



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m., Nov. 14, 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: Oct. 31, 2022

Approval of Agenda

- 1) Fire Department:** Conditional Offer of Employment Agreement with Kevin A Mann
- 2) Elizabeth & Nathan Yoder request:** Approval for a patio encroaching on the Douglas Street right-of way, with a response from the Director of Public Works
- 3) Aguilar family request:** Approval for gravel driveway at 1322 East Douglas Street
- 4) Legal Department:** Community Service Partnership Agreement with Economic Development Corporation of Elkhart County
- 5) Legal Department:** Approve and authorize Mayor Stutsman to execute the agreement with OJS Building Services, Inc. for upgrading KMC Temperature Controls at the Goshen Police Department at a cost of \$46,550
- 6) Legal Department:** Approve and authorize Mayor Stutsman to execute the agreement with OJS Building Services, Inc. for the replacement of hot and chilled water valves at the Goshen Police Department at a cost of \$38,150
- 7) Legal Department:** Approve and authorize Mayor Stutsman to execute the Agreement for the special cleaning of Well #14 with Peerless Midwest, Inc. at a cost of \$29,960.
- 8) Legal Department:** Approve and authorize Mayor Stutsman to execute the Agreement with Peerless-Midwest, Inc. for work on the #7 pump overhaul at a cost not-to-exceed \$27,840



9) Legal Department: Agreement with Peerless-Midwest, Inc. for work on the #4 pump overhaul at a cost not-to-exceed \$25,830

10) Legal Department: Resolution 2022-28 – Contract with Indiana Department of Transportation for Sweeping Services

11) Legal Department: Acceptance of Easement from Pilgrim Partners, LLC

12) Legal Department: Resolution 2022-29 for the transfer of 311 N. 9th Street to Habitat for Humanity of Elkhart County, Inc. and authorize Mayor Stutsman to execute documents necessary to accomplish the transfer

13) Legal Department: Approve an agreement with Q-mation, Inc. for the development of a serial interface custom driver for the City's SCADA system for \$14,040

14) Community Development Block Grant Program: Approve and authorize Mayor Stutsman to sign the CDBG agreement for homeownership assistance for Program Year 2022

15) Water & Sewer Office: Request to approve unpaid final accounts (Kelly Saenz)

16) Engineering Department: Approve the extended closure of Wilden Avenue from east of Main St (SR 15) to and including the intersection with 5th Street through Nov. 1s, 2022

17) Engineering Department: Approve \$10,181.12 contract with Yoder & Sons Fencing to remove and replace fencing in City Parking Lot #1 and authorize Mayor to sign the agreement

18) Engineering Department: Approve balancing Change Order No. 1, decreasing the contract \$19,759.45, for a final amount of \$329,450.70 for Niblock's asphalt paving project

Privilege of the Floor

Approval of Civil City and Utility Claims

Adjournment



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

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

Present: Mayor Jeremy Stutsman, Mike Landis, Mary Nichols, DeWayne Riouse and Barb Swartley

Absent: None

CALL TO ORDER: Mayor Jeremy Stutsman called the meeting to order at 2:01 p.m.

REVIEW/APPROVE MINUTES: Mayor Stutsman presented the minutes of the Oct. 24, 2022 Regular Meeting. Board member Mary Nichols moved to approve the minutes and the motion was seconded by Board member DeWayne Riouse. Motion passed 5-0.

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

1) Police Department: Accept resignation of Detective Nicholas D. McCloughen and approve the hiring Det. McCloughen as a Reserve Patrol Officer

Goshen Assistant Police Chief Shawn Turner asked the Board approve the resignation of Detective Nicholas D. McCloughen as a full-time police officer with the Police Department, effective Friday Nov. 4, 2022. Chief Turner also asked the Board to approve the hiring of McCloughen for the position of Reserve Patrol Officer, also effective Nov. 4. **Chief Turner** said **Chief José Miller** received a resignation letter from McCloughen stating he will be starting a career in the private sector. He said McCloughen is an exceptional officer who has been involved with/and assisted, in the solving of numerous serious crimes against our community. The Chief said his experience and dedication will truly be missed; he has served on the Goshen Police Department as a full-time officer since April 2007.

Chief Turner said McCloughen considers the members of the department his family since he has been there all his life and followed the footsteps of his father, who retired from the department soon after Nick was hired. He said he was excited for McCloughen and his family in this new career path and is certain he will be successful in whatever he chooses to do in life. He also thanked him for his dedication to our community and the department.

Chief Turner added that McCloughen wants to remain on the Goshen Police Department as a reserve police officer until all the current investigations he has been involved with are concluded.

Mayor Stutsman agreed with the Chief's appreciation and praise for Detective McCloughen's work, including his service with the Elkhart County Homicide Unit. He also said McCloughen has been an asset to the community.

Nichols/Riouse moved to approve the resignation of Detective Nicholas D. McCloughen as a full-time police officer with the Goshen Police Department, effective Friday Nov. 4, 2022. Motion passed 5-0.

Nichols/Riouse then moved to approve the hiring of McCloughen for the position of Reserve Patrol Officer, also effective Nov. 4. Motion passed 5-0.

Afterward, Mayor Stutsman swore McCloughen into office as a Reserve Patrol Officer.



2) Company request: Yaw Construction request to close the eastbound lane of West Lincoln Avenue, west of Riverside Drive, from 9-11 am on Nov. 1, 2022

Kerry Yaw, the president of Yaw Construction Inc., asked the Board to approve the closure of the eastbound lane of West Lincoln Avenue, west of Riverside Drive, from 9 a.m. to 11 a.m. on Tuesday, Nov. 1 to pour a concrete patio at the rear of a house because access is not possible by truck because of utility lines.

Board member Landis thanked Yaw for requesting the closure, noting that some contractors don't seek permission. **Mayor Stutsman** said he agreed.

At the request of **City Assistant Planning & Zoning Administrator Rossa Deegan**, Yaw provided the address of the home where the concrete for the patio would be poured.

In a staff report, **City Director of Public Works Dustin Sailor** said the City Engineering Department had no issue with the two-hour requested lane closure as long as Yaw provided a flagging operation in accordance with MUTCD guidelines that would allow traffic to safely move around the short-distance lane closure on a collector street.

Nichols/Riouse moved to allow closure the eastbound lane of West Lincoln Avenue, west of Riverside Drive, from 9 a.m. to 11 a.m. on Tuesday, Nov. 1. Motion passed 5-0.

3) Legal Department request: Approve agreement with Grever & Ward, Inc. to provide cemetery planning services for Violet Cemetery

Brandy Toms, a paralegal with the City Legal Department, asked the Board to approve and authorize Mayor Stutsman to execute the agreement with Grever & Ward, Inc. to provide cemetery planning services to Violet Cemetery at a cost of \$24,700. Toms said the contractor anticipates the project to take approximately 12-16 weeks for completion, upon authorization to proceed, weather permitting.

Mayor Stutsman said **Director of Cemeteries Burt Matteson** was present in case there were any questions from the Board. He also said the company would be providing a general plan for the cemetery because the City plans to open a new section. He said the plan would include new roads, plots and other features.

In response to a question from **Board member Swartley**, Matteson said the plan would be for the northern section of the cemetery. In response to a question from **Board member Landis**, Matteson said the plan will provide guidance for cremation services and cemetery land use. **Mayor Stutsman** said because of City staffing issues, it was determined it was better to have the planning done by an outside company so a plan could be ready sooner.

Nichols/Riouse moved to approve and authorize Mayor Stutsman to execute the agreement with Grever & Ward, Inc. to provide cemetery planning services to Violet Cemetery at a cost of \$24,700. Motion passed 5-0.

4) Legal Department request: Approve credit application with McCann Industries, Inc. and authorize Superintendent of City Water Treatment and Sewer Department Kent Holdren to sign the credit application

City Attorney Bodie Stegelmann asked the Board to approve the credit application with McCann Industries, Inc. and authorize Superintendent of City Water Treatment and Sewer Department Kent Holdren to sign the credit application.

Stegelmann said the City's Water & Sewer Department needed to lease a backhoe from McCann Industries, Inc. to complete a project. He said McCann Industries, Inc. required execution of their form credit application. The Legal Department reviewed the credit application, struck objectionable language, and had Holdren sign the application. If approved, City staff will provide the signed application to McCann Industries, Inc.

Nichols/Riouse moved to approve the credit application with McCann Industries, Inc. and authorize Kent Holdren to sign the credit application. Motion passed 5-0.



5) Legal Department request: Approve Amendment to the Agreement for the sale and purchase of real estate with Delmar J. Birkey and Stacy R. Birkey

Shannon Marks, the Legal Compliance Administrator for the City Legal Department, asked the Board to approve and authorize the Mayor to execute the Amendment to the Agreement for the Sale of Purchase of Real Estate with Delmar J. Birkey and Stacy R. Birkey.

Marks said that pursuant to an Agreement for the Sale of Purchase of Real Estate with the couple, the Birkeys are to deliver possession and occupancy of the real estate at 1689 Reliance Road to the City on or before Nov. 1, 2022. However, the Birkeys have requested additional time to move their personal property, and the City has agreed to allow this additional time. The attached Amendment to the Agreement for the Sale of Purchase of Real Estate would allow the Birkeys to deliver possession of 1689 Reliance Road to the City on or before Jan. 1, 2023.

In response to a question from **Mayor Stutsman**, Marks said the Birkeys requested until the end of November to move their property, but Marks thought it would be better to give them until the end of the year. The Mayor said he agreed with that decision.

Nichols/Riouse moved to approve and authorize the Mayor to execute the Amendment to the Agreement for the Sale of Purchase of Real Estate with Delmar J. Birkey and Stacy R. Birkey. Motion passed 5-0.

6) Engineering Department request: Approve and authorize the Mayor to sign Change Order No. 1 increasing the contract amount by \$1,221.51, for a revised contract amount of \$6,966,241.07, for the Wilden Avenue reconstruction (JN: 2014-0035)

City Civil Traffic Engineer Josh Corwin asked the Board to approve and authorize the Mayor to sign Change Order No. 1, increasing the contract amount by \$1,221.51, for a revised contract amount of \$6,966,241.07 for the Wilden Avenue reconstruction (JN: 2014-0035).

Sailor said this change order is for the addition of a 3c/8 power cable and service point for the new signal at Wilden and Main. These items were not included in the bid plan set. Change Order No. 1 increases the current contract price by \$1,221.51, making the current contract amount \$6,966,241.16, a 0.018% increase over the original contract of \$6,965,019.65.

Original contract amount	\$6,965,019.65
Change Order No. 1	\$ 1,221.51
Revised contract amount	\$6,966,241.16

Before the vote on the motion, **Mayor Stutsman** asked that City staff make sure and include the name of the contractor in future change order requests.

Nichols/Riouse moved to approve and authorize the mayor to sign Change Order No. 1 increasing the contract amount by \$1,221.51, for a revised contract amount of \$6,966,241.16 for the Wilden Avenue reconstruction (JN: 2014-0035). Motion passed 5-0.

Privilege of the Floor (opportunity for public comment for matters not on the agenda):
Mayor Stutsman opened Privilege of the Floor at 2:16 p.m.

There were no public comments, so the Mayor closed Privilege of the Floor at 2:16 p.m.



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

Mayor Stutsman adjourned the meeting at 2:16 p.m.

APPROVED

Mayor Jeremy Stutsman

Mike Landis, Member

Mary Nichols, Member

DeWayne Riouse, Member



Barb Swartley, Member

ATTEST

Richard R. Aguirre, City of Goshen Clerk-Treasurer



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

November 14, 2022

To: Goshen Board of Public Works and Safety
From: Shannon Marks, Legal Compliance Administrator
Subject: Goshen Fire Department Conditional Offer of Employment to Kevin A. Mann

On behalf of the Fire Department, it is recommended that the Board extend a conditional offer of employment to Kevin A. Mann, as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor, or the Deputy Mayor in the Mayor's absence, to execute the agreement.

The agreement sets forth the conditions that the prospective employee must meet prior to beginning employment with the Fire Department as a probationary firefighter which includes being approved by the board of trustees of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Kevin currently possesses Firefighter I/II certification and Basic EMT certification; and he is currently enrolled in a paramedic training program.

Once employed, Kevin will be required to successfully complete a paramedic training program and obtain an Indiana paramedic license, and serve as an active paramedic with the Department a minimum of three years.

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

Suggested motions:

- (1) Move to extend a conditional offer of employment to Kevin A. Mann as a probationary firefighter.
- (2) Move to approve the Conditional Offer of Employment Agreement with Kevin A. Mann, and authorize the Mayor, or the Deputy Mayor in the Mayor's absence, to execute the agreement.

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

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

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

CONDITIONAL OFFER OF AND PREREQUISITES TO BEGINNING EMPLOYMENT

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

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

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

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

**AGREE TO OBTAIN A PARAMEDIC LICENSE
AND SERVE AS A PARAMEDIC**

- (1) As a condition of employment with City and the Goshen Fire Department, Mann is required to successfully complete a paramedic training program, pass the license test, obtain an Indiana paramedic license, and serve as an active paramedic with the Goshen Fire Department a minimum of three (3) years.
- (2) Upon commencing employment, Mann agrees to enroll in a paramedic training program when instructed to do so by the Fire Chief, attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license. If Mann is currently enrolled in and attending a paramedic training program prior to commencing employment, Mann agrees to continue to attend and successfully complete the training program, pass the license test, and obtain an Indiana paramedic license.
- (3) Starting on Mann's first day of employment, City will pay the cost of the paramedic training program. If Mann is currently enrolled in and attending a paramedic training program prior to commencing employment, City will pay a prorated cost of the training program based on the portion of the training program remaining after Mann's first day of employment with the Goshen Fire Department. While employed with the Goshen Fire Department, City will pay Mann for the time to attend class and required clinical sessions. Mann shall schedule all classes and clinical sessions when Mann is scheduled to work to the extent possible. City will pay the cost for the paramedic training program, or prorated portion thereof, and for Mann's time to attend the paramedic training classes and clinical sessions one (1) time. City will not pay for a refresher course or for Mann's time to attend a refresher course unless City does not pay for any of the paramedic training program cost or Mann's time to attend the paramedic training program.
- (4) Mann shall have twenty-four (24) months from the first day of the paramedic class to successfully complete the paramedic training program. Mann agrees to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program.
- (5) If Mann refuses to attend the paramedic training program, fails to successfully complete the paramedic training program within twenty-four (24) months from the first day of the

paramedic class, or fails to obtain an Indiana paramedic license within one (1) year after completion of the paramedic training program, Mann's employment with City and the Goshen Fire Department will be terminated for cause.

- (6) Except as provided by paragraph (10), if Mann leaves employment with City and the Goshen Fire Department before obtaining an Indiana paramedic license, including termination, Mann agrees to repay City the City's actual cost for Mann to attend the paramedic training program, including the cost of the training program and the time City paid another employee to cover Mann's shift due to Mann's attendance of the paramedic training classes and clinical sessions. In no event shall the reimbursement amount exceed the sum of Fifteen Thousand Dollars (\$15,000).
- (7) Upon receiving an Indiana paramedic license, Mann agrees to serve City and the Goshen Fire Department as an active paramedic in accordance with the requirements set forth in the contract between the City of Goshen and the Goshen Firefighters Association, Local No. 1443, as amended from time to time. Mann agrees to maintain Mann's paramedic license as long as Mann is required to serve City and the Goshen Fire Department as a paramedic.
- (8) Mann agrees to serve City and the Goshen Fire Department as an active paramedic for a minimum of three (3) full years. Except as provided by paragraph (10), if Mann fails to serve City and the Goshen Fire Department as an active paramedic for three (3) full years, including termination, Mann agrees to repay City a prorated portion of Fifteen Thousand Dollars (\$15,000) or City's actual cost for Mann to attend the paramedic training program, whichever is less. The reimbursement amount will be credited at the rate of Five Thousand Dollars (\$5,000) or one-third (1/3) of City's actual cost, whichever is less, for each full year Mann serves City and the Goshen Fire Department as an active paramedic. (Credit will not be given for partial years of service.) If City's actual cost for the paramedic training is less than Fifteen Thousand Dollars (\$15,000), then City and Mann agree to establish in writing City's actual cost for Mann to complete the paramedic training program, including the cost of the training program and the time City paid another employee to cover Mann's shift due to Mann's attendance of the paramedic training classes and clinical sessions.
- (9) Mann's repayment to City is due (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Mann's last day of employment with City and the Goshen Fire Department. Interest will accrue on the unpaid balance of the repayment at the rate of eight percent (8%) per annum beginning thirty (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Mann's last day of employment with City and the Goshen Fire Department.
- (10) No repayment will be due City if Mann fails to obtain an Indiana paramedic license and/or fails to serve as an active paramedic for three (3) full years because of disability or illness

which make it impractical for Mann to obtain an Indiana paramedic license and/or to continue to serve as a paramedic in the foreseeable future, or due to death.

AMENDMENT

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

SEVERABILITY

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

INDIANA LAW

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

BINDING EFFECT

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

ENTIRE AGREEMENT

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

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

City of Goshen, Indiana

By: _____

Kevin A. Mann

Printed: _____

Date: _____

Title: _____

Date: _____

10/26/2022

Request for Patio Approval

802 S 7th St, Goshen, IN

This letter is to request approval for redo and extension of the patio between our house and garage at the above address at the corner of S. 7th and E. Douglas Streets. The old cement patio is badly cracked and we would like to replace and enlarge it. The patio would be made of flagstone and be level with the surrounding area. The total area is approx. 330 sq feet. The old portion is 12ft x 11ft 7in. The addition would extend 11.5 feet toward Douglas St. from the current patio which ends at the front of the house and be 16ft 9in wide. This new portion extends 4ft 6in into the city right of way. Please see diagram provided.

We have noticed that a new cement driveway was approved and installed at 416 E Douglas in our block which also makes use of the city right away.

Thank you for your consideration,

Elizabeth and Norman Yoder

**ENGINEERING & ZONING CLEARANCE - BUILDING PERMIT APPLICATION
CITY OF GOSHEN, INDIANA**

Landowner/Applicant: Norman Elizabeth Yoder Phone: 574-596-9403 Date: 08/26/2022
 Mailing Address: 802 S 7th St, Goshen, IN Zip Code: 46526
 PROPOSED USE/CONSTRUCTION: patio redo + extension
 Building Address: 802 S 7th St, Goshen, IN Twp: Elkhart
 PROPOSED CONSTRUCTION: _____ Zoning District: _____
 Contractor: Countryscapes + Gardens Address: 1680 Lindlunway West, Ligonier, IN 46767
 Phone: 260-394-4498 Email: mett@countryscapesandgardens.com Approx. Cost: 12,610.00
 Lot No. _____ Corner Interior Through Subdivision: _____
 Lot Width: _____ Lot Depth: _____ SF/Acres: _____ Existing Use: _____
 Public Sewer Public Water Well Septic System Flood Zone Designation: _____
 Dedicated Road Private Road Sidewalk Required Landscaping Required
 Size: _____ X _____ Square Footage: 330 SF Coverage: _____ % Height: _____ ft/story
 Setbacks measured from the furthest projection to the property line:
 Front _____ Rear _____ Side _____ Side _____
 Conventional Manufactured Home Type I (HUD Certified) Modular Home (PL 360 Certified) Mobile Home
 For Manufactured/Modular/Mobile Homes, Installer's State # _____
 Deck _____ sq. ft. Patio _____ sq. ft. Porch _____ sq. ft. Basement: _____ Finished sq. ft.
 1st story _____ sq. ft. 2nd story _____ sq. ft. Garage: Attached Detached sq. ft. Total sq. ft.: _____
 Subcontractors: Electrical NA Mechanical NA Plumbing NA
 Temp electric: Yes No Central air: Yes No IPC IRC Total # plumbing fixtures _____
 Principal Building Accessory Structure Addition Remodeling Rental unit: Yes No
 Parking required _____ Parking provided: _____
 Parking/Driving aisle setbacks: Front _____ ft Rear _____ ft Side _____ ft Side _____ ft

The information on this application together with attachments thereto are true and complete. I agree that all structures and uses, as indicated, will comply with the standards and restrictions for the Zoning District in which they are located, and that any deviation there from will render this certificate null and void.

Date: 8/26/2022 Signed: Norman Elizabeth Yoder Owner/Agent

ENGINEERING CLEARANCE

The following have been approved by Goshen Engineering:

Water/Sewer Site Plan Stormwater Clearance Post-construction Plan
 Driveway Permit: Commercial Residential Industrial Date Issued: _____
 Engineering Project Number: _____
 Conditions of Approval: _____

I have examined the above application for compliance with Engineering Department requirements. On the basis of the information submitted it is hereby determined that Engineering Department requirements have been met to allow a Zoning Clearance to be granted.

Date: _____ Signed: _____ By/For City Engineer

ZONING CLEARANCE

Sign: Temporary/Mobile Location: _____ Dates used: _____ Time Left: _____
 Comments: _____

PLANNING INSPECTION REQUIRED BEFORE CERTIFICATE OF OCCUPANCY IS ISSUED

Variance: Granted Denied Board Action Date: _____
 Conditions: _____

Zoning Clearance Fee for Primary Buildings: Paid: _____

I have examined the above application, including site plan, for compliance with all requirements of the Zoning Ordinance. On the basis of the information submitted it is hereby determined that a Zoning Clearance shall be granted.

Date: _____ Signed: _____ By _____ Zoning Administrator

This certificate applies to Zoning Clearance only and does not satisfy the requirements of any applicable building or engineering codes or permits required.



DOUGLAS STREET

Proposed Par. 10

802

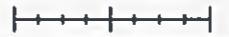
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804

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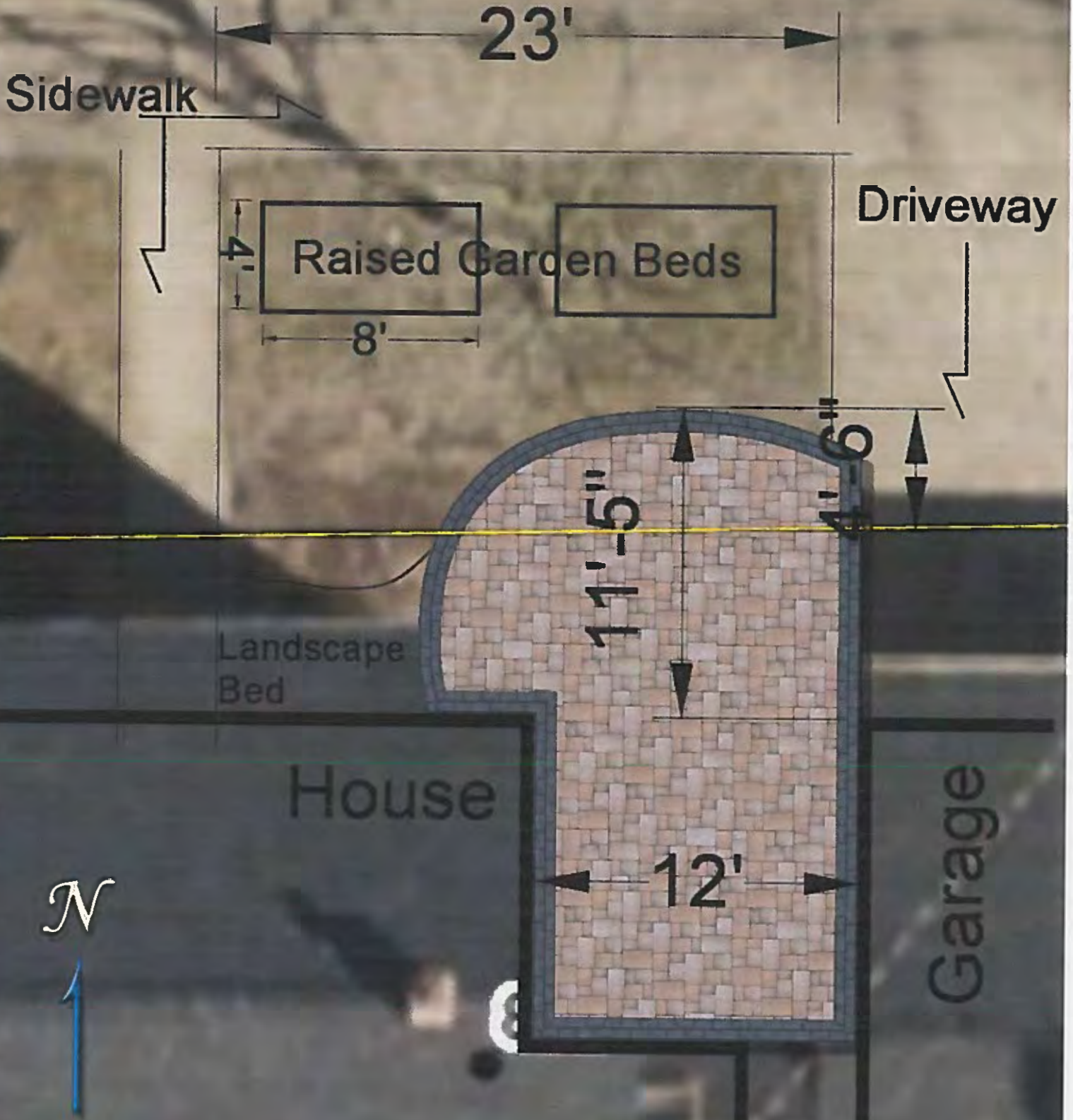


1 inch equals 20 feet

802 S 7th Street

2021 Aerial
Printed on 6/7/2022

The City of Goshen
Department of
Planning & Zoning
204 East Jefferson Street, Goshen, Indiana 46526
Phone: 574-534-3600 Fax: 574-533-8626





**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

From: Dustin K. Sailor, Director of Public Works

RE: **BOARD OF WORKS REQUEST – 802 S. 7TH STREET PATIO IN RW REQUEST
(JN: STREETS)**

Date: October 28, 2022

Goshen Engineering has reviewed the request of Mr. & Mrs. Norman Yoder to extend their patio into the public right-of-way. They provided a proposal to extend the patio 4'-6" into the public right-of-way by 16'-9" wide. Goshen Engineering's interpretation of the request is shown in the Figure 1 graphic.



