- (C) Collection of solid waste and recyclable materials from an eligible residence shall occur on the same day.

**6.04 Waste Carts and Recycle Carts.**

- (A) Contractor shall supply and maintain one (1) waste cart and one (1) recycle cart for each eligible residence.
- (B) Each eligible residence shall be initially supplied with a clean waste cart and recycle cart. Contractor shall initially supply each eligible residence a waste cart and recycle cart as defined and specified in Exhibit A, Section 13, Subsections 13.06 and 13.08.
- (C) Contractor may also offer a waste cart with a 65- or 48-gallon capacity or a recycle cart with a 65-gallon capacity. An eligible residence must contact Contractor to request exchange of a waste cart or a recycle cart for a different size.
- (D) Contractor began delivery of the initial waste cart and recycle cart upon award of the bid and shall complete delivery by October 1, 2022. Carts will be delivered to each eligible residence Monday through Saturday from 6:30 a.m. and 7:00 p.m.
- (E) Contractor shall provide City an accurate count of waste carts and recycle carts delivered to each eligible residence after the initial delivery (excluding additional waste carts and additional recycle carts delivered as an Extra Service).
- (F) Contractor shall supply new eligible residences with a waste cart and recycle cart within fourteen (14) days after receipt of a request from City or a new eligible residence. Contractor may contact City's representative to confirm the eligibility of a residence to receive City's services. The waste carts and recycle carts will be delivered to a new eligible residence on Thursday of each week between the hours of 6:30 a.m. and 7:00 p.m.
- (G) Waste carts and recycle carts will remain the property of Contractor.

**6.05 Large Item Collection.**

- (A) Contractor shall collect no more than two (2) large items from an eligible residence each month. This shall include large items that contain refrigerants.

- (B) Contractor shall be responsible for properly evacuating and disposing of refrigerants from appliances such as refrigerators, freezers, air conditioners and dehumidifiers.
- (C) An eligible residence shall contact Contractor's customer support department to schedule collection of large items. Contractor will utilize regular service vehicles and a specialized large/bulky item removal truck to collect large items on the same day as the regular schedule for residential solid waste collection for the eligible residence.
- (D) Except as provided by Exhibit A, Section 6, Subsection 6.11(A)(4), in the event that an eligible residence has large items in excess of two (2) large items each month, Contractor may elect not to collect any such large item.

**6.06 Container Damage, Repair and Replacement.**

- (A) Contractor shall exercise reasonable care not to damage the waste cart or recycle cart and to replace the same in an upright position with lid on or closed at the collection location out of the traveled portion of the public right-of-way.
- (B) In the event the waste cart or recycle cart is damaged or stolen, Contractor shall repair or replace the waste cart or recycle cart at Contractor's expense within fourteen (14) days of being notified by the City or by an eligible residence.

**6.07 Collection Location and Routes.**

- (A) Except as provided by Subsection 6.08, Hardship Collection Services, all collections shall be made from the street unless a specific street precludes Contractor's equipment from collecting from the street. In such event, collection shall continue to be made from the alley.
- (B) Contractor shall collect all wastes that are placed within a waste cart or recycle cart that are properly placed for collection by the resident. Proper placement shall be within two (2) feet of the edge of the pavement, at least five (5) feet from any other object such as an automobile, utility pole, fence, mailbox, and at least three (3) feet from another waste cart or recycle cart. In locations where a fence exists, it shall be the resident's responsibility to see that the waste cart and recycle cart are placed on the street-side of the fence.
- (C) Contractor shall adhere to the designated boundaries of each daily collection route as shown on the map attached as Exhibit B. Contractor shall determine the best route for collection within each daily route.
- (D) If during the course of the contract Contractor wishes to change the day of collection or the location where the waste cart and recycle cart are placed for collection, Contractor shall bear the cost and responsibility of informing the affected resident(s). Any changes shall not be made without the prior written approval of Goshen Board of Public Works and Safety or its designated representative, which approval will not be unreasonably withheld.

**6.08 Hardship Collection Services.**

- (A) The occupant(s) of an eligible residence that is/are physically unable to move the waste cart and recycle cart to and from the designated street side or alley collection location may apply to the City for hardship collection services in accordance with the City's Hardship Collection Services Policy. If City approves a request for hardship collection services, City will notify Contractor of the address of an eligible

residence that has been approved for hardship collection services. City will designate the alternate collection location after consultation with Contractor.

- (B) In lieu of collecting the waste cart and recycle cart from the designated street side or alley collection location, Contractor shall collect the waste cart and recycle cart from the designated alternate collection location, dispose of the solid waste and recyclable materials, and return the waste cart and recycle cart to the designated alternate collection location. The eligible residence must ensure that the waste cart and recycle cart can be accessed by Contractor by a clear and open pathway in a non-gated/fenced area, and all animals of the eligible residence must be restrained. Hardship collection services shall also include the collection of large items from the door side collection location.
- (C) City will notify Contractor when hardship collection services are terminated for an eligible residence, and the collection of the waste cart and recycle cart shall return to the designated street side or alley side collection location.

#### 6.09 Declined Collections.

- (A) If Contractor has reason to leave solid wastes or recyclable materials uncollected from any location, Contractor shall log the date and time, service location and reason(s) for the declined collection. Upon request of City, Contractor shall provide City a copy of the log.
- (B) Contractor shall also leave a notice or tag on the waste cart or recycle cart to inform the resident why the solid wastes or recyclable materials were not collected.
- (C) In the event that the recyclable materials are contaminated, Contractor may decline the collection as recyclable materials. If the recyclable materials are contaminated at a location on a regular basis, Contractor shall contact City's representative in an attempt to rectify the problem.

#### 6.10 Complaints.

- (A) Any complaint regarding service initially received by City from an eligible residence will be directed to Contractor's office.
- (B) Contractor must give prompt and courteous attention to any complaints received and promptly resolve any valid complaint. Contractor shall log all complaints received, including the date and time of the complaint, nature of complaint, including service location, and the manner and timing of resolution. Upon request of City, Contractor shall provide City a copy of the log.
- (C) Contractor shall investigate a complaint and shall resolve the verified complaint as soon as possible, but no later than twenty-four (24) hours after the complaint is received.
- (D) Contractor's failure or refusal to resolve a verified complaint within twenty-four (24) hours after the complaint is received, and if no fault is found on the resident or complaining party, City may remove the solid waste and/or recyclable materials after City gives Contractor a twenty-four (24) hour notice that the solid waste and/or recyclable materials needs to be removed, and deduct the costs of doing so from the payment due to Contractor. If a City employee is used to perform work that is Contractor's responsibility, City may charge Contractor the sum of One Hundred Dollars (\$100) per hour to perform the work with a minimum charge of one (1) hour per incident.

- (E) If an eligible residence does not properly conform to solid waste and recyclable materials collection requirements (i.e., not properly contained, excess solid wastes, solid wastes generated from a different location than where the solid wastes are to be collected, etc.), Contractor shall advise City's representative of the nonconformance.

**6.11 Extra Services to Eligible Residences.**

- (A) In conjunction with the services for residential solid waste collection with waste cart and residential recyclable materials collection with recycle cart, as an extra service, and at the request of an eligible residence, Contractor will be responsible for providing the following extra services, billing, and collecting payment for the extra service from an eligible residence. City shall in no way be a party to such arrangements. Such extra services include:
  - (1) Contractor shall provide an additional waste cart and additional service (in excess of one (1) waste cart each week) for the weekly collection and disposal of additional solid wastes, including yard wastes, from the eligible residence for the cost of Eight and 00/100 Dollars (\$8.00) per month for a 96-, 65- or 48-gallon waste cart.
  - (2) Contractor shall provide additional service for the collection and disposal of each additional bag of solid waste (in excess of solid waste contained within the waste cart) from the eligible residence for the cost of Two and 00/100 Dollars (\$2.00) per bag. The bag size shall not exceed 33 gallons in capacity nor weigh more than 40 pounds.
  - (3) Contractor shall provide an additional recycle cart and additional service (in excess on one (1) recycle cart bi-weekly) for the bi-weekly collection and disposal of recyclable materials from the eligible residence for the cost of Five and 00/100 Dollars (\$5.00) per month for a 96- or 65-gallon recycle cart.
  - (4) Contractor shall collect and dispose of an additional large item (in excess of two (2) large items each month) from the eligible residence for the cost based on the item type and specification as listed on the Large/Bulky Item Removal & Pricing list attached as Exhibit D.
  - (5) Contractor shall collect and dispose of electronic waste from the eligible residence for the cost of Fifty Dollars (\$50.00) per item.
- (B) City will provide residents the description of the extra services and cost along with Contractor's name and telephone number to contact for the extra service.
- (C) The unit costs for the extra service may be adjusted beginning April 1, 2024 in the same manner as set forth in the main Contract, Section 5, Adjustments to Contract Rates.

**6.12 Recycling Participation Report.** Upon request of City's Environmental Resilience Department, Contractor shall provide a report on recycling participation that identifies the level of residential recycling participation by neighborhood, street and/or by the eligible residence.

**6.13 Information and Educational Materials.** Contractor may provide City with service information and other solid waste and recycling educational materials to be included in City's newsletter, posted on City's website, or posted on other City social media sites. In

addition, Contractor may collaborate with City's Environmental Resilience Department to provide presentations to increase recycling or zero waste efforts.

## **SECTION 7. DOWNTOWN PUBLIC TRASH RECEPTACLES SOLID WASTE COLLECTION**

- 7.01 **Scope of Services.** As part of the residential solid waste collection, Contractor shall collect solid wastes on a regularly scheduled basis from all City-owned downtown public trash receptacles. There are approximately forty (40) trash receptacles located in the area bounded by Pike Street to the north, Madison Street to the south, Third Street to the west, and Fifth Street to the east, including Main Street, Clinton Street, Lincoln Avenue, Washington Street and Jefferson Street.
- 7.02 **Collection Schedule.** Contractor shall collect all solid wastes at least one (1) time per week from September through May, and at least two (2) times per week, at least three (3) days apart, from June through August. At the request of City, Contractor shall provide a collection schedule acceptable to City and shall follow this schedule within reasonable limits.
- 7.03 **Addition and Removal of Trash Receptacles.** City reserves the right to add or remove public trash receptacles to be serviced without additional charge to City.

## **SECTION 8. CITY BUILDINGS AND FACILITIES SOLID WASTE AND RECYCLABLE MATERIALS COLLECTION**

- 8.01 **Scope of Services.**
- (A) Contractor shall supply and maintain covered solid waste and recycling containers for City buildings and facilities identified in Exhibit E and collect the solid waste and recyclable materials on a regularly scheduled basis.
  - (B) The container number, size and frequency of collection are listed in Exhibit E and are based on current service.
- 8.02 **Collection Schedule.** At the request of City, Contractor shall provide a collection schedule for the City buildings and facilities acceptable to City and shall follow this schedule within reasonable limits.
- 8.03 **Adjustments to Number and Size of Containers and Frequency of Collection.**
- (A) City reserves the right to add or remove locations to receive services throughout the term of the contract as needed.
  - (B) City or Contractor may adjust the container number, size and frequency of collection at each location to provide a cost effective, efficient level of service and ensure that all solid waste and recyclable materials are contained inside the containers between collection days.
- 8.04 **Container Maintenance.** Contractor shall maintain all containers, including repair or replacement when damaged, found to be rusted through or leaking.

## **SECTION 9. CITY PROJECTS AND EVENTS SOLID WASTE COLLECTION**

- 9.01 **Scope of Services.** Contractor shall provide various sized roll-off containers (20 cubic yard to 40 cubic yard) for the collection of electronic waste and/or EPS waste from City

projects and events on an as-needed basis, and then transport the waste to the disposal facility.

**9.02 Scheduling Delivery and Transport.**

- (A) City will contact Contractor's representative at least five (5) business days in advance to schedule the delivery of the roll-off container to the City site.
- (B) City will contact Contractor's representative at least two (2) business days in advance to schedule the transport the roll-off container and electronic waste or EPS waste to the disposal facility.
- (C) Contractor's representative for this service is:
  - (1) Stacy Douglas, Customer Support Supervisor, 574-293-8534 ext. 553, stacy.douglas@wasteawaygroup.com

Contractor shall notify City in writing should the Contractor's representative or the contact information change.

**9.03 Disposal Facilities.**

- (A) **Electronic Waste Recycling Facility.** Contractor shall transport roll-off containers that contain electronic waste to a recycling facility for disposal.
- (B) **EPS Waste Recycling Facility.** Contractor shall transport roll-containers that contain expanded polystyrene foam to a recycling facility for disposal.

**9.04 Dump Tickets.** Contractor is required to submit to City a copy of the dump ticket for the waste disposed for each roll-off container transported. City must receive a copy of each dump ticket in order for payment to Contractor to be processed.

**SECTION 10. THIS SECTION IS INTENTIONALLY LEFT BLANK**

**SECTION 11. CONFIDENTIAL DOCUMENT COLLECTION, DESTRUCTION AND DISPOSAL**

**11.01 Scope of Services.** Contractor shall provide services for the secure collection, destruction and disposal of confidential documents from City offices. Documents shall consist of mixed office paper, including, but not limited to white and colored paper and cardstock, envelopes, post-it notes, file folders, etc.

**11.02 Secure Containers.**

- (A) Contractor shall supply secure containers for the collection of documents. Contractor's executive stationary container is a console-light gray, sturdy, side door with bag inside, locking and secure. The capacity is 60 pounds and the dimensions are 36 inches high by 21 inches wide by 16 inches deep.
- (B) Contractor shall deliver each container to the city office requesting such service. The office(s) requesting containers are:
  - (1) Goshen Legal Department, Goshen Annex Building, 204 East Jefferson Street, Suite 2 (Basement), Goshen, IN 46528
- (C) City reserves the right to add or remove locations to receive secure containers and services throughout the term of the contract as needed.



- (D) City shall contact Contractor's representative to schedule collection of the confidential documents.
- (E) Contractor's representative for this service is:
  - (1) Stacy Douglas, Customer Support Supervisor, 574-293-8534 ext. 553, stacy.douglas@wasteawaygroup.com

Contractor shall notify City in writing should the Contractor's representative or the contact information change.
- (F) Contractor shall retain ownership of the containers.
- (G) Contractor shall be responsible for maintaining all containers in good working order, cleaning containers as necessary and providing replacement and/or additional containers as may be requested by City.

11.03 **Confidentiality.** Contractor shall maintain the confidentiality of all information. Contractor and Contractor's personnel shall not inspect, copy, or examine any materials or documents at any time. Contractor and Contractor's personnel shall not disclose, release or communicate any information obtained from the materials or documents to any person or entity at any time.

11.04 **Destruction and Disposal.**

- (A) Contractor shall destroy completely documents placed in the secure containers. Shredding equipment must convert the documents into small unreadable pieces which are mixed, compressed and secured until destroyed.
- (B) Contractor shall properly dispose of the destroyed documents and recycle those destroyed documents that are recyclable.
- (C) Contractor shall provide the City office with a certificate of destruction for each location where documents are collected and the date of service.

