



## **Goshen Common Council**

**6:00 p.m., Nov. 21, 2022 Regular Meeting**

***Council Chamber, Police & Court Building, 111 East Jefferson Street, Goshen, IN***

### **Call to Order by Mayor Jeremy Stutsman**

### **Pledge of Allegiance**

### **Roll Call:**

**Megan Eichorn** (District 4)

**Julia King** (At-Large)

**Doug Nisley** (District 2)

**Gilberto Pérez, Jr.** (District 5)

**Donald Riegsecker** (District 1)

**Matt Schrock** (District 3)

**Council President Brett Weddell** (At-Large)

**Youth Advisor Karen C. Velazquez Valdes** (Non-voting)

### **Approval of Minutes – Oct. 24, 2022 Regular Meeting**

### **Approval of Meeting Agenda**

### **Privilege of the Floor**

**1) Presentation:** Announcement of Kid Mayor for 2022-2023

**2) Resolution 2022-21:** Category Transfer (for the Police and Parks departments)

**3) Ordinance 5143:** Establishing an Elkhart Township Fire Support Fund

**4) Resolution 2022-26:** Contract with the Indiana Department of Transportation for sweeping services

### **Elected Official Reports**

### ***Adjournment***



## GOSHEN COMMON COUNCIL

### Minutes of the October 24, 2022 Regular Meeting

*Convened in the Council Chambers, Police & Court Building, 111 East Jefferson Street, Goshen, Indiana*

Mayor Jeremy Stutsman called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

Mayor Stutsman asked the Clerk-Treasurer to conduct the roll call.

**Present:** Megan Eichorn (District 4)                      Julia King (At-Large)                      Doug Nisley (District 2)  
                    Gilberto Pérez Jr. (District 5)                      Donald Riegsecker (District 1)                      Matt Schrock (District 3)  
                    Council President Brett Weddell (At-Large)  
                    Youth Advisor Karen C. Velazquez Valdes (Non-voting)

**Absent:**                      None

**Approval of Minutes:** Mayor Stutsman asked the Council's wishes regarding the minutes of the Oct. 10, 2022 Regular Meeting. Councilor King made a motion to approve the minutes as presented. Councilor Schrock seconded the motion. The motion passed 7-0 on a voice vote.

**Approval of Meeting Agenda:** Mayor Stutsman asked the Council's wishes regarding the meeting agenda. Councilor Nisley moved to approve the agenda as submitted. Councilor Eichorn seconded the motion. The motion passed 7-0 on a voice vote.

#### Privilege of the Floor:

At 6:02 p.m., Mayor Stutsman invited public comments on matters not on the agenda.

Kyle Richardson of Goshen said he wanted to address the cycle track lane on Lincoln Avenue. He said the project would have produced safety, fiscal and environmental benefits for the City of Goshen and he is disappointed the project was "tabled" due to vocal opposition from four Council members.

Richardson said the cycle track would improve safety for cyclists, pedestrians, motorists and adjacent homes and businesses. He said every year car crashes in the United States kill 40,000 people, permanently injure two million more people and Goshen is not exempt. He said a City traffic study showed that from 2017 to 2019, there were 182 collisions with 42 injuries and 22 injuries characterized as incapacitating in a one-mile stretch of road. He said there are 22 residents living with permanent, incapacitating injuries because of accidents on Lincoln Avenue.

Richardson said the cycle track would have reduced accidents and injuries and reduced traffic on Lincoln Avenue. He said the Pumpkinvine Trail gets over 250,000 visitors per year and connecting it to downtown would have increased local business. He further promoted the benefits of increasing bicycle riding in Goshen.

Responding to Richardson's comments, Council President Weddell said the City Council never voted on the cycle track. Richardson said he attended a Council meeting at which four councilors criticized the cycle track



**Council President Weddell** said the City Traffic Commission voted unanimously to oppose the cycle track and commissioners represent a broad cross section of the community. He said the level of opposition from those who contacted him about the project was 25 to 1 in opposition. The Council President also said that during his time on the Council, only one previous proposal reached that level of opposition. However, he said he wanted everyone to know that the Council did not vote on the cycle track and had no say on the decision to remove it.