Approximate Patio
Projection

Figure 1 - Aerial View of 807 S. 7th Street



Figure 2 - Google Maps View of Home from Douglas Street

The Yoder's used a recent driveway extension as a similar allowance by the City. As the department delegated with approving work within the right-of-way, Goshen Engineering does not view a patio extending from the home into the right-of-way a legitimate encroachment.

The City's right-of-way needs to be reserved for public uses that include utility services, transit, and the appropriate space necessary to rebuild the noted infrastructure. With the recent surge of communication company activity within the public right-of-way, the area that was once adequate to provide room for essential service by a few utilities is quickly becoming a tangled mess. Goshen Engineering recommends the Board of Works and Safety deny this request into the public right-of-way.



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 • www.goshenindiana.org

To: City of Goshen Board of Works & Safety
From: Clerk-Treasurer Richard R. Aguirre
Date: Nov. 14, 2022
Subject: Aguilar family request for gravel driveway at 1322 E. Douglas Street

The Clerk-Treasurer's received the following request from Adrian Aguilar on behalf of Martin Aguilar:

We are in the process of finishing our carport on 1322 E Douglas St, Goshen, IN 46528. We are required to have a hard surface for vehicles to sit on.

We would like to do a concrete floor, but because of how work is right now in this area, we don't have the means for a concrete floor. So for the meantime, we are looking at doing gravel for now and hope to do concrete in the near future.

A nearby house also has a gravel addition, too. Their driveway is at 1308 Reynolds St. We would like a similar floor as this house. By having gravel it would help by not having a muddy area, it would look better and to help vehicles not to sink in.

Attached to this memorandum is an Oct. 25, 2022 notification by the Goshen Board of Zoning Appeals of the approval for Martin Aguilar of a developmental variance to allow a side (west) setback of 5 feet where 8 feet is required for the addition of an approximately 408 square foot carport for the subject property generally located at 1322 East Douglas Street and zoned Residential R-1 District. Approval by the Board of Works is required for the gravel surface.

Goshen Board of Zoning Appeals
204 E. Jefferson Street, Suite 4
Goshen, Indiana 46528
574-534-3600

TO: Martin Aguilar
1322 E Douglas Street
Goshen, IN 46528

RE: 22-30DV –1322 E Douglas Street

You are hereby notified that the request for a developmental variance to allow a side (west) setback of 5' where 8' is required for the addition of an approximately 408 Sf carport, for the subject property generally located at 1322 E Douglas Street and zoned Residential R-1 District, was heard at the meeting of the Goshen Board of Zoning Appeals on October 25, 2022, and acted upon as follows:

APPROVED XX DENIED _____ TABLED _____ WITHDRAWN _____

With approval the following conditions shall apply:

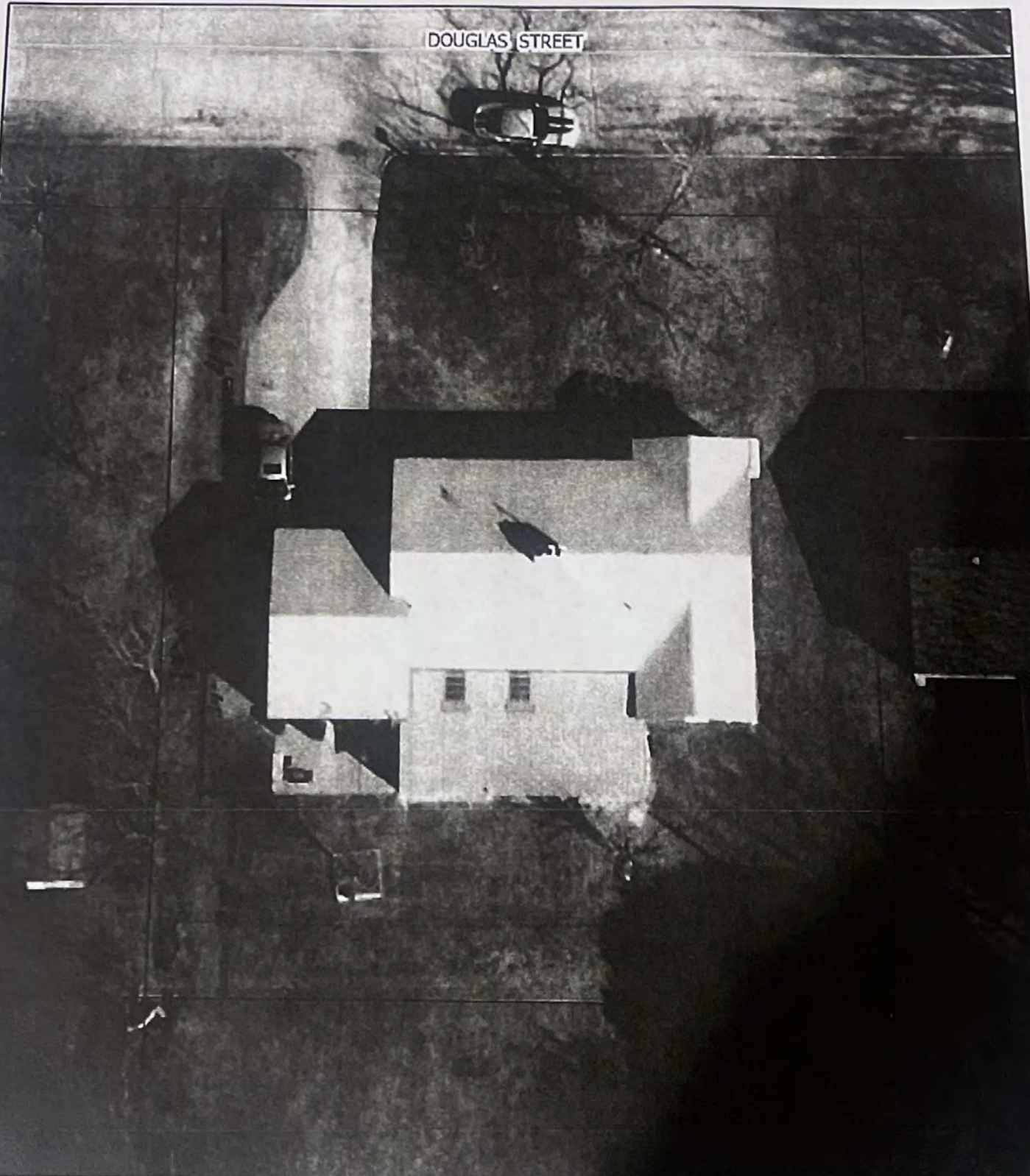
1. The variance shall become null and void unless a zoning clearance has been issued and **substantial progress** has been made within six (6) months of the date of the BZA approval.
2. Deviation from the requirements and conditions of the variance may result in the **cancellation and termination** of the approval or permit.
3. An approved zoning clearance form is required.
4. Approval by the Building and Fire departments is required.
5. **Approval of the gravel surface by the Board of Public Works is required.**



Lee Rohn

City of Goshen Board of Zoning Appeals Secretary

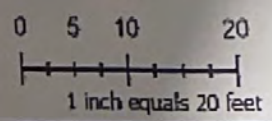
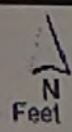
DOUGLAS STREET



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.

1322 E Douglas Street

2021 Aerial
Printed on 9/7/2022

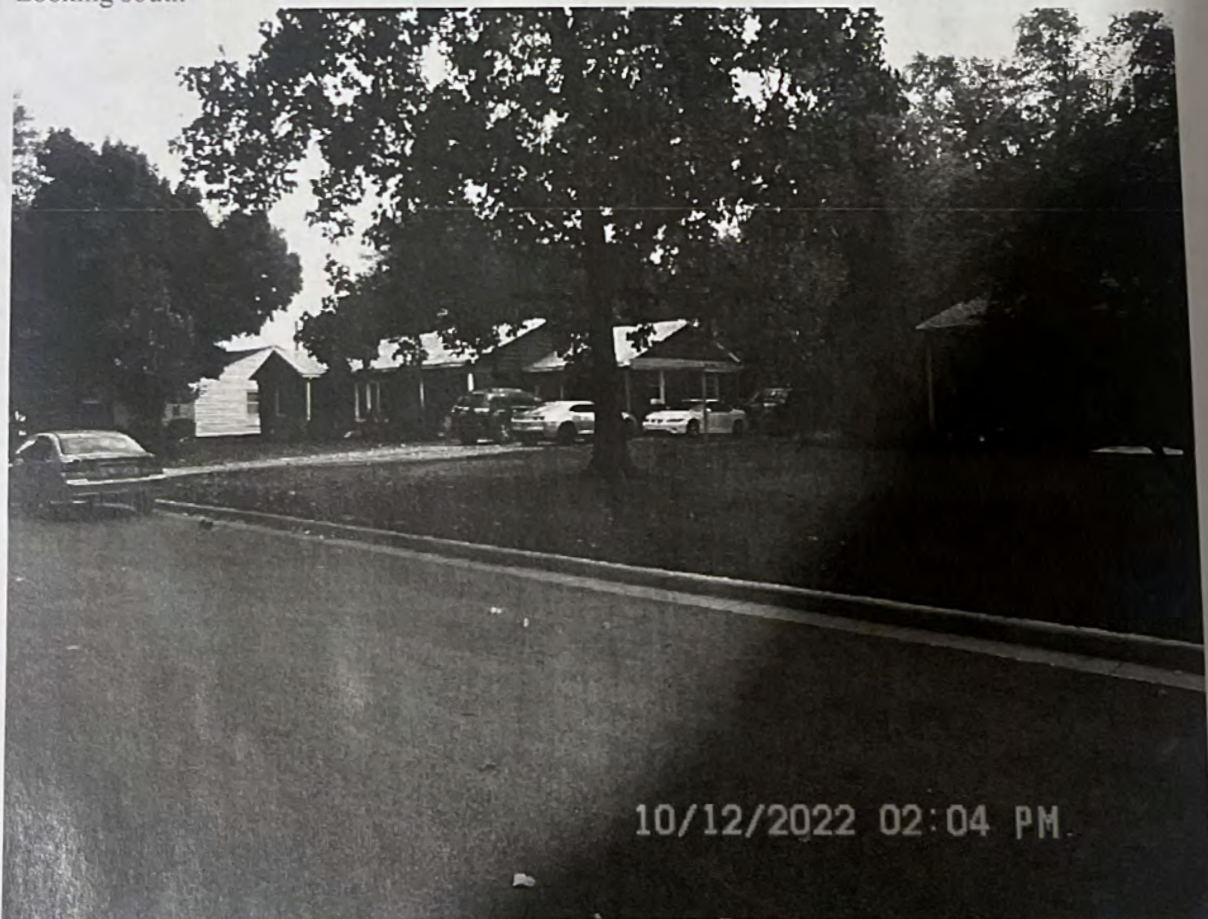


The City of Goshen
Department of
Planning & Zoning

204 East Jefferson Street, Goshen, Indiana 46528
Phone: 574-534-3600 Fax: 574-533-6626



Looking south



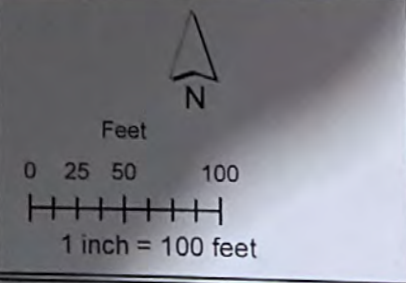
Looking southeast



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.

1322 E Douglas Street

2021 Aerial
 Printed September 28, 2022



The City of Goshen
 Department of
 Planning & Zoning
 204 East Jefferson Street, Goshen, Indiana 46528
 Phone: 574-534-3600 Fax: 574-533-8626



**Legal Department
CITY OF GOSHEN**

204 East Jefferson Street, Suite 2 • Goshen, IN 46528-3405

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

November 14, 2022

To: Board of Public Works and Safety
From: Brandy L. Toms
Subject: Community Service Partnership Agreement with Economic Development Corporation of Elkhart County

The City of Goshen has many various community service organizations that provide services or programs to its residents in a manner more efficient than what the City can provide. The City has supported these organizations with funds in the past and wishes to continue to do so. These organizations were subject to an application process requiring specific documentation regarding their organization including a detailed description of how these funds will be used.

Economic Development Corporation of Elkhart County is one such community service organization that has applied for these funds. Economic Development Corporation of Elkhart County has requested \$65,219 to help with business retention and expansion projects they are a part of. Economic Development Corporation of Elkhart County has provided all the required information and an agreement is now being brought before the Board for consideration and approval.

Suggested Motion: I move that the City of Goshen approved, and authorize Mayor Stutsman to execute, the agreement with Economic Development Corporation of Elkhart County to support the project outlined in its submitted application.

COMMUNITY SERVICE
PARTNERSHIP AGREEMENT

With Economic Development Corporation of Elkhart County for
Business Retention and Expansion

This Community Service Partnership Agreement (“Agreement”), entered into by and between the City of Goshen, Indiana (“the City”) and Economic Development Corporation of Elkhart County (the “Partner”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Purpose of this Agreement; Funds Award.

A. The purpose of this Agreement is to enable the City to award funds, in the amount of Sixty-Five Thousand Two Hundred Nineteen Dollars (\$65,219), to the Partner for eligible costs of the services or program described in Partner’s Community Services Partnership Application, a copy of which is attached hereto and made a part hereof (the “Project”).

B. The funds shall be used exclusively in accordance with the provisions contained in this Agreement, in Partner’s Community Services Partnership Application, and in conformance with any applicable Indiana Code provisions. The funds received by the Partner pursuant to this Agreement shall be used only to implement the Project or to provide the services in conformance with this Agreement and for no other purpose.

2. Representations and Warranties of the Partner.

A. The Partner expressly represents and warrants to the City that it is statutorily eligible to receive these funds and that the information set forth in its Community Services Partnership Application is true, complete, and accurate. The Partner expressly agrees to promptly repay all funds paid to it under this Agreement should it be determined either that it was ineligible to receive the funds, or it made any material misrepresentation on its Community Services Partnership Application.

B. By entering into this Agreement, Partner certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal or state department or agency. The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Partner.

3. Implementation of and Reporting on the Project.

A. The Partner shall implement and complete the Project in accordance with the description contained in Partner’s Community Services Partnership Application. Any

modification of the Project from the description given in Partner's Community Services Partnership Application shall require prior written approval of the City.

B. The Partner shall submit to the City a Final Community Services Partnership Report Form within thirty (30) days of completion of the Project, but no later than December 16, 2022, on forms provided by the City.

4. Term. This Agreement commences upon execution by both parties and approval by the Goshen Board of Public Works and Safety, and shall remain in effect through completion of the Project, or December 31, 2022, whichever is later.

5. Funding.

A. The City shall fund this award during its term, pursuant to the project budget set forth within Partner's Community Services Partnership Application. The Partner shall not make substantial modifications to any line item in the budget without the prior written consent of the City, nor shall the Project costs funded by this Agreement be changed or modified without the prior written consent of the City.

B. The disbursement of funds to the Partner shall not be made until this Agreement has been fully approved by the City.

6. Payment of Claims.

A. If advance or lump payment of all or a portion of the funds is not prohibited by statute or regulation, and the City agrees to provide such advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. Otherwise, all payments shall be made forty-five (45) days in arrears in conformance with applicable fiscal policies and procedures.

B. Requests for payment will be processed only upon presentation of a claim in the form designated by the City, and must be submitted with accompanying supportive documentation as requested by the City.

7. Project Monitoring by the City. The City may conduct on-site or off-site monitoring reviews of the Project during the term of this Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Partner shall extend its full cooperation and give full access to the Project site and to relevant documentation to the City or its authorized designees for the purpose of determining, among other things:

A. whether Project activities are consistent with those set forth in the Partner's Community Services Partnership Application;

B. the actual expenditure of funds to date on the Project is in conformity with the amounts for each budget line item as contained in Partner's Community Services Partnership Application and that unpaid costs have been properly accrued; and

C. that Partner is making timely progress with the Project, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in

this Agreement and are fully and accurately reflected in Project reports submitted to the City.

8. Audits and Maintenance of Records. Partner may be required to submit to an audit of funds paid pursuant to this Agreement, and shall make all books, accounting records, and other documents available at all reasonable times during the term of this Agreement and for a period of three (3) years after final payment for inspection by the City or its authorized designee. Copies shall be furnished to the City at no cost.

9. Compliance with Laws.

A. The Partner shall comply with all applicable federal, state and local laws, rules, regulations and ordinances. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the City and the Partner to determine whether the provisions of this Agreement require formal modification.

B. The Partner warrants that the Partner and any contractors performing work in connection with the Project shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of any work activities. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further opportunities with the City under this program.

C. The Partner affirms that, if it is an entity described in Indiana Code Title 23, it is properly registered, and owes no outstanding reports to the Indiana Secretary of State.

D. As required by I.C. § 5-22-3-7:

i. The Partner and any principals of the Partner certify that:

a. the Partner, except for *de minimis* and nonsystematic violations, has not violated the terms of:

(i) I.C. 24-4.7 [Telephone Solicitation Of Consumers];

(ii) I.C. 24-5-12 [Telephone Solicitations]; or

(iii) I.C. 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

b. the Partner will not violate the terms of I.C. 24-4.7 for the duration of this Agreement, even if I.C. 24-4.7 is preempted by federal law.

ii. The Partner and any principals of the Partner certify that an affiliate or principal of the Partner and any agent acting on behalf of the Partner or on behalf

of an affiliate or principal of the Partner, except for *de minimis* and nonsystematic violations,

a. has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law; and

b. will not violate the terms of I.C. 24-4.7 for the duration of this Agreement even if I.C. 24-4.7 is preempted by federal law.

10. Employment Eligibility Verification. As required by I.C. 22-5-1.7, the Partner hereby swears or affirms under the penalties of perjury that:

A. The Partner has enrolled and is participating in the E-Verify program;

B. The Partner has provided documentation to the City that it has enrolled and is participating in the E-Verify program;

C. The Partner does not knowingly employ an unauthorized alien.

D. The Partner shall require its contractors who perform work under this Agreement to certify to Partner that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Partner shall maintain this certification throughout the duration of the term of a contract with a contractor.

The City may terminate for default if the Partner fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

11. Funding Cancellation. When a written determination is made that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled.

12. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in Elkhart County, State of Indiana.

13. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including I.C. § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Partner covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, sexual orientation or identity, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Partner certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

The Partner understands that the City is a recipient of federal funds, and therefore, where applicable, Partner and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

14. Contracting with Relatives.

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

15. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the City shall be sent to:

City of Goshen
Attn: Legal Department
204 E. Jefferson Street
Goshen, IN 46526
bodiestegelmann@goshencity.com

B. Notices to the Partner shall be sent to (Include contact name and title, mailing and e-mail address):

Economic Development Corporation of Elkhart County
Attn: Chris Stager
300 Nibco Parkway, Suite 201
Elkhart, IN 46516
chris@elkhartcountybiz.com

16. Order of Precedence. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (1) requirements imposed by applicable federal or State law; (2) this Agreement; (3) the Community Services Partnership Application.

17. Termination for Breach.

A. Failure to complete the Project and expend funds in accordance with this Agreement may be considered a material breach, and shall entitle the City to suspend payments under this Agreement, and suspend the Partner's participation in the City Community Service Partnership program until such time as all material breaches are cured to the City's satisfaction.

B. The expenditure of funds other than in conformance with the Project or the Budget may be deemed a breach. The Partner explicitly covenants that it shall promptly repay to the City all funds not spent in conformance with this Agreement.

18. Termination for Convenience. Unless prohibited by a statute or regulation relating to the award under this Agreement, this Agreement may be terminated, in whole or in part, by the City whenever, for any reason, the City determines that such termination is in the best interest of the City. Termination shall be effected by delivery to the Partner of a Termination Notice, specifying effective date of termination and extent of termination. The Partner shall be compensated for completion of the Project properly done prior to the effective date of termination. The City will not be liable for work on the Project performed after the effective date of termination.

19. Non-Collusion, Acceptance. The undersigned individual signing on behalf of the Partner attests, subject to the penalties for perjury, that the undersigned is the Partner or a properly authorized representative, agent, member, or officer of the Partner. To the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent, or officer of the Partner, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof.

In Witness Whereof, Partner and the City have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

CITY:

CITY OF GOSHEN, INDIANA

Jeremy P. Stutsman, Mayor

Date: _____

PARTNER:

ECOMONIC DEVELOPMENT CORP
OF ELKHART COUNTY

By: _____

Name: _____

Title: _____

Date: _____



**Community Services Grant Application
Program Year 2021**

(Attach additional sheets if space provided is not adequate.)

Applications available: Monday, March 29, 2021.

Applications due: Monday, April 12, 2021.

Application submittal: Please submit one signed original, with attachments. No copies required. Submittal may be made via email.

Applications due to: Denise Blenner 202 S. Fifth, Goshen, IN 46528; mayor@goshencity.com

Call 533-9322 with questions.

Summary of Community Service Grant Priorities

Each activity must meet one of the following priorities:

1. Address a goal that has been identified in the Goshen Comprehensive Plan:
<https://goshenindiana.org/planning-zoning>
2. Address a goal that has been identified in the CDBG Five Year Consolidated Plan:
https://goshenindiana.org/media/uploads/0/8255_2020-2024-Consolidated-Plan_2020-AAP_Final.pdf
3. Meet an urgent community development need.

Community Services funds for program year 2021 will become available sometime after July 1, 2021. If a grant is awarded, program expenses may be incurred starting January 1, 2021, but no claims will be paid until grant agreements are approved by the Board of Public Works and signed.