**SECTION 12. THIS SECTION IS INTENTIONALLY LEFT BLANK**

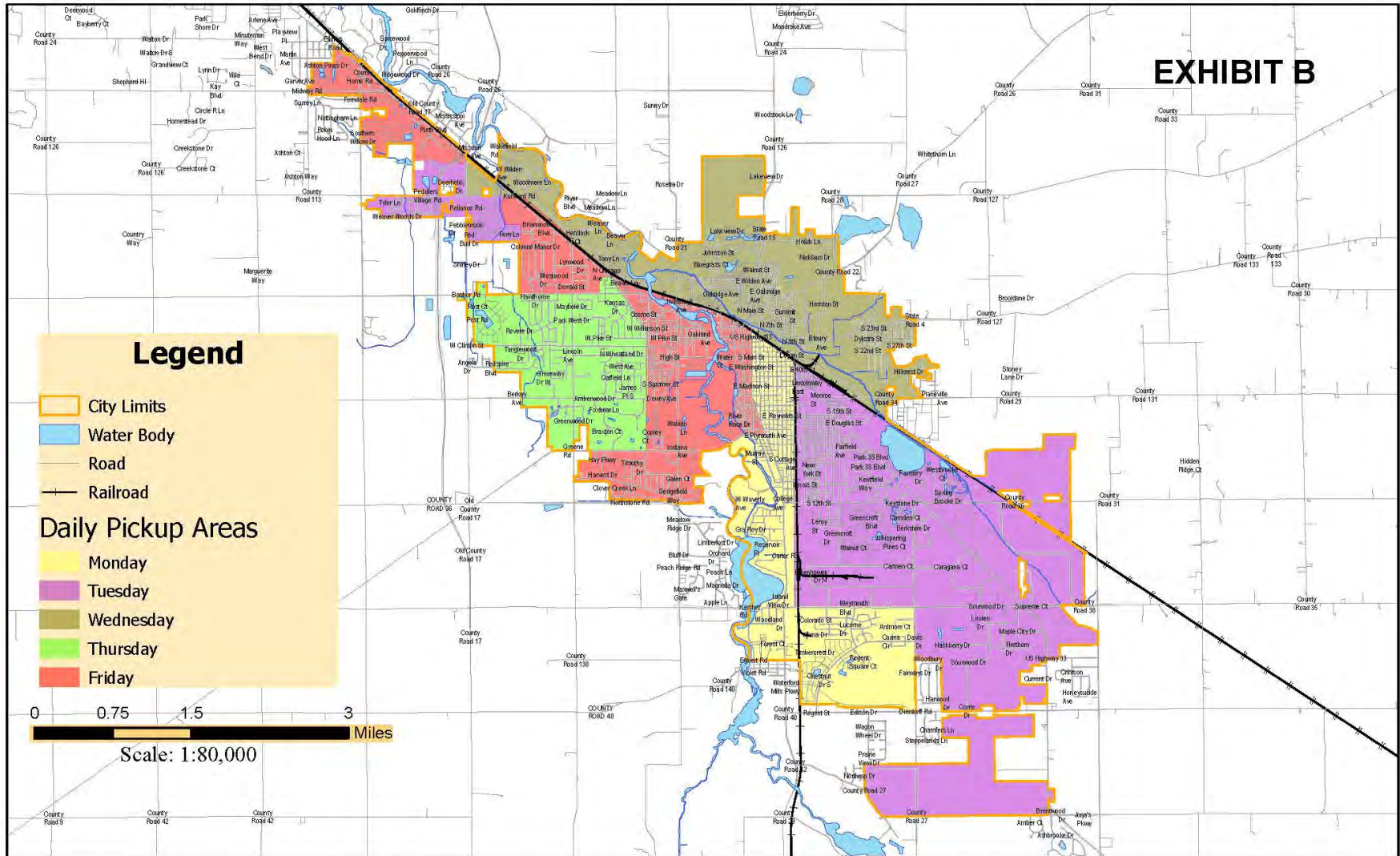
**SECTION 13. DEFINITIONS**

13.01 **Bundle.** Any waste securely tied together forming an easily handled package not exceeding four (4) feet in length and two (2) feet in diameter, and not exceeding fifty (50) pounds.

13.02 **Eligible Residence.** For the purposes of this contract, an eligible residence shall include:

- (A) An occupied residential unit in any building or part of a building that contains one (1) or more residential units, but EXCLUDES a building or related group of buildings on the same lot, tract or parcel of real estate containing five (5) or more rental residential units. (City will provide a list of buildings or related group of buildings containing five (5) or more rental residential units.) Occupied residential units which are individually owned in a condominium building, including a building or related group of buildings with five (5) or more individually owned residential units, are eligible for service.
- (B) A manufactured home or mobile home occupied as a residential unit located within a manufactured housing community or mobile home park.

- 13.03 **Hazardous Waste.** Any material, solid waste, chemical or substance determined to be hazardous by state or federal regulations or may be potentially hazardous to any person or property, or to the environment.
- 13.04 **Large Items.** Any bulky, heavy or otherwise difficult to handle wastes with weights and/or volumes greater than that allowed in a waste cart, including, but not limited to appliances, furniture, mattresses, bundles, or branches. Three (3) bundles shall be equivalent to one (1) large item.
- 13.05 **Recyclable Materials.** Acceptable materials that have been recovered or diverted from the solid waste stream for use or reuse; conversion into raw materials; or use in the production of new products. Recyclable materials shall include, at a minimum, commingled cardboard, paperboard, newspaper, magazines/catalogs, copy paper, mail, other office paper products, #1-#7 plastics, glass (clear, brown and green), and metals (aluminum, steel, tin and bi-metal).
- 13.06 **Recycle Cart.** A receptacle designed and intended for a resident to store recyclable materials between collection days. The recycle cart shall be supplied, maintained, and replaced when necessary by Contractor. The recycle cart must include wheels, a hinged lid, handle and be approximately ninety-six (96) gallons in size. Recycle carts must be able to withstand all types of outdoor climate and weather conditions. Recycle carts must be uniform in appearance, but must be distinguished from a waste cart. The recycle cart must include information on the lid to describe the proper preparation of and the type of materials that are recyclable.
- 13.07 **Solid Waste.** All solid and semi-solid wastes, except human excreta, but including garbage, litter, trash, refuse and rubbish.
- 13.08 **Waste Cart.** A receptacle designed and intended for a resident to store solid waste between collection days. The waste cart shall be supplied, maintained, and replaced when necessary by Contractor. The waste cart must include wheels, a hinged lid, handle and be approximately ninety-six (96) gallons in size. Waste carts must be able to withstand all types of outdoor climate and weather conditions. Waste carts must be uniform in appearance, but must be distinguished from a recycle cart.
- 13.09 **Yard Waste.** Vegetative matter resulting from landscaping and garden maintenance, including, but not limited to leaves, grass clippings, branches, brush, shrubbery, and flowers.



The City of Goshen's Digital Data is the property of the City of Goshen and Elkhart County, Indiana. All graphic data supplied by the city and county has been derived from public records that are constantly undergoing change and is not warranted for content or accuracy. The city and county do not guarantee the positional or thematic accuracy of the data. The cartographic digital files are not a legal representation of any of the features depicted, and the city and county disclaim any assumption of the legal status they represent. Any implied warranties, including warranties of merchantability or fitness for a particular purpose, shall be expressly excluded. The data represents an actual reproduction of data contained in the city's or county's computer files. This data may be incomplete or inaccurate, and is subject to modifications and changes. City of Goshen and Elkhart County cannot be held liable for errors or omissions in the data. The recipient's use and reliance upon such data is at the recipient's risk. By using this data, the recipient agrees to protect, hold harmless and indemnify the City of Goshen and Elkhart County and its employees and officers. This indemnity covers reasonable attorney fees and all court costs associated with the defense of the city and county arising out of this disclaimer.

<p><b>February 2022</b></p>	<p><b>Trash Pickup Areas</b> MUNICIPAL TRASH SERVICE ROUTES BY DAY</p>		<p>Department of Public Works &amp; Safety Office of Engineering</p> <p><b>Goshen</b></p> <p>204 East Jefferson Street, Goshen, Indiana 46528 Phone: 574-534-2201 Fax: 574-533-8626</p>
---------------------------------	--	--	---



# RECYCLING 101

THE MATERIALS THAT WE ALWAYS ACCEPT

## ALWAYS



THE MATERIALS THAT WE NEVER ACCEPT

## NEVER



## HELPFUL HINTS TO AVOID IMPROPER RECYCLING

### NEVER BAG YOUR RECYCLABLES.

Recyclables should be placed in your cart **LOOSE, DRY** and relatively **CLEAN**.

### WISHCYCLING IS COUNTERPRODUCTIVE.

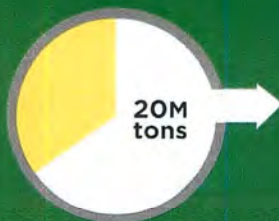
Tossing items into the recycling without checking whether they are recyclable causes significant issues at our plant. In many cases, these unacceptable items will be hauled to the landfill regardless.  
**WHEN IN DOUBT, THROW IT OUT!**

### RECYCLING ARROWS DO NOT ALWAYS MEAN RECYCLABLE.

Recycling arrows refer to the type of plastic an item is made from, not whether or not it is recyclable at our plant.  
**HINT:** Typically only #1, #2 and #5 plastics are recycled.

## DID YOU KNOW?

Out of 37.4 million tons available to be recycled, 20 million tons are thrown in the trash due to lack of access and participation.



If these 20M tons were recycled, it would:



Conserve an annual energy equivalent of 154 million barrels of oil



Reduce U.S. greenhouse gas emissions by 96 million metric tons of carbon dioxide equivalent



Generate 370,000 full-time equivalent (FTE) jobs



Achieve the equivalent of taking more than 20 million cars off U.S. highways.

SOURCE: THE RECYCLING PARTNERSHIP (2020)



## RECYCLABLES ONLY

Please do not bag items. Place the following clean items in the cart.



Glass jars & bottles  
Botellas y envases de vidrio



Aluminum cans, foil & pie tins  
Latas, papel y recipientes de aluminio



Tin or steel cans  
Latas de acero u hojalata



Cereal boxes, paper towel rolls, etc.  
Cajas de cereal, tubos de cartón, etc.



Cardboard (flatten all boxes)  
Cajas de cartón (desarmadas)

**PLEASE:**

- **NO** styrofoam  
Hule espuma
- **NO** electronics  
electrónicos
- **NO** ceramics or dishes  
cerámicas
- **NO** food waste  
desperdicios de comida
- **NO** plastic grocery bags  
bolsas de plástico
- **NO** motor oil containers  
envases de aceite automotriz
- **NO** hazardous waste containers  
envases de químicos o contaminantes
- **NO** light bulbs, window glass or mirrors  
focos, ventanas de vidrio o espejos
- **NO** yard waste  
desperdicios de jardín
- **NO** shredded paper  
papel en tiras



Telephone books  
Directorios telefónicos



Junk mail  
Correspondencia publicitaria



Plastic bottles & containers  
Botellas y envases de plástico



Magazines & catalogs  
Revistas y catálogos



Newspaper & inserts  
Periódicos y propaganda



Office paper & file folders  
Papel de oficina



Paper bags  
Bolsas de papel

NO

GARBAGE  
BASURA

FOR MORE INFORMATION

Call 574-293-5001 or 800-386-3313.

• Carts must be placed with lid opening toward street  
• Do not block cart or place within 3 ft. of any obstruction



3 FEET



3 FEET



5500-0541

291411



# EXHIBIT D

## Borden Waste-Away Service - May 2, 2022

### Large/Bulky Item Removal & Pricing

Item & Specs	Price	Route	Item & Specs	Price	Route
Air Conditioner	\$90.00	CALL	Lawn Mower (no gas/oil)	\$30.00	R
Barrels (empty)	\$15.00	R	Love Seat	\$35.00	R
Barrels (full)	\$30.00	R	Love Seat (Sleeper)	\$50.00	R
Bath Tub (Fiberglass)	\$40.00	R	Mattress/Spring - Queen & King - Per Set	\$70.00	CALL
Bicycle	\$25.00	R	Mattress/Spring - Twin & Full - Per Set	\$50.00	R
Carpet Rolls (1' diameter, 4' long) Qty=1	\$10.00	R	Refridgerator	\$120.00	CALL
Chair / Recliner	\$40.00	R	Sink	\$10.00	R
Counter Tops (4' or Under) Qty=1	\$25.00	R	Sofa/Couch	\$60.00	R
Dehumidifier (Contains Freon )	\$85.00	CALL	Sofa/Couch - Sleeper/Sectional	\$80.00	CALL
Desk (Roll Top/Office)	\$45.00	R	Stove/Range	\$45.00	R
Desk (Small/Student)	\$15.00	R	Table (coffee/end)	\$15.00	R
Dining Room Chair	\$5.00	R	Table (patio/yard)	\$45.00	R
Dining Room Table	\$45.00	R	Toilet	\$40.00	R
Dishwasher	\$35.00	R	Treadmill/Exercise Bike	\$65.00	R
Door	\$20.00	R	Washer	\$45.00	R
Door + Frame	\$30.00	R	Water Heater (drained)	\$45.00	R
Dryer	\$45.00	R	Water Softner (must be empty)	\$45.00	R
Gas Grill (NO TANK)	\$30.00	R	Windows (3'x3' or smaller)	\$25.00	R
Dresser / Hutch ( larger than 4'x4' )	\$40.00	R			
Dresser / Hutch (up to 4'x4' )	\$30.00	R			

\*\* Non-Listed Items Call Borden Operations \*\*

\*\* Listed Items That Say Call Will Have A Transportation Cost \*\*

**EXHIBIT E**  
**CITY BUILDINGS AND FACILITIES**

City Building/Facility	Service Address	Container Size	Collection Frequency
<b>SOLID WASTE CONTAINERS</b>			
City Hall	202 South Fifth Street	4 yard	1/week
Municipal Annex	204 East Jefferson Street	4 yard	1/week
Police Department & City Court	111 East Jefferson Street	6 yard	1/week
Police Training Facility	713 East Lincoln Avenue	4 yard	1/week
Central Fire Station	209 North Third Street	6 yard	1/week
Reliance Memorial Fire Station	1728 North Reliance Road	2 yard	1/week
College Avenue Fire Station	1203 College Avenue	2 yard or 2-96 gallon carts	1/week
Egbert Road Fire Station	308 Egbert Road	1-96 gallon cart	1/week
Street Department	475 Steury Avenue	8 yard	1/week
Central Garage	320 Steury Avenue	6 yard	1/week
Parks Department - Shanklin Pool	607 West Plymouth Avenue	4 yard	1/week, but may be suspended Nov thru Feb
Parks Department - Maintenance Building	607 West Plymouth Avenue	3-8 yard	1/week
Violet Cemetery	2818 Violet Road	4 yard	1/week, but increase to 2/week in April & May only
West Goshen Cemetery	1200-block West Berkey Avenue	4 yard	1/week
Oakridge Cemetery	427 North First Street	4 yard	1/week, but increase to 2/week in April & May only
Municipal Airport	17229 County Road 42	6 yard	1/week

**EXHIBIT E**  
**CITY BUILDINGS AND FACILITIES**

City Building/Facility	Service Address	Container Size	Collection Frequency
Water and Sewer Department	308 North Fifth Street	8 yard	1/week
Wastewater Treatment Plant	1000 West Wilden Avenue	8 yard	1/week
Wastewater Treatment Plant	1000 West Wilden Avenue	5-2 yard (with casters)	2/week
Wastewater Treatment Plant	1000 West Wilden Avenue	2 yard dock dumper (with casters)	NA
Goshen Boys and Girls Club	306 Crescent Steet	2-8 yard	1/week



**EXHIBIT E**  
**CITY BUILDINGS AND FACILITIES**

City Building/Facility	Service Address	Container Size	Collection Frequency
<b>RECYCLABLE MATERIALS CONTAINERS</b>			
City Hall	202 South Fifth Street	4 yard	1/week
Municipal Annex	204 East Jefferson Street	4 yard	1/week
Police Department and City Court	111 East Jefferson Street	4 yard	1/week
Police Training Facility	713 East Lincoln Avenue	4 yard	1/week
Central Fire Station	209 North Third Street	4 yard	1/week
Egbert Road Fire Station	308 Egbert Road	96 gallon cart	Every other week
Street Department	475 Steury Avenue	6 yard	1/week
Central Garage	320 Steury Avenue	6 yard	1/week
Park Department	524 East Jackson Street	4 yard	1/week
Municipal Airport	17229 County Road 42	6 yard	1/week
Water and Sewer Department	308 North Fifth Street	4 yard	1/week
Rieth Interpretative Center	410 West Plymouth Avenue	96-gallon cart	Every other week



**CITY OF GOSHEN LEGAL DEPARTMENT**

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](http://www.goshenindiana.org)

August 29, 2022

**To:** Board of Public Works and Safety and Stormwater Board

**From:** Brandy L. Toms

**Subject:** Agreement Allowing connection to storm sewer

Before the Board is a storm sewer connection agreement involving a home that will be built in the fall at 1914 Woodward Place that grants permission to discharge groundwater from a abasement sump pump to the storm sewer line along River Vista Drive.