**Ron Byler of Goshen** thanked the Council for embracing Indigenous People's Day. He said the City organized a great event a few weeks ago in the Goshen Theater. He especially thanked **Councilor Megan Eichorn** for representing the City Council at the event. Byler also thanked the City Community Relations Commission and its director, **A.J. Delgadillo**, for sponsoring the event. Byler added, "When we demonstrate our ability to welcome and celebrate all of our citizens and people groups, we become a stronger and more vibrant community."

**Glenn Null of Goshen** thanked **Councilors** for appointing a new member to the Community Relations Commission and to the Mayor for also appointing a new member. He noted that the Mayor still needs to appoint another member. Null said that he has only two months left to serve on the commission, so another commissioner will be needed at the start of 2023. He said he hopes the Mayor makes another appointment soon. Unlike the past, Null said a number of people have indicated they would like to serve on the CRC. Null also said it's good to appoint more people to share the commission's responsibilities and prevent member burnout.

**Mayor Stutsman** responded that he has been asked by the CRC director to wait until first of year to appoint another CRC member because that's when the commissioner's new term will begin.

**Lori Arnold** of Goshen said she has been gone from Goshen for many months and participated in an "exciting journey" to a number of states, including West Virginia and Virginia. She said some of her new friends from other states have visited Goshen. Arnold complimented Councilors and the Mayor because her friends described Goshen as "beautiful." She said she was proud to have people come through Goshen, adding that people should be proud of Goshen because of its beauty. **Arnold** also said that while in Washington, D.C., West Virginia and Virginia, she met with people who put aside their political differences and worked against pedophilia. She said some "right wing" people have used Christianity and freedom movements to target children. Arnold described that group's activities. Arnold urged people to contact her if they wanted more information about the group.

There were no further public comments, either from those in the Council chamber or via Zoom, so the Mayor closed Privilege of the Floor at 6:11 p.m.

1) Ordinance 5136: Amend Ordinance 3011 by Rezoning Real Estate Hereinafter Described from Industrial M-1PUD, Residential R-1PUD and Agricultural A-1 to Residential R-3 District, and Amend Ordinance 4768, Known as the Waterford Commons Business Park PUD (Planned Unit Development)

Mayor Stutsman called for the introduction on first reading of Ordinance 5136. Council President Weddell asked the Clerk-Treasurer to read Ordinance 5136 by title only, which was done.

Weddell/Nisley moved to approve Ordinance 5136 on first reading.



## **BACKGROUND:**

**Before the Common Council was Ordinance 5136**, which would Amend Ordinance 3011 by Rezoning Real Estate, Hereinafter Described from Industrial M-1PUD, Residential R-1PUD and Agricultural A-1 to Residential R-3 District, and Amend Ordinance 4768, known as the Waterford Commons Business Park PUD (Planned Unit Development).

**The Waterford Commons Business Park PUD** was established in January 2014 and includes three separate tracts of land, Tracts 1, 2 and 3, each zoned Industrial M-1PUD and each having slightly separate requirements. The most northern tract, Tract 2 (Ardmore Court), is nearly fully developed. Tracts 1 and 3 each have an approved preliminary subdivision, but no development has occurred in either tract.

**The overall Waterford Commons PUD was established in 1989** and is a mixed use development, including R-1, R-2, R-3 and R-4 zoning (permitting all types of residential use), two areas zoned B-4 (Planned Shopping Center), and the three industrial tracts.

**The current request** is to remove Tracts 1 and 3 from the Waterford Commons Business Park PUD and rezone Tracts 1 and 3 from M-1PUD to R-3, and to rezone adjacent City parcels from M-1PUD, A-1 and R-1PUD to R-3. Per the Goshen Zoning Ordinance PUD District Regulations, Section 4250.9, a change of use is a major change, requiring approval by the Plan Commission and Council.