Organization: Economic Development Corporation of Elkhart County

Organization Address: 300 Nibco Parkway, Suite 201, Elkhart, Indiana

Mailing Address: 300 Nibco Parkway, Suite 201, Elkhart, Indiana

Contact Person: Chris Stager

Phone Number: 574-293-5627

Email address: chris@elkhartcountybiz.com

Project Title: Business Retention and Expansion

Community Services grant requested: \$ 65,219

Expected number of individuals to benefit from this project: 34,756

1. Briefly describe the proposed project. Include the need or problem to be addressed, the population (or area) to be served, a description of the work, including who will carry it out, and the proposed schedule of work, including the proposed timing of requests for Community Services funds.

Thank you for your continued support of the Economic Development Corporation of Elkhart County. This funding request is for calendar year 2022. The EDC of EC represents the City of Goshen during meetings with local businesses, site selectors and other entities looking to grow or relocate their businesses here or from outside the area. We actively meet with manufacturing and logistics businesses to discuss workforce opportunities and barriers relating to additional profitability and productivity. We build ongoing relationships with Goshen businesses and work with companies and our partner organizations to deliver a variety of programs/solutions such as:

Next Level Jobs
 LIFT Network incumbent worker and Enfocus student apprenticeships
 HEA Manufacturing Sector partnerships (Health and Manufacturing) Manufacturing Readiness Grants Advanced Sector Partnerships
 Company specific training programs
 Lean, 5S, and other continuous improvement solutions

And additional services such as but not limited to:

Real and Personal property tax phase in
 Indiana Economic Development Corporation incentives
 Utility analysis and NIPSCO, I&M Utility Riders
 Talent strategy, acquisition and retention
 Property acquisition
 Permitting
 Region and community specific data

2. Complete the line item budget for the proposed project and provide details on how reimbursed costs will be calculated.

Item Description	Total Amount	Community Services Funds	Other Funds
a.			
b.			
c.			
d.			
e.			
f.			
TOTALS			

3. List the source and amount of other sources of funding, including matching funds and in-kind contributions, expected to be used to support this project. For in-kind contributions, such as volunteer labor, please include the number of hours and dollar value (\$10 per hour) of the volunteer hours.

We receive approximately 40% of our revenues from incorporated communities in Elkhart County. The remaining 60% of our operating budget is provided by contributions from local companies and organizations and grant support. Additionally, we generate incremental revenue because of the Purdue MEP training classes offered throughout Elkhart County. Since approximately 2010 the amount calculated for Goshen's support of the EDC has been calculated by multiplying Goshen's 2010 population of 32,630 x 1.998 equaling \$65,219 or roughly 16% of the Elkhart County population.

4. Describe how the project will meet one or more of the objectives identified in the Goshen Comprehensive Plan, CDBG Consolidated Plan or meet an urgent community development need.

We will be working with all local and regional partners to continue to diversify the Goshen business base and drive entrepreneurial, knowledge based, and technology focused skills growth

We currently works with Goshen College, University of Notre Dame, IUSB, Enfocus, and the South Bend Elkhart Regional Partnership to provide training content and support services. Additionally we partner with the Purdue Manufacturing Extension Partnership and Notre Dame's Labs for Industry Futures and Transformation on the advancement of Industry 4.0, continuous improvement training, and overall digital literacy.

We support all types City initiatives upon request.

We assist in representing the Elkhart County and Goshen with the US 31 Coalition.

We support a countywide dark fiber infrastructure program that will support additional broadband connectivity for the City and it's residents.

We represent Goshen on site selection trips and inquiries.

We provide employment listings for Goshen businesses on elkhartcountyworks.com

5. What are the measurable goals and timeline for this project or program? How will you define and measure success?

The goals for this submission encompass calendar year 2022

Project volume from new real and personal property investment: \$15M

Jobs Created from projects: 150

Business and Retention visits: 60+

Companies participating in training: 10

Companies taking advantage of subsidized apprenticeship and internship opportunities: 10

6. Please describe the population who will benefit from this project or program. Include demographic information in this description (age, income, ethnicity, race, etc.)

The EDC supports equal opportunity for all. We also support the regional and local diversity, equity, and inclusion programs in all areas of the county.

Organizational Characteristics

IRS nonprofit status 501 c3
Years in operation 21
Number of full-time paid staff 4
Number of part-time paid staff 1
Number of volunteer staff 0
Number of Board members 26

Briefly describe the organization's structure, mission statement and services provided.

We are a 501 C 3 not for profit Corporation and our mission statement is:

Mission

Create an economically vibrant community by: Recruiting, retaining, and strengthening our economic base; Being a catalyst for diversification, innovation, and economic change.

Vision

The EDC will leverage our entrepreneurial spirit, expertise, and regional resources to develop a more prosperous community through a diversified, resilient and knowledge - based economy.

Please attach copies of the following documents to the original application. If any of the requested documents are not available, please attach an explanation. If you have previously submitted the requested documents, and there have been no changes, new copies are not required, but please indicate which documents have been previously submitted.

- a. Most recent Annual Report and Audit
- b. Current fiscal year budget
- c. Current list of Board of Directors

Certification Of Authorization To Submit This Application

I (We) certify to the City of Goshen that the Board of Directors of the organization identified on page 1 of this application authorized the submission of this application.

Agency Director (Signature)

Chris Strayer

Date:

10/27/2022

Printed Name:

Chris Strayer, President / CEO

Chairperson, Board of Directors (Signature)

Lori K. Stanclor

Date:

10/28/22

LORI K. STANCLOR

Printed Name: PRESIDENT - EDC BOARD

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.**

FINANCIAL REPORT

December 31, 2021 and 2020

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INDEPENDENT ACCOUNTANT'S REVIEW REPORT

To the Board of Directors
Economic Development Corporation of Elkhart County, Inc.
Elkhart, Indiana

We have reviewed the accompanying financial statements of the Economic Development Corporation of Elkhart County, Inc. (a nonprofit organization), which comprise the statements of financial position as of December 31, 2021 and 2020, and the related statements of activities, functional expenses, and cash flows for the years then ended, and the related notes to the financial statements. A review includes primarily applying analytical procedures to management's financial data and making inquiries of entity management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, we do not express such an opinion.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Accountant's Responsibility

Our responsibility is to conduct the review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements for them to be in accordance with accounting principles generally accepted in the United States of America. We believe that the results of our procedures provide a reasonable basis for our conclusion.

We are required to be independent of Economic Development Corporation of Elkhart County, Inc. and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our review.

Accountant's Conclusion

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.

Supplementary Information

The supplementary information included in Schedule of Revenue Collected (Cash Basis) is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the financial statements. The supplementary information has been subjected to the review procedures applied in our review of the basic financial statements. We are not aware of any material modifications that should be made to the supplementary information. We have not audited the supplementary information and do not express an opinion on such information.

Report on 2020 Financial Statements

The 2020 financial statements were audited by us, and we expressed an unmodified opinion on them in our report dated June 1, 2021. We have not performed any auditing procedures since that date.

A handwritten signature in cursive script that reads "Insight Accounting Group, P.C." is written over a faint, rectangular background.

Insight Accounting Group, P.C.

Goshen, IN
August 1, 2022

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
STATEMENTS OF FINANCIAL POSITION
December 31, 2021 (Reviewed) and 2020 (Audited)**

	2021	2020
ASSETS		
Current assets		
Cash and cash equivalents	\$ 515,244	\$ 384,261
Pledges receivable	11,897	15,250
Contract receivable	7,410	1,089
Prepaid expenses	8,827	5,393
Short term investments	203,103	202,809
Total current assets	746,481	608,802
Property and equipment		
Furniture and fixtures	199,219	195,152
Website and software	38,928	38,928
	238,147	234,080
Less accumulated depreciation	(209,160)	(205,307)
Net property and equipment	28,987	28,773
TOTAL ASSETS	\$ 775,468	\$ 637,575

See independent accountant's review report.
The accompanying notes to financial statements are an integral part of these statements.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
STATEMENTS OF FINANCIAL POSITION
December 31, 2021 (Reviewed) and 2020 (Audited)**

	2021	2020
LIABILITIES AND NET ASSETS		
Current liabilities		
Accounts payable	\$ 1,322	\$ 653
Accrued payroll taxes	5,286	4,289
Deferred revenue	-	8,939
Total current liabilities	6,608	13,881
Net Assets		
Without donor restrictions	764,763	617,623
With donor restrictions	4,097	6,071
Total net assets	768,860	623,694
TOTAL LIABILITIES AND NET ASSETS	\$ 775,468	\$ 637,575

See independent accountant's review report.
The accompanying notes to financial statements are an integral part of these statements.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
STATEMENTS OF ACTIVITIES
For the Year Ended December 31, 2021 (Reviewed)**

	2021			
	<u>Without Donor Restrictions</u>	<u>With Donor Restrictions</u>	<u>Total</u>	<u>%</u>
Support and revenue				
Public sector contributions:				
Elkhart County	\$ 207,199	\$ -	\$ 207,199	27.70
City of Nappanee	13,421	-	13,421	1.79
Town of Middlebury	7,249	-	7,249	0.97
Town of Wakarusa	4,000	-	4,000	0.53
Town of Bristol	3,392	-	3,392	0.45
Contract fees:				
City of Goshen	65,219	-	65,219	8.72
City of Elkhart	105,240	-	105,240	14.07
Total public sector	405,720	-	405,720	54.23
Private sector contributions	229,379	-	229,379	30.67
Training classes	53,123	-	53,123	7.10
Investment income	645	-	645	0.09
Referral income	7,112	-	7,112	0.95
PPP grant income	52,075	-	52,075	6.96
Net assets released from restriction	1,974	(1,974)	-	-
Total support and revenue	750,028	(1,974)	748,054	100.00
Expenses				
Program expenses	339,386	-	339,386	45.37
Management and general	192,720	-	192,720	25.76
Fundraising expenses	70,701	-	70,701	9.45
Total expenses	602,807	-	602,807	80.58
Loss on disposal of fixed assets	81	-	81	0.01
Total expenses on classes	602,888	-	602,888	80.59
INCREASE (DECREASE) IN NET ASSETS	147,140	(1,974)	145,166	<u>19.41</u>
Net assets, beginning of year	617,623	6,071	623,694	
Net assets, end of year	<u>\$ 764,763</u>	<u>\$ 4,097</u>	<u>\$ 768,860</u>	

See independent accountant's review report.
The accompanying notes to financial statements are an integral part of these statements.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
STATEMENTS OF ACTIVITIES
For the Year Ended December 31, 2020 (Audited)**

	2020			
	Without Donor Restrictions	With Donor Restrictions	Total	%
Support and revenue				
Public sector contributions:				
Elkhart County	\$ 207,199	\$ -	\$ 207,199	26.71
City of Nappanee	13,421	-	13,421	1.73
Town of Middlebury	6,378	-	6,378	0.82
Town of Wakarusa	4,000	-	4,000	0.52
Contract fees:				
City of Goshen	64,492	-	64,492	8.31
City of Elkhart	105,240	-	105,240	13.57
Total public sector	400,730	-	400,730	51.66
Private sector contributions	181,271	-	181,271	23.37
Training classes	116,668	-	116,668	15.04
Interest income	2,553	-	2,553	0.33
Other income	2,218	-	2,218	0.29
PPP grant income	72,200	-	72,200	9.31
Net assets released from restriction	4,406	(4,406)	-	-
Total support and revenue	<u>780,046</u>	<u>(4,406)</u>	<u>775,640</u>	<u>100.00</u>
Expenses				
Program expenses	334,482	-	334,482	43.12
Management and general	203,523	-	203,523	26.24
Fundraising expenses	71,005	-	71,005	9.15
Total expenses	<u>609,010</u>	<u>-</u>	<u>609,010</u>	<u>78.51</u>
INCREASE IN NET ASSETS	171,036	(4,406)	166,630	<u>21.49</u>
Net assets, beginning of year	<u>446,587</u>	<u>10,477</u>	<u>457,064</u>	
Net assets, end of year	<u>\$ 617,623</u>	<u>\$ 6,071</u>	<u>\$ 623,694</u>	

See independent accountant's review report.
The accompanying notes to financial statements are an integral part of these statements.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
STATEMENTS OF FUNCTIONAL EXPENSES
For the Years Ended December 31, 2021 (Reviewed) and 2020 (Audited)**

	2021			2020				
	Program Expenses	Management and General	Fundraising Expenses	Total	Program Expenses	Management and General	Fundraising Expenses	Total
Salaries and wages	\$ 184,650	\$ 85,356	\$ 49,034	\$ 319,040	\$ 144,921	\$ 81,913	\$ 42,742	\$ 269,576
Payroll taxes	14,287	6,603	3,794	24,684	11,230	6,348	3,311	20,889
Employee benefits	16,669	9,423	4,914	31,006	13,580	7,677	4,004	25,261
Telecommunications	5,594	5,594	1,243	12,431	3,828	3,828	3,944	11,600
Insurance	632	5,768	-	6,400	625	5,746	-	6,371
Postage	65	65	523	653	267	334	67	668
Office expense	7,768	5,768	5,768	19,304	6,651	5,556	5,366	17,573
Software	5,011	5,011	1,114	11,136	5,565	3,895	1,669	11,129
Meals and entertainment	4,020	-	212	4,232	2,860	-	151	3,011
Travel	2,792	179	62	3,033	1,191	145	10	1,346
Advertising and marketing expense	17,476	-	1,942	19,418	24,473	-	6,118	30,591
Depreciation	2,909	716	850	4,475	6,842	1,684	2,000	10,526
Maintenance	-	-	-	-	2,090	2,041	729	4,860
Membership dues	3,916	691	-	4,607	2,962	15,523	-	18,485
Contributions	-	1,000	-	1,000	-	3,100	-	3,100
Training	-	-	-	-	15	-	6	21
Training class expense	53,773	-	-	53,773	88,362	-	-	88,362
Subscriptions	590	188	-	778	1,607	457	-	2,064
Website and newsletter	4,980	-	1,245	6,225	3,552	-	888	4,440
Miscellaneous expense	346	115	-	461	-	131	-	131
Rent	12,676	43,585	-	56,261	12,653	43,505	-	56,158
Cleaning	1,232	4,238	-	5,470	1,208	4,152	-	5,360
Professional fees	-	18,420	-	18,420	-	17,488	-	17,488
Total	\$ 339,386	\$ 192,720	\$ 70,701	\$ 602,807	\$ 334,482	\$ 203,523	\$ 71,005	\$ 609,010

See independent accountant's review report.
The accompanying notes to financial statements are an integral part of these statements.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2021 (Reviewed) and 2020 (Audited)**

	2021	2020
Cash flows from operating activities		
Increase in net assets	\$ 145,166	\$ 166,630
Adjustments to reconcile net assets to net cash provided by operating activities		
Depreciation	4,475	10,526
Loss on disposal of fixed assets	81	
PPP grant income	(52,075)	(72,200)
(Increase) decrease in assets		
Pledges receivable	3,353	(6,150)
Contract receivable	(6,321)	6,314
Prepaid expenses	(3,434)	5,028
Increase (decrease) in liabilities		
Accounts payable	669	(20,547)
Accrued expenses	997	(2,632)
Deferred revenue	(8,939)	(5,941)
Net cash from operating activities	83,972	81,028
Cash flows from investing activities		
Purchase of property and equipment	(4,770)	(13,937)
Purchase of investments	(294)	(1,961)
Net cash from investing activities	(5,064)	(15,898)
Cash flows from financing activities		
Proceeds from PPP grant	52,075	72,200
Net cash from financing activities	52,075	72,200
Net change in cash and cash equivalents	130,983	137,330
Cash and cash equivalents, beginning of the year	384,261	246,931
Cash and cash equivalents, end of the year	\$ 515,244	\$ 384,261

See independent accountant's review report.
The accompanying notes to financial statements are an integral part of these statements.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2021 (Reviewed) and 2020 (Audited)**

	<u>2021</u>	<u>2020</u>
Schedule of non cash investing transactions		
Acquisition of equipment		
Cost of Equipment	\$ 789	\$ -
Gain on trade -in	(789)	-
Cash down payment for equipment	<u>\$ -</u>	<u>\$ -</u>

See independent accountant's review report.
The accompanying notes to financial statements are an integral part of these statements.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The following is a summary of the accounting policies adopted by the Organization that have a significant effect on the financial statements.

Nature of the Organization

The Organization was incorporated on December 28, 1995, to stimulate and improve the communities within Elkhart County through the creation of employment opportunities in both traditional manufacturing industries and in technology-based industries. The mission of the Organization is to create an economically vibrant community by recruiting, retaining, and strengthening our economic base, and being a catalyst for diversification, innovation, and economic change. This includes the continual education of the current workforce, the promotion of Elkhart County as a quality place to live and work to prospective businesses looking to either relocate or begin operations and working with existing businesses to help them become more efficient and competitive in their respective markets. Support for the Organization comes from Elkhart County and the municipalities and business entities located within Elkhart County.

Tax status of the Organization

The Organization is a not-for-profit organization as defined under Section 501(c) (3) of the Internal Revenue Code and as such is exempt from income taxes. The Organization is not considered a private foundation.

Uncertain tax positions

The Organization has adopted the accounting for uncertainty in income tax guidance which clarifies the accounting and recognition for tax positions taken or expected to be taken in its income tax returns. The Organization does not accrue interest or penalties associated with uncertain tax positions as part of the income tax provision. Management has determined that the Organization has not taken, nor does it plan to take any tax positions that it does not believe would be fully recognized by the applicable governing tax authority. Therefore, no tax liability has been recorded for uncertain tax positions.

Basis of accounting

The financial statements of the Organization have been prepared on the accrual basis of accounting in conformance with accounting principles generally accepted in the United States of America. The Organization recognizes revenue in accordance with ASU No. 2014-09, see note 2.

Basis of presentation

The financial statements of the Organization have been prepared in accordance with the accounting principles generally accepted in the United States of America, which under ASU 2016-14 requires the Organization to report information regarding its financial position and activities according to the following net asset classifications:

Net assets without donor restrictions – Net assets without donor restrictions includes public and private sector contributions, training class income, and other income that is not subject to donor-imposed restrictions. From time to time the Board designates a portion of these net assets for specific purposes which makes them unavailable for use at management’s discretion.

See independent accountant’s review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Basis of presentation (continued)

Net assets with donor restrictions – Net assets with donor-imposed restrictions that will be met either by actions of the Organization or the passage of time, or net assets to be maintained permanently by the Organization. Items affecting this category of net assets include giving towards special projects and events that do not occur in the year of the gift.

Contributions that are restricted by the donor are reported as increases in net assets without donor restrictions if the restrictions expire (that is, when a stipulated time restriction ends, or purpose of the restriction is accomplished) in the reporting period in which the revenue is recognized. All other donor-restricted contributions are reported as increases in net assets with donor restrictions. When a restriction expires, net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the Statement of Activities as net assets released from restrictions.

Cash equivalents

For purposes of the statement of cash flows, the Organization considers all highly liquid debt instruments purchased with maturity of three months or less and gift certificates to be cash equivalents.

Pledges receivable

Unconditional pledges receivable are recognized as revenues or gains in the period received and as assets, decreases of liabilities, or expenses depending on the form of the benefits received. Conditional pledges receivable are recognized only when the conditions on which they depend are substantially met and the promises become unconditional.

Contracts receivable

All of the contract receivables are considered collectable. Accordingly, no allowance for doubtful accounts is required. Balances that are still outstanding after management has used reasonable collection efforts are charged to operations.

Investments

All investments are carried at fair value in the statement of financial position. Unrealized gains and losses are included in the change in net assets. Investment income and gains restricted by donors are reported as increases in unrestricted net assets if the restrictions are met (either a stipulated time period ends, or a purpose restriction is accomplished) in the reporting period in which the income and gains are recognized.

Property, equipment, and depreciation

Property and equipment are stated at cost or, in the case of donated fixed assets, at fair value at date of donation. The Organization capitalizes all expenditures over \$500 for repairs, maintenance, renewals, and betterments that materially prolong the useful lives of assets. The cost of assets retired or otherwise disposed of and the related accumulated depreciation are eliminated from the accounts in the year of disposal with any resulting gain or loss reflected in earnings. Depreciation is computed using the straight-line method over the useful lives of the property and equipment ranging from 3-10 years. Total depreciation expense for the years ended December 31, 2021 and 2020 was \$4,475 and \$10,526, respectively.

See independent accountant's review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Advertising

The Organization expenses advertising costs as they are incurred. Advertising expenses for the years ended December 31, 2021 and 2020 were \$19,418 and \$30,591, respectively.

Donated materials and services

Donated materials are recorded as contributions in the accompanying statements at fair market value at date of receipt. During the year ended December 31, 2020, the Organization received various in-kind contributions. These contributions along with an expense equal to the contribution have been recognized in the Statement of Activities. These contributions include a computer support/service agreement totaling \$4,859 for the year ended December 31, 2020. Additionally, in the year ended 2020, the Organization received a donation of a water cooler and water for their conference room totaling \$412. In-kind contributions received totaled \$0 and \$5,271 for the years ended December 31, 2021 and 2020.

The Organization pays for services requiring specific expertise. However, many individuals volunteer their time and perform a variety of tasks that assist the Organization with specific assistance programs and various committee assignments.

Functional allocation of expenses

The costs of providing various programs and other activities have been summarized on a functional basis in the statement of activities. Accordingly, certain costs have been allocated among the programs and supporting services benefited. Such allocations are determined by management on an equitable basis.

The expenses that are allocated include the following:

<u>Expense</u>	<u>Method of allocation</u>
Salaries and wages	Time and effort
Payroll taxes, employee benefits	Wages
Insurance	Function
Occupancy	Square footage
Telecommunications	Function
Depreciation	Function
Advertising	Function
Office, postage, and software	Function
Meals and entertainment, travel	Function
Membership dues, subscriptions	Function
Wage and benefit survey	Function
Miscellaneous	Function

See independent accountant's review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during that reporting period. Actual results could differ from those estimates.

NOTE 2 – REVENUE RECOGNITION

Revenue recognition policy

The Organization recognizes contributions from public and private sector when cash or an unconditional pledge is received. Conditional pledges are recognized only when the conditions on which they depend are substantially met and the promises become unconditional.

The Organization recognizes revenue from training classes during the year in which the related services are provided to participants. The performance obligation consists of hosting specific training classes for participants to attend. Occasionally these courses are offered in a multiple class series and the participants are required to pay for the entire series in advance. Revenue from a training class is recognized at a point in time. Revenue for multiple class series is recognized pro rata after the completion of each class in the series. Payments for training classes are usually paid prior to the class being held or billed upon completion of the class and paid within 60 days. Deposits for training classes not yet hosted are deferred revenue until the training class is completed.

The Organization also derives revenue from being a referral source for fiber optics services to prospective and existing businesses. Revenues are recognized over time, measured by the passage of time since the customer simultaneously received and consumes the benefit of those services as work is performed under the contract by the county.

Disaggregation of revenue from contracts with customers

Revenue from performance obligations satisfied over time consist of training courses offered in a multiple class series and fiber referral fees. Training course revenue is recognized as each training class is completed. Revenue from performance obligations satisfied at a point in time consist of training courses offered as a single class.

Various economic factors affect revenue and cash flows. Revenues are regional and are impacted by changes in the local economy. The coronavirus pandemic (COVID-19) is expected to continue to reduce the amount of training class revenue to be received in the year ended December 31, 2021. The severity of the impact of the outbreak of COVID-19 cannot be estimated at this time.