**Suggestion motion: to approve and authorize Mayor Stutsman to execute an agreement allowing a home to be built in the fall at 1914 Wooward Place for the connection to City's storm sewer system.**

**AGREEMENT ALLOWING CONNECTION TO STORM SEWER**

THIS AGREEMENT is entered into on \_\_\_\_\_, 2022 by the **City of Goshen, Indiana** by and through the Goshen Board of Public Works and Safety and Stormwater Board, hereinafter referred to as "City", and **Dale J. Kempf and Kay M. Kempf**, hereinafter referred to as "Owners".

**RECITALS**

WHEREAS Dale J. Kempf and Kay M. Kempf are the Owners of a tract of real estate at 1914 Woodward, Goshen, Indiana 46526 (Parcel No. 20-11-21-278-024.000-015), hereinafter referred to as the "subject real estate". (See Quit-Claim Deed attached and marked as Exhibit A and map marked as Exhibit B).

WHEREAS the high groundwater table in the area will prevent the construction of a basement protected from seeping, and pumping the water outside will not relieve the problem as the water recirculates.

WHEREAS City standards and regulations require stormwater to be contained onsite. It is therefore agreed by City and Owners as follows:

**1. SUBJECT REAL ESTATE**

The subject real estate is more particularly described as follows:

A part of the Northeast Quarter of Section 21, Township 36 North, Range 6 East, Second Principal Meridian, Elkhart Township, Elkhart County, State of Indiana, prepared by Christian F. Marbach, registration number LS80880002, with Surveying and Mapping, LLC, drawing number B-45998, certified on September 11, 2021 and being more particularly described as follows:

Lot Number 14 as the said Lot is known and designated on the Plat of Gunden's First Addition recorded in Plat Book 3, Page 150 in the Office of the Recorder of Elkhart County, Indiana.

Also:

Beginning at the Southwest corner of Lot Number 15 as the said Lot is known on the Plat of Gunden's First Addition recorded in Plat Book 3, Page 150 in the Office of the Recorder of Elkhart County, Indiana; thence North 0°08'00" East along the East line of Woodward Place and the West line of said Lot Number 15 a distance of 40.00 feet to an iron pipe capped "SAM, LLC FIRM 112;" thence South 89°59'10" East a distance of 140.00 feet to a rebar capped "SAM, LLC FIRM 112" on the East line of said Lot Number 15; thence South 0°08'00" West along the East line of said Lot Number 15 a distance of 40.00 feet to an iron pipe marking the Southeast corner of said Lot Number 15; thence North 89°59'37" West along the South line of said Lot Number 15 a distance of 140.00 feet to the Point of Beginning.

## **2. TERM OF AGREEMENT**

The term of this agreement shall be effective upon the date of execution and approval by both parties and continue until December 31, 2026. This agreement may continue on a year-to-year basis thereafter under the same terms and conditions, unless otherwise terminated with a ninety-day written notification from either party.

## **3. CONNECTION TO CITY'S STORM SEWER SYSTEM**

- a) City will allow for alternate groundwater drainage by permitting Owners to connect to and discharge groundwater from the subject real estate to City's existing storm sewer system as long as City can accommodate such connection and discharge without undue operational costs or negatively impacting the existing storm sewer system.
- b) Owners shall install a private storm sewer line which shall connect to an existing City of Goshen storm sewer system line that is located along the southside of River Vista Drive between Main St. and Woodward Place. Owners shall obtain an easement from the Owners of the real estates at 1916 Woodward Place to install, operate, and maintain the private storm sewer line. The easement shall be recorded with the Office of the Recorder of Elkhart County, Indiana.
- c) The plans and specifications developed by or on behalf of the Owners to connect and discharge to City's storm sewer system must be approved in writing by City's Engineering Department prior to connecting and discharging to the storm sewer system.
- d) Owners shall obtain a right-of-way cut permit from the Goshen Engineering Department prior to commencing any work within the public right-of-way.
- e) Owners shall maintain the private storm sewer line and connection to City's storm sewer system at Owners' expense.
- f) Owners or Owners' occupant shall not discharge any liquid or substance other than clear and clean groundwater into the City's storm sewer system. In the event that Owners or Owners' occupant does discharge any liquid or substance other than clear and clean groundwater into the City's storm sewer system, then Owners shall be responsible for any damages caused to the City's storm sewer system and any clean-up required.
- g) Owners shall not modify the Owners' drainage system in any material way other than as provided for by this agreement.

## **4. TERMINATION OF CONNECTION**

- a) City may terminate this agreement if any of the following events occur:
  - i. State or federal statutes, rules or regulations are changed or interpreted to require City to treat stormwater that enters the storm sewer system.
  - ii. Owners or Owners' occupant discharges any liquid or substance other than clear

and clean groundwater into the City's storm sewer system.

- iii. City's existing storm sewer system is for any reason unable to handle the groundwater generated from the subject real estate without undue operational costs or negative impact to the existing storm sewer system.
  - iv. City changes or replaces its existing storm sewer system in a way that makes it impractical for City to continue to accept groundwater generated from the subject real estate.
  - v. Owners modifies the Owners' drainage system in any material way.
- b) If any of the events listed in paragraph a) occur and City's Department of Stormwater Management notifies Owners of the need to disconnect from the storm sewer system, Owners shall disconnect from the system within six (6) months of City's notice at Owners' expense unless a shorter period of time is required by the Indiana Department of Environmental Management or other governmental entity.
- c) If Owners disconnects from City's storm sewer system for any reason, Owners shall retain its groundwater on the subject real estate or discharge its groundwater in a manner approved by the City of Goshen's Department of Stormwater Management and in compliance with statutes, ordinances, rules and regulations in effect at the time Owners disconnects from City's storm sewer system at Owners' expense.
- d) City retains the right to immediately suspend Owners' right to connect to City's storm sewer system if in the opinion of City the suspension is necessary in order to stop an actual or threatened discharge that presents or may reasonably present an imminent or substantial endangerment to the health or welfare of persons, to the environment, or causes City to violate any condition of City's National Pollutant Discharge Elimination System (NPDES) Permit.

## 5. NOTICES

Whenever any notice, statement or other communication is required under this agreement, it 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 the parties may designate in writing from time to time.

Notices to City shall be sent to:

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

Notices to Owners shall be sent to:

Dale J. and Kay M. Kempf  
1914 Woodward Place  
Goshen, Indiana 46526

**6. MISCELLANEOUS**

- a) Owners agrees that upon the sale of any portion of the subject real estate described in this agreement, Owners will advise the purchaser of this agreement in writing prior to the sale.
- b) This agreement shall be construed and enforced in accordance with the laws of the State of Indiana. The venue for any action brought by either party relating to or arising out of this agreement shall be in Elkhart County, State of Indiana.
- c) If it becomes necessary for any party to this agreement to institute litigation in order to enforce or construe the terms and provisions of this agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in such litigation from the non-prevailing party.
- d) No remedy conferred upon any party in this agreement is intended to be exclusive of any other remedy provided or permitted by law, but each remedy shall be cumulative and shall be in addition to any other remedy given under the terms of this agreement or existing at law or equity. Every power or remedy provided in this agreement may be exercised concurrently or independently and as often as deemed appropriate.
- e) All provisions, covenants, terms and conditions of the agreement apply to bind the parties and their legal heirs, representatives, successors and assigns.
- f) This agreement contains the entire agreement between the parties respecting the matters set forth.

**7. AUTHORITY TO EXECUTE**

The undersigned affirm that all steps have been taken to permit them to execute this agreement, and upon their execution bind their respective organizations to the terms of the agreement.

IN WITNESS WHEREOF, the parties have set their hands to this Agreement on the dates set forth below.

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

\_\_\_\_\_  
Jeremy P. Stutsman, Mayor

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

State of Indiana     )  
                                  )  
County of Elkhart    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by  
Jeremy P. Stutsman.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public (Printed Name)

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Dale J. Kempf, Owner

State of Indiana     )  
                                  )  
County of Elkhart    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by  
Dale J. Kempf.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public (Printed Name)

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Kay M. Kempf, Owner

State of Indiana     )  
                                  )  
County of Elkhart    )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Kay M. Kempf.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Notary Public (Printed Name)



ELKHART COUNTY RECORDER  
JENNIFER L. DORIOT  
FILED FOR RECORD ON  
07/27/2022 09:32 AM  
AS PRESENTED

**QUIT-CLAIM DEED**

**This indenture witnesseth** that Dale J. Kempf and Kay M. Kempf, husband and wife (“Grantor”), of Elkhart County in the State of Indiana, **release and quit-claim** to Dale J. Kempf and Kay M. Kempf, husband and wife (“Grantee”), of Elkhart County in the State of Indiana, for no consideration, the following described real estate located in Elkhart County, State of Indiana, to-wit:

A part of the Northeast Quarter of Section 21, Township 36 North, Range 6 East, Second Principal Meridian, Elkhart Township, Elkhart County, State of Indiana, prepared by Christian F. Marbach, registration number LS80880002, with Surveying and Mapping, LLC, drawing number B-45998, certified on September 11, 2021 and being more particularly described as follows:

Lot Number 14 as the said Lot is known and designated on the Plat of Gunden’s First Addition recorded in Plat Book 3, Page 150 in the Office of the Recorder of Elkhart County, Indiana.

Also:

Beginning at the Southwest corner of Lot Number 15 as the said Lot is known on the Plat of Gunden’s First Addition recorded in Plat Book 3, Page 150 in the Office of the Recorder of Elkhart County, Indiana; thence North 0°08’00” East along the East line of Woodward Place and the West line of said Lot Number 15 a distance of 40.00 feet to an iron pipe capped “SAM, LLC FIRM 112;” thence South 89°59’10” East a distance of 140.00 feet to a rebar capped “SAM, LLC FIRM 112” on the East line of said Lot Number 15; thence South 0°08’00” West along the East line of said Lot Number 15 a distance of 40.00 feet to an iron pipe marking the Southeast corner of said Lot Number 15; thence North 89°59’37” West along the South line of said Lot Number 15 a distance of 140.00 feet to the Point of Beginning.

JM  
KK  
20-11-21-278-010.000-015  
Part Of  
20-11-21-278-008.000-015


**TAXES PAID**

NO SALES DISCLOSURE REQUIRED-SM  
DULY ENTERED FOR TAXATION  
SUBJECT TO FINAL ACCEPTANCE FOR TRANSFER  
Jul 27 2022  
PATRICIA A. PICKENS, AUDITOR  
**03954**  
**20.00**

Being part tax code numbers 20-11-21-278-010.000-015 and 20-11-21-278-008.000-015.

IN WITNESS WHEREOF, the Grantor has executed this Quit-Claim Deed this 22<sup>nd</sup> day of July, 2022.

  
Dale J. Kempf

  
Kay M. Kempf

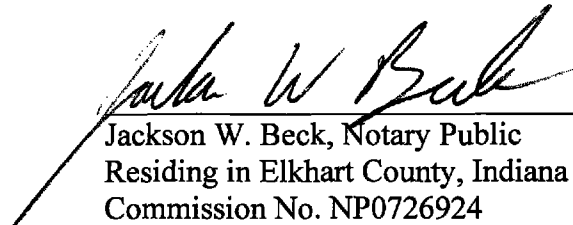
STATE OF INDIANA        )  
  ) SS:  
COUNTY OF ELKHART    )

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared the above-named Dale J. Kempf and Kay M. Kempf, husband and wife, and acknowledged the execution of the foregoing Quit-Claim Deed this 22<sup>nd</sup> day of July, 2022.

WITNESS my hand and notarial seal.



JACKSON W. BECK  
NOTARY PUBLIC  
State of Indiana, Elkhart County  
Commission Number: 0726924  
My commission expires May 19, 2028

  
Jackson W. Beck, Notary Public  
Residing in Elkhart County, Indiana  
Commission No. NP0726924

My Commission Expires:  
May 19, 2028

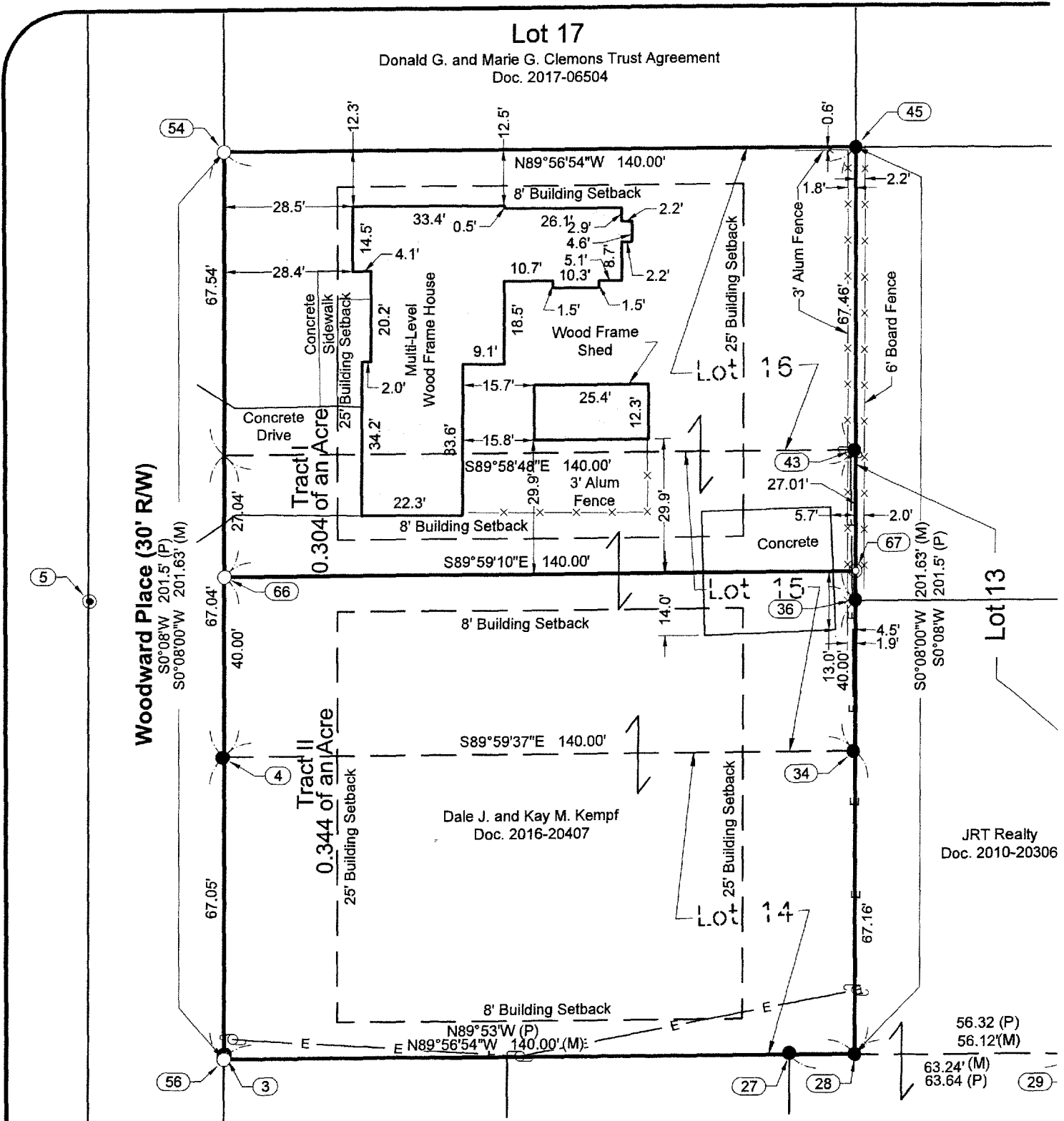
**Grantee's mailing address is  
and send tax statements to:** 1910 Woodward Place  
Goshen, IN 4652