The R-3 District allows a range of residential land use, including single unit detached, single unit attached, two unit, and multi-unit. The proposed R-3 zoning for Tract 1 is primarily adjacent to existing R-3PUD zoning, and the proposed rezoning to R-3 is consistent with the existing mixed use land development with Waterford Commons PUD.

**Ordinance 5136** concerns the property generally located on the northwest corner of Waterford Mills Parkway and Dierdorff Road (Tract 1 of Waterford Commons Business Park PUD) and on the west side of Regent Street, south of Waterford Mills Parkway (Tract 3 of Waterford Commons Business Park PUD), including adjacent City parcels intended for public right of way, containing ±210 acres.

**Ordinance 4768 would be amended as follows:**

1. That the Goshen Plan Commission did after a public hearing determine the amendment to be a major change.
2. That the PUD major change removes Tracts 1 and 3 from the Waterford Commons Business Park PUD.

**The Goshen Plan Commission met on Sept. 20, 2022, in regular session and considered a request for a rezoning from Industrial M-1PUD, Residential R-1PUD and Agricultural A-1 to Residential R-3, for a residential development with a variety of housing types, and a PUD major change to remove Tracts 1 and 3 from Waterford Commons Business Park PUD**, for property generally located on the northwest corner of Waterford Mills Parkway and Dierdorff Road (Tract 1) and on the west side of Regent Street south of Waterford Mills Parkway (Tract 3), including adjacent City parcels intended for public right of way, with the following outcome: **The request was forwarded to the Goshen Common Council with a favorable recommendation by a vote of 8-0.**

**The recommendation is based upon the following:**

1. The rezoning is consistent with the existing mixed use land development within Waterford Commons PUD.
2. The rezoning is consistent with the Comprehensive Plan, including: Neighborhoods & Housing, Goal N-7: Expand housing options and opportunities.
3. The R-3 District requirements will be able to be met.

**Prior to the Plan Commission meeting**, the Planning office received a phone call expressing concerns about safety adjacent to multi-family residential land use, an email asking how to purchase a home in the new development, and an email in support of the rezoning.



**At the Plan Commission meeting**, four people shared concerns about traffic and density, suggested that one-acre lots like the adjacent County development should be considered, that space should be provided for the school and for Greencroft to grow, and that a large park should be included in the project.

**At the Plan Commission meeting**, **Director of Public Works, Dustin Sailor** said a comprehensive traffic study is being conducted for Dierdorff Road and County Road 40, and he also stated that County development requires large lots to accommodate septic, but with available City water and sewer, higher density is possible and preferred, as it is more cost effective per foot of pipe to have more people using services.

**A Housing Market Analysis and Development Study** conceptual layout included in the Council packet are part of the **City of Goshen Housing Study**, and were provided to the Plan Commission at its meeting. The conceptual layout is for illustration only, and is not part of the rezoning.

City staff recommended the Plan Commission forward a favorable recommendation to the Goshen Common Council for the rezoning from Industrial M-1PUD, Residential R-1PUD and Agricultural A-1 to Residential R-3 for a residential development with a variety of housing types, and the PUD major change to remove Tracts 1 and 3 from Waterford Commons Business Park PUD, based upon the following findings:

1. The rezoning is consistent with the existing mixed use land development within Waterford Commons PUD.
2. The rezoning is consistent with the Comprehensive Plan, including: Neighborhoods & Housing, Goal N-7: Expand housing options and opportunities.
3. The R-3 District requirements will be able to be met.

In a memorandum to the Common Council, **City Redevelopment Director Becky Hutsell** wrote that City staff, in partnership with the **Hoogenboom-Nofziger Corp.**, was submitting two (2) requests to the Plan Commission, and subsequently City Council, for consideration.

1. Request to Rezone approximately 210 acres from M-1 PUD, R-1 PUD and A-1 to Residential R-3
2. Request for a Major Change to the Waterford Commons Business Park PUD to remove