The various revenue lines on the statement of activities includes income from contracts with customers and from other sources. The income from contracts with customers is either earned at a point in time or over time. Revenue shown on the statement of activities for the years ended December 31 are as follows:

See independent accountant's review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 2 – REVENUE RECOGNITION (CONTINUED)

	2021		
	Revenue from contracts with customers	Revenue from other sources	Total
Public sector contributions	\$ -	\$ 405,720	\$ 405,720
Private sector contributions	-	229,379	229,379
Training classes	53,123	-	53,123
Interest income	-	645	645
Referral income	7,112	-	7,112
Debt forgiveness income	-	52,075	52,075
	\$ 60,235	\$ 687,819	\$ 748,054

	Revenue recognized over time	Revenue recognized at a point in time	Revenue from contracts with customers
Training classes	\$ 21,945	\$ 31,178	\$ 53,123
Referral income	7,112	-	7,112
	\$ 29,057	\$ 31,178	\$ 60,235

	2020		
	Revenue from contracts with customers	Revenue from other sources	Total
Public sector contributions	\$ -	\$ 400,730	\$ 400,730
Private sector contributions	-	181,271	181,271
Training classes	116,668	-	116,668
Interest income	-	2,553	2,553
Other income	-	2,218	2,218
PPP grant income	-	72,200	72,200
	\$ 116,668	\$ 658,972	\$ 775,640

	Revenue recognized over time	Revenue recognized at a point in time	Revenue from contracts with customers
Training classes	\$ 50,097	\$ 66,571	\$ 116,668

See independent accountant's review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 2 – REVENUE RECOGNITION (CONTINUED)

Performance obligations

Performance obligations related to training classes are satisfied upon completion of each individual training class. Cancellations by participants are fully refundable if notice is given 10 days prior to the class being held. Cancellations within 5-9 days are 85% refunded, and cancellations less than 5 days prior to the class being held are non-refundable. The Organization transfers control and records revenue when participants receive the service.

The performance obligation related to referral fees is satisfied over time. The contracts for these services are for a period of time and revenue is recognized over time.

Variable consideration

The Organization does not offer any variable consideration.

Accounts receivable from contracts with customers

Contract receivable on the statements of financial position represents amounts expected to be received in exchange for services provided to their customers. As of December 31, 2021 and 2020, the Organization has performed all services and all performance obligations have been fulfilled related to these receivables. Therefore, the Organization has an unconditional right to these funds as all performance obligations have been satisfied, and thus, they are classified as accounts receivable on the balance sheet.

Contract balances

The timing of revenue recognition and cash collections results in accounts receivable and deferred revenue (contract liabilities) on the statement of financial position. Amounts are billed to participants when the class occurs, and invoices are considered due on demand. The revenue related to multiple class series is earned when each class in the series is completed, which creates a corresponding contract liability for amounts not yet earned. Amounts billed for referral fees are based on the monthly passage of time and invoices are considered due on demand.

Contract balances as of the years ended December 31, 2021 and 2020, are as follows:

Contract Balances	Adjusted Balance January 1, 2020	December 31, 2020	December 31, 2021
Contract receivable	\$ 7,403	\$ 1,089	\$ 7,410
Deferred revenue	\$ 14,880	\$ 8,939	\$ -

Revenue recognized for the years ended December 31, 2021 and 2020 that was included in the contract liability balance at the beginning of each year was \$5,985 and \$12,192, respectively.

See independent accountant's review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 3 – LOCAL GRANT AWARDS

The Organization has not received any federal funding for the years ended December 31, 2021 and 2020. Local funds received are detailed under public sector contributions on the statements of activities. The public section contributions agree to the Entity Annual Report (E-1) filed by the Organization. Reconciliation of entity disbursements reported on E-1 is as follows:

	<u>2021</u>	<u>2020</u>
E-1 reported total disbursements	\$ 602,664	\$ 633,434
Depreciation adjustment	(35)	(14,836)
In-kind donations	-	5,271
Miscellaneous adjustments	178	(14,859)
	<u>\$ 602,807</u>	<u>\$ 609,010</u>

NOTE 4 – INVESTMENTS

Investments consist entirely of certificates of deposits with terms varying from seven to twelve months. Investments held by the Organization totaled \$203,103 and \$202,809 at December 31, 2021 and 2020, respectively. Investment income is comprised entirely of dividends and interest, and totaled \$645 and \$2,553 for the years ending December 31, 2021 and 2020, respectively.

NOTE 5 – FAIR VALUE MEASUREMENT

The Organization follows the provisions of ASC Topic, “*Fair Value Measurements*” which applies to all assets and liabilities that are being measured and reported at fair value. This topic establishes a framework for measuring fair value in accordance with accounting principles generally accepted in the United States of America and expands disclosure about fair value measurement. Under accounting principles generally accepted in the United States of America, fair value refers to the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. It clarifies the principle that fair value should be based on the assumptions market participants would use when pricing the asset or liability. This standard enables the reader of the financial statements to assess the inputs used to develop those measurements by establishing a hierarchy for ranking the quality and reliability of the information used to determine the fair values.

Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from independent sources. Unobservable inputs reflect assumptions that market participants would use in pricing the asset or liability based on the best information available in the circumstances. Inputs are used in applying the various valuation techniques and broadly refer to the assumptions that market participants use to make valuation decisions, including assumptions about risk. Inputs may include price information, volatility statistics, specific and broad credit data, liquidity, and other factors.

See independent accountant’s review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 5 – FAIR VALUE MEASUREMENT (CONTINUED)

A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. However, the determination of what constitutes "observable" requires significant judgment by management. Economic Development Corporation of Elkhart County, Inc. considers observable data to be market data that is readily available, regularly distributed or updated, reliable and verifiable, not proprietary, and provided by independent sources that are actively involved in the relevant market. The categorization of a financial instrument within the hierarchy is based upon the pricing transparency of the instrument and does not correspond to Economic Development Corporation of Elkhart County, Inc.'s perceived risk of that instrument.

The standard requires that assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

Level 1 – Pricing inputs are quoted prices in active markets for identical assets or liabilities. A quoted price for an identical asset or liability in an active market provides the most reliable fair value measurement because it is directly observable to the market.

Investments whose values are based on quoted market prices in active markets, and are therefore classified within Level 1, include actively traded equities, certain U.S. government and sovereign obligations, and certain money market securities.

Level 2 – Pricing inputs are other than quoted prices in active markets for identical assets, but the inputs are either directly or indirectly observable. Quoted prices are available, but the assets are traded less frequently and thus valuation is accomplished using similar securities, the parameters of which can be directly observed.

Investments classified as Level 2 trade in markets that are not considered to be active, but are valued based on quoted market price, dealer quotations or alternative pricing sources supported by observable inputs are classified within Level 2. These generally include certain U.S. government and sovereign obligations, most government agency securities, investment grade corporate bonds, certain mortgage products, certain bank loan and bridge loans, less liquid listed equities, state, municipal and provincial obligations, most physical commodities, and certain loan commitments. As Level 2 investments include positions that are not traded in active markets and/or subject to transfer restrictions, valuations may be adjusted to reflect liquidity and/or non-transferability, which are generally based on available market information.

Level 3– Pricing inputs are not observable in the market. Thus, valuation is accomplished using management's best estimate of fair value, with inputs into the determination of fair value that require significant management judgment or estimation.

Investments classified within Level 3 have significant unobservable inputs, as they trade infrequently or not at all. Level 3 instruments include private equity and real estate investments, certain bank loans and bridge loans, less liquid corporate debt securities (including distressed debt instruments), collateralized debt obligations, and less liquid mortgage securities (backed by either commercial or residential real estate).

See independent accountant's review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 5 – FAIR VALUE MEASUREMENT (CONTINUED)

Level 3-(Continued)

Within Level 3, the use of market approach generally consists of using comparable market transactions, while use of the income approach generally consists of the net present value of estimated future cash flows, adjusted as appropriate for liquidity, credit, market and/or other risk factors.

The inputs used in estimating the fair value of Level 3 investments include the original transaction price, recent transactions for the same or similar instruments, completed or pending third-party transactions in the underlying investment or comparable issuers, subsequent rounds of financing, recapitalizations and other transactions across the capital structure, offerings in the equity or debt capital markets, and changes in financial ratios or cash flows. Level 3 investments may also be adjusted to reflect illiquidity and/or non-transferability, with the amount of such discount estimated in the absence of market information. The fair value measurement of Level 3 investments does not include transaction costs as an input, although those costs may have been capitalized as part of the security’s cost. Due to the lack of observable inputs, the assumptions used may significantly impact resulting fair value and, therefore, the amounts reported in the accompanying financial statements.

The following table sets forth by level and major classification, within the fair value hierarchy, the Organization’s investments as of December 31, 2021 and 2020:

	2021			
	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Certificates of deposit	\$ 203,103	\$ -	203,103	\$ -
	<u>\$ 203,103</u>	<u>\$ -</u>	<u>\$ 203,103</u>	<u>\$ -</u>
	2020			
	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Certificates of deposit	\$ 202,809	\$ -	202,809	\$ -
	<u>\$ 202,809</u>	<u>\$ -</u>	<u>\$ 202,809</u>	<u>\$ -</u>

Investments, in general, are exposed to various risks, such as interest rate, credit, and overall market volatility. As such, it is reasonably possible that changes in values of investments will occur in the near term and that such changes could materially affect the amounts reported in the statements of financial position and statements of activities.

See independent accountant’s review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 6 – FINANCIAL ASSETS AND LIQUIDITY RESOURCES

As of December 31, 2021 and 2020, financial assets and liquidity resources available for general expenditure, that is, without donor or other restrictions limiting their use, within one year of the balance sheet date, comprise the following:

	<u>2021</u>	<u>2020</u>
Financial assets:		
Cash and cash equivalents	\$ 515,244	\$ 384,261
Pledges receivable	11,897	15,250
Contract receivable	7,410	1,089
Investments	<u>203,103</u>	<u>202,809</u>
Total financial assets available within one year	737,654	603,409
Liquidity resources:		
Bank line of credit	<u>100,000</u>	<u>100,000</u>
Total financial assets and liquidity resources available within one year	<u>\$ 837,654</u>	<u>\$ 703,409</u>

The Organization’s goal is to maintain financial assets to meet 180 days of operating expenses in cash reserves (approximately \$298,000).

NOTE 7 – LINE OF CREDIT

The Organization entered into a line of credit agreement in September 2021 with a bank expiring in September 2023. The agreement allows the Organization to borrow up to a maximum of \$100,000 and contains an interest rate equal to the bank’s prime lending rate but not below a floor rate of 5%. The rate at December 31, 2021 and 2020 was 5%. The line of credit was collateralized by substantially all assets of the Organization. The line of credit was subject to certain nonfinancial covenants. The Organization was in compliance with covenants. As of December 31, 2021 and 2020, there was no outstanding balance.

NOTE 8 – RETIREMENT PLAN

The Organization offers a Savings Incentive Match Plan (SIMPLE). All employees are eligible to participate in this plan immediately. Participants can elect to contribute up the maximum amount allowed under a SIMPLE plan and the Organization has agreed to match up to 3% of an employee’s gross wages. Retirement plan expenses totaled \$0 for the years ended December 31, 2021 and 2020.

See independent accountant’s review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 9 – OPERATING LEASE AGREEMENTS

On October 2017 the Organization signed a five-year lease extension, with one five year option remaining on the original lease for monthly lease payments of \$4,454 to be adjusted each December for CPI at that time. This monthly lease payment increased to \$4,688 in years four, and did not change in year five. Future minimum lease payments required under this agreement as of December 31, 2021 are as follows:

	<u>Real Estate</u>
2022	56,256
2023	4,688
	<u>\$ 60,944</u>

Total rental expense for these facilities included in the statement of activities is \$56,262 and \$56,158 for the years ended December 31, 2021 and 2020, respectively.

In April 2020, the Organization entered into a non-cancellable lease for a copy machine. The lease requires monthly payments of approximately \$208 starting in July 2020 and expires in October 2025. Total lease expense incurred was \$2,517 and \$2,813 for the years ended December 31, 2021 and 2020, respectively. The future minimum lease payments required under this agreement as of December 31, 2021 are as follows:

	<u>Copier</u>
2022	2,500
2023	2,500
2024	2,500
2025	1,875
	<u>9,375</u>

NOTE 10 – CONCENTRATION OF CREDIT RISK

Financial instruments that potentially subject the Organization to concentrations of credit risk consist principally of temporary cash investments.

The Organization maintains its cash balances in one financial institution. The balances are insured by the Federal Deposit Insurance Corporation up to \$250,000. The Organization's uninsured cash balances totaled \$278,829 and \$75,538 at December 31, 2021 and 2020, respectively.

See independent accountant's review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 11 – RESTRICTIONS ON NET ASSETS

Net assets of the Organization consisted of the following for the years ended December 31, 2021 and 2020:

	<u>2021</u>	<u>2020</u>
Net assets with donor imposed restrictions		
Labor shed study	\$ 4,097	\$ 4,097
Class sponsorship	-	1,974
	<u>4,097</u>	<u>6,071</u>
Net assets without donor imposed restrictions	<u>764,763</u>	<u>617,623</u>
Total net assets	<u>\$ 768,860</u>	<u>\$ 623,694</u>

Net assets released from net assets with donor restrictions for the years ended December 31, 2021 and 2020 are as follows:

	<u>2021</u>	<u>2020</u>
Satisfaction of purpose restrictions		
Training class sponsorship	<u>\$ 1,974</u>	<u>\$ 4,406</u>

NOTE 12 – PAYCHECK PROTECTION PROGRAM LOAN

Congress created the Paycheck Protection Program (“PPP”) as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136. The legislation authorized the Treasury to use the U.S. Small Business Administration’s (“SBA”) small business lending program to fund loans to qualifying businesses to cover payroll, mortgage interest, rent, and utilities. The forgivable loans were designed to help support organizations facing economic hardship created by the coronavirus pandemic and assist them in continuing to pay employee salaries. PPP loan recipients can have their loans forgiven in full if the funds are used for eligible expenses and certain other criteria are met.

The Organization obtained PPP loans for \$52,075 and \$72,200 in 2021 and 2020, respectively and has utilized all funds as of December 31, 2021, and 2020. The Organization elected to account for these funds in accordance with FASB ASC 958-605 as a conditional grant. Under FASB ASC 958-605, grant income is recognized when the conditions of release have been substantially met. The Organization received forgiveness for the entire loan balances.

NOTE 13 – RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which provides guidance on the recognition, measurement, presentation, and disclosure of leases. This new accounting standard requires that an entity recognizes the right to use the leased assets and a liability for the corresponding lease obligation on its balance sheet for leases in excess of one year that were previously classified as operating leases under U.S. GAAP.

See independent accountant’s review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
NOTES TO FINANCIAL STATEMENTS
December 31, 2021 (Reviewed) and 2020 (Audited)**

NOTE 13 – RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS (CONTINUED)

The standard also requires entities to disclose information about the amount, timing, and uncertainty for the payments made for the lease agreements in the footnotes to the financial statements. The Organization is currently evaluating how the adoption of ASU 2016-02 will impact its financial position and results of operations. The guidance will be effective for the Organization’s reporting period beginning January 1, 2022.

NOTE 14 – SUBSEQUENT EVENTS

The Organization has evaluated subsequent events through August 1, 2022, the date which the financial statements were available to be issued. As a result of the ongoing COVID-19 pandemic in the United States, economic uncertainties continue which may negatively impact the Organization’s revenue. The severity of the impact of COVID-19 cannot be estimated at this time.

See independent accountant’s review report.

**ECONOMIC DEVELOPMENT CORPORATION
OF ELKHART COUNTY, INC.
SCHEDULES OF REVENUE COLLECTED (CASH BASIS)
For the Years Ended December 31, 2021 (Reviewed) and 2020 (Audited)**

	2021	2020
Support and revenue		
Public sector contributions:		
Elkhart County	\$ 207,199	\$ 207,199
City of Nappanee	13,421	13,421
Town of Middlebury	7,249	6,378
Town of Wakarusa	4,000	4,000
Contract fees:		
City of Goshen	65,219	64,492
City of Elkhart	105,240	105,240
Total public sector	402,328	400,730
Private sector contributions	236,129	170,345
Training classes	44,975	116,546
Other income	-	2,218
Debt forgiveness income - PPP	52,075	72,200
Interest income	645	2,553
Total revenue collected	\$ 736,152	\$ 764,592

See independent accountant's review report.

EXECUTIVE COMMITTEE

William Burton - Chairman
1st Source Bank

Lori Stanger - Vice Chair
Kem Krest

Mike Yoder - Nominating Committee Chair
Elkhart County Commissioner

Rick Gentle - Treasurer
Crowe Horwath, LLP

Jack Welter - Secretary
Elkhart Plastics

Jeremy Stutsman - Government Representative
Mayor, City of Goshen

BOARD OF DIRECTORS

Jeff Beachy
Bristol Town Council

David Birky
Interra Credit Union

Adam Bujalski
Elkhart County Republican Central Committee

Bill Burton
First Source Bank

Mary Cripe
Middlebury Town Mgr.

Brian Dickerson
Final Phase Electric

Rhett Fisher
Ancon Construction

Scott Ford
University of Notre Dame

Rick Gentle
Retired

Brad Hartman
RSM Consulting

Mike Holloway
Town of Middlebury

Phil Jenkins
City of Nappanee

Levon Johnson
Elkhart Chamber of Commerce

Nick Kieffer
Goshen Chamber of Commerce

Jeff Kitson
Nappanee Chamber of Commerce

Holly Landis
Wakarusa Town Manager

John Letherman
Elkhart County Council

Carl Risk
Beacon Medical Group

Rod Roberson
Mayor, City of Elkhart

Lori Stanger
KemKrest

Mike Stump
Forest River

Jeremy Stutsman
Goshen Mayor

Clark Warner
Ceres Co-op

Suzie Weirick
Elkhart County Commissioner

Jack Welter
Elkhart Plastics

Jim Winkler
Millersburg Town Council

Mike Yoder
Town of Bristol

Chris Stager
EDC of Elkhart County

CEO'S MESSAGE

We are ecstatic that the Economic Development Corporation of Elkhart County had a productive year with considerable groundbreaking workforce activity and record industrial and logistical investment.

Our ongoing work with regional partners position us as the lead Elkhart County organization supporting workforce, entrepreneurship and advanced manufacturing initiatives while providing invaluable transitional support to Elkhart County businesses.

Throughout 2021 we experienced considerable interest in a growing number of strategic workforce programs which increase Elkhart County business capabilities. These programs position our community for more technological growth as businesses worldwide revise their business strategies because of the pandemic and labor challenges and move rapidly towards Industry 4.0 capabilities and the age of SMART manufacturing. Diverse business sectors including Industrial manufacturers in Elkhart County can now take advantage of the subsidized internship and apprenticeship models and technical support opportunities being offered by the Labs for Industry Futures and Transformation (LIFT), Purdue MEP, Work One, and others. Ivy Tech recently opened their \$5.5 million Advanced Automation Simulation facility on their campus in Elkhart County. This leading-edge facility will be able to provide local students and workers advanced training in a wide variety of technology-based workforce skills that are in high demand today and position Elkhart County for future growth and improved economic stability.

As we look forward to 2022 and beyond, we are very excited to join with our clients, partners and the local business community to solidly and position Elkhart County as the best place to live, play and work in the Midwest.

Sincerely,

Chris Stager

President/CEO, EDC Elkhart County

EDC'S MISSION

Create an economically vibrant community by: Recruiting, retaining and strengthening our economic base, and being a catalyst for diversification, innovation and economic change.

EDC'S VISION

The EDC will leverage our entrepreneurial spirit, expertise and regional resources to develop a more prosperous community through a diversified, resilient and knowledge-based economy.

COMMUNITY LEADERS ARE SAYING ...

"Indiana Michigan Power (I&M) considers it a pleasure to work with local economic development organizations like the Economic Development Corporation of Elkhart for many reasons. The leadership and the EDC has shown phenomenal success by supporting existing businesses with growth plans, attracting new businesses that will diversify the economy, and by moving quickly to prepare sites and buildings that will be the right fit for those industries.

As the local electric utility for many parts of Elkhart, I&M understands the value of successful companies growing and increasing investment and jobs in the community. As new facilities are built, and new jobs are created, more households and companies use the electricity provided by I&M's infrastructure throughout the community."

SHELLEY L. KLUG

Economic & Business Development Manager, American Electric Power

"I want to thank the entire staff of the EDC of Elkhart County for the success and progress they have brought to Elkhart County in 2021. Elkhart County has consistently been among the top 5 counties in Indiana for job creation as summarized by the Indiana Economic Development Corporation (IEDC). In 2021, the EDC of Elkhart County brought the IEDC 19 attraction and expansion projects, containing over \$518 Million in new capital investment and over 5,000 proposed new jobs, well over half the totals of the entire 5 county North Central Indiana Region. Chris Stager and his staff offers prompt and professional advice and assistance in local economic development. I am looking forward to an equally prosperous 2022 in Elkhart County Indiana."

DAVID BEHR

Director, North Central Region, Indiana Economic Development Corporation

"It was an exciting year around Elkhart County in 2021 to assist companies with all types of expansions from new buildings to meet increased demand to automated equipment spend for smaller companies. Companies adjusted very well to new Federal stimulus programs and remote workforce issues. RSM collaborated with Elkhart EDC on several projects to ensure the expansions proceeded with all possible support in place from local/state/utility partners"

ERIC LEVENHAGEN, CECD

Senior Manager, National Business Credits & Incentives, RSM

2021 TRAINING CLASSES

Our collaboration with Purdue MEP netted new training class concepts such as Leadership Skills for Success delivered in Spanish, Customer Service Skills for Success, Finance for Non-Financial Managers, and Lessons Learned from "The Toyota Way." The introduction of these new topics emphasizes the need for delivering diversified training tools and key skills to create a continuous improvement culture.

Upon completion of each training session, attendees receive a Purdue University Certificate of Learning. Purdue MEP is an approved provider of training for Next Level Jobs Employer Training Grant funding.

To date, the EDC has delivered **135 classes** and has trained **1,990 employees** which has impacted **302 companies** in Elkhart County.

2021 TRAINING BY THE NUMBERS

CLASSES	WEBINARS
22 CLASSES DELIVERED	9 WEBINARS DELIVERED
260 EMPLOYEES ATTENDED	204 EMPLOYEES ATTENDED
48 COMPANIES IMPACTED	80 COMPANIES IMPACTED

35
FDI companies**
representing
16 countries

46
companies**
headquartered
employing
44,683
workers

2021
**"Year of
the RV"**
as declared by
RV Industry
Association

1,318
DoD contracts
awarded to
**companies
in 2021

\$46,975
per capita
income**

** Elkhart County

2021 PROJECTS

BUSINESS RETENTION /EXPANSION			
COMPANY/ LOCATION	AVERAGE WAGE	INVESTMENT ANNOUNCED	# OF JOBS ANNOUNCED
Alliance RV (Elkhart)	\$20.77	\$33,250,000	85
Amazon Distribution (Elkhart County)*	\$17.00	\$200,000,000	1000
American Tech Components (Elkhart)	\$16.00	\$17,320,000	74
American Millwork (Elkhart)	\$22.00	\$2,500,000	1
Big Dog Adhesives (Elkhart)	\$18.00	\$2,150,000	30
Elevation Park Model (Elkhart)	\$30.00	\$850,000	15
Ember RV (Bristol)**	\$24.00	\$8,000,000	30
Delivery Concepts (Elkhart)	\$20.00	\$5,600,000	15
Dimensional Foam (Elkhart)	\$27.22	\$6,250,000	290
Flexible Concepts (Elkhart)	\$20.00	\$3,000,000	10
Great Lakes Lamination (Elkhart)	\$17.42	\$5,550,000	26
Hull Lift Trucks (Elkhart County)	\$26.24	\$7,744,000	13
MJB Wood (Bristol)	\$31.16	\$53,051,724	38
Smoker Craft (Elkhart County)	\$19.00	\$12,000,000	100
Trim Lok (Elkhart)	\$24.93	\$4,295,000	74
Valmont Industries (Bristol)	\$22.99	\$29,569,525	94
Way Distribution (Elkhart County)	\$20.88	\$31,000,000	113
TOTAL	\$22.21	\$422,130,908	2008

* = Attraction ** = Start up company

EDC'S RESOURCES

We live and breathe all things Elkhart County. If you're thinking about a new business location, our team of economic development experts can help you decide whether Elkhart County is the perfect fit — and connect you with the resources you need to break ground and THRIVE in Elkhart County.

OUR EXPERT SERVICES

We are committed to attracting, growing and retaining business and industry for Elkhart County, Indiana.

OUR SERVICES INCLUDE:

- Operational Cost Analysis
- Incentive Comparisons
- Workforce Surveys & Research
- Research & Support for State and Local Tax Structures
- Connections to Key Resources
- Project Management

SINCE 2001...