Prepared by Jackson W. Beck, Yoder, Ainlay, Ulmer & Buckingham, LLP  
130 North Main Street, Goshen, IN 46526

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Jackson W. Beck, 130 N. Main St., Goshen, IN 46526

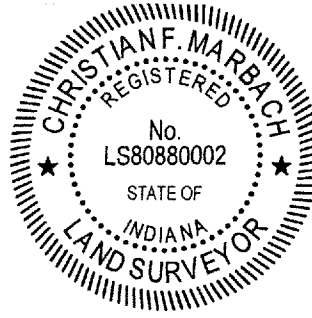
**Lot 17**

Donald G. and Marie G. Clemons Trust Agreement  
Doc. 2017-06504



*Christian F. Marbach*

Christian F. Marbach,  
P.S. No. LS80880002  
State of Indiana



*Transfer*

### Tract II Description

A part of the Northeast Quarter of Section 21, Township 36 North, Range 6 East, Second Principal Meridian, Elkhart Township, Elkhart County, State of Indiana, prepared by Christian F. Marbach, registration number LS80880002, with Surveying and Mapping, LLC drawing number B-45998, certified on September 11, 2021 and being more particularly described as follows:

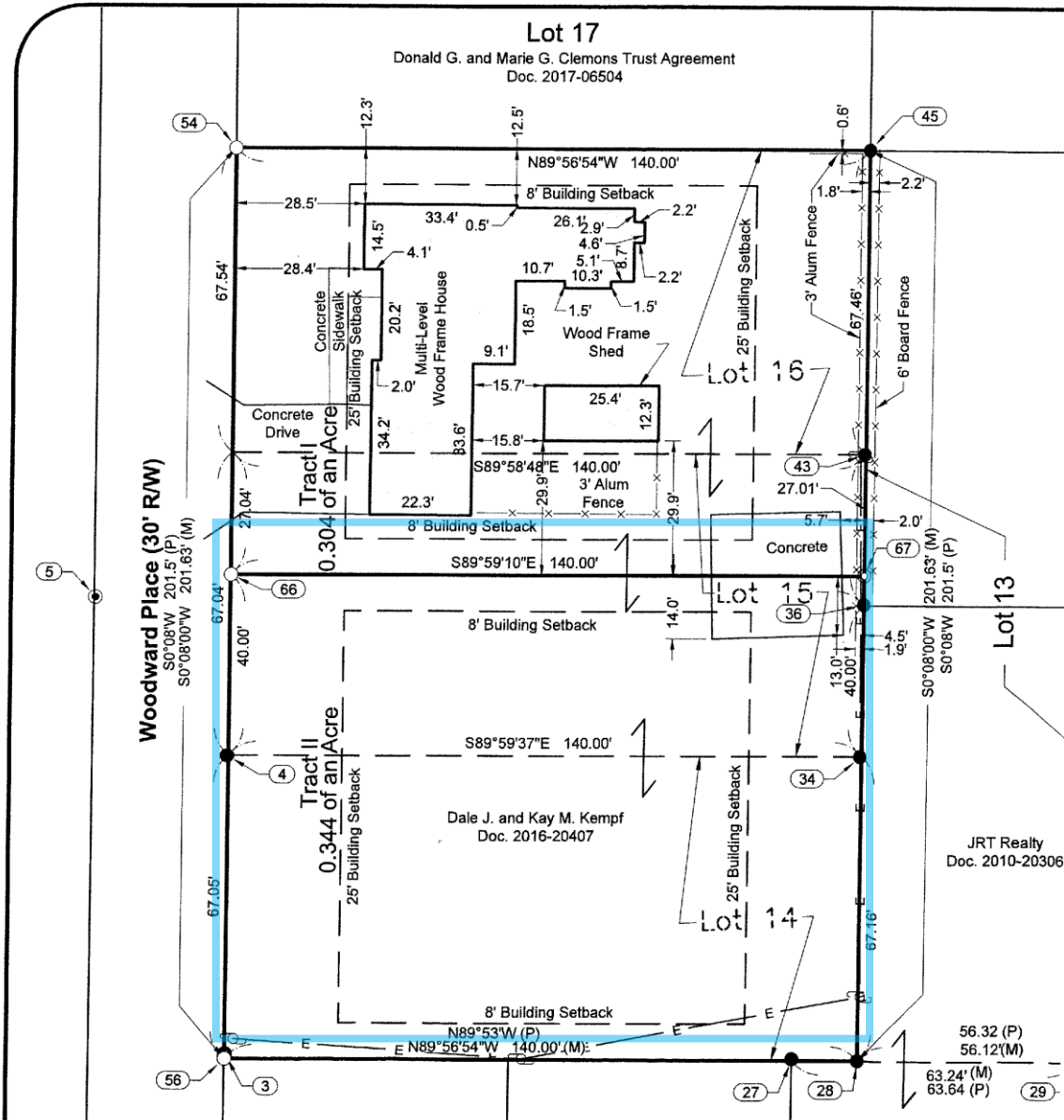
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Also,

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EXHIBIT B

Subject Real Estate at 1914 Woodward Place, Goshen, Indiana





**Richard Aguirre, City Clerk-Treasurer**  
**CITY OF GOSHEN**

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

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

[richardaguirre@goshencity.com](mailto:richardaguirre@goshencity.com) • [www.goshenindiana.org](http://www.goshenindiana.org)

**To:** Board of Works and Safety  
**From:** Jeffery Weaver, Deputy Clerk-Treasurer  
**Date:** August 29, 2022  
**Subject:** Agreement with Daniel Boling for Cemeteries Database Maintenance

---

Attached for the Board's approval is an agreement with Daniel Boling to provide installation, maintenance and update services for a Cemetery Records Database to support the City's Cemeteries and Clerk-Treasurer's offices.

The database under development compiles records that have been separately maintained between the various Cemeteries offices and the Clerk-Treasurer's office. Among other benefits, the new database will compile and cross-reference various plot, parcel, ownership, deed and inurnment information and be accessible to both the Cemetery and Clerk-Treasurer offices at the same time.

Boling is an independent contractor who was involved in the original development of the database on a volunteer and educational basis. He is now contracting to install the database working with the City's Technology department.

Suggested motion:

Approve the agreement and authorize the Clerk-Treasurer and the Director of Cemeteries to execute the agreement with Daniel Boling for Cemeteries Records Database services.

# AGREEMENT

## **Programming Services for City of Goshen's Cemeteries Database.**

THIS AGREEMENT is entered into on \_\_\_\_\_, 2022, which is the last signature date set forth below, by and between **Daniel Boling**, ("Consultant"), whose mailing address is 24182 County Road 126, Goshen, IN 46526, 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**

Consultant shall provide City the following services which shall include the provision of all labor, , supervision, insurance and all other items necessary to set up and install a new database for City Cemeteries over the course of the remainder of 2022 (hereinafter referred to as "Duties"). Consultant's Duties under this agreement include:

- (A) August – Initial planning and installation to server for internal testing, primarily work with IT.
- (B) September – Update database fields for records use and additions. Move server from Symphony to IIS.
- (C) October – Update database fields and forms per database team requests
- (D) November – Troubleshooting database reporting and accessibility
- (E) December – Testing reporting, accessibility, and forms per database team requests

Each of the above will required two (2) to three (3) hours of meetings on site at either the Clerk-Treasurer's Office or the Cemeteries Office and are included in the cost estimates below. Most other work will be performed remotely.

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

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) This agreement shall be effective from date of execution by all parties through and to include December 31, 2022.
- (C) Consultant acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Consultant shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (D) Consultant shall commence the Duties as soon as practical after receiving a notice to proceed from City.



**Section 3. Compensation**

City agrees to compensate Consultant as follows for performing all Duties:

August – 20 hours @\$20/hour .....	approx. \$400
September – 20 hours @\$20/hour .....	approx. \$600
October – 25 hours @\$20/hour.....	approx. \$500
November – 25 hours @\$20/hour.....	approx. \$500
December – 25 hours @\$20/hour .....	approx. \$500
<b>Total Estimated cost for 2022 Services .....</b>	<b>\$2,500</b>

The parties understand that the costs outlined above are based upon the anticipated needs for the completion of the Duties specified herein. The parties understand that the timeline for completion outlined above is an estimate and may move more quickly or slowly than projected. The parties also understand that the activities and estimated hours outlined are roughly the preparatory and maintenance activities anticipated for these Duties but may vary depending on the features and fixes requested by the database team.

**Section 4. Payment**

- (A) City shall pay Consultant 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 Consultant. 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 Goshen Clerk-Treasurer’s Office  
202 S. 5<sup>th</sup> Street  
Goshen, IN 46528

- (C) Payment will be made within forty-five (45) days following City’s receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (D) Consultant 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: Daniel Boling  
24182 County Road 126  
Goshen, IN 46526

### **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 Consultant.

**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

**Daniel Boling**

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

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

\_\_\_\_\_  
Burton Matteson, Director of Cemeteries

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

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

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



**Richard Aguirre, City Clerk-Treasurer**  
**CITY OF GOSHEN**

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

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

[richardaguirre@goshencity.com](mailto:richardaguirre@goshencity.com) • [www.goshenindiana.org](http://www.goshenindiana.org)

August 29, 2022

**To:** Board of Public Works and Safety  
**From:** Deputy Clerk-Treasurer Jeffery Weaver, Clerk-Treasurer Richard R. Aguirre and City Water & Sewer Utilities Business Office Manager Kelly Saenz  
**Subject:** Agreement for ERP services with Tyler Technologies, Inc. (Incode Division)

Attached for the Board's approval and authorization for the Clerk-Treasurer to execute is an agreement with Tyler Technologies, Inc. for the company's Incode Division to provide software, maintenance, service, support and training for the City of Goshen and Utilities.

For more than a decade, City of Goshen departments have used the Incode 9 software provided by Tyler Technologies to manage and document many essential business and financial operations, including accounting, bank reconciliation, billing (for Utilities), purchasing and reporting. This software category is known as Enterprise Resource Planning (ERP) and is indispensable for the efficient, timely and verifiable operations of businesses, non-profit organizations and government agencies.

Last year, the Clerk-Treasurer's Office recognized the need for a comprehensive review of current processes and the software systems in place that support those processes. To complete that review, the City of Goshen and Utilities Offices contracted with Baker Tilly, US to assist the City with an ERP system needs assessment. That review and assessment began last fall and has continued this summer.

The outcome: The Clerk-Treasurer's and Utilities Offices determined that the City needed a substantial upgrade of its ERP software to meet statutory reporting requirements of the State of Indiana as well as to improve the accuracy and efficiency of City operations. After weighing various options and the cost of competing proposals, City staff also determined that a major upgrade to our current Incode software was the best and most affordable alternative.

This proposed agreement with Tyler Technologies includes one-time costs for the upgraded license, new module implementation and training, and migration of the existing module Incode 9 to Incode 10 at a cost of \$122,388. Additionally, there will be annual fees for cloud-hosted Incode and new module fees not to exceed \$70,202.



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For these expenditures, the City of Goshen will benefit from the following improved and new capabilities:

- Cloud-based server allowing for remote access by Utilities employees, and streamlined reporting access for all City departments;
- Content Manager to efficiently store scanned and digital documents pertaining to financial and statutory records, alongside a public interface allowing for open publication of ordinances, resolutions, minutes and other public records;
- Correctly report four-digit fund numbers;
- Inventory Control application directly connected to the purchasing and accounts payable modules;
- Fixed Asset application directly connected to the purchasing, receivables and budgeting modules;
- Direct connection between Content Manager and most other modules allowing for cross-referencing documents; and
- Opportunity to reexamine the City's financial and records management processes.

Deputy Clerk-Treasurer Jeffery Weaver, City Water & Sewer Utilities Business Office Manager Kelly Saenz and Clerk-Treasurer Richard R. Aguirre can provide additional information as requested about the use of the ERP, the needs assessment process and the work of Baker Tilly and how the upgrade to Incode 10 will help substantially enhance the City of Goshen's operations.

**Suggested motion:**

Approve and authorize the Clerk-Treasurer to execute the agreement with Tyler Technologies, Inc. for maintenance, service, support and training on the upgrade to Incode 10 and Tyler Content Manager with one-time costs of \$122,388 and annual costs not to exceed \$70,202.





## SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to provide certain products and services set forth in the Investment Summary, including providing Client with access to Tyler's proprietary software products, and Tyler desires to provide such products and services under the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

### SECTION A – DEFINITIONS

- **“Agreement”** means this Software as a Services Agreement.
- **“Business Travel Policy”** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **“Client”** means the City of Goshen, Indiana.
- **“Data”** means your data necessary to utilize the Tyler Software.
- **“Data Storage Capacity”** means the contracted amount of storage capacity for your Data identified in the Investment Summary.
- **“Defect”** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **“Defined Users”** means the number of users that are authorized to use the SaaS Services. The Defined Users for the Agreement are as identified in the Investment Summary. If Exhibit A contains Enterprise Permitting & Licensing labeled software, defined users mean the maximum number of named users that are authorized to use the Enterprise Permitting & Licensing labeled modules as indicated in the Investment Summary.
- **“Developer”** means a third party who owns the intellectual property rights to Third Party Software.
- **“Documentation”** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **“Effective Date”** means the date by which both your and our authorized representatives have signed the Agreement.
- **“Force Majeure”** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **“Investment Summary”** means the agreed upon cost proposal for the products and services attached as Exhibit A.



- **“Invoicing and Payment Policy”** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as Exhibit B.
- **“Order Form”** means an ordering document that includes a quote or investment summary and specifying the items to be provided by Tyler to Client, including any addenda and supplements thereto.
- **“SaaS Fees”** means the fees for the SaaS Services identified in the Investment Summary.
- **“SaaS Services”** means software as a service consisting of system administration, system management, and system monitoring activities that Tyler performs for the Tyler Software, and includes the right to access and use the Tyler Software, receive maintenance and support on the Tyler Software, including Downtime resolution under the terms of the SLA, and Data storage and archiving. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting or other professional services.
- **“SLA”** means the service level agreement. A copy of our current SLA is attached hereto as Exhibit C.
- **“Support Call Process”** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as Schedule 1 to Exhibit C.
- **“Third Party Hardware”** means the third party hardware, if any, identified in the Investment Summary.
- **“Third Party Products”** means the Third Party Software and Third Party Hardware.
- **“Third Party SaaS Services”** means software as a service provided by a third party, if any, identified in the Investment Summary.
- **“Third Party Services”** means the third party services, if any, identified in the Investment Summary.
- **“Third Party Software”** means the third party software, if any, identified in the Investment Summary.
- **“Third Party Terms”** means, if any, the end user license agreement(s) or similar terms for the Third Party Products or other parties’ products or services, as applicable, and attached or indicated at Exhibit D.
- **“Tyler”** means Tyler Technologies, Inc., a Delaware corporation.
- **“Tyler Software”** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement.
- **“we”, “us”, “our”** and similar terms mean Tyler.
- **“you”** and similar terms mean Client.

## SECTION B – LICENSE RIGHTS AND SAAS SERVICES

### 1. Rights Granted.

- 1.1 We grant to you a license to use the Tyler Software, if and listed in the Investment Summary, for your internal business purposes only, in the scope of the internal business purposes disclosed to us as of the Effective Date. You may make copies of the Tyler Software for backup and testing purposes, so long as such copies are not used in production and the testing is for internal use only. Your rights to use the Tyler Software are perpetual but may be revoked if you do not comply with the terms of this Agreement including, without limitation, Section B(4). We will make any such software available to you for download.

- 1.2 We grant to you the non-exclusive, non-assignable limited right to use the SaaS Services solely for your internal business purposes for the number of Defined Users only. The Tyler Software will be made available to you according to the terms of the SLA. You acknowledge that we have no delivery obligations and we will not ship copies of the Tyler Software as part of the SaaS Services. You may use the SaaS Services to access updates and enhancements to the Tyler Software, as further described in Section C(9).
2. SaaS Fees. You agree to pay us the license fees and SaaS Fees. Those amounts are payable in accordance with our Invoicing and Payment Policy. The SaaS Fees are based on the number of Defined Users and amount of Data Storage Capacity. You may add additional users or additional data storage capacity on the terms set forth in Section H(1). In the event you regularly and/or meaningfully exceed the Defined Users or Data Storage Capacity, we reserve the right to charge you additional fees commensurate with the overage(s).
3. Ownership.
  - 3.1 We retain all ownership and intellectual property rights to the SaaS Services, the Tyler Software, and anything developed by us under this Agreement. You do not acquire under this Agreement any license to use the Tyler Software in excess of the scope and/or duration of the SaaS Services.
  - 3.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.
  - 3.3 You retain all ownership and intellectual property rights to the Data. You expressly recognize that except to the extent necessary to carry out our obligations contained in this Agreement, we do not create or endorse any Data used in connection with the SaaS Services.
4. Restrictions. You may not: (a) make the Tyler Software or Documentation resulting from the SaaS Services available in any manner to any third party for use in the third party's business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the SaaS Services; (c) access or use the SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS Services, Tyler Software, or Documentation available to any third party other than as expressly permitted by this Agreement.
5. Software Warranty. We warrant that the Tyler Software will perform without Defects during the term of this Agreement. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the maintenance and support process set forth in Section C(9), below, the SLA and our then current Support Call Process.
6. SaaS Services.
  - 6.1 Our SaaS Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 18. We have attained, and will maintain, SOC 1 and SOC 2 compliance, or its equivalent, for so long as you are timely paying for SaaS Services. The scope of audit coverage varies for some Tyler Software solutions. Upon execution

of a mutually agreeable Non-Disclosure Agreement (“NDA”), we will provide you with a summary of our compliance report(s) or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which you make a written request, we will provide that same information. If our SaaS Services are provided using a 3rd party data center, we will provide available compliance reports for that data center.

- 6.2 You will be hosted on shared hardware in a Tyler data center or in a third-party data center. In either event, databases containing your Data will be dedicated to you and inaccessible to our other customers.
- 6.3 Our Tyler data centers have fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Tyler Software in the event of a disaster or component failure. In the event of a data center failure, we reserve the right to employ our disaster recovery plan for resumption of the SaaS Services. In that event, we commit to a Recovery Point Objective (“RPO”) of 24 hours and a Recovery Time Objective (“RTO”) of 24 hours. RPO represents the maximum duration of time between the most recent recoverable copy of your hosted Data and subsequent data center failure. RTO represents the maximum duration of time following data center failure within which your access to the Tyler Software must be restored.
- 6.4 We conduct annual penetration testing of either the production network and/or web application to be performed. We will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. We will provide you with a written or electronic record of the actions taken by us in the event that any unauthorized access to your database(s) is detected as a result of our security protocols. We will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at your written request. You may not attempt to bypass or subvert security restrictions in the SaaS Services or environments related to the Tyler Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of our network and systems (hosted or otherwise) is prohibited without the prior written approval of our IT Security Officer.
- 6.5 We test our disaster recovery plan on an annual basis. Our standard test is not client-specific. Should you request a client-specific disaster recovery test, we will work with you to schedule and execute such a test on a mutually agreeable schedule. At your written request, we will provide test results to you within a commercially reasonable timeframe after receipt of the request.
- 6.6 We will be responsible for importing back-up and verifying that you can log-in. You will be responsible for running reports and testing critical processes to verify the returned Data.
- 6.7 We provide secure Data transmission paths between each of your workstations and our servers.
- 6.8 Tyler data centers are accessible only by authorized personnel with a unique key entry. All other visitors to Tyler data centers must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.

6.9 Where applicable with respect to our applications that take or process card payment data, we are responsible for the security of cardholder data that we possess, including functions relating to storing, processing, and transmitting of the cardholder data and affirm that, as of the Effective Date, we comply with applicable requirements to be considered PCI DSS compliant and have performed the necessary steps to validate compliance with the PCI DSS. We agree to supply the current status of our PCI DSS compliance program in the form of an official Attestation of Compliance, which can be found at <https://www.tylertech.com/about-us/compliance>, and in the event of any change in our status, will comply with applicable notice requirements.

7. License Rights Terminate Upon Migration. When makes Tyler Software identified in the Investment Summary (the “Evergreen Modules”) and licensed pursuant to this Agreement available to the Client for use in live production, the license to the Tyler software listed in Exhibit A, Schedule 1 (hereafter, “Migration Modules”) terminates, as do Tyler’s maintenance, support, and/or update obligations for such software.

## **SECTION C –PROFESSIONAL SERVICES**

1. Professional Services. We will provide you the various implementation-related services itemized in the Investment Summary and described in the Statement of Work.
2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for your implementation. We will bill you the actual fees incurred based on the in-scope services provided to you. Any discrepancies in the total values set forth in the Investment Summary will be resolved by multiplying the applicable hourly rate by the quoted hours.
3. Additional Services. The Investment Summary contains, and the Statement of Work describes, the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.
4. Cancellation. If travel is required, we will make all reasonable efforts to schedule travel for our personnel, including arranging travel reservations, at least two (2) weeks in advance of commitments. Therefore, if you cancel services less than two (2) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) non-refundable expenses incurred by us on your behalf, and (b) daily fees associated with cancelled professional services if we are unable to reassign our personnel. We will make all reasonable efforts to reassign personnel in the event you cancel within two (2) weeks of scheduled commitments.
5. Services Warranty. We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.

6. Site Access and Requirements. At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us.
7. Background Checks. For at least the past twelve (12) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies.
8. Client Assistance. You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).
9. Maintenance and Support. For so long as you timely pay your SaaS Fees according to the Invoicing and Payment Policy, then in addition to the terms set forth in the SLA and the Support Call Process, we will:
  - 9.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (subject to any applicable release life cycle policy);
  - 9.2 provide support during our established support hours;
  - 9.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;
  - 9.4 make available to you all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and
  - 9.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with any applicable release life cycle policy.

We will use all reasonable efforts to perform support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a

reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain your VPN for backup connectivity purposes.

For the avoidance of doubt, SaaS Fees do not include the following services: (a) onsite support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (b) application design; (c) other consulting services; or (d) support outside our normal business hours as listed in our then-current Support Call Process. Requested services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.

10. Support of Migration Modules. Beginning on the commencement of the initial term as set forth in Section F (1) of this Agreement, and contingent upon Client's timely payment of annual SaaS Fees for Tyler Evergreen Modules, Client is entitled to receive, at no additional charge, maintenance and support for the Migration Modules until Tyler makes the Tyler Evergreen Modules available for use in live production.

#### **SECTION D – THIRD PARTY PRODUCTS**

1. Third Party Hardware. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.
2. Third Party Software. As part of the SaaS Services, you will receive access to the Third Party Software and related documentation for internal business purposes only. Your rights to the Third Party Software will be governed by the Third Party Terms.
3. Third Party Products Warranties.
  - 3.1 We are authorized by each Developer to grant access to the Third Party Software.
  - 3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.
  - 3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.
4. Third Party Services. If you have purchased Third Party Services, those services will be provided independent of Tyler by such third-party at the rates set forth in the Investment Summary and in accordance with our Invoicing and Payment Policy.

#### **SECTION E - INVOICING AND PAYMENT; INVOICE DISPUTES**

1. Invoicing and Payment. We will invoice you the SaaS Fees and fees for other professional services in the Investment Summary per our Invoicing and Payment Policy, subject to Section E(2).



2. Invoice Disputes. If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all SaaS Services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

## **SECTION F – TERM AND TERMINATION**

1. Term. The initial term of this Agreement equal to the number of years indicated for SaaS Services in Exhibit A, commencing on the first day of the first month following the date Tyler makes the SaaS environment available to you, unless earlier terminated as set forth below. If no duration is indicated in Exhibit A, the initial term is one (1) year. Upon expiration of the initial term, this Agreement will renew automatically for additional one (1) year renewal terms at our then-current SaaS Fees unless terminated in writing by either party at least sixty (60) days prior to the end of the then-current renewal term. Your right to access or use the Tyler Software and the SaaS Services will terminate at the end of this Agreement.
2. Termination. This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section E(2).
  - 2.1 Failure to Pay SaaS Fees. You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.
  - 2.2 For Cause. If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section H(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section H(3).
  - 2.3 Force Majeure. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more.
  - 2.4 Lack of Appropriations. If you should not appropriate or otherwise make available funds sufficient to utilize the SaaS Services, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid,



but unused SaaS Fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.

## **SECTION G – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE**

### **1. Intellectual Property Infringement Indemnification.**

- 1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 1.2 Our obligations under this Section G(1) will not apply to the extent the claim or adverse final judgment is based on your use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties, or your willful infringement.
- 1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.
- 1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

### **2. General Indemnification.**

- 2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of PCI-DSS requirements or a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for personal injury or property damage to the extent caused by your negligence or willful misconduct; or (b) your violation of a law applicable to your performance under this Agreement.

We will notify you promptly in writing of the claim and will give you sole control over its defense or settlement. We agree to provide you with reasonable assistance, cooperation, and information in defending the claim at your expense.

3. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT UNDERSTANDS AND AGREES THAT TYLER DISCLAIMS ANY LIABILITY FOR ERRORS THAT RELATE TO USER ERROR.
4. **LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) DURING THE INITIAL TERM, AS SET FORTH IN SECTION F(1), TOTAL FEES PAID AS OF THE TIME OF THE CLAIM; OR (B) DURING ANY RENEWAL TERM, THE THEN-CURRENT ANNUAL SAAS FEES PAYABLE IN THAT RENEWAL TERM. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE EXCLUSION OF CERTAIN DAMAGES, AND EACH SHALL APPLY REGARDLESS OF THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS G(1) AND G(2).
5. **EXCLUSION OF CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
6. **Insurance.** During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least \$1,000,000; (b) Automobile Liability of at least \$1,000,000; (c) Professional Liability of at least \$1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least \$5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

## SECTION H – GENERAL TERMS AND CONDITIONS

1. **Additional Products and Services.** You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date by executing a mutually agreed addendum. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.
2. **Optional Items.** Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.

3. Dispute Resolution. You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, then the parties shall participate in non-binding mediation in an effort to resolve the dispute. If the dispute remains unresolved after mediation, then either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.
4. Taxes. The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.
5. Nondiscrimination. We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.
6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.
7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.
8. Binding Effect; No Assignment. This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.
9. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.

10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.
11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.
12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.
14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.
15. Notices. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.
16. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.
17. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (*e.g.*, social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This

obligation of confidentiality will not apply to information that:

- (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
- (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
- (c) a party receives from a third party who has a right to disclose it to the receiving party; or
- (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.

18. Quarantining of Client Data. Some services provided by Tyler require us to be in possession of your Data. In the event we detect malware or other conditions associated with your Data that are reasonably suspected of putting Tyler resources or other Tyler clients' data at risk, we reserve the absolute right to move your Data from its location within a multi-tenancy Tyler hosted environment to an isolated "quarantined" environment without advance notice. Your Data will remain in such quarantine for a period of at least six (6) months during which time we will review the Data, and all traffic associated with the Data, for signs of malware or other similar issues. If no issues are detected through such reviews during the six (6) month period of quarantine, we will coordinate with you the restoration of your Data to a non-quarantined environment. In the event your Data must remain in quarantine beyond this six (6) month period through no fault of Tyler's, we reserve the right to require payment of additional fees for the extended duration of quarantine. We will provide an estimate of what those costs will be upon your request.
19. Business License. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.
20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of your state of domicile, without regard to its rules on conflicts of law.
21. Multiple Originals and Authorized Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.
22. Cooperative Procurement. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement.
23. Data & Insights Solution Terms. Your use of certain Tyler solutions includes Tyler's Data & Insights data platform. Your rights, and the rights of any of your end users, to use Tyler's Data & Insights data platform is subject to the Data & Insights SaaS Services Terms of Service, available at <https://www.tylertech.com/terms/data-insights-saas-services-terms-of-service>. By signing a Tyler

Agreement or Order Form, or accessing, installing, or using any of the Tyler solutions listed at the linked terms, you certify that you have reviewed, understand, and agree to said terms.

24. Contract Documents. This Agreement includes the following exhibits:

- Exhibit A Investment Summary  
Schedule 1: Migration Modules
- Exhibit B Invoicing and Payment Policy  
Schedule 1: Business Travel Policy
- Exhibit C Service Level Agreement  
Schedule 1: Support Call Process
- Exhibit D Third Party Terms  
Schedule 1: Hyperlinked Terms  
Schedule 2: DocOrigin Terms

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.

City of Goshen, IN

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

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

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

Address for Notices:

Tyler Technologies, Inc.  
One Tyler Drive  
Yarmouth, ME 04096  
Attention: Chief Legal Officer

Address for Notices:

City of Goshen  
202 South 5<sup>th</sup> Street  
Goshen, IN 46528

Attention: \_\_\_\_\_



## **Exhibit A Investment Summary**

The following Investment Summary details the software and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date, despite any expiration date in the Investment Summary that may have lapsed as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement. In the event of conflict between the Agreement and terms in the Comments section of this Investment Summary, the language in the Agreement will prevail.

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Quoted By:  
 Quote Expiration:  
 Quote Name:

Tyler Richardson  
 8/10/22  
 SaaS Flip

**Sales Quotation For:**

City of Goshen  
 202 S 5th St  
 Goshen IN 46528-3703

**Tyler Annual Software – SaaS**

Description	Annual
<b>Incode</b>	
<b>Incode Financial Management Suite</b>	
Core Financials	\$ 11,717
Positive Pay	\$ 1,406
Project Accounting	\$ 3,115
System Software Non SQL	\$ 4,473
Accounts Receivable	\$ 2,641
<b>Incode Customer Relationship Management Suite</b>	
Utility CIS System-Electric/Water/Gas	\$ 5,779
Utility Meter Data Sync	\$ 1,137
Utility Meter Data Sync w/Scheduler	\$ 2,066
Utility Payment Import Interface	\$ 1,063
Third Party Printing Interface	\$ 3,400
Additional Utility Meter-Reader Interface	\$ 1,137
Central Cash Collection	\$ 2,942
Forms Overlay	\$ 1,358



Incode Tax Management Suite	
Tax Lien Process -File Export	\$ 989

**TOTAL: \$ 43,223**

**Term # of Years: 3**

Summary	One Time Fees	Recurring Fees
Total SaaS		\$ 43,223
Total Tyler Services		
<b>Summary Total</b>		<b>\$ 43,223</b>
<b>Contract Total</b>	<b>\$ 43,223</b>	

**Comments**

- Some services may be delivered remotely via web-based training.
- Expenses associated with onsite services are invoiced as incurred according to Tyler's standard business travel policy.

SaaS is considered a term of one year unless otherwise indicated.

Core Financials includes general ledger, budget prep, bank recon, accounts payable.

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms, subject to payment terms in an agreement, amendment, or similar document in which this sales quotation is included:

- License fees for Tyler and third-party software are invoiced upon the earlier of (i) delivery of the license key or (ii) when Tyler makes such software available accessible.
- Fees for hardware are invoiced upon delivery.
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware.
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software accessible to the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the agreement, with renewals invoiced annually thereafter in accord with the Agreement.

- Fees for services included in this sales quotation shall be invoiced as indicated below.
  - o Implementation and other professional services fees shall be invoiced as delivered.
  - o Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
  - o Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual services delivered on a time and materials basis.
  - o Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
  - o If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
  - o Notwithstanding anything to the contrary stated above, the following payment terms shall apply to fees specifically for migrations: Tyler will invoice Client 50% of any Migration Services Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Annual SaaS Fees will be invoiced upon availability of the hosted environment.