The EDC has facilitated a total of
\$2,951,982,060
INVESTMENTS
 in Elkhart County
32,187
NEW JOBS

which has created

MANY THANKS TO OUR 2021 INVESTORS

1st Source Bank
 AE Techtron, Inc.
 Agdia Incorporated
 Anabaptist Mennonite Biblical Seminary
 Ancon Construction
 Barletta Boat Company
 Bennington Marine Group
 Business Development Corporation
 Cadet Construction, LLC
 Center for Hospice & Palliative Care, Inc
 Centier Bank
 Champagne Metals
 City of Elkhart
 City of Goshen
 City of Nappanee
 Community Foundation of Elkhart County
 CommunityWide Federal Credit Union
 Crowe LLP
 Culver Duck Farms, LLC
 Dave Carter & Associates
 Dec-O-Art
 DJ Construction Company, Inc.
 Dometic
 Dwyer Instruments, Inc
 Edward Jones
 Elkhart Chamber of Commerce
 Elkhart Clinic LLC
 Elkhart County Board of Realtors
 Elkhart County Government
 Beacon Health/Elkhart General Hospital
 ET&T Enterprises, Inc.
 Final Phase Electric Company, Inc.
 First State Bank Middlebury
 FM Stone Commercial LLC
 Forest River, Inc
 Forum Architects, LLC
 GDC, Inc.

Genesis Products, Inc.
 Global Link Distribution Corp
 Goshen Chamber of Commerce
 Goshen Health Foundation
 Goshen Stamping Company, Inc
 Grand Design RV, LLC
 Great Lakes Forest Products, Inc
 Green Stream Company
 Greencroft Retirement Communities
 Hampton Inn
 Hansen & Associates
 Hawkins Water Tech
 HIMCO Waste-Away Group, Ltd.
 Hoogenboom-Nofziger Real Estate
 Indiana Michigan Power
 INOVA Federal Credit Union
 Insight Business Solutions (Whitcraft)
 InterCambio Express, Inc
 ITR Concession Company LLC
 Ivy Tech Community College South Bend
 Jayco
 JMS Engineered Plastics
 Jones Petrie Rafinski
 KemKrest
 KMC Controls
 Kountry Wood Products, LLC
 Kuert Concrete, Inc.
 LaCasa Inc.
 Lake City Bank
 Lakota Trailers
 LaVanture Products
 L&W Engineering
 LeMaster Steel
 Lionshead Speciality Tire & Wheel LLC
 Lippert Components, Inc.
 Majority Builders, Inc.
 Marbach, Brady & Weaver, Inc

Martin Brothers Contracting, Inc
 Maverick Packaging, Inc
 Menno Travel Service
 Mid-City Supply Company, Inc.
 Middlebury Chamber of Commerce
 Nappanee Area Chamber of Commerce
 NIBLOCK Excavating
 NIPSCO
 NuWay Construction
 Office Interiors
 Physicians Health Plan of N Indiana
 PNC Bank
 Pro Air, LLC
 PWI
 RC Industries
 Reschcor
 Rieth-Riley Construction Co., Inc.
 Robert Weed Plywood Corp
 Salem Insurance Agency, Inc.
 Satellite Industries
 Schrock Commercial
 Schurz Communications, Inc
 Serim Research Corp
 Smoker Craft, Inc
 South Bend International Airport
 Steel Dynamics
 Surf Broadband Solutions
 The Commodore Corporation
 The Northland Corporation
 Thor Industries, Inc.
 Town of Middlebury
 Town of Wakarusa
 Utilmaster Corporation
 Vista Manufacturing, Inc
 Wakarusa Chamber
 Welch Packaging
 Welter Foundation



2021 ANNUAL REPORT



2021 EDC TEAM

Chris Stager
 President / CEO

Sherm Hansen
 Advancement Director

Stephanie Kabel
 Director of Business Retention and Expansion

Linda Tunks
 Operations Manager

Cara Anderson
 Program Coordinator



Your Connection for a
Thriving Elkhart County

300 NIBCO Parkway, Suite 201
 Elkhart, IN 46516
 574.293.5627
 edc@elkhartcountybiz.com

www.elkhartcountybiz.com



elkhartcountybiz.com

“Elkhart County has consistently been among the top 5 counties in Indiana for job creation as summarized by the Indiana Economic Development Corporation.”



manufacturing hub for the second year in a row*

* Business Facilities Magazine, 2021

- DAVID BEHR, INDIANA ECONOMIC DEVELOPMENT CORPORATION

	A	B
1	Board Member	Affiliations
2	Jeff Beachy	Bristol Town Council
3	David Birky	Interra Credit Union
4	Adam Bujalski	Elkhart County Councilman
5	Bill Burton	First Source Bank
6	Mary Cripe	Middlebury Town Manager
7	Brian Dickerson	Final Phase Electric
8	Rhett Fisher	Ancon Construction
9	Scott Ford	Notre Dame
10	Phil Jenkins	City of Nappanee Mayor
11	Levon Johnson	City of Elkhart Chamber of Commerce
12	Nick Kieffer	Goshen Chamber of Commerce
13	Jeff Kitson	Nappanee Chamber of Commerce
14	Jess Koscher	Write Connections Owner
15	Holly Landis	Wakarusa Town Mgr.
16	John Letherman	Former- FM Stone
17	Carl Risk	President of Elkhart General Hospital
18	Rod Roberson	Elkhart Mayor
19	Lori Stanger	Maple Leaf Farms
20	Mike Stump	Forest River
21	Jeremy Stutsman	Goshen Mayor
22	Clark Warner	Ceres Co-op
23	Suzie Weirick	Elkhart County Commissioner
24	Jack Welter	Elkhart Plastics
25	Jim Winkler	Goshen Plumbing and Heating
26	Mike Yoder	Bristol Town Manager
27	Chris Stager	EDC President/CEO
28		

2021 Tentative E



Revenue	2022 Proposed
---------	---------------

Public Funding	405,200.00
Private Funding	220,000.00
Utilities	20,000.00
Sponsorships	\$10,000.00
New Monies	20,000.00
Training Classes (Gross)	50,000.00
Grants	10,000.00
Wage and Benefit Income	0.00
Miscellaneous	2,000.00
Fiber Referrals	90,000.00
Interest Income (CD's)	500.00
Total Revenue all categories	827,700.00

Expense Description	2022 Proposed
---------------------	---------------

Salaries	411,277.90
Payroll Taxes	33,650.00
Insurance - Health	47,000.00
Simple IRA Match	14,000.00
Auto Allowance	0.00
Mileage Reimbursement	6,500.00
Employee Search	0.00
Other Employee Expenses	0.00
Total Employee Expenses	512,427.90

Telephone & Internet	16,000.00
Postage	1,000.00
Office Supplies and Equipment	16,000.00
Training Class Expense	40,000.00
Software	15,000.00
Insurance - Director's Liability	4,000.00
Equipment Maintenance	500.00
Rent	59,000.00
Cleaning Service	5,000.00
Utilities	5,000.00

Total Office Expenses	161,500.00
Advertising and Marketing	30,000.00
Website	10,000.00
Meals and Entertainment	7,000.00
Travel, Lodging, Parking	5,000.00
Michiana Regional EDC	15,000.00
Other Meeting Expenses	1,742.10
Total Advertising & Marketing E:	68,742.10
Accounting	21,000.00
Legal	2,000.00
Other	0.00
Total Professional Expenses	23,000.00
Depreciation	0.00
Miscellaneous	1,000.00
Memberships and Conferences	4,500.00
Subscriptions	2,000.00
Training and Webinars	10,000.00
Manufacturing Week	0.00
Interest Expense	30.00
Credit Card Fees	0.00
Wage and Benefit Expenses	2,500.00
Contract Services	0.00
Training Classes	30,000.00
Newsletter & Communications	6,000.00
Laborshed Study	0.00
Capital Expenditures	6,000.00
Strategic Plan Update	0.00
Total Miscellaneous Expenses	62,030.00
Total Year-End Expenses	827,700.00



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

November 14, 2022

To: Board of Public Works and Safety

From: Brandy L. Toms

Subject: Agreement with OJS Building Service, Inc. for upgrading KMC Temperature Controls at the Goshen Police Department

Attached for the Board's approval and to authorize Mayor Stutsman to execute is an agreement with OJS Building Services, Inc. for upgrading KMC Temperature Controls at the Goshen Police Department. OJS Building Services, Inc. will be paid \$46,550 for the services.

Suggested Motion:

Approve and authorize Mayor Stutsman to execute the agreement with OJS Building Services, Inc. for upgrading KMC Temperature Controls at the Goshen Police Department at a cost of \$46,550.

AGREEMENT

OJS Building Services, Inc. for Upgrading KMC Temperature Controls at the Goshen Police Department

THIS AGREEMENT is entered into on _____, 2022, which is the last signature date set forth below, by and between **OJS Building Services, Inc.** (“Contractor”), whose mailing address is 1825 E. 12th Street, Mishawaka, IN 46544, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Contractor shall provide City the work for upgrading KMC temperature controls at the Goshen Police Department, which work are more particularly described in Option 3 of Contractor’s October 18, 2022 proposal attached as Exhibit A (hereinafter referred to as “Duties”).

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

Contractor’s Duties under this agreement include:

- (A) Remove KMC controller and dispose per EPA guidelines
- (B) Provide (54) Reliable Control® MPZ-44 controller
- (C) Provide (54) Reliable Control® SS3-EPD controller
- (D) Provide (54) discharge air sensor
- (E) Provide (54) fan status
- (F) Provide programming and graphical user interface
- (G) Provide labor/travel costs

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.

- (C) Contractor shall commence the Duties as soon as practical after receiving a notice to proceed from City.

Section 3. Compensation

- (A) City agrees to compensate Contractor the sum of Forty-Six Thousand Five Hundred Fifty Dollars (\$46,550) for performing all Duties.

Section 4. Payment

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

City of Goshen
c/o Goshen Maintenance Department
204 East Jefferson Street, Suite 1
Goshen, IN 46528

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

Section 5. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively "Documents") prepared by Contractor or Contractor's employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Contractor may retain a copy of the Documents for its records.

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 work performed by Contractor pursuant to this agreement.

Section 7. Warranty

Contractor warrants all parts and labor under this agreement for five (5) years from date of installation.

Section 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 work 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 14. 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 15. Default

- (A) If Contractor fails to perform the work 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 work 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 work 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 work 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 16. 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 work completed 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 17. 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: OJS Building Services, Inc.
Attention: Brian Sears
1825 E. 12th Street
Mishawaka, IN 46544

Section 18. 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 19. 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 20. 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 21. 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 work. Failure to do so may be deemed a material breach of agreement.

Section 22. 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 23. 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 24. 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 25. Entire Agreement

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

Section 26. Authority to Execute

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

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

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

OJS Building Services, Inc.

Jeremy P. Stutsman, Mayor

Printed: _____

Title: _____

Date Signed: _____

Date Signed: _____



OJS Building Services
1008 Lincoln Way East
South Bend, IN. 46601
Phone: 574-284-2020
Fax: 574-287-2939
www.ojsbsi.com

TO: Goshen Police
Department

FOR: Upgrading KMC
temperature controls

QUOTE: PP76132

DATE: REV-2 10/18/2022

PAGE: 1 of 2

ATTN: Jeff Halsey

OJS Building Service is pleased to provide a quote to upgrade the existing KMC temperature controllers that correlate with the fan coil units. This quote includes but not limited to the following:

Inclusions:

Option 1: \$1,095.00 (One Thousand Ninety-Five Dollars 00/100) \$1,095.00/ FCU

Fan Coil Unit (1)

- Remove KMC controller and dispose per EPA guidelines
- Provide (1) Reliable Controls® MPZ-44 controller
- Provide (1) Reliable Controls® SS3-EPD wall thermostat
- Provide (1) discharge air sensor
- Provide (1) fan status
- Provide programing and graphical user interface
- Provide labor/travel costs

Option 2: \$24,925.00 (Twenty-four Thousand Nine Hundred Twenty-Five Dollars 00/100)

\$923.14/FCU

Fan Coil Unit (27)

- Remove KMC controller and dispose per EPA guidelines
- Provide (27) Reliable Controls® MPZ-44 controller
- Provide (27) Reliable Controls® SS3-EPD wall thermostat
- Provide (27) discharge air sensor
- Provide (27) fan status
- Provide programing and graphical user interface
- Provide labor/travel costs

Option 3: \$46,550.00 (Forty-Six Thousand Five Hundred Fifty Dollars 00/100)

\$862.03/FCU

Fan Coil Unit (54)

- Remove KMC controller and dispose per EPA guidelines
- Provide (54) Reliable Controls® MPZ-44 controller
- Provide (54) Reliable Controls® SS3-EPD wall thermostat
- Provide (54) discharge air sensor
- Provide (54) fan status
- Provide programing and graphical user interface

- Provide labor/travel costs

OJS Building Service, Inc. recommends setting aside an additional contingency fund of 10% for components found to inoperable within the current system.

EXCLUSIONS:

- Over time costs, all work is to be completed during normal working hours. Any request by owner to change working times may result in a change order for added overtime rates.
- Smoke/fire control
- Test and balance
- Patching/Painting
- Existing Plumbing/HVAC equipment and all systems and defects which require/repairs or replacements as result of pre-existing or faults that are not included in this quote will be brought to owners' attention and quoted.

Attention: Due to COVID-19 this project subject to delivery of materials and postpone targeted completion dates.

Note: Quote shall be valid for a period of thirty days (30 days)

If this is acceptable, please sign, date, and fax back:

Name

Date

OJS Building Services, INC.

Andrew A. Miller



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

November 14, 2022

To: Board of Public Works and Safety

From: Brandy L. Toms

Subject: Agreement with OJS Building Service, Inc. for the replacement of hot and chilled water valves at the Goshen Police Department

Attached for the Board's approval and to authorize Mayor Stutsman to execute is an agreement with OJS Building Services, Inc. for replacement of hot and chilled water valves at the Goshen Police Department. OJS Building Services, Inc. will be paid \$38,150 for the services.

Suggested Motion:

Approve and authorize Mayor Stutsman to execute the agreement with OJS Building Services, Inc. for the replacement of hot and chilled water valves at the Goshen Police Department at a cost of \$38,150.

AGREEMENT

OJS Building Services, Inc. for the Replacement of Hot and Chilled Water Valves at the Goshen Police Department

THIS AGREEMENT is entered into on _____, 2022, which is the last signature date set forth below, by and between **OJS Building Services, Inc.** (“Contractor”), whose mailing address is 1825 E. 12th Street, Mishawaka, IN 46544, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Contractor shall provide City the work for the replacement of hot and chilled water valves located at the Goshen Police Department, which work are more particularly described in Contractor’s October 18, 2022 proposal attached as Exhibit A (hereinafter referred to as “Duties”).

Contractor’s Duties under this agreement include:

- (A) Provide and install (26) 3-way ½” modulating valve (Any other valves larger than ¾” will be quoted)
- (B) Provide and install (29) 3-way ½” modulating valve (Any other valves larger than ¾” will be quoted)
- (C) Provide piping materials to install water valves to include insulation.
- (D) Provide testing and operational.

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

Section 2. Effective Date; Term

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

Section 3. Compensation

- (A) City agrees to compensate Contractor the sum of Thirty-Eight Thousand One Hundred Fifty Dollars (\$38,150) for performing all Duties.

Section 4. Payment

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

City of Goshen
c/o Goshen Maintenance Department
204 East Jefferson Street, Suite 1
Goshen, IN 46528

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

Section 5. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively “Documents”) prepared by Contractor or Contractor’s employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Contractor may retain a copy of the Documents for its records.

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 work performed by Contractor pursuant to this agreement.

Section 7. Warranty

Contractor warrants all parts and labor under this agreement for five (5) years from date of installation.

Section 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 work 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 14. 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 15. Default

- (A) If Contractor fails to perform the work 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 work 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 work 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 work 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 16. 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 work completed 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 17. 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: OJS Building Services, Inc.
Attention: Brian Sears
1825 E. 12th Street
Mishawaka, IN 46544

Section 18. 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 19. 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 20. 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 21. 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 work. Failure to do so maybe deemed a material breach of agreement.

Section 22. 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 23. 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 24. 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 25. Entire Agreement

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

Section 26. Authority to Execute

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

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

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

OJS Building Services, Inc.

Jeremy P. Stutsman, Mayor

Printed: _____

Title: _____

Date Signed: _____

Date Signed: _____



OJS Building Services
1825 E 12th Street
Mishawka, In 46544
Phone: 574-284-2020
Fax: 574-287-2939
www.ojsbsi.com

TO: Goshen Police
Department

FOR: Hot Water Valves
Replacement

QUOTE: PP76900

DATE: 10/18/2022

PAGE: 1 of 1

ATTN: Jeff Halsey

OJS Building Service is pleased to provide a quote to replace (55) hot and chilled water valves located at the Goshen Police Department. This quote includes but limited to the following.

Inclusions:

- Provide and install (26) 3-way ½” modulating valve (Any other valves larger than ¾” will be quoted)
- Provide and install (29) 3-way ½” modulating valve (Any other valves larger than ¾” will be quoted)
- Provide piping materials to install hot water valves.
- Provide testing and operational.

Exclusions:

- Over time costs
- Smoke and Fire control
- Patching/painting
- Access panels
- Tax

Attention: Due to COVID-19 this project maybe subject to delivery of materials and postpone targeted completion dates.

Note: Quote pricing shall extend to December 31,2022. Price increase may occur after this date.

Total: \$38,150.00 (Thirty-Eight Thousand One Hundred Fifty Dollars 00/100)

If this is acceptable, please sign, date, and fax back:

Name

Date

OJS Building Services, INC.

Andrew A. Miller

CONFIDENTIAL



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

November 14, 2022

To: Board of Public Works and Safety
From: Brandy L. Toms
Subject: Agreement for Special Cleaning of Well #14

Attached for the Board's approval and authorization for Mayor Stutsman to execute is an agreement with Peerless Midwest, Inc. The City of Goshen Water and Sewer Department, wishes to enter into an agreement with Peerless-Midwest, Inc for the special cleaning of Well #14 utilizing an innovative and very successful process called the Armour Method. It will require approximately 6 treatments over the course of 3 to 4 weeks at a cost of \$29,960.00. Any additional treatments, should they be required will cost \$4,500.00 per treatment.

Suggested Motion:

Move to approve and authorize Mayor Stutsman to execute the Agreement for the special cleaning of Well #14 with Peerless Midwest, Inc. at a cost of \$29,960.00.

AGREEMENT

Special Cleaning of Well #14 Screen, Gravel Pack and Surrounding Formation

THIS AGREEMENT is entered into on _____, 2022, which is the last signature date set forth below, by and between **Peerless-Midwest, Inc.**, (“Contractor”), whose mailing address is 55860 Russell Industrial Parkway, Mishawka, IN 46545, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Contractor shall provide City the following services which shall include the provision of all labor, supplies, materials, tools, equipment, supervision, insurance and all other items necessary to perform the special cleaning of Well #14 to include the screen, gravel pack and surrounding formation (hereinafter referred to as “Duties”). Contractor’s Duties under this agreement include the use of the Amour Method which includes a minimum six (6) treatments over the course of three to four weeks’ time.

Section 2. Effective Date; Term

- A. The agreement shall become effective on the day of execution and approval by both parties.
- B. Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- C. Parties acknowledges that work on the project will commence as soon as project can be scheduled upon execution of this agreement and the cleaning process will take approximately six (6) weeks to complete.

Section 3. Compensation

City agrees to compensate Contractor the sum of Twenty-Nine Thousand, Nine Hundred Sixty Dollars (\$29,960.00) for performing all Duties.

If the City requests treatments beyond the six (6) treatments contemplated by this Agreement, the cost of each such additional treatment shall be Four Thousand Five Hundred Fifty Dollars (\$4,550.00) per treatment.

Section 4. Payment

- (A) City shall pay Contractor for Duties satisfactorily completed under this agreement as Duties progress.

- (B) Payment shall be upon City's receipt of a detailed invoice from Contractor. The invoice shall be sent to the following address, or at such other address as City may designate in writing.

City of Goshen
c/o Water and Sewer
308 N. 5th Street
Goshen, IN 46528

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

Section 5. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively "Documents") prepared by Contractor or Contractor's employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Contractor may retain a copy of the Documents for its records.

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. Warranty

Contractor provides a 100% warranty on labor, equipment, and any damage that occurs based upon labor and equipment. All materials and workmanship are warranted for a period of two (2) years.

City understands that there are too many unknowns for Contractor to extend any warranty related to the specific capacity or the results' longevity.

Section 8. Independent Contractor

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.

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 9. 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 10. Employment Eligibility Verification

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.

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.

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.

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 11. 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 12. 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 13. 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 14. Insurance

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

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.

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

- (1) Workers Compensation and Employer's Liability - Statutory Limits
- (2) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
- (3) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
- (4) Professional Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
- (5) Excess Umbrella Coverage - \$1,000,000 each occurrence

Section 15. Force Majeure

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

If either party is delayed by force majeure, the party affected shall provide written 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 16. Default

If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.

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

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 17. Termination

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.

City may terminate this agreement, in whole or in part, in the event of default by Contractor.

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 18. 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: Water & Sewer Department
308 N. 5th Street
Goshen, IN 46528

Contractor: Peerless- Midwest, Inc
Attention: Adam L. Gerstbauer
55860 Russell Industrial Parkway

Section 19. 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 20. 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 21. 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 22. Applicable Laws

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.

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 agreement.

Section 23. Miscellaneous

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.

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.

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 24. 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 25. 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 26. Entire Agreement

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

Section 27. 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

Peerless-Midwest, Inc.

Jeremy P. Stutsman, Mayor

Printed: _____

Title: _____

Date Signed: _____

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

November 14, 2022

To: Board of Public Works and Safety
From: Brandy L. Toms
Subject: Agreement for work on the High Service #7 Pump Overhaul

Attached for the Board's approval and authorization for Mayor Stutsman to execute is an agreement with Peerless Midwest, Inc. for work on the #7 pump overhaul at a cost not-to-exceed \$27,840.

Suggested Motion:

Move to approve and authorize Mayor Stutsman to execute the Agreement with Peerless-Midwest, Inc for work on the #7 pump overhaul at a cost not-to-exceed \$27,840.

AGREEMENT

With Peerless-Midwest, Inc for the Work on the High Service #7 Pump Overhaul

THIS AGREEMENT is entered into on _____, 2022, which is the last signature date set forth below, by and between **Peerless- Midwest, Inc.** (“Contractor”), whose mailing address is 55860 Russell Industrial Parkway, Mishawaka, Indiana 46545, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Contractor shall provide City the work on the high service #7 pump overhaul, which work is more particularly described in Contractor’s October 31, 2022 proposal attached as Exhibit A (hereinafter referred to as “Duties”).

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

Contractor’s Duties under this agreement include:

- (A) Full replacement of bowl assembly rated 1800 GPM@ 170’ TDH (includes new column, line shaft)
- (B) Standard motor reconditioning 100 HP motor.
- (C) Shop and Machinist labor to disassemble overhaul and reassemble
- (D) Field labor: Pull/Set (3-man crew due to 10” column size.)

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (C) Contractor shall commence the Duties on as soon as scheduling allows once agreement is executed by the parties.

Section 3. Compensation

- (A) City agrees to compensate Contractor as follows for performing all Duties:

Full replacement of bowl assembly rated 1800 GPM@170’ TDH.....Not-to-Exceed \$11,560

Standard motor reconditioning 100 HP motor	Not-to-Exceed \$ 3,960
Shop and Machinist Labor to disassemble overhaul and reassemble	Not-to-Exceed \$ 5,600
Filed Labor: Pull/Set (3-man crew due to 10” column size).....	Not-to-Exceed \$ 6,720
Total Not to Exceed.....	\$27,840

Section 4. Payment

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

City of Goshen
c/o Goshen Water and Sewer Department
308 North Fifth Street
Goshen, IN 46526

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

Section 5. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively “Documents”) prepared by Contractor or Contractor’s employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Contractor may retain a copy of the Documents for its records.