Any SaaS or hosted solutions added to an agreement containing Client-hosted Tyler solutions are subject to Tyler’s SaaS Services terms found here: <https://www.tylertech.com/terms/tyler-saas-services>.

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: \_\_\_\_\_ Date: \_\_\_\_\_  
 Print Name: \_\_\_\_\_ P.O.#: \_\_\_\_\_



Quoted By: Tyler Richardson  
 Quote Expiration: 12/21/22  
 Quote Name: v9 to v10 Migration with Add Ons

**Sales Quotation For:**

City of Goshen  
 202 S 5th St  
 Goshen IN 46528-3703

**Tyler Software**

Description	License	Discount	License Total	Annual Maintenance
<b>Tyler One</b>				
<b>Content Manager Suite</b>				
Enterprise	\$ 38,500	\$ 11,550	\$ 26,950	\$ 0
Access	\$ 7,500	\$ 750	\$ 6,750	\$ 0
<b>ERP Pro powered by Incode</b>				
<b>ERP Pro 10 Financial Management Suite</b>				
Fixed Assets	\$ 5,929	\$ 593	\$ 5,336	\$ 0
Inventory Control	\$ 8,800	\$ 880	\$ 7,920	\$ 0
Purchasing	\$ 10,780	\$ 1,078	\$ 9,702	\$ 0
<b>TOTAL:</b>	<b>\$ 71,509</b>	<b>\$ 14,851</b>	<b>\$ 56,658</b>	<b>\$ 0</b>

**Tyler Annual Software – SaaS**

Description	Annual
<b>ERP Pro powered by Incode</b>	
ERP Pro 10 Financial Management Suite	
Purchasing Annual SaaS Fee	\$ 4,851
Inventory Control Annual SaaS Fee	\$ 3,960
Fixed Assets Annual SaaS Fee	\$ 2,667
Content Manager Enterprise Annual SaaS Fee	\$ 12,126
Content Manager Access Annual SaaS Fee	\$ 3,375
<b>TOTAL:</b>	<b>\$ 26,979</b>

**Tyler Fees per Transaction**

Description	Net Unit Price
<b>ERP Pro powered by Incode</b>	
ERP Pro 10 Financial Management Suite	
AP Automation	\$ 0.00

**Services**

Description	Hours/Units	Extended Price	Maintenance
ERP Pro 10 Financial Management Suite			
Professional Services	92	\$ 11,960	\$ 0
Content Manager Suite			

Professional Services		166	\$ 21,580	\$ 0
	<b>TOTAL:</b>		<b>\$ 33,540</b>	<b>\$ 0</b>

**Tyler Migration Services**

Description	Total
<b>ERP Pro powered by Incode</b>	
<b>ERP Pro 10 Financial Management Suite</b>	
Financial Management Services	\$ 7,350
Accounts Receivable	
Core Financials	
Project Accounting	
<b>ERP Pro 10 Customer Relationship Management Suite</b>	
Customer Relationship Management Services	\$ 21,840
Additional Handheld Meter-Reader Interface	
Cashiering	
Meter Data Sync with Scheduler	
Utility Billing Water/Gas	
Third-Party Printing Interface	
Utility Payment Import Interface	
<b>Other Services</b>	
Project Management-Migration Services	\$ 3,000
	<b>Total:</b>
	<b>\$ 32,190</b>

Summary	One Time Fees	Recurring Fees
Total Tyler Software	\$ 56,658	
Total SaaS		\$ 26,979
Total Tyler Services	\$ 65,730	
<b>Summary Total</b>	<b>\$ 122,388</b>	<b>\$ 26,979</b>
<b>Contract Total</b>	<b>\$ 149,367</b>	

**Detailed Breakdown of Professional Services (Included in Summary Total)**

Description	Hours	Extended Price	Maintenance
<b>Tyler One</b>			
Content Manager Suite			
Access	16	\$ 2,080	\$ 0
Enterprise	150	\$ 19,500	\$ 0
	<b>Sub-Total</b>	<b>166</b>	<b>\$ 21,580</b>
<b>ERP Pro powered by Incode</b>			
ERP Pro 10 Financial Management Suite			
Fixed Assets	24	\$ 3,120	\$ 0
Inventory Control	32	\$ 4,160	\$ 0
Purchasing	36	\$ 4,680	\$ 0
	<b>Sub-Total</b>	<b>92</b>	<b>\$ 11,960</b>
	<b>TOTAL:</b>	<b>258</b>	<b>\$ 33,540</b>

**Comments**

- Some services may be delivered remotely via web-based training.
- Expenses associated with onsite services are invoiced as incurred according to Tyler's standard business travel policy.

SaaS is considered a term of one year unless otherwise indicated.

Cashiering supports credit/debit cards via ETS, includes PCI Compliant, a cash collection interface, a cashiering receipt import)

Core Financials includes general ledger, budget prep, bank recon, AP, CellSense, a standard forms pkg, output director, positive pay, secure signatures.

Utility CIS System includes collections, tax lien process and import, a standard forms pkg., output director and one Utility handheld meter-reader interface.

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms, subject to payment terms in an agreement, amendment, or similar document in which this sales quotation is included:

- License fees for Tyler and third-party software are invoiced upon the earlier of (i) delivery of the license key or (ii) when Tyler makes such software available accessible.
- Fees for hardware are invoiced upon delivery.
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware.

- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software accessible to the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the agreement, with renewals invoiced annually thereafter in accord with the Agreement.
- Fees for services included in this sales quotation shall be invoiced as indicated below.
  - o Implementation and other professional services fees shall be invoiced as delivered.
  - o Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
  - o Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual services delivered on a time and materials basis.
  - o Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
  - o If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
  - o Notwithstanding anything to the contrary stated above, the following payment terms shall apply to fees specifically for migrations: Tyler will invoice Client 50% of any Migration Services Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Annual SaaS Fees will be invoiced upon availability of the hosted environment.

Any SaaS or hosted solutions added to an agreement containing Client-hosted Tyler solutions are subject to Tyler’s SaaS Services terms found here: <https://www.tylertech.com/terms/tyler-saas-services>.

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ P.O.#: \_\_\_\_\_



# Goshen, IN

## Summary of Fees

<b>Annual Fees</b>	
New Annual fee for Cloud Hosted Incode	\$43,223
New Module Annual Fees	\$26,979
<b>Total Annual Fees</b>	<b>\$70,202</b>

<b>One Time Fees</b>	
New Module License Fees	\$56,658
New Module Implementation and Training Fees	\$33,540
Existing Module Incode 10 Migration Fees	\$32,190
<b>Total One Time Fees</b>	<b>\$122,388</b>



**Exhibit A**  
**Schedule 1**  
**Migration Modules**

- Accounts Receivable
- Core Financials
- Project Accounting
- ERP Pro 10 Customer Relationship Management Suite
- Additional Handheld Meter-Reader Interface Cashiering
- Meter Data Sync with Scheduler
- Utility Billing Water/Gas
- Third-Party Printing Interface
- Utility Payment Import Interface



## Exhibit B

### Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary of the Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

**Invoicing:** We will invoice you for the applicable software and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

1. **SaaS Fees.** SaaS Fees are invoiced on an annual basis, beginning on the commencement of the initial term as set forth in Section F (1) of this Agreement. Your annual SaaS fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual SaaS fees will be at our then-current rates. Beginning on the commencement of the initial term, Client shall no longer be required to pay annual support fees for the Migration Modules.
2. **License Fees:** License fees are invoiced 100% on the date when we provide you with access to the applicable Tyler Software (the "Software Access Date").
3. **Other Tyler Software and Services.**
  - 3.1 ***VPN Device:*** The fee for the VPN device will be invoiced upon installation of the VPN.
  - 3.2 ***Implementation and Other Professional Services (including training):*** Implementation and other professional services (including training) are billed and invoiced as delivered, at the rates set forth in the Investment Summary.
  - 3.3 ***Consulting Services:*** If you have purchased any Business Process Consulting services, if they have been quoted as fixed-fee services, they will be invoiced 50% upon your acceptance of the Best Practice Recommendations, by module, and 50% upon your acceptance of custom desktop procedures, by module. If you have purchased any Business Process Consulting services and they are quoted as an estimate, then we will bill you the actual services delivered on a time and materials basis.
  - 3.4 ***Conversions:*** Fixed-fee conversions are invoiced 50% upon initial delivery of the converted Data, by conversion option, and 50% upon Client acceptance to load the converted Data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, we will bill you the actual services delivered on a time and materials basis.
  - 3.5 ***Requested Modifications to the Tyler Software:*** Requested modifications to the Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the applicable modification. You must report any failure of the modification to conform to the

specifications within thirty (30) days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 30-day window has passed. You may still report Defects to us as set forth in this Agreement.

3.6 *Other Fixed Price Services*: Other fixed price services are invoiced as delivered, at the rates set forth in the Investment Summary. For the avoidance of doubt, where “Project Planning Services” are provided, payment will be due upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be billed monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.

3.7 *Annual Services*: Unless otherwise indicated in this Exhibit B, fees for annual services are due annually, in advance, commencing on the availability of the service. Your annual fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.

### 3. Third Party Products.

3.1 *Third Party Software License Fees*: License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.

3.2 *Third Party Software Maintenance*: The first year maintenance for the Third Party Software is invoiced when we make it available to you for downloading.

3.3 *Third Party Hardware*: Third Party Hardware costs, if any, are invoiced upon delivery.

3.4 *Third Party Services*: Fees for Third Party Services, if any, are invoiced as delivered, along with applicable expenses, at the rates set forth in the Investment Summary.

3.5 *Third Party SaaS*: Third Party SaaS Services fees, if any, are invoiced annually, in advance, commencing with availability of the respective Third Party SaaS Services. Pricing for the first year of Third Party SaaS Services is indicated in the Investment Summary. Pricing for subsequent years will be at the respective third party’s then-current rates.

4. Transaction Fees. Unless paid directly by an end user at the time of transaction, per transaction (call, message, etc.) fees are invoiced on a quarterly basis. Fees are indicated in Schedule A and may be increased by Tyler upon notice of no less than thirty (30) days.

5. Expenses. The service rates in the Investment Summary do not include travel expenses. Expenses for Tyler delivered services will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B as Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.

6. Credit for Prepaid Maintenance and Support Fees for Migration Modules. Client will receive a credit for the maintenance and support fees prepaid for the Migration Modules for the time period commencing on the first day of the initial term, as set forth in Section F (1) of this

Agreement. Migration Modules are listed at Exhibit A, Schedule 1.

**Payment.** Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is available by contacting [AR@tylertech.com](mailto:AR@tylertech.com).



**Exhibit B**  
**Schedule 1**  
**Business Travel Policy**

1. Air Travel

A. Reservations & Tickets

The Travel Management Company (TMC) used by Tyler will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not reimbursable.

## 2. Ground Transportation

### A. Private Automobile

Mileage Allowance – Business use of an employee’s private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee’s office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

### B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a “mid-size” or “intermediate” car. “Full” size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

### C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

### D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

## 3. Lodging

Tyler’s TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler’s work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

“No shows” or cancellation fees are not reimbursable if the employee does not comply with the hotel’s cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem).

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of State and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

\*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

Breakfast	15%
Lunch	25%
Dinner	60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.\*

\*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.



5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.



## Exhibit C Service Level Agreement

### I. Agreement Overview

This SLA operates in conjunction with, and does not supersede or replace any part of, the Agreement. It outlines the information technology service levels that we will provide to you to ensure the availability of the application services that you have requested us to provide. This SLA does not apply to any Third Party SaaS Services. All other support services are documented in the Support Call Process.

**II. Definitions.** Except as defined below, all defined terms have the meaning set forth in the Agreement.

*Actual Attainment:* The percentage of time the Tyler Software is available during a calendar quarter, calculated as follows:  $(\text{Service Availability} - \text{Downtime}) \div \text{Service Availability}$ .

*Client Error Incident:* Any service unavailability resulting from your applications, content or equipment, or the acts or omissions of any of your service users or third-party providers over whom we exercise no control.

*Downtime:* Those minutes during Service Availability, as defined below, when all users cannot launch, login, search or save primary data in the Tyler Software. Downtime does not include those instances in which only a Defect is present.

*Emergency Maintenance:* (1) maintenance that is required to patch a critical security vulnerability; (2) maintenance that is required to prevent an imminent outage of Service Availability; or (3) maintenance that is mutually agreed upon in writing by Tyler and the Client.

*Planned Downtime:* Downtime that occurs during a Standard or Emergency Maintenance window.

*Service Availability:* The total number of minutes in a calendar quarter that the Tyler Software is capable of receiving, processing, and responding to requests, excluding Planned Downtime, Client Error Incidents, denial of service attacks and Force Majeure.

*Standard Maintenance:* Routine maintenance to the Tyler Software and infrastructure. Standard Maintenance is limited to five (5) hours per week.

### III. **Service Availability**

#### a. Your Responsibilities

Whenever you experience Downtime, you must make a support call according to the procedures outlined in the Support Call Process. You will receive a support case number.

#### b. Our Responsibilities

When our support team receives a call from you that Downtime has occurred or is occurring, we will work with you to identify the cause of the Downtime (including whether it may be the result of Planned

Downtime, a Client Error Incident, Denial of Service attack or Force Majeure). We will also work with you to resume normal operations.

c. Client Relief

Our targeted Attainment Goal is 100%. You may be entitled to credits as indicated in the Client Relief Schedule found below. Your relief credit is calculated as a percentage of the SaaS fees paid for the calendar quarter.

In order to receive relief credits, you must submit a request through one of the channels listed in our Support Call Process within fifteen days (15) of the end of the applicable quarter. We will respond to your relief request within thirty (30) day(s) of receipt.

The total credits confirmed by us will be applied to the SaaS Fee for the next billing cycle. Issuing of such credit does not relieve us of our obligations under the Agreement to correct the problem which created the service interruption.

Client Relief Schedule	
Actual Attainment	Client Relief
99.99% - 98.00%	Remedial action will be taken
97.99% - 95.00%	4%
Below 95.00%	5%

**IV. Maintenance Notifications**

We perform Standard Maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, we will provide advance notice of those windows and will coordinate to the greatest extent possible with you.

Not all maintenance activities will cause application unavailability. However, if Tyler anticipates that activities during a Standard or Emergency Maintenance window may make the Tyler Software unavailable, we will provide advance notice, as reasonably practicable that the Tyler Software will be unavailable during the maintenance window.



## Exhibit C Schedule 1 Support Call Process

### Support Channels

Tyler Technologies, Inc. provides the following channels of software support for authorized users\*:

- (1) On-line submission (portal) – for less urgent and functionality-based questions, users may create support incidents through the Tyler Customer Portal available at the Tyler Technologies website. A built-in Answer Panel provides users with resolutions to most “how-to” and configuration-based questions through a simplified search interface with machine learning, potentially eliminating the need to submit the support case.
- (2) Email – for less urgent situations, users may submit emails directly to the software support group.
- (3) Telephone – for urgent or complex questions, users receive toll-free, telephone software support.

*\* Channel availability may be limited for certain applications.*

### Support Resources

A number of additional resources are available to provide a comprehensive and complete support experience:

- (1) Tyler Website – [www.tylertech.com](http://www.tylertech.com) – for accessing client tools, documentation, and other information including support contact information.
- (2) Tyler Search -a knowledge based search engine that lets you search multiple sources simultaneously to find the answers you need, 24x7.
- (3) Tyler Community –provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
- (4) Tyler University – online training courses on Tyler products.

### Support Availability

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday – Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Tyler’s holiday schedule is outlined below. There will be no support coverage on these days.