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

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Contractor provides a 100% warranty on labor, equipment, and any damage that occurs based upon labor and equipment. All materials and workmanship are warranted for a period of two (2) years.

City understands that there are too many unknowns for Contractor to extend any warranty related to the specific capacity or the results’ longevity.

Section 8. Independent Contractor

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

Section 9. 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 10. 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 11. 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.

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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.

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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 work 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 14. Insurance

- (A) Prior to commencing work, the Contractor shall furnish City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the contract with City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Contractor shall specifically include coverage for the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability.
- (B) Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a material change in the policy.
- (C) Contractor shall at least include the following types of insurance with the following minimum limits of liability:
 - (1) Workers Compensation and Employer's Liability - Statutory Limits
 - (2) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - (3) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - (4) Professional Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - (5) Excess Umbrella Coverage - \$1,000,000 each occurrence

Section 15. 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 16. Default

- (A) If Contractor fails to perform the work 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 work 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 work 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 work 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 17. 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 work completed 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 18. 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: Peerless-Midwest, Inc.
Attention: Adam L. Gerstbauer
55860 Russell Industrial Parkway
Mishawaka, IN 46545

Section 19. 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 20. Amendment

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 21. 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 22. 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 work. Failure to do so maybe deemed a material breach of agreement.

Section 23. 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 24. 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 25. 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 26. Entire Agreement

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

Section 27. Authority to Execute

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

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

City of Goshen, Indiana

Goshen Board of Public Works and Safety

Peerless-Midwest, Inc.

Jeremy P. Stutsman, Mayor

Printed: _____

Title: _____

Date Signed: _____

Date Signed: _____

PEERLESS-MIDWEST, INC.

55860 Russell Industrial Parkway
Mishawaka, IN 46545
574-254-9050



Goshen Water Department
308 North Fifth St.
Goshen, IN 46526
Attn: Mr. Kent Holdren

Our Number: ALG-10312022.2

Date: 10/31/22

REFERENCE NTE: High Service #7 Pump Overhaul

QUANTITY	DESCRIPTION	PRICE
	Not to exceed quote to overhaul HS #7.	
	Pump: Full replacement of bowl assembly rated 1800 GPM @ 170' TDH *Includes new column, line shaft	\$11,560.00
	Motor: Standard motor reconditioning 100 HP motor.	\$3,960.00
	Shop and Machinist Labor to disassemble overhaul and reassemble	\$5,600.00
	Field Labor: Pull/Set *3-man due to 10" column size.	\$6,720.00

TERMS NET-30
START Upon Authorization
COMPLETE _____
ACCEPTED BY _____

TOTAL PRICE: \$27,840.00

PEERLESS-MIDWEST, INC.

BY Adam L. Gerstbauer
Adam L. Gerstbauer



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

November 14, 2022

To: Board of Public Works and Safety
From: Brandy L. Toms
Subject: Agreement for work on the High Service #4 Pump Overhaul

Attached for the Board's approval and authorization for Mayor Stutsman to execute is an agreement with Peerless Midwest, Inc. for work on the #4 pump overhaul at a cost not-to-exceed \$25,830.

Suggested Motion:

Move to approve and authorize Mayor Stutsman to execute the Agreement with Peerless-Midwest, Inc for work on the #4 pump overhaul at a cost not-to-exceed \$25,830.

AGREEMENT

With Peerless-Midwest, Inc for the Work on the High Service #4 Pump Overhaul

THIS AGREEMENT is entered into on _____, 2022, which is the last signature date set forth below, by and between **Peerless- Midwest, Inc.** (“Contractor”), whose mailing address is 55860 Russell Industrial Parkway, Mishawaka, Indiana 46545, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Contractor shall provide City the work on the high service #4 pump overhaul, which work is more particularly described in Contractor’s October 31, 2022 proposal attached as Exhibit A (hereinafter referred to as “Duties”).

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

Contractor’s Duties under this agreement include:

- (A) Full replacement of bowl assembly rated 1200 GPM@ 200’ TDH (includes new column, line shaft)
- (B) Standard motor reconditioning 75 HP motor.
- (C) Shop and Machinist labor to disassemble overhaul and reassemble
- (D) Field labor: Pull/Set

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (C) Contractor shall commence the Duties on as soon as scheduling allows once agreement is executed by the parties.

Section 3. Compensation

- (A) City agrees to compensate Contractor as follows for performing all Duties:

Full replacement of bowl assembly rated 1200 GPM@200’ TDH.....Not-to-Exceed \$12,450

Standard motor reconditioning 75 HP motor.....	Not-to-Exceed \$ 3,300
Shop and Machinist Labor to disassemble overhaul and reassemble	Not-to-Exceed \$ 5,600
Field Labor: Pull/Set.....	Not-to-Exceed \$ 4,480
Total Not to Exceed.....	\$25,830

Section 4. Payment

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

City of Goshen
 c/o Goshen Water and Sewer Department
 308 North Fifth Street
 Goshen, IN 46526
- (C) Payment will be made within forty-five (45) days following City’s receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (D) Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer’s Office before City will issue payment.

Section 5. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively “Documents”) prepared by Contractor or Contractor’s employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Contractor may retain a copy of the Documents for its records.

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 work performed by Contractor pursuant to this agreement.

Section 7. Warranty

Contractor provides a 100% warranty on labor, equipment, and any damage that occurs based upon labor and equipment. All materials and workmanship are warranted for a period of two (2) years.

City understands that there are too many unknowns for Contractor to extend any warranty related to the specific capacity or the results’ longevity.

Section 8. Independent Contractor

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

Section 9. 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 10. 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 11. 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 12. 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 13. 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 work 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 14. Insurance

- (A) Prior to commencing work, the Contractor shall furnish City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the contract with City the certificates of proof issued by the insurance carrier that such insurance is in full force and effect. Contractor shall specifically include coverage for the City of Goshen as an additional insured for Employer's Liability, General Liability and Automobile Liability.
- (B) Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a material change in the policy.
- (C) Contractor shall at least include the following types of insurance with the following minimum limits of liability:
 - (1) Workers Compensation and Employer's Liability - Statutory Limits
 - (2) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - (3) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - (4) Professional Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - (5) Excess Umbrella Coverage - \$1,000,000 each occurrence

Section 15. 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 16. Default

- (A) If Contractor fails to perform the work 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 work 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 work 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 work 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 17. 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 work completed 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 18. 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: Peerless-Midwest, Inc.
Attention: Adam L. Gerstbauer
55860 Russell Industrial Parkway
Mishawaka, IN 46545

Section 19. 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 20. Amendment

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 21. 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 22. 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 work. Failure to do so maybe deemed a material breach of agreement.

Section 23. 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 24. 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 25. 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 26. Entire Agreement

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

Section 27. Authority to Execute

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

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

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

Peerless-Midwest, Inc.

Jeremy P. Stutsman, Mayor

Printed: _____

Title: _____

Date Signed: _____

Date Signed: _____

PEERLESS-MIDWEST, INC.

55860 Russell Industrial Parkway
Mishawaka, IN 46545
574-254-9050



Goshen Water Department

308 North Fifth St.

Goshen, IN 46526

Attn: Mr. Kent Holdren

Our Number: ALG-10312022.3

Date: 10/31/22

REFERENCE **NTE: High Service #4 Pump Overhaul**

QUANTITY	DESCRIPTION	PRICE
	Not to exceed quote to overhaul HS #4.	
	Pump: Full replacement of bowl assembly rated 1200 GPM @ 200' TDH *Includes new column, line shaft	\$12,450.00
	Motor: Standard motor reconditioning 75 HP motor.	\$3,300.00
	Shop and Machinist Labor to disassemble overhaul and reassemble	\$5,600.00
	Field Labor: Pull/Set	\$4,480.00

TERMS NET-30

START Upon Authorization

COMPLETE _____

ACCEPTED BY _____

TOTAL PRICE: \$25,830.00

PEERLESS-MIDWEST, INC.

BY Adam L. Gerstbauer
Adam L. Gerstbauer



CITY OF GOSHEN LEGAL DEPARTMENT

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185
www.goshenindiana.org

November 14, 2022

To: Goshen Board of Public Works and Safety

From: Shannon Marks

Subject: Resolution 2022-28 – Contract with the Indiana Department of Transportation for Sweeping Services

The Indiana Department of Transportation wishes to contract with the City of Goshen for the City to sweep the 20.6 curb miles of state highways within the city limits a minimum of two times each year. The contract term is for 48 months commencing July 1, 2021 through June 30, 2025. The State will pay the City \$360/curb mile for a total of \$7,416 each year.

Resolution 2022-28 is to approve the terms and conditions of the contract and to authorize the Mayor to execute the contract.

Suggested Motion:

Move to adopt Resolution 2022-28 – Contract with the Indiana Department of Transportation for Sweeping Services.

GOSHEN BOARD OF PUBLIC WORKS AND SAFETY

RESOLUTION 2022-28

**Contract with the Indiana Department of Transportation
for Sweeping Services**

WHEREAS the Indiana Department of Transportation desires to contract with the City of Goshen for the City to provide services to clean the dirt and debris from State Road 119, State Road 15 and US Highway 33 that run through the Goshen corporate limits, hereinafter referred to as the "Sweeping Services."

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

NOW, THEREFORE, BE IT RESOLVED that the Goshen Board of Public Works and Safety approves the terms and conditions of the Contract with the Indiana Department of Transportation for Sweeping Services attached to and made a part of this resolution.

BE IT FURTHER RESOLVED that the Mayor is authorized to execute the Contract on behalf of the Goshen Board of Public Works and Safety and the City of Goshen.

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

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

DeWayne Riouse, Member

Michael A. Landis, Member

Barb Swartley, Member

SWEEPING SERVICES
EDS/SCM# _____

This Contract, entered into by and between the Indiana Department of Transportation (hereinafter referred to as "State") and the City of Goshen, Indiana (hereinafter referred to as the "Local Public Agency" or "LPA"), is executed pursuant to the terms and conditions set forth herein.

WHEREAS, the State is in need of sweeping services to keep state highways and curbs clean and free of dirt and debris; and

WHEREAS, the LPA has the required sweeping capabilities and is willing to perform sweeping services on state facilities pursuant to this Contract;

NOW THEREFORE, in consideration of the mutual covenants contained herein the parties agree as follows.

1. Duties of LPA. The LPA agrees to perform all services necessary to keep the following described state roads, highways and curbs clean and free of dirt and debris (include road, location, curb miles, etc.):

- SR 119 for 1.1 curb miles**
- SR 15 for 6.7 curb miles**
- US 33 for 12.8 curb miles**

Total curb miles: 20.6

- a) The LPA agrees to dispose of all dirt and debris collected in the cleaning process. All cleaning and disposal of dirt and debris shall be to the reasonable satisfaction of the Indiana Department of Transportation's District Director or his/her designee. The LPA shall take proper precautions and be responsible for the safe performance of the work covered by this Contract. Furthermore, the LPA agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances in the performance of its work under this Contract.
- b) Each location shall be cleaned a minimum of **two (2)** times per year.
- c) The LPA shall be responsible for all liability due to loss, damage, injuries, or other casualties to persons or property arising out of the work performed pursuant to this Contract, whether due in whole or in part to the negligent acts or omissions of the LPA, its agents or employees, or other persons engaged in the performance of the work, including any claims arising out of the Worker's Compensation Act.

2. Consideration. The State agrees to pay the LPA **\$360.00 per curb mile per year, for a total of \$7,416.00 per year. Total remuneration under this Contract shall not exceed \$29,664.00.**

The LPA shall submit one (1) invoice to the State each **year** and the State shall pay the invoice in accordance with its regular fiscal procedures. **When submitting the invoice, the LPA shall certify that the service(s) has been provided.**

3. Term. This Contract shall be effective for a period of **forty-eight (48)** months. It shall commence on **July 1, 2021**, and shall remain in effect through **June 30, 2025**.

4. Access to Records. The LPA and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors.

A. The LPA binds its successors and assignees to all the terms and conditions of this Contract. The LPA may assign its right to receive payments to such third parties as the LPA may desire without the prior written consent of the State, provided that the LPA gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

B. The LPA shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the LPA shall provide prompt written notice to the State of any change in the LPA's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

6. Assignment of Antitrust Claims. [OMITTED – NOT APPLICABLE].

7. Audits. The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

The State considers the LPA to be a "LPA" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the LPA is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), LPA shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

8. Authority to Bind the LPA. The signatory for the LPA represents that he/she has been duly authorized to execute this Contract on behalf of the LPA and has obtained all necessary or applicable approvals to make this Contract fully binding upon the LPA when his/her signature is affixed, and accepted by the State.

9. Changes in Work. The LPA shall not commence any additional work or change the scope of the work until authorized in writing by the State. The LPA shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Compliance with Laws.

A. The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the LPA to determine whether the provisions of this Contract require formal modification.

B. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. **If the LPA has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the LPA shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Contract.** If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the LPA or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The LPA certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The LPA agrees that any payments currently due to the State may be withheld from payments due to the LPA. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the LPA is current in its payments and has submitted proof of such payment to the State.

D. The LPA warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the LPA agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the LPA's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the LPA, the LPA may request that it be allowed to continue, or receive work, without delay. The LPA must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The LPA warrants that the LPA and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The LPA affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC 5-22-3-7:

(1) The LPA and any principals of the LPA certify that:

(A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) the LPA will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) The LPA and any principals of the LPA certify that an affiliate or principal of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or principal of the LPA, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

11. Condition of Payment. All services provided by the LPA under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of State Information. [OMITTED – NOT APPLICABLE].

13. Continuity of Services. [OMITTED – NOT APPLICABLE].

14. Debarment and Suspension.

A. The LPA certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the LPA.

B. The LPA certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The LPA shall immediately notify the State if any subcontractor

becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

15. Default by State. [OMITTED – NOT APPLICABLE].

16. Disputes. [OMITTED – NOT APPLICABLE].

17. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the LPA hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The LPA will give written notice to the State within ten (10) days after receiving actual notice that the LPA, or an employee of the LPA in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the LPA certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the LPA's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the LPA's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Employment Eligibility Verification. As required by IC § 22-5-1.7, the LPA swears or affirms under the penalties of perjury that the LPA does not knowingly employ an unauthorized alien. The LPA further agrees that:

A. The LPA shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The LPA is not required to participate should the E-Verify program cease to exist. Additionally, the LPA is not required to participate if the LPA is self-employed and does not employ any employees.

B. The LPA shall not knowingly employ or contract with an unauthorized alien. The LPA shall not retain an employee or contract with a person that the LPA subsequently learns is an unauthorized alien.

C. The LPA shall require his/her/its subcontractors, who perform work under this Contract, to certify to the LPA 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. The LPA agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the LPA fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

19. Employment Option. [OMITTED – NOT APPLICABLE].

20. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

21. Funding Cancellation. As required by Financial Management Circular 3.3 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

22. Governing Law. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

23. HIPAA Compliance. [OMITTED – NOT APPLICABLE.]

24. Indemnification. The LPA agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third-party claims and suits including court costs, attorney’s fees, and other expenses caused by any act or omission of the LPA and/or its subcontractors, if any, in the performance of this Contract. The State will not provide indemnification to the LPA.

25. Independent Contractor; Workers’ Compensation Insurance. The LPA is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The LPA shall provide all necessary unemployment and workers’ compensation insurance for the LPA’s employees, and LPA shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

26. Indiana Veteran Owned Small Business Enterprise Compliance. [OMITTED – NOT APPLICABLE].

27. Information Technology Enterprise Architecture Requirements. [OMITTED – NOT APPLICABLE].

28. Insurance. [OMITTED – NOT APPLICABLE].

29. Key Person(s). [OMITTED – NOT APPLICABLE].

30. Licensing Standards. [OMITTED – NOT APPLICABLE].

31. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, except by written agreement signed by all necessary parties.

32. Minority and Women’s Business Enterprises Compliance. [OMITTED – NOT APPLICABLE].

33. Nondiscrimination.

- A. Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the LPA covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, or status as a veteran or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The LPA certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this covenant may be regarded as a material breach of this Agreement, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any contractor or subcontractor.
- B. INDOT is a recipient of federal funds, and therefore, where applicable, the LPA and any contractors or subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

The LPA agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by reference. Breach of this covenant may be regarded as a material breach of this Agreement.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, limited English proficiency, or status as a veteran.)

- C. During the performance of this Agreement, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
1. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Agreement.
 2. Nondiscrimination: The LPA, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulation, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential contractor or subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

4. **Information and Reports:** The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by INDOT and the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to INDOT or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this Agreement, INDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Agreement until the LPA complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.
6. **Incorporation of Provisions:** The LPA shall include the provisions of paragraphs 1. through 5. above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

34. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

Notices to the State shall be sent to:

Indiana Department of Transportation – Fort Wayne District
ATTN: Scott E. McDaniel
5333 Hatfield Road
Fort Wayne, IN 46808

Notices to the LPA shall be sent to:

City of Goshen
202 S. 5th Street
Goshen, IN 46528

As required by IC 4-13-2-14.8, payments to the LPA shall be made via electronic funds transfer in accordance with instructions filed by the LPA with the Indiana Auditor of State.

35. Order of Precedence; Incorporation by Reference. [OMITTED – NOT APPLICABLE].

36. Ownership of Documents and Materials. [OMITTED – NOT APPLICABLE].

37. Payments.

A. All payments shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC § 4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20.

B. If the LPA is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the LPA agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

38. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

39. Progress Reports. [OMITTED – NOT APPLICABLE].

40. Public Record. The LPA acknowledges that the State will not treat this Contract as containing confidential information and the State will post this Contract on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

41. Renewal Option. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.

42. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

43. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

44. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the LPA as a result of this Contract.

45. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the LPA of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The LPA shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The LPA shall be compensated for services herein provided but in no case shall total payment made to the LPA exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

46. Termination for Default. [OMITTED – NOT APPLICABLE].

47. Travel. [OMITTED – NOT APPLICABLE].

48. 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 is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the LPA shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the LPA's negligent performance of any of the services furnished under this Contract.

49. Work Standards. The LPA shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the LPA shall grant such request.

50. State Boilerplate Affirmation Clause. [OMITTED – NOT APPLICABLE].

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Agreement, the LPA attests to compliance with the disclosure requirements in IC §4-2-6-10.5.

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Agreement by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Agreement to the State of Indiana. I understand that my signing and submitting this Agreement in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Agreement and this affirmation. I understand and agree that by electronically signing and submitting this Agreement in this fashion I am affirming to the truth of the information contained therein. I understand that this Agreement will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database: https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTRCTS.GBL

In Witness Whereof, the LPA and the State have, through duly authorized representatives, entered into this Contract. The parties, having read and understand the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

LPA

Name of LPA:	<u>City of Goshen</u>
Signature:	_____
Printed Name:	_____
Title:	_____
Date:	_____

STATE OF INDIANA

_____ (for)
Michael Smith, Commissioner
Department of Transportation

Date: _____

STATE APPROVALS

All State Approvals are made electronically – see attached confirmation page.

APPROVALS

Department of Administration

_____ (for)
Dr. Rebecca Holwerda, Commissioner

Date: _____

Budget Agency

_____ (for)
Zachary Q. Jackson, Director

Date: _____

Approved as to Form and Legality:

_____ (for)
Theodore E. Rokita
Attorney General of Indiana

Date: _____

*Form approval has been granted by the
Office of the Attorney General pursuant to
IC 4-13-2-14.3(e) on June 8, 2022
FA 22-26*



CITY OF GOSHEN LEGAL DEPARTMENT

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185
www.goshenindiana.org

November 14, 2022

To: Goshen Board of Public Works and Safety
From: Shannon Marks, Legal Compliance Administrator
Subject: Acceptance of Easement from Pilgrim Partners, LLC

It is recommended that the Board accept the attached Easement from Pilgrim Partners, LLC, for Goshen City storm sewer utility purposes. The 500 sq. ft. easement area is located on the south side of West Plymouth Avenue east of Lighthouse Lane.

Suggested Motion:

Move to accept the Easement for Goshen City storm sewer utility from Pilgrim Partners, LLC, and authorize the Mayor to execute the Acceptance.

EASEMENT

Pilgrim Partners, LLC (“Grantor”), grants and conveys to **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana (“City”), whose mailing address is 202 South Fifth Street, Goshen, Indiana 46528, for One Dollar (\$1) and other good and valuable consideration, the receipt whereof is hereby acknowledged, an easement over, across, and through real estate situated in Elkhart County, State of Indiana, as more particularly described in the legal description attached as Exhibit A. The area so described is hereafter referred to as “Easement.”

The Easement is part of Parcel Number 20-11-17-301-021.000-015. Grantor obtained title to the real estate by the Plat of Plymouth Avenue Professional Park First Addition, signed by Grantor on November 16, 2015, and recorded November 18, 2015, in the Office of the Recorder of Elkhart County, in Plat Book 36, Page 15, as Instrument No. 2015-23813.

The Easement is granted and conveyed to City for Goshen City storm sewer utility purposes and drainage purposes. Grantor grants that City access to the Easement for the purposes of accessing, installing, operating, and maintaining Goshen City storm sewer utility facilities and drainage facilities, including any appurtenances as may be required.

City shall restore the surface of the Easement after any entry by City to as good as or better condition than it was prior to the entry. City shall promptly pay for or otherwise rectify any damage cause by City to Grantor’s adjoining real estate.

City is not obligated to replace any improvements extending over or into the Easement that may be damaged or removed during any subsequent entry.


Grantor may use, occupy and possess the Easement in a manner that is consistent with and does not interfere with City’s rights contained in this Easement.

The terms of this Easement shall run with the land and shall be binding upon and inure to the benefit of the heirs, assigns and successors in interest of the parties.

The undersigned represents and certifies that such person is a duly authorized representative of Grantor and has been fully empowered to execute this Easement on behalf of Grantor; that the Grantor has full capacity to grant the Easement described; and that all necessary action for granting this Easement had been taken.

IN WITNESS WHEREOF, the undersigned has executed this Easement on
November 1, 2022.


Pilgrim Partners, LLC

By: 
Printed: FA Simon Jr. MD
Title: partner

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on November 1, 2022, personally appeared FA Simon Jr. MD (Name) as Partner (Title) of Pilgrim Partners, LLC, being known to me or whose identity has been authenticated by me to be the person who acknowledged the execution of the foregoing instrument.




Printed Name: Tracee D. Norton

ACCEPTANCE

The City of Goshen, Indiana by the Goshen Board of Public Works and Safety, acknowledges the receipt of this Easement from Pilgrim Partners, LLC and accepts the Easement on _____, 2022.

Jeremy P. Stutsman, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on _____, 2022, personally appeared Jeremy P. Stutsman, Mayor of the City of Goshen, Indiana on behalf of the Goshen Board of Public Works and Safety, being known to me or whose identity has been authenticated by me to be the person who acknowledged the execution of the foregoing instrument.

Printed Name: _____

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 (James W. Kolbus).

This instrument was prepared by James W. Kolbus, Attorney No. 5494-20, Barkes, Kolbus, Rife & Shuler, LLP, 118 N. Main Street, Goshen, Indiana, (574) 533-3181.

EXHIBIT A

LEGAL DESCRIPTION

DRAINAGE EASEMENT

OWNER: PILGRIM PARTNERS, LLC

INSTR. #:2015-23813 (LAST DEED OF RECORD)

A PART OF TRACT A AS SAID TRACT IS KNOWN AND DESIGNATED ON THE PLAT OF PLYMOUTH AVENUE PROFESSIONAL PARK FIRST ADDITION AND ALSO BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 6 EAST, ELKHART TOWNSHIP, ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF TRACT A IN PLYMOUTH AVENUE PROFESSIONAL PARK FIRST ADDITION, AS RECORDED IN PLAT BOOK 36, PAGE 15, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA; THENCE NORTH 89 DEGREES 07 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF SAID TRACT A, A DISTANCE OF 20.00 FEET; THENCE NORTH 00 DEGREES 27 MINUTES 00 SECONDS EAST, A DISTANCE OF 25.00 FEET; THENCE SOUTH 89 DEGREES 07 MINUTES 00 SECONDS EAST, A DISTANCE OF 20.00 FEET TO THE EAST LINE OF SAID TRACT A; THENCE SOUTH 00 DEGREES 27 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SAID TRACT A, A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE DESCRIBED CONTAINING 500 S.F., MORE OR LESS. BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND PUBLIC RIGHTS OF WAY OF RECORD.



CITY OF GOSHEN LEGAL DEPARTMENT

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www.goshenindiana.org

To: Goshen Board of Public Works and Safety
From: Bodie J. Stegelmann
Subject: Transfer of 311 N. 9th Street
Date: November 14, 2022

The City owns vacant real property located generally at 311 North 9th Street, and has no plans to utilize the real property for governmental purposes. It is recommended that the Board approve the transfer of the subject real property to Habitat for Humanity of Elkhart County, Inc. pursuant to the Resolution 2022-29 provided herewith.

Suggested Motion:

Move to approve Resolution 2022-29 for the transfer of 311 N. 9th Street to Habitat for Humanity of Elkhart County, Inc. and authorize Mayor Stutsman to execute documents necessary to accomplish such transfer.

RESOLUTION _____

**Transfer of Real Property
Located at 311 N. 9th St., Goshen, Indiana
to Habitat for Humanity of Elkhart County, Inc.**

WHEREAS The City of Goshen, Indiana (“The City”) owns real property generally located at 311 N. 9th Street, Goshen, Indiana (“Subject Real Estate”), more particularly described as,

Lot Number Fifty-Nine (59) as said lot is known and designated on the recorded Plat of Chamberlain’s Second Addition to the City of Goshen, said Plat being recorded in Plat Book 21, page 91, in the Office of the Recorder of Elkhart County, Indiana.

WHEREAS Habitat for Humanity of Elkhart County, Inc. (“Habitat”) is an Indiana nonprofit corporation organized for educational, literary, scientific, religious, or charitable purposes that is exempt from federal income taxation under Section 501 of the Internal Revenue Code, and would like to acquire the Subject Real Estate from The City for the purpose of constructing a residence for one of its clients.

WHEREAS The City is willing to transfer the Subject Real Estate to Habitat for the purpose so stated.

WHEREAS, Indiana Code § 36-1-11-1 allows the City to transfer real property to an Indiana nonprofit corporation organized for educational, literary, scientific, religious, or charitable purposes that is exempt from federal income taxation under Section 501 of the Internal Revenue Code.

NOW, THEREFORE, BE IT RESOLVED that:

1. The City agrees to transfer to Habitat the real property generally located at 311 N. 9th Street, Goshen, Indiana as more particularly described as,

Lot Number Fifty-Nine (59) as said lot is known and designated on the recorded Plat of Chamberlain’s Second Addition to the City of Goshen, said Plat being recorded in Plat Book 21, page 91, in the Office of the Recorder of Elkhart County, Indiana.

(“Subject Real Property”)

2. The transfer of the Subject Real Estate shall be for no consideration.

3. The transfer of the Subject Real Estate shall be pursuant to the quit claim deed. Any costs for document preparation, title insurance, and filing and recording the deed shall be paid by Habitat.

4. Mayor Jeremy P. Stutsman is hereby authorized to execute the quit claim deed and any other document necessary to transfer title to the Subject Real Property to Habitat.

PASSED and ADOPTED by the Goshen Board of Public Works and Safety on November 14, 2022.

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

DeWayne Riouse, Member

Michael A. Landis, Member

Barb Swartley, Member

QUITCLAIM DEED

THIS INDENTURE WITNESSETH, that **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana, whose mailing address is 202 South Fifth Street, Suite 2, Goshen, Indiana 46528, releases and quitclaims to the, **Habitat for Humanity of Elkhart County, Inc.**, an Indiana Not-for-Profit Corporation, for One Dollar (\$1) and other good and valuable consideration, the receipt whereof is hereby acknowledged, the following real estate located in Elkhart Township, Elkhart County, in the State of Indiana, commonly known as 311 N. 9th St., Goshen, Indiana 46528, and more particularly described as follows:

Lot Number Fifty-Nine (59) as said lot is known and designated on the recorded Plat of Chamberlain’s Second Addition to the City of Goshen, said Plat being recorded in Plat Book 21, page 91, in the Office of the Recorder of Elkhart County, Indiana.

Subject to taxes and all easements and restrictions of record.

Being Parcel No. 20-11-10-153-012.000-015.

IN WITNESS WHEREOF, the undersigned has executed this Quitclaim Deed on November _____, 2022.

City of Goshen, Indiana

By: _____
Jeremy P. Stutsman, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on _____, 20____, personally appeared Jeremy P. Stutsman as Mayor and authorized signatory of the City of Goshen, Indiana, and acknowledged the execution of the foregoing instrument.

Notary Public
Printed: _____
County of residence: _____
Commission number: _____
My commission expires: _____

The mailing address of the grantee and address to which statements for taxes or special assessments should be mailed is Habitat for Humanity of Elkhart County, Inc., 2910 Elkhart Road, P.O. Box 950, Goshen IN 46527.

This instrument was prepared by Bodie J. Stegelmann, Attorney No. 18180-20, City of Goshen Legal Department, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, (574) 537-3820.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law (Bodie J. Stegelmann).



CITY OF GOSHEN LEGAL DEPARTMENT

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www.goshenindiana.org

To: Goshen Board of Public Works and Safety
From: Bodie J. Stegelmann
Subject: Agreement with Q-mation, Inc.
Date: November 14, 2022

It is recommended that the Board approve an agreement with Q-mation, Inc. for the development of a serial interface custom driver for the City's SCADA system. Q-mation, Inc. will be paid Fourteen Thousand Forty Dollars (\$14,040.00) to provide these services.

Suggested Motion:

Move to approve an agreement with Q-mation, Inc. for the development of a serial interface custom driver for the City's SCADA system, in the amount of Fourteen Thousand Forty Dollars (\$14,040.00).

AGREEMENT

With Q-mation, Inc. For Work on Serial Interface Custom Driver On the City's SCADA System

THIS AGREEMENT is entered into on November _____, 2022, which is the last signature date set forth below, by and between **Q-mation, Inc. d/b/a Q-mation** ("Q-mation"), whose mailing address is 425 Caredean Drive, Horsham, PA 19044, 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. Q-mation Duties

Q-mation shall provide City work on a serial interface custom driver for the City's SCADA system, and provide software associated therewith, which software and services are more particularly described in Q-mation's proposal dated October 19, 2022, attached hereto and made a part hereof (hereinafter referred to as "Duties").

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

Section 2. Effective Date; Term

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

(B) Upon execution of this Agreement, the parties will define a schedule of performance acceptable to both parties. Q-mation acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Q-mation shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.

Section 3. Compensation

City agrees to compensate Q-mation the sum of Fourteen Thousand Forty Dollars (\$14,040.00) for performing all engineering services associated with Duties, and Nine Hundred Thirty-Five Dollars (\$935.00) for software licenses associated with Duties, as well as reasonable travel costs (flight, car rental, overnight stay, and meals) that are pre-approved by City.

Section 4. Payment

(A) City shall pay Q-mation for engineering services associated with Duties as they are satisfactorily completed under this agreement, and City shall pay Q-mation for software licenses when invoiced.

(B) Payment shall be upon City's receipt of a detailed invoice from Q-mation. 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 Water Department
308 North 5th Street
Goshen, IN 46528

(C) Payment will be made within forty-five (45) days following City's receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.

(D) Q-mation 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 Q-mation or Q-mation's employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Q-mation may retain a copy of the Documents for its records.

Section 6. Licensing/Certification Standards

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

Section 7. Independent Contractor

(A) Q-mation shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Q-mation shall be under the sole and exclusive direction and control of Q-mation 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 Q-mation and/or Q-mation's employees, agents or subcontractors.

(B) Q-mation understands that City will not carry worker's compensation or any other insurance on Q-mation and/or Q-mation's employees or subcontractors

(C) Q-mation 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

Q-mation agrees to comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. Q-mation or any subcontractors, or any other person acting on behalf of Q-mation 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) Q-mation shall enroll in and verify the work eligibility status of all Q-mation's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Q-mation is not required to participate in the E-Verify program should the program cease to exist. Q-mation is not required to participate in the E-Verify program if Q-mation is self-employed and does not employ any employees.

(B) Q-mation shall not knowingly employ or contract with an unauthorized alien, and Q-mation shall not retain an employee or continue to contract with a person that the Q-mation subsequently learns is an unauthorized alien.

(C) Q-mation shall require their subcontractors, who perform work under this contract, to certify to the Q-mation 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. Q-mation agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

(D) City may terminate the contract if Q-mation 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 Q-mation 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 Q-mation certifies that Q-mation 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, Q-mation certifies that Q-mation does not engage in investment activities in Iran as defined by Indiana Code § 5-22-16.5-8.

Section 12. Indemnification

Q-mation 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 Q-mation or any of Q-mation'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 Q-mation 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. Insurance

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

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

(C) Q-mation shall at least include the following types of insurance with the following minimum limits of liability:

(1) Workers Compensation and Employer's Liability - Statutory Limits.

(2) General Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate.

(3) Professional Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate

(4) Excess Umbrella Coverage - \$1,000,000 each occurrence

Section 14. 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 15. Default

(A) If Q-mation fails to perform the services or comply with the provisions of this agreement, then Q-mation may be considered in default.

(B) It shall be mutually agreed that if Q-mation 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 Q-mation 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 Q-mation shall be liable to the City for any excess costs incurred.

(C) Q-mation may also be considered in default by the City if any of the following occur:

(1) There is a substantive breach by Q-mation of any obligation or duty owed under the provisions of this contract.

(2) Q-mation is adjudged bankrupt or makes an assignment for the benefit of creditors.

(3) Q-mation becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.

(4) Q-mation 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 Q-mation or any of Q-mation's property.

(6) Q-mation is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Q-mation unable to perform the services described under these Specification Documents.

(7) The contract or any right, monies or claims are assigned by Q-mation without the consent of the City.

Section 16. Termination

(A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Q-mation 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 Q-mation.

(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 17. 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

Q-mation: Q-mation, Inc.
Attention: _____
425 Caredean Drive
Horsham, PA 19044

Section 18. Subcontracting or Assignment

Q-mation 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 Q-mation to subcontract or assign any portion of the agreement shall not be construed to relieve Q-mation from any responsibility to fulfill all contractual obligations.

Section 19. 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 20. 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 21. Applicable Laws

(A) Q-mation 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) Q-mation 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 agreement.

Section 22. 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) 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 23. 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 24. 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 25. Entire Agreement

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

Section 26. Authority to Execute

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

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

City of Goshen, Indiana

Goshen Board of Public Works and Safety

Q-mation, Inc.

Jeremy P. Stutsman, Mayor

By: _____

Mary Nichols, Member

Printed: _____

DeWayne Riouse, Member

Title: _____

Michael A. Landis, Member

Date Signed: _____

Barb Swartley, Member

Date Signed: _____

Customer	City of Goshen 308 North 5 th Street Goshen, IN 46528	
Project Name	Serial Interface custom driver	
Date and Quote ID	10/19/2022	QUOTE-GOSHEN20221019-SOW
Customer Project Owner	Marvin Shepard	
Q-mation Account Manager	Matt Weaver	
Q-mation Services manager	Simon Wright	
Q-mation Proposal Author	Shannon Asselin	

1. Basis for Proposal

Q-mation received a request from City of Goshen to help interface with communication to an old USFilter D620 controller at their facility in Goshen, IN. The controller communication is being decoded by the FSGateway tool kit DDE custom driver. This tool kit is no longer available and is not compatible with the newer windows environment. Q-mation is proposing to upgrade the current application to OmniServer and will provide all software, and services to complete the upgrade project. This will be executed in conjunction with QUOTE-GOSHEN20220420-SOW and QUOTE-GOSHEN20220706Part2-SOW.

2. Solution Overview

2.1 Overview

Q-mation will install and setup the OmniServer to interface directly to the D620 controller. This setup will be done on an existing Windows 10 workstation provided by City of Goshen.

3. Project Scope

The following covers the project scope Q-mation agrees to complete:

- 3.1 Procure, provide, and activate all software licenses listed in 6.2 of the proposal
- 3.2 Install and configure OmniServer on 1 PC provided by City of Goshen
- 3.3 Test and verify all communication between OmniServer and the Aveva application
- 3.4 Onsite validation, working with City of Goshen for implementation in a live production environment

4. Assumptions, Clarifications, and Exclusions

- 4.1 City of Goshen will provide onsite access for installation, testing, commissioning, and support of the project
- 4.2 City of Goshen will provide a single point of contact for the duration of the project
- 4.3 City of Goshen will use existing monitors, peripherals, and enclosures for the upgrade
- 4.4 Q-mation is not responsible for the PLC controls and coding
- 4.5 Q-mation and City of Goshen will agree upon a schedule at a project kick-off meeting

4.6 City of Goshen will provide the hardware

4.7 Formal classroom training is not included in the proposal

5. Approach & Schedule

Q-mation will work with City of Goshen to define a schedule upon issue of PO. Q-mation will designate an Application Engineer to service the project and act as the main point of contact between Q-mation and City of Goshen. Once the project is accepted and stable, responsibility for support then passes to our Wonderware Customer FIRST program.

6. Pricing Summary

Sections 6.1, 6.2, and 6.3 provide pricing for all services, software licensing, and hardware for the project. **The project is a fixed price cost with the total of \$14,975.** The price does not include travel cost. All travel costs (flights, car rental, overnight stay, and meals) will be billed at actual cost. The proposed price does not include any applicable taxes. Tax exemption number must be on file or applicable taxes will be added. Variances to the scope defined in this proposal will be handled via change requests after approval from City of Goshen.

6.1 Table of Engineering Services

Engineering Services	Price
All Services and Labor	\$14,040

6.2 Table of Software Licenses

Software Licenses	Part Number	Price Each	Qty.	Ext. Price
OmniServer Version Server Includes 1 year of support & Maintenance	41242109-N	\$935	1	\$935
			Total	\$935

7. Terms and Conditions

Q-mation agrees to provide the project scope and deliverables as described. Customer agrees to reimburse Q-mation for the stipulated project price. The following terms and conditions also apply:

The services price does not include any expected travel time or living expenses. Travel time is billable and T&L expenses will be invoiced at actual cost.

- 7.1 Services will be scheduled after acceptance of a valid PO
- 7.2 Software licensing will be invoiced 100% upon receipt of PO
- 7.3 Services will be invoiced 50% at receipt of PO and 50% upon completion of the project
- 7.4 This Statement of Work is valid for 90 days from the date of issue
- 7.5 Payment terms are Net 30 days unless otherwise agreed
- 7.6 Price does not include any applicable taxes. Tax exemption number must be on file or taxes will be added
- 7.7 Project price assumes working normal business hours (8:30AM-6PM Eastern time) on normal business days (Monday-Friday)
- 7.8 Legal entity is Q-mation, Inc. d/b/a Q-mation

Mail, Email or FAX a Purchase Order referencing this Quote ID to:

Q-mation, Inc. d/b/a/ Q-mation
 425 Caredean Drive
 Horsham, PA 19044
 Email: sales@wonderwarenorth.com
 Fax: (215) 675-9712



**COMMUNITY DEVELOPMENT BLOCK GRANT
CITY OF GOSHEN**

204 East Jefferson Street, Suite 4 • Goshen, IN 46528-3405

Phone (574) 533-9370 • Fax (574) 533-8626 • TDD (574) 534-3185
theresacummings@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Board of Public Works and Safety

FROM: Theresa Cummings, Community Development Specialist

DATE: November 14, 2022

RE: Approval of 2022 Community Development Block Grant (CDBG) Agreement

Please approve and authorize the Mayor to sign the following CDBG agreement for Program Year 2022:

Homeownership Assistance

Lacasa, Inc. – homeownership assistance program **\$40,000**

Homeownership assistance is a new program that will provide direct financial assistance to low/moderate homebuyers purchasing single family homes in the City of Goshen.

Agreement is attached for your reference.

Suggested Motion: To approve and authorize Mayor Stutsman to sign the CDBG agreement for homeownership assistance for Program Year 2022.

CITY OF GOSHEN
COMMUNITY DEVELOPMENT BLOCK GRANT
SUBRECIPIENT AGREEMENT FOR HOMEOWNERSHIP ASSISTANCE
Program Year 2022: July 1, 2022-June 30, 2023

This Homeownership Assistance Agreement (the “Agreement”) is entered into by and between the City of Goshen, Indiana (the “City”) and LaCasa, Inc. (the “Sub-Recipient”), an Indiana not-for-profit corporation, as of this 14th day of November, 2022.

WITNESSETH:

WHEREAS, such CDBG Homeownership Assistance grant will be funded through the entitlement city’s Community Development Block Grant (“CDBG”) program established under Title I of the Housing and Community Development Act of 1974, as amended, and the rules, regulations, policy memoranda and other authority thereunder (collectively, the “Act”) and administered by the City of Goshen.

WHEREAS, City has requested the assistance of the Sub-Recipient to jointly administer the Homeownership Assistance portion of the CDBG program with the City in order to carry out the proposed program;

WHEREAS, the Act contains certain requirements regarding the use of funds to fulfill a “national objective,” as defined in the Act;

WHEREAS, the national objective to be fulfilled by the City’s use of its CDBG program is the provision of single unit residential housing by the Sub-Recipient for low and moderate (“Low and Moderate”) income households. Low- and Moderate-income households are defined in the Act, and the income limits will be as established for the HOME Program, as published annually by Indiana Housing & Community Development Authority, with a separate Lien and Restrictive Covenant Agreement required to be executed and recorded for each individual property receiving CDBG assistance;

WHEREAS, the Act requires that the Sub-Recipient demonstrate its intent to provide such housing for Low- and Moderate-income families;

WHEREAS, the Act prohibits discrimination under any program or activity funded with CDBG moneys on the basis of race, color, national origin, sex, age, or handicap; additionally, the Act prohibits discrimination in housing programs and activities funded with CDBG on the basis of sexual orientation, gender identity or marital status;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and Sub-Recipient agree as follows:

1. Sub-recipient Designation and Administration of Grant. City hereby designates and Sub-Recipient hereby agrees to serve as a sub-recipient for the Homeownership Assistance portion of the CDBG program and to administer such portion in accordance with this Agreement and the Act.

2. Scope of Services. Sub-Recipient agrees to perform the services under this Agreement as specified in the attached Exhibit A that are hereby incorporated by reference. In performing such services, Sub-Recipient agrees:

(a) To obtain all federal, state, and local government approvals, permits, licenses, and review required by law to be obtained for the performance of the homeownership assistance services under this Agreement.

(b) To comply with all applicable, federal, state, and local laws and regulations pertaining to the performance of the homeownership assistance services under this Agreement.

(c) To submit to the City any and all documents demonstrating compliance with all federal and state rules and regulations. Such demonstrations will be provided at the request of the City. City's failure to request any supporting documentation, however, shall not excuse any failure on the part of Sub-Recipient to have complied with the applicable federal and state rules and regulations.

(d) To file claims on a timely basis with the City for the release of funds from the grant for payment of the direct homeownership assistance costs as outlined in the HUD-1. All claims will be accompanied by verification of all costs incurred. Copies of the following documents must be on file with the City in order to process a claim: homebuyer application, household income verification, HUD-1 with itemized claim invoice, and homeownership assistance report with all required attachments.

(e) Claims will be limited to the sum of Forty Thousand Dollars (\$40,000.00) for the homeownership assistance project. The maximum CDBG contribution per household/property shall generally not exceed Ten Thousand Dollars (\$10,000.00). The Sub-Recipient will not be reimbursed by the City for any costs associated with the homeownership assistance project. CDBG homeownership assistance funds will be paid directly to the title company on behalf of the homebuyer household.

(f) That all contracts and services shall be carried out in compliance with applicable laws and regulations, including, but not limited to, those listed in Exhibit B.

(g) That all federal fair housing and other requirements stated in the CDBG program shall be met when performing the homeownership assistance services under this Agreement.

(h) That City and Federal officials and representatives will have access to all books, accounts, records, reports, files, and other papers, things or property pertaining to the project in order to make audits, examinations, excerpts, and transcripts.

(i) To assist any or all of the City's personnel or agencies, designated by the City by contract or resolution or other written document, regarding the implementation of this Agreement, and such designated personnel and agencies shall provide information and cooperation to the Sub-Recipient to the extent provided in this Agreement and other contracts, resolutions, or written agreements.

(j) To provide any and all information as requested by the City to fulfill the requirements of the Federal Subaward Reporting System (FSRS). This includes having a UEI (Unique Entity Identifier) and maintaining a current and accurate SAM.gov (System for Award Management) account.

3. Release of Funds. The City agrees to release funds from the CDBG program for direct homeownership assistance costs, to be provided to the title company on behalf of the homebuyer household, as outlined in the HUD-1 provided by the Sub-Recipient at the time funds are requested by Sub-Recipient, in accordance with City claim procedures as outlined in Exhibit C.

4. City Responsibilities. City agrees:

(a) To retain all environmental responsibilities and the responsibility for initiating any applicable inter-governmental review process. However, nothing in this Agreement shall be construed to create environmental responsibilities that do not otherwise exist.

(b) To file required paperwork and documents with the U.S. Department of Housing and Urban Development and any other necessary agencies on a timely basis with respect to the CDBG program and to pay properly submitted and documented claims of the Sub-Recipient on a timely basis.

5. Designation of Project Coordinators. For purposes of this Agreement, the Project Coordinator for the City shall be Rhonda Yoder, CDBG Director, City of Goshen. The Project Coordinator for the Sub-Recipient shall be Chris Kingsley, President, LaCasa, Inc. Communications pertaining to this Agreement shall be through the respective Project Coordinators for the City and Sub-Recipient.

6. Term of Agreement.

(a) The term of this Agreement shall run from and including the 1st day of July 2022 through and including the 30th day of June 2023. All of Sub-Recipient's claims to release funds from the CDBG program shall be submitted to the City no later than the day specified by the CDBG Director near the end of the contract period, approximately June 8, 2023, so that all claims can be paid within the contract year, except as needed to complete projects, including the associated reporting and paperwork, extending the term of the contract no longer than the end of calendar year 2023.

(b) When the CDBG Director is notified that CDBG funds are no longer available due to funding changes or lack of funding by the U.S. Department of Housing and Urban Development to support continuation of performance of the Agreement, the Agreement shall be canceled with not less than 30 days' notice to the Sub-Recipient from the City.

7. Audit Compliance. The Sub-recipient shall provide the amount of federal funds expended in the Sub-recipient's fiscal year, as requested by the City. If the Sub-recipient expends \$750,000 or more of federal funds in a fiscal year, an audit following 2 CFR 200.514 must be conducted and a copy of the audit submitted to the City for review, within 30 days after receipt of the auditor's report(s) or nine months after the end of the audit period, whichever is earlier. Any findings related to CDBG must be cleared by the City.

8. CDBG Assets. Upon the expiration or termination of this Agreement, all CDBG-funded assets shall revert to the City to be disposed of in accordance with applicable federal rules, laws, and regulations governing the disposition of property, assets, and equipment purchased with federal funds.

9. Program Income. Sub-Recipient agrees that any Program Income as defined by the Act generated pursuant to this Agreement in the administration of the CDBG program shall be administered and handled as required by the Act and may be expended only upon the prior approval of the City.

10. Uniform Administrative Requirements. Sub-Recipient agrees to comply with applicable uniform administrative requirements, as described in 2 CFR Part 200.