New Year’s Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day

For support teams that provide after-hours service, we will provide you with procedures for contacting support staff after normal business hours for reporting Priority Level 1 Defects only. Upon receipt of



such a Defect notification, we will use commercially reasonable efforts to meet the resolution targets set forth below.

We will also make commercially reasonable efforts to be available for one pre-scheduled Saturday of each month to assist your IT staff with applying patches and release upgrades, as well as consulting with them on server maintenance and configuration of the Tyler Software environment.

## Incident Handling

### *Incident Tracking*

Every support incident is logged into Tyler’s Customer Relationship Management System and given a unique case number. This system tracks the history of each incident. The case number is used to track and reference open issues when clients contact support. Clients may track incidents, using the case number, through Tyler’s Customer Portal or by calling software support directly.

### *Incident Priority*

Each incident is assigned a priority level, which corresponds to the Client’s needs. Tyler and the Client will reasonably set the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain “characteristics” may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the Client towards clearly understanding and communicating the importance of the issue and to describe generally expected response and resolution targets in the production environment only.

References to a “confirmed support incident” mean that Tyler and the Client have successfully validated the reported Defect/support incident.

Priority Level	Characteristics of Support Incident	Resolution Targets*
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client’s remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler’s responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.

Priority Level	Characteristics of Support Incident	Resolution Targets*
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the Client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack, which shall occur at least quarterly. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

*\*Response and Resolution Targets may differ by product or business need*

### *Incident Escalation*

If Tyler is unable to resolve any priority level 1 or 2 defect as listed above or the priority of an issue has elevated since initiation, you may escalate the incident to the appropriate resource, as outlined by each product support team. The corresponding resource will meet with you and any Tyler staff to establish a mutually agreeable plan for addressing the defect.

### *Remote Support Tool*

Some support calls may require further analysis of the Client's database, processes or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Tyler's support team must have the ability to quickly connect to the Client's system and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.



**Exhibit D**  
**Third Party Terms**



**Exhibit D**  
**Schedule 1**  
**Hyperlinked Terms**

Fire Prevention Mobile Terms. Your use of Tyler’s Fire Prevention Mobile solutions is subject to the terms found here: <https://www.tylertech.com/terms/mobileeyes-third-party-terms>. By signing a Tyler Agreement or Order Form, or accessing, installing, or using the Fire Prevention Mobile solution, you agree that you have read, understood, and agree to such terms.

Pattern Stream Terms. Your use of Pattern Stream software and services is subject to the terms found here: <https://www.tylertech.com/terms/finite-matters-ltd-consolidated-terms>. By signing a Tyler Agreement or Order Form, or accessing, installing, or using Pattern Stream software or services, you agree that you have read, understood, and agree to such terms.

Quatred Terms. Your use of Quatred solutions is subject to the End User License Agreement terms found here: <https://www.quatred.com/eula>. By signing a Tyler Agreement or Order Form, or accessing, installing, or using Quatred solutions provided to you by Tyler, you agree that you have read, understood, and agree to such terms.

ThinPrint Terms. Your use of Tyler Forms software and forms is subject to the End User License Agreement terms for ThinPrint Engine, ThinPrint License Server, and Connected Gateway found here: <https://www.thinprint.com/en/legal-notes/eula/>. By signing a Tyler Agreement or Order Form, or accessing, installing, or using Tyler Forms software or forms, you agree that you have read, understood, and agree to such terms.

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- Electronic Warrants
- Online Dispute Resolution
- Enterprise Justice Notifications Add On (text notifications)
- Absence & Substitute
- Notify
- Enterprise Jury Manager
- Enterprise Supervision
- Virtual Court







**Exhibit D**  
**Schedule 2**  
**DocOrigin Terms**

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DocOrigin

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Last Updated: July 22, 2017



**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 Public Works and Safety

FROM: Engineering Department

RE: **REQUEST FOR TEMPORARY ROAD CLOSURE ON W. JEFFERSON  
(JN: 2021-2044)**

DATE: August 29, 2022

---

Schrock Commercial has notified the engineering department of requested for road closure associated with utility connections for the future establishment, Barecito. They have requested Jefferson Street between 3<sup>rd</sup> St. and Main St. to be closed to traffic from August 31<sup>st</sup> through Sept. 2<sup>nd</sup>. Current MUTCD traffic control standards shall be used.

**Requested Motion: Approve the closure of Jefferson Street from August 31<sup>st</sup> through September 2<sup>nd</sup> , for utility connections to 114 W. Jefferson Street.**

City of Goshen  
Board of Works & Safety

\_\_\_\_\_  
Jeremy Stutsman, Mayor

\_\_\_\_\_  
Mary Nichols, Board Member

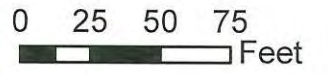
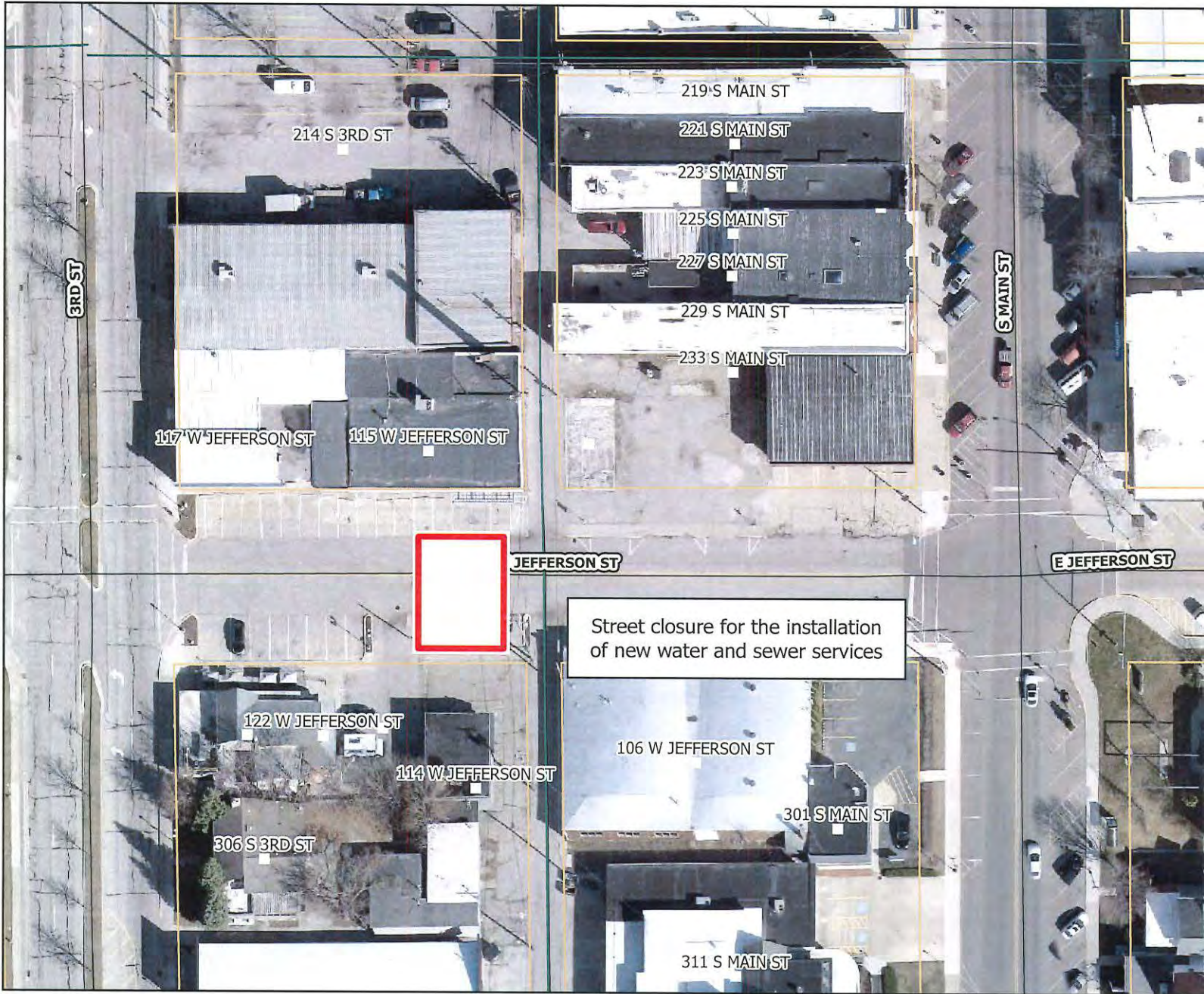
\_\_\_\_\_  
Mike Landis, Board Member

\_\_\_\_\_  
DeWayne Riouse, Board Member

\_\_\_\_\_  
Barb Swartley, Board Member



# Lane Closure W. Jefferson Street







**Engineering Department  
CITY OF GOSHEN**

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## **MEMORANDUM**

**TO:** Board of Public Works and Safety

**FROM:** Engineering Department

**RE:** **EXTENSION OF LANE RESTRICTIONS AND WILDEN AVENUE CLOSURE  
(JN: 2014 – 0035)**

**DATE:** August 26, 2022

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Rieth-Riley Construction has notified INDOT of an extension of the lane restrictions associated with the Wilden Avenue Reconstruction project. Two-way traffic at the intersection of SR 15 and Wilden Avenue will be maintained on SR 15, but movements to and from West Wilden Avenue at the intersection will continue to be restricted. The closure of West Wilden Avenue at the intersection is expected to continue until September 17, 2022.



**Engineering Department  
CITY OF GOSHEN**

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## MEMORANDUM

TO: Board of Public Works and Safety

FROM: Traffic Commission

RE: **NO PARKING REQUEST - PICKWICK VILLAGE**

DATE: August 29, 2022

---

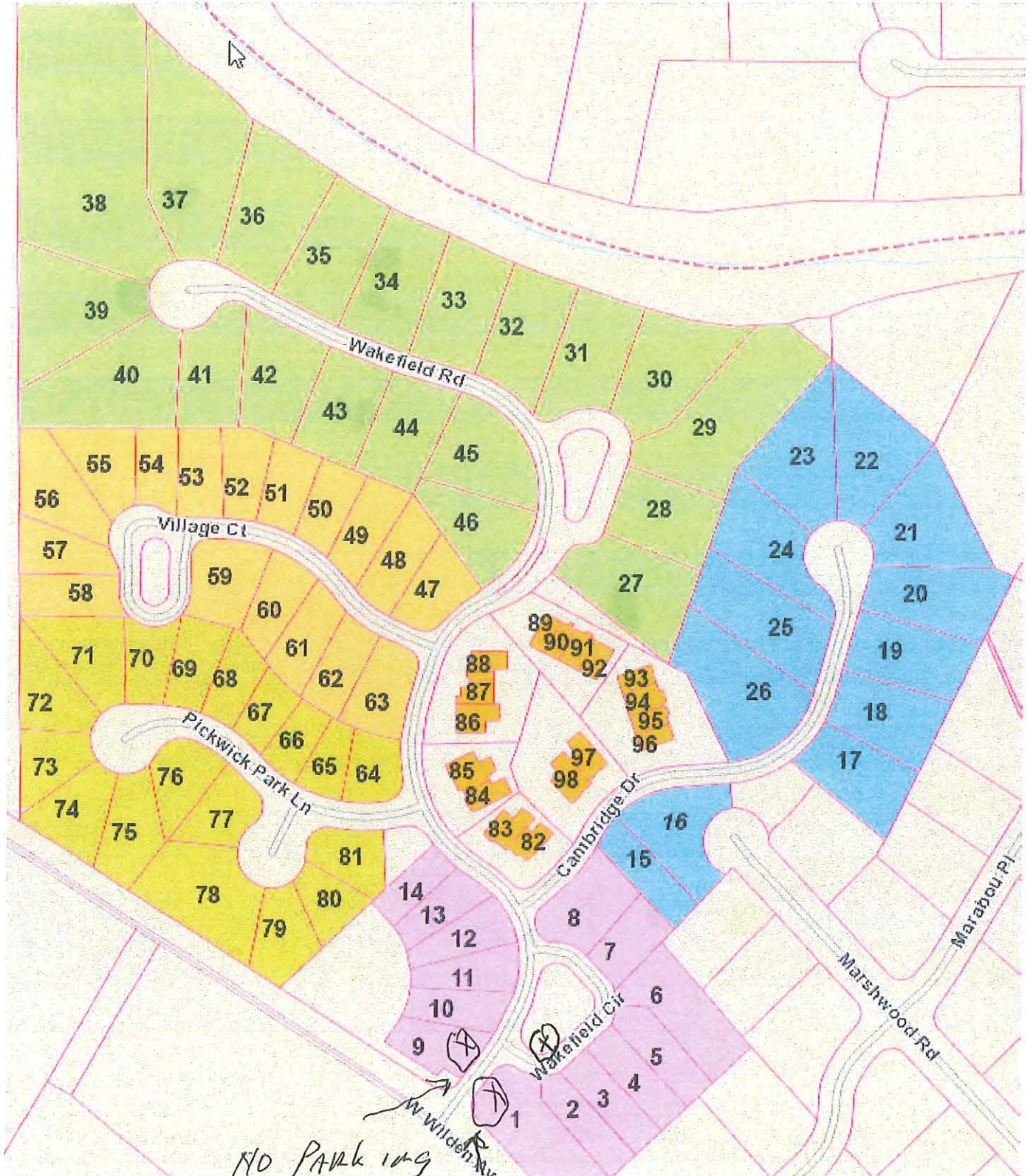
The engineering office has received a resident request to prohibit parking at the entrance to Pickwick Village. The resident has had occasions where their mail has not been delivered and their trash has not been picked up because of cars parked along the street. The resident is also concerned that the parked cars pose a dangerous situation for children getting on and off the school bus.

The traffic commission considered the request at the August meeting and unanimously supported the placement of "No Parking" restrictions along Wakefield Rd. between Wilden Ave. and Wakefield Cir. However, the commission felt that restrictions along Wakefield Circle were not necessary and would significantly impact residences along the circle.