11. Notice. All notices required or permitted under this Agreement shall be submitted in writing to the other party to this Agreement, and delivered personally or sent by regular first-class mail:

City of Goshen, Indiana
Attn: Rhonda Yoder, CDBG
204 E. Jefferson Street, Suite 4
Goshen, Indiana 46528

LaCasa, Inc.
Attn: Chris Kingsley
202 N. Cottage Avenue
Goshen, Indiana 46528

Or at such other place as the parties may designate in writing from time to time.

12. Conflict of Interest. The Sub-Recipient represents that none of its employees, officers, or directors presently have any interest, either direct or indirect, which would conflict in any manner with Sub-Recipient's performance or procurement under this Agreement, and that no person having such interest shall be appointed or employed by Sub-Recipient; except that which is disclosed in writing by the Sub-Recipient to the City.

13. Tax Exempt Status. Attached hereto as Exhibit D by this reference made a part hereof is a copy of

correspondence from the Internal Revenue Service dated the 28th day of January 2003 confirming the 501(c)(3) tax exempt status of the Sub-Recipient.

14. Default.

(a) Upon Sub-Recipient’s failure to comply with any of the terms and conditions contained within this Agreement or its failure to comply with the appropriate federal rules, laws, and regulations governing the administration of the CDBG funds, all rights inuring to the benefit of Sub-Recipient pursuant to this Agreement shall be suspended and this Agreement, shall be terminated upon delivery of written notice by the City. Furthermore, Sub-Recipient shall not be entitled to reimbursement from the City for any project in which Sub-Recipient is in default of its obligations imposed upon it pursuant to this Agreement, or is in violation of any federal rules, laws, or regulations governing the administration of CDBG funds. Upon City’s default under this Agreement, all rights inuring to the benefit of City pursuant to this Agreement shall be suspended and this Agreement shall be terminated upon delivery of written notice by Sub-Recipient.

(b) Upon default by a party to this Agreement, the non-defaulting party shall be entitled to recover its damages, penalties incurred, costs and expenses sustained, and reasonable attorney fees from the defaulting party in addition to the remedies provided in subparagraph (a) above. A party shall be in default under this Agreement in the event it violates or fails to comply with any of the terms and conditions contained within this Agreement or the applicable state and federal laws, rules, and regulations.

15. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however that no assignment shall be effective to relieve a party of any liability under this Agreement unless the other party has consented in writing to the assignment and agreed to the release of such liability. The City and Sub-Recipient hereby acknowledge receipt of a duly executed copy of this Agreement complete with all exhibits attached hereto.

IN WITNESS WHEREOF, the Sub-Recipient and the City have caused this Agreement to be executed by a duly authorized individual as of the date first above written.

SUB-RECIPIENT:

LACASA, INC.

By: _____
Chris Kingsley
President

ATTESTED:

By: _____

Printed: _____

Title: _____

CITY:

CITY OF GOSHEN, INDIANA BY
AND THROUGH THE MAYOR
OF THE CITY OF GOSHEN, INDIANA

By: _____
Jeremy P. Stutsman, Mayor

Exhibit A
HOMEOWNERSHIP ASSISTANCE PROGRAM
CITY OF GOSHEN, INDIANA

SCOPE OF SERVICES

- a) To prepare and secure execution of agreements between LaCasa and the homebuyer household specifying the responsibilities of each party with regard to the project including the work to be performed and commitments made by LaCasa under this Agreement.
- b) To provide all required documents to the City, including homebuyer application, income verification, homeownership assistance report form, HUD-1 with itemized invoice, housing education/counseling verification, and recorded deed and recorded affordability liens after closing, including all supporting documentation for each.
- c) To maintain records adequate to identify and account for all costs pertaining to this Agreement; to establish the eligibility of the homebuyer household assisted under the program and such other records as may be required by statute, rule or regulations. These records shall be maintained for a period of four (4) years after project completion and shall be available to the City and authorized federal agencies. CDBG project completion occurs when the CDBG lien is released.
- d) Prepare homeownership assistance reports on the form provided by the City, detailing the property location, legal description of property, determination of household income, number of household members, the race and ethnicity of household members, and other required information.
- e) Provide proof of complying with all rules and regulations involving Lead Based Paint requirements.
- f) The maximum CDBG grant per household/property will typically be Ten Thousand (\$10,000.00). A Lien and Restrictive Covenant Agreement will be required to be executed and recorded for each individual property receiving CDBG assistance. All proceeds from lien repayment are considered program income and shall be returned to the City's CDBG program.

Exhibit B

I. Administrative Requirements

A. Financial Management

1. Accounting Standards

The Sub-recipient agrees to comply with 2 CFR Part 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Sub-recipient shall administer its program in conformance with 2 CFR Part 200 as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Sub-recipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets the National Objective of the CDBG program of benefiting low/moderate income persons;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 2 CFR Part 200; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The Sub-recipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of submission of the City's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Sub-recipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the City or their designees for review upon request.

4. Disclosure

The Sub-recipient understands that client information collected under this contract is private, and the use or disclosure of such information, when not directly connected with the administration of the City's or Sub-recipient's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service, and, in the case of a minor, that of a responsible parent/guardian, unless otherwise required by law.

5. Close-Outs

The Sub-recipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), final close-out reports and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Sub-recipient has control over CDBG funds, including program income.

6. Audits and Inspections

All Sub-recipient records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Sub-recipient within 30 days after receipt by the Sub-recipient. Failure of the Sub-recipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Sub-recipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Sub-recipient audits and, as applicable, 2 CFR Part 200.

C. Reporting and Payment Procedures

1. Program Income

The Sub-recipient shall report on a monthly basis all program income as defined at 24 CFR 570.500(a) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Sub-recipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Sub-recipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unused program income shall be returned to the City at the end of the contract period. Any interest earned on cash advances from the US Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the City.

2. Indirect Costs

If indirect costs are charged, the Sub-recipient will develop an indirect cost allocation plan for determining the appropriate Sub-recipient's share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.

3. Payment Procedures

The City will pay to the Sub-recipient funds available under this contract, based upon information submitted by the Sub-recipient and consistent with any approved budget and City policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Sub-recipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund and program income balances available in Sub-recipient accounts. In addition, the City reserves the right to liquidate funds available under this contract for costs incurred by the City on behalf of the Sub-recipient.

D. Procurement

1. Compliance

The Sub-recipient shall comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provide herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this Agreement, the Sub-recipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR Part 200.

3. Travel

The Sub-recipient shall obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

II. Personnel and Participant Conditions

A. Civil Rights

1. Compliance

The Sub-recipient agrees to comply with all local and State of Indiana civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act (HCDA) of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Sub-recipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (PL 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Sub-recipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. The Sub-recipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Sub-recipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 USC 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the Sub-recipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Equal Opportunity

1. Women- and Minority-Owned Businesses (W/MBE)

The Sub-recipient will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the term “minority and female business enterprise” means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are Afro-Americans, Spanish-speaking, Spanish-surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Sub-recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

2. Access to Records

The Sub-recipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

3. Notifications

The Sub-recipient will send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding, a notice, to be provided by the agency contracting office, advising the labor union or worker’s representative of the Sub-recipient’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Sub-recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Sub-recipient will include the provisions of Paragraphs II.A., Civil Rights, and B., Equal Opportunity, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or contractors.

C. Employment Restrictions

1. Prohibited Activity

The Sub-recipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Sub-recipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 USC 327 *et seq.*), and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Sub-recipient agrees to comply with the Copeland Anti-Kickback Act (18 USC 874 *et seq.*) and its implementing regulations of the US Department of Labor at 29 CFR Part 5. The Sub-recipient shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The Sub-recipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided, that if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Sub-recipient of its obligation, if any, to require payment of the higher wage. The Sub-recipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause

a) Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 75, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the City, the Sub-recipient and any of the Sub-recipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, the Sub-recipient and any of the Sub-recipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Sub-recipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Sub-recipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Sub-recipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Sub-recipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b) Notifications

The Sub-recipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining Agreement, or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c) Subcontracts

The Sub-recipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Sub-recipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 75 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Sub-recipient shall not assign or transfer any interest in this contract without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Sub-recipient from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

a) Approvals

The Sub-recipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the City prior to the execution of such Agreement.

b) Monitoring

The Sub-recipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c) Content

The Sub-recipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d) Selection Process

The Sub-recipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Hatch Act

The Sub-recipient agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the USC.

4. Conflict of Interest

The Sub-recipient agrees to abide by the provisions of 2 CFR Part 200 and 570.611, which include (but are not limited to) the following:

- a) The Sub-recipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b) No employee, officer or agent of the Sub-recipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c) No covered person who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or Agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Sub-recipient, the City, or any designated public agency.

5. Lobbying

The Sub-recipient hereby certifies that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement;
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and
- c) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly:
- d) Lobbying Certification:
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Sub-recipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

III. Environmental Conditions

A. Air and Water

The Sub-recipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 USC, 7401 *et seq.*
- Federal Water Pollution Control Act, as amended, 33 USC, 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the Sub-recipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Sub-recipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Sub-recipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 USC 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

IV. General Conditions

A. Responsibilities

The Grantee will carry out its activities in compliance with the requirements of Subpart K of 24 CFR 570, except, however, that the Grantee does not assume the City's environmental responsibilities or the responsibility for initiating the environmental review process under 24 CFR part 52.

Exhibit C

City of Goshen Weekly Payment Procedures for CDBG Claims Effective December 8, 2014

Thursday NOON	Deadline to submit claims to CDBG Administrator for processing the following week
Friday	CDBG Administrator Review of Claim: Incomplete claims will be held until all required information is received
Monday (Week 1)	CDBG Administrator Reporting in HUD's online system for each claim (required before a claim may be processed)
Tuesday AM Tuesday PM	First drawdown authorization by CDBG Administrator Voucher submitted by CDBG Administrator to Clerk Treasurer's Office
Wednesday Wednesday, 5pm	Second drawdown authorization by Clerk Treasurer's Office Deadline for claim to be processed by Clerk Treasurer's Office for Board of Works
Monday (Week 2)	Claim approved and signed by Board of Works – all CDBG vouchers must be hand-signed by BOW members
Tuesday	Check written by Clerk Treasurer's Office

Exhibit D
Tax Exempt Status

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508
Cincinnati, Ohio 45201

Date: **JAN 28 2003**

LaCasa of Goshen, Inc.
202 North Cottage Avenue
Goshen, IN 46256-3346

Person to Contact:
Thomas Kallman, ID# 31-07250
Contact Telephone Numbers:
877-829-5500 Phone Toll-Free
513-263-3756 FAX
Federal Identification Number:
35-1554538

Dear Sir or Madam:

This modifies our letter dated November 18, 1970. In that letter we determined that your organization is exempt under section 501(a) of the Internal Revenue Code, as an organization described in section 501(c)(3). We determined that you were not a private foundation within the meaning of section 509(a) of the Code because you were an organization described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code.

In your letter dated November 11, 2002, you requested classification as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Based on the information you provided, we have determined that you meet the requirements for the requested foundation classification. Accordingly, we have granted your request and modified your foundation status to reflect an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

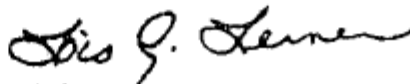
Your exempt status under section 501(a) of the Internal Revenue Code, as an organization described in section 501(c)(3) remains in effect.

Grantors and contributors may rely on this determination until the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act that resulted in your loss of such status, or acquired knowledge that the Internal Revenue Service had given notice that you would be removed from classification as a section 509(a)(1) organization.

Because this letter could help resolve any questions about your exempt status and/or foundation status, you should keep it with your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

cc: Randall M. Jacobs

*****REQUEST*****

DATE: Monday, November 14, 2022

TO: GOSHEN BOARD OF WORKS

FROM: GOSHEN WATER & SEWER
KELLY SAENZ

RE: UNPAID FINAL ACCOUNTS

The original amount of unpaid final Water/Sewer accounts for this period was **\$8,055.88**
Collection letters were sent out and payments of **\$4,270.98** had been collected.

The uncollected amount equals **\$3,784.90**

Therefore I am requesting to move our uncollected finalized accounts from active to Collection,
Sewer Liens and Write offs.

These are accounts for the most part were finalized thru **Wednesday, August 24, 2022**

WATER: \$2,889.41
SEWER: \$895.49

TOTALS 4-2022

REPORT TOTAL		\$8,055.88
BPS TOTAL	\$2,665.75	\$5,390.13
COUNTY TOTAL	\$637.27	\$4,752.86
W-WRITE OFF	\$223.66	\$4,529.20
S-WRITE OFF	\$258.22	\$4,270.98
PAYMENT TOTAL	\$4,270.98	\$0.00
AGREEMENT TOTAL		



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 EXTENSION OF ROAD CLOSURE
WILDEN AVENUE RECONSTRUCTION (JN: 2014-0035)**
DATE: November 14, 2022

Rieth-Riley has notified the engineering department of their request to extend the closure of Wilden Avenue from east of Main St (SR 15) to and including the intersection with 5th Street through Friday, November 18, 2022, in order to ensure the safety of crews during final sidewalk installation, grading, and site restoration. The proposed detour route will remain the same, with traffic using 6th Street, Oakridge Avenue, and Main Street.

Requested Motion: Approve the extended closure of Wilden Avenue from east of Main St (SR 15) to and including the intersection with 5th Street through November 18th, 2022.

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



**Engineering Department
CITY OF GOSHEN**

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engineering@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

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

RE: **PARKING LOT I, REMOVAL AND REPLACEMENT OF FENCING
(JN: 2022-2032)**

DATE: Nov. 7, 2022

The vinyl fence along the north line of Parking Lot I, which is north of the Goshen City Church of the Brethern at 203 N. Fifth Street, is in poor condition. The City solicited three (3) quotes to replace the fence and Yoder and Sons Fencing provided the lowest responsive and responsible quote in the amount of \$10,181.12. Work for the fence replacement is to be complete by April 28, 2023.

Requested Motion: Move to award the contract to Yoder and Sons Fencing in the amount of \$10,181.12, and authorize the Mayor to sign the agreement.

AGREEMENT

Removal and Replace Fencing of City Parking Lot I

THIS AGREEMENT is entered into on _____, 2022, which is the last signature date set forth below, by and between **Yoder & Son Fencing, LLC** (“Contractor”), whose mailing address is 54014 County Road 37, Middlebury, IN 46540, 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 Commission (“City”).

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

Section 1. Contractor Duties

Contractor shall provide City the work for the removal and repair of fence in City of Goshen Parking Lot 1 located at N. Fifty Street, which work is more particularly described in Contractor’s October 10, 2022 Estimate P.O. No. 4188 attached as Exhibit A (hereinafter referred to as “Duties”).

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

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Contractor shall commence the Duties on or before April 28, 2023.

Section 3. Compensation

City agrees to compensate Contractor the sum of Ten Thousand One Hundred Eighty-One Dollars and Twelve Cents (\$10,181.12) for performing all Duties.

Section 4. Payment

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

City of Goshen
c/o Goshen Engineering Department
204 East Jefferson Street, Suite 1
Goshen, IN 46528

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

Section 5. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively "Documents") prepared by Contractor or Contractor's employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Contractor may retain a copy of the Documents for its records.

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 work performed by Contractor pursuant to this agreement.

Section 7. Inspection

Parties agree that a representative from City of Goshen's Engineering Department shall immediately inspect the site upon notification of the work completed. Once all workmanship has been inspected and approved an invoice can be generated and forwarded to City of Goshen for remittance.

Section 8. Warranty

Manufacturer of materials provides a Transferable Lifetime Limited Warranty (see attached). Contractor warrants all installation for one (1) year from date installation is complete.

Section 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 work 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 15. 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 16. Default

- (A) If Contractor fails to perform the work 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 work 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 work 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 work 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 17. 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 work completed 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 18. 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: Yoder & Son Fencing, LLC
Attention: Matt Schlabach/Alban Yoder
54014 County Road 37
Middlebury, IN 46540

Section 19. 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 20. 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 21. 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 22. 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 work. Failure to do so may be deemed a material breach of agreement.

Section 23. 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 24. 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 25. 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 26. Entire Agreement

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

Section 27. Authority to Execute

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

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

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

Yoder & Son Fencing, LLC

Jeremy P. Stutsman, Mayor

Printed: _____

Title: _____

Date Signed: _____

Date Signed: _____



P.O. Box 262
Middlebury, IN 46540

Phone: 574-312-1171
Fax: 574-314-6504

Estimate

Show this Purchase Order No.
on all correspondence, invoices,
shipping papers, and packages.

To City of Goshen
W 5 St.
Goshen

Date 10-10-22 Quote No.
Ship To

Terms	Customer Phone	P.O. No.
P.O.	574-534-2201	4188

QUANTITY	PART NO. / DESCRIPTION	UNIT PRICE	AMOUNT
24	6' sections 6' High Almond Niagra Privacy Fence		\$1218 ¹²
2	EP Posts		—
23	Line Posts		—
	Concrete Mix		\$269 ⁰⁰
	Labor to cement posts in and install fence.		\$309 ⁰⁰
	Labor on removal + haul away old fence		\$499 ⁰⁰
	estimated install: March or April 2023		
	Thank You Allan		

Subtotal	\$1218 ¹²
Tax	\$440 ¹⁰
Total	\$1658 ²²





Transforming the Outdoor Living Experience™

Digger Specialties, Inc. Transferable Lifetime Limited Warranty DSI Vinyl Warranty

Digger Specialties, Inc. (DSI) Warrants to the purchaser that its DSI Vinyl Products are free of defects in workmanship and materials and that, in the course of normal and proper use, its Vinyl Products will not peel, blister, flake, rot, corrode, rust, be damaged by termites, or be subject to abnormal weathering per **ASTM F-964** specifications.

This warranty covers:

- Any defect in materials and workmanship.

This warranty will be effective:

- For the lifetime of the original purchaser/owner of real estate upon which the material is installed. If the real estate is sold, the warranty will be transferred and be in effect for the first new owner for a period of 20 years. An online warranty registration must be completed on the DSI website (diggerspecialties.com).
- The original owner will have 30 days to complete this online registration for the warranty to be valid.

This warranty applies to:

- The original purchasing owner or if the real estate is transferred the first new owner can make a claim, as long as they have properly registered a property transfer within 60 days of new ownership. Proof of purchase must be provided. This is a transferable warranty.
- The Lifetime Limited Warranty applies only to living entities. Non-living entities shall include but are not limited to governments, municipalities, corporations, and commercial operations. All non-living entities shall receive a 30-year limited warranty from the date of purchase.

Warranty claim process:

- Submit a claim via the DSI website (diggerspecialties.com) within 30 days of discovering the claimed defect.
- If DSI Vinyl materials are found to be defective and covered by this warranty, Digger Specialties, Inc. will provide replacement of the defective vinyl materials, or at the sole discretion of Digger Specialties, Inc., will provide financial compensation equal to the original purchase price of the defective product.

Limitations and conditions not covered:

- Damage caused by faulty installation, or from improper applications. Installation instructions are available on the DSI website (diggerspecialties.com).
- Damage attributable to fire, violent storms, earthquake or other Acts of God, accidents, vandalism, or other casualties, impact of objects or exposure to atmospheric pollutants or conditions other than natural weather processes.
- Damage or discoloration due to misuse, abuse, abrasion (including sand abrasion), and improper storage or the alteration of the material by paints, chemicals, or other substances not recommended for polyvinyl chloride (PVC).
- Any part relative to gate hardware, mechanism, and/or operators. Please refer to Gate Hardware Warranty.
- Cost of installation or removal, freight, labor and similar costs.
- Any incidental or consequential damages.
- All installations, including installations where the atmosphere is influenced by bodies of salt water (or contaminant conditions), must adhere to the Vinyl Care and Cleaning Guidelines specified on the DSI website (diggerspecialties.com), as modified from time to time. Any Vinyl Product that also includes Powder Coated Aluminum must also adhere to the Aluminum Care and Cleaning Guidelines.

Other considerations:

- The manufacturer of this material does not recommend or approve this material for all possible end use applications. Your Local Code Authority should be consulted regarding its safety and applicability for intended usage.
- This warranty gives you specific legal rights, and you may also have other rights that vary from state to state.

The warranty statements contained in this limited warranty set forth the only warranties extended by Digger Specialties, Inc. for its DSI Vinyl products, and the provisions of this warranty shall constitute the entire liability of Digger Specialties, Inc. and the property owner's exclusive remedy for breach of this warranty. No other warranty, written, made by Digger Specialties, Inc. or any agent thereof, which is not contained or authorized herein, will be recognized by Digger Specialties, Inc.



**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: **ASPHALT PAVING PROJECT
(JN: 2022-0002)**

DATE: November 14, 2022

Attached please find Change Order No. 1 – A Balancing Change Order.

Change Order No. 1 reduces the current contract price -\$19,759.45, making the final contract amount \$329,450.70, a 5.66% decrease under the original contract of \$349,210.15.

Original contract amount	\$349,210.15
Change Order No. 1	\$ -19,759.45
Revised contract amount	\$329,450.70

Suggested Motion: Move to approve the balancing Change Order No. 1 decreasing the contract \$19,759.45, for a final contract amount of \$329,450.70.

CHANGE ORDER FORM

Pg 1 of 3

Change Order No. 1
Date: 11/14/2022

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

OWNER: City of Goshen
PROJECT NAME: Dykstra Asphalt Paving
PROJECT NUMBER: 2022-0002
CONTRACTOR: Niblock Excavating, Inc.

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

Line item adjustments to serve as a balancing change order to close the project.

7	Curb & Gutter, Removal (Note: This balances the line item out)	70 LFT	@ \$10.00	-----	\$700.00
9	Common Excavation (Note: This balances the line item out)	130.64 CYD	@ \$20.50	-----	\$2,678.12
10	INDOT B-Borrow (Undistributed) (Note: This balances the line item out)	-200 CYD	@ \$25.00	-----	-\$5,000.00
15	HMA, Type B, Surface, 9.5 mm (Note: This balances the line item out)	13.31 TON	@ \$107.50	-----	\$1,430.83
16	HMA, Type B, Binder, 12.5 mm (Note: This balances the line item out)	47.26 TON	@ \$84.00	-----	\$3,969.84
17	HMA Curb (Note: This balances the line item out)	-465 LFT	@ \$15.00	-----	-\$6,975.00
19	Compacted Aggregate, No. 53, Type O (Note: This balances the line item out)	-208.32 TON	@ \$31.50	-----	-\$6,562.08
20	Stone, No. 2 (Undistributed) (Crushed\Recyc) (Note: This balances the line item out)	-225 LFT	@ \$35.00	-----	-\$7,875.00
23	Limestone, No. 73, Drive Approach (Note: This balances the line item out)	-32.71 TON	@ \$65.00	-----	-\$2,126.15
				Subtotal -	-\$19,759.45

CHANGE ORDER FORM

Pg 2 of 3

Change Order No. 1

II. ADJUSTMENTS IN AMOUNT OF CONTRACT

1. Amount of original contract	\$349,210.15
2. Net (Addition / Reduction) due to all Previous Contract Supplements Numbers 0 to <u>1</u>	
3. Amount of Contract, not including this supplement	\$349,210.15
4. Addition / Reduction to Contract due to this Supplement	-\$19,759.45
5. Amount of Contract, including this supplemental	\$329,450.70
6. Total (Addition / Reduction) due to all Change Orders (Line 2 + Line 4)	-\$19,759.45
7. Total percent of change in the original contract price Includes Change Order No. 0 to <u>1</u> (Line 6 divided by Line 1)	-5.66%

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 0 calendar days, making the final completion date N/A.
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 _____, 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 decrease the original contract price by (5.66) percent.

CHANGE ORDER FORM

Pg. 3 of 3

Change Order No. 1

RECOMMENDED FOR ACCEPTANCE



Dustin Sailor, PE

ACCEPTED: BOARD OF PUBLIC WORKS AND SAFETY
CITY OF GOSHEN, INDIANA

Mayor Stutsman

Michael Landis, Member

Mary Nichols, Member

DeWayne Riouse, Member

Barb Swartley, Member

ACCEPTED: CONTRACTOR

Niblock Excavating

BY:

Signature of authorized representative

Printed

Title