**Recommended Action: Approve the placement of "No Parking" signs along Wakefield Rd. between Wilden Ave. and Wakefield Cir.**



# PICKWICK VILLAGE ASSOCIATION



NO PARKING  
PLEASE  
BUS STOP



**Engineering Department  
CITY OF GOSHEN**

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## MEMORANDUM

TO: Board of Public Works and Safety

FROM: Traffic Commission

RE: **NO PARKING SIGNS – HILLCREST DRIVE**

DATE: August 29, 2022

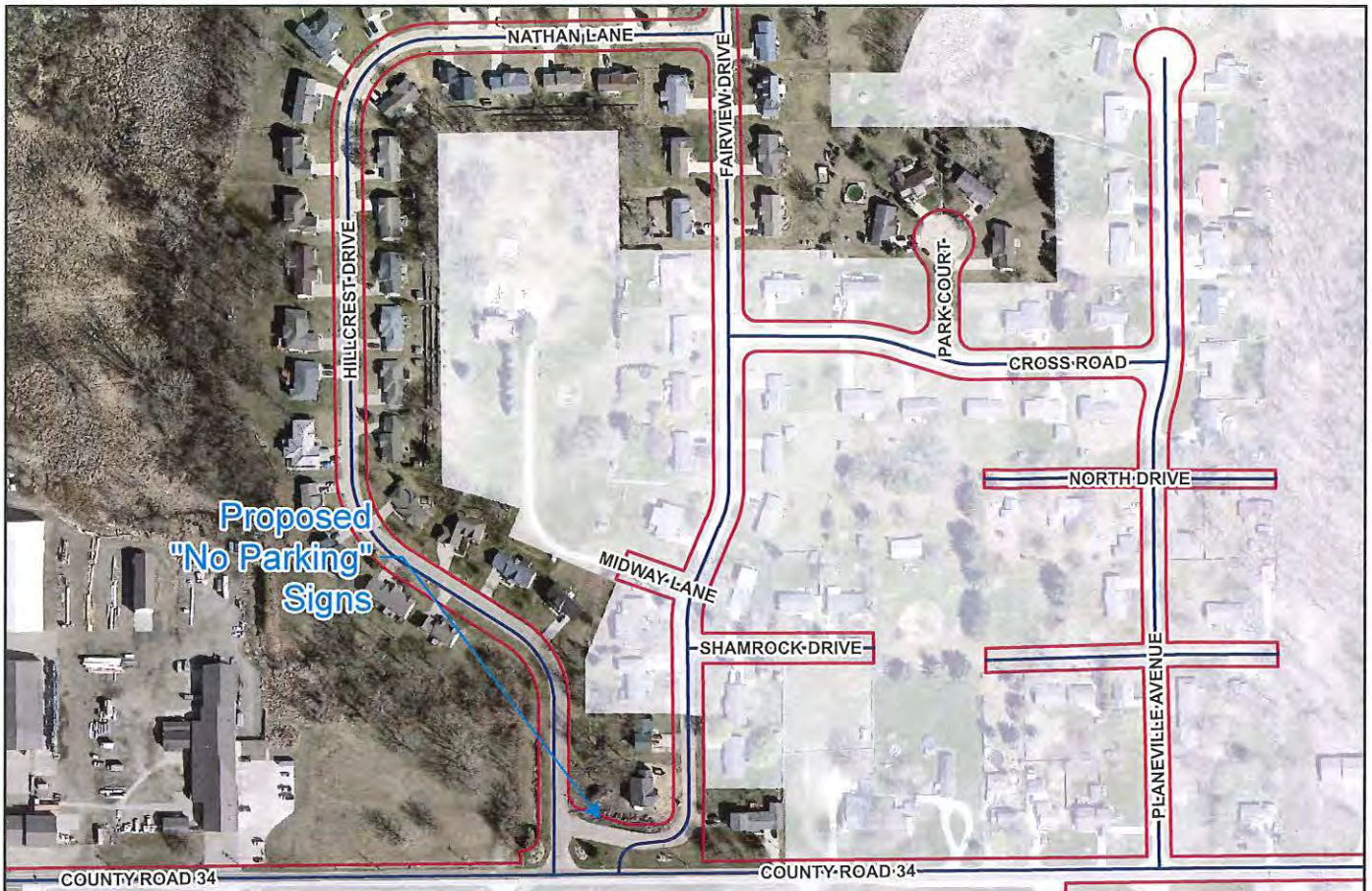
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The Goshen street department has requested permanent “No Parking” signs to be placed at the entrance to Terrace Park as depicted in the attached exhibit. This area is regularly an issue during fair week and the street department currently places numerous temporary signs to prohibit parking per request of the local residents. Placement of the permanent signs should not have a significant impact on parking availability for the residents.

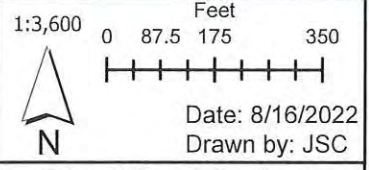
This item was considered at the August meeting of the traffic commission, and the commission recommended the installation of the signs as requested.

**Recommended Action: Approve the placement of "No Parking" signs on Hillcrest Drive and Fairview Drive near the subdivision entrance from CR 34.**





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**Request for "No Parking" Signs  
Terrace Park**

**The City of Goshen**  
Department of Public Works & Safety  
Office of Engineering  
204 East Jefferson Street, Goshen, Indiana 46528  
Phone: 574-534-2201 Fax: 574-533-8626



**Engineering Department  
CITY OF GOSHEN**

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## MEMORANDUM

TO: Board of Public Works and Safety

FROM: Traffic Commission

RE: **NEIGHBORHOOD SPEEDING CONCERNS**

DATE: August 29, 2022

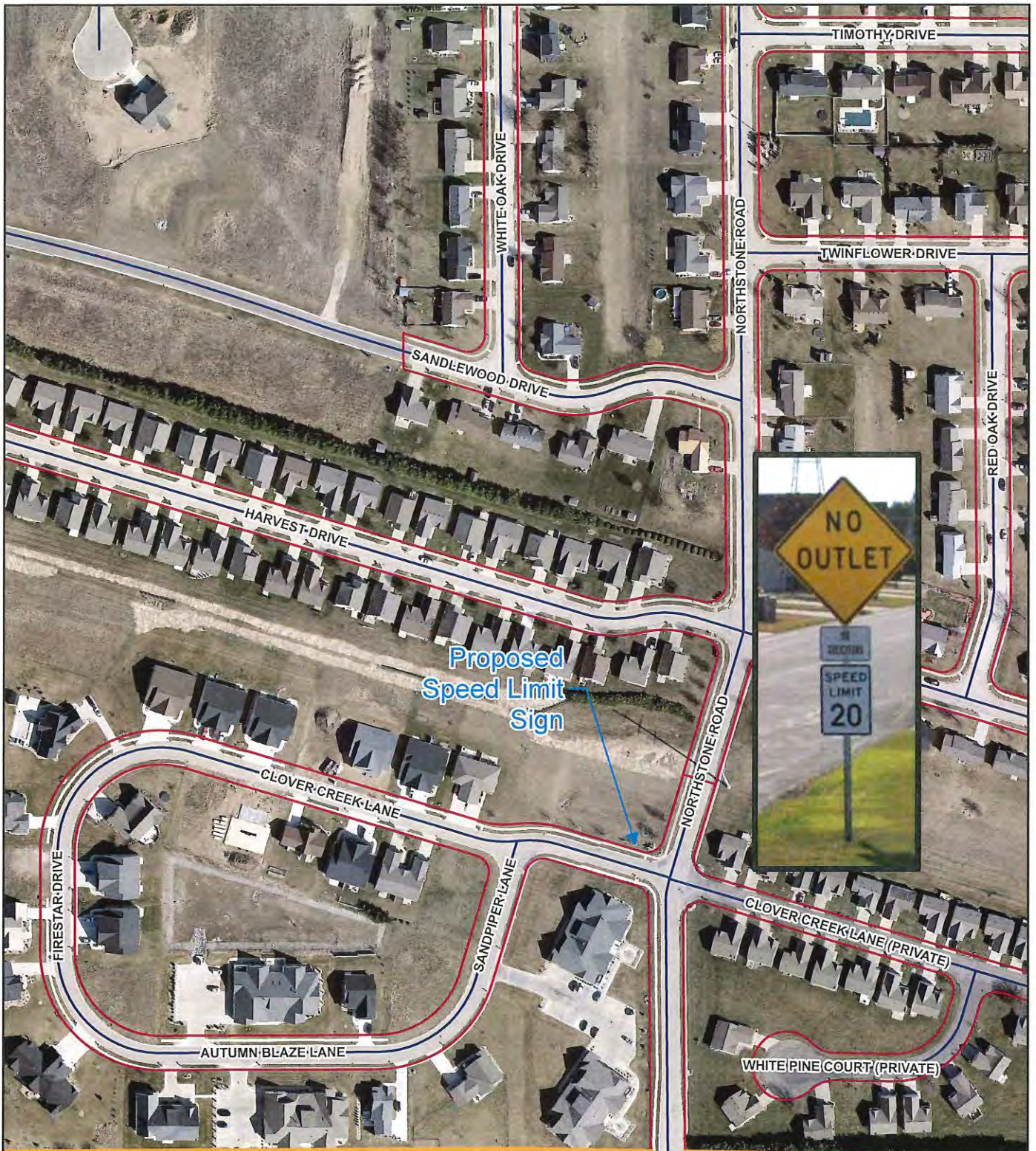
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At the August meeting, the traffic commission considered a request from a resident in Maplewood Estates for the installation of a sign assembly at the entrance on Clover Creek Lane similar to what exists on the private section of Clover Creek Lane east of Northstone Road. The proposed location and example sign assembly are shown in the attached exhibit. (Note: the "No Soliciting" placard was not included in the consideration)

As with previous similar requests, the traffic commission recommended the placement of a single speed limit sign (25 mph) at the entrance to the subdivision and also supported the placement of the "No Outlet" sign.

**Recommended Action: Approve the placement of a 25 mph speed limit sign and "No Outlet" sign on a single post on Clover Creek Lane west of Northstone Road.**





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1:2,400      Feet  
 0    60    120    240

Date: 8/16/2022  
 Drawn by: JSC

## Request for Speed Limit Signs Maplewood Estates

**The City of Goshen**  
 Department of Public Works & Safety  
 Office of Engineering  
 204 East Jefferson Street, Goshen, Indiana 46528  
 Phone: 574-534-2201    Fax: 574-533-8626





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## MEMORANDUM

TO: Board of Public Works and Safety

FROM: Traffic Commission

RE: **ALLEY 139 SIGNS**

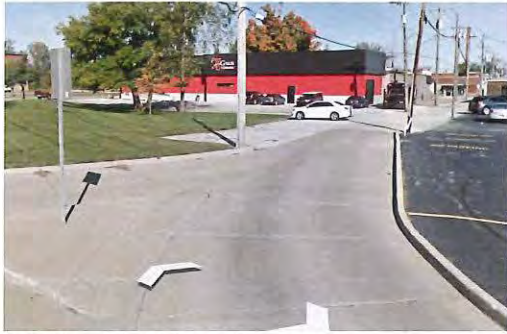
DATE: August 29, 2022

---

At the August meeting, the traffic commission review the directional control signs along alley 139. The current directional control is depicted in the attached exhibit along with pictures of the current signs. The traffic commission forwards a recommendation to remove the directional restrictions and allow bi-directional traffic to self-regulate in the low-speed alleyways as the best option.

**Recommended Action: Approve the removal of the directional control signage along alley 139.**

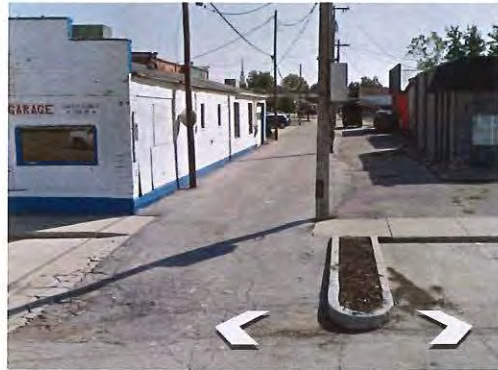




Madison looking North



Jefferson looking North



Jefferson looking South



Washington looking North



Washington looking South



Between Lincoln and Washington looking South



Lincoln looking South







**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: Goshen Engineering

RE: **CONCRETE PAVING PROJECT  
CHANGE ORDER NO. 1 (JN: 2022-0002)**

DATE: August 29, 2022

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Rieth Riley is requesting an additional 22 days to be added to the project schedule due to the delay of the utility locates not being located at the beginning of the project. Rieth Riley could not perform the work until the project was located properly.

Goshen Engineering has seen the locate ticket requests, and can confirm the requested days are warranted.

**Requested motion: Approve Change Order No. 1 of an additional 22 calendar days to the project schedule to perform the remainder of the work.**

***CITY OF GOSHEN, INDIANA  
OFFICE OF THE CITY ENGINEER  
204 E. Jefferson Street, Suite 1  
Goshen, IN 46528***

OWNER: City of Goshen  
PROJECT NAME: Concrete Paving Project  
PROJECT NUMBER: 2022-0002  
CONTRACTOR: Rieth Riley Construction

**I. DESCRIPTION OF WORK INVOLVED (Use additional sheets if needed)**

Rieth Riley is requesting an additional 22 days be added on to the project schedule due the delay of the utility locates not being located at the beginning of the project. Rieth Riley could not perform any of the work until the project was located properly.

Subtotal -

**II. ADJUSTMENTS IN AMOUNT OF CONTRACT**

1. Amount of original contract		\$973,545.25
2. Net (Addition/ <del>Reduction</del> ) due to all Previous Contract Supplements Numbers	0 to <u>1</u>	\$0.00
3. Amount of Contract, not including this supplement		\$973,545.25
4. Addition/ <del>Reduction</del> to Contract due to this supplement		\$0.00
5. Amount of Contract, including this supplemental		\$973,545.25
6. Total (Addition/ <del>Reduction</del> ) due to all Change Orders (Line 2 + Line 4)		\$0.00
7. Total percent of change in the original contract price Includes Change Order No.	1 to <u>1</u> (Line 6 divided by Line 1)	0.00%

**III. CONTRACT SUPPLEMENT CONDITIONS**

1. The contract completion date established in the original contract or as modified by previous Contract Supplement(s) is hereby **extended/reduced** by **22 calendar days**, making the final completion date September 23, 2022.
2. Any additional work to be performed under this Contract supplement will be carried out in compliance with the specifications included in the preceding Description of Work Involved, with the supplemental contract drawing designed as NA, and under the provisions of the original contract including compliance with applicable equipment specifications, general specifications and project specifications for the same type of work.
3. This Contract Supplement, unless otherwise provided herein, does not relieve the contractor from strict compliance with the guarantee provisions of the original contract, particularly those pertaining to performance and operation of equipment.
4. The contractor expressly agrees that he will place under coverage of his Performance and Payment Bonds and contractor's insurance, all work covered by this Contract Supplement. The contractor will furnish to the owner evidence of increased coverage of this Performance and Payments bonds for the accrued value of all contract supplements, which exceed the original contract price by (0) percent.

**RECOMMENDED FOR ACCEPTANCE**

Dustin K. Sailor 8.25.22  
Dustin Sailor, PE

**ACCEPTED:** Board of Works and Safety  
CITY OF GOSHEN, INDIANA

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

\_\_\_\_\_  
Member

**ACCEPTED:** CONTRACTOR

\_\_\_\_\_  
Rieth Riley Construction

BY: \_\_\_\_\_  
Signature of authorized representative of Contractor

\_\_\_\_\_  
Printed



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CITY OF GOSHEN**

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## MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

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

RE: **CLINTON WATER TOWER – AT&T LEASE  
SIGNATURE FOR FAA NOTIFICATION  
(JN: 2002-2032)**

DATE: August 26, 2022

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AT&T, occupying space on the Clinton Water Tower under a 2002 lease agreement, is looking to make modifications to their equipment. In accordance with the 2007 FAA Collocation Spectrum Void Policy that list frequencies that can be added without voiding the FAA determination, a new FAA filing is required allowing AT&T to add newly authorized frequencies without voiding the City's Determination of No Hazard for the tower.

It is the site owner's responsibility to apply for the FAA notification, but AT&T's consultant, Ericsson, will prepare the filing if authorized by the City. To avoid additional paperwork that is outside staff expertise, please authorize the Mayor to sign the attached letter of permission with Ericsson.

**Requested Motion:** *Move to authorize the Mayor to sign the letter allowing Ericsson to file the necessary FAA paperwork necessary for AT&T to add additional signal equipment on the Clinton Water Tower.*



DATE: 8/9/2022

**TO: City of Goshen**  
**204 E. Jefferson St, Ste. 1**  
**Goshen, IN 46528**

RE: Site Name/PACE ID/FA Code: GRANMI1969-10096659-MRIND058581

Site Address: 204 Tanglewood Dr., Goshen, IN 46526

**Dear Ms. Hetler:**

Ericsson is managing a project in which AT&T Mobility has installed antennas previously and/or will be installing new antennas on a tower structure of the above-noted location. With the new modification and/or new collocation build site in progress to install antenna(s) and/or radios, the FAA is requiring that a new FAA filing be submitted to include any new frequency band(s) that is not currently listed under the FAA's Collocation Spectrum Void Policy and/or owner's most current FAA filing.

With this said, our AT&T Mobility Regulatory Group will complete the necessary FAA filing but will need documented permission from the structure owner to file under the structure owner's name. Please sign and complete where indicated below and AT&T Mobility Regulatory Group will file the necessary documentation with the FAA.

Thank you for your support in our endeavors and should you require anything further, please feel free to contact us.

**OWNER FILLS OUT THIS SECTION BELOW:**

Owner Permission Signature:

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Printed Name:

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Phone:

---

Email:

---

Date:

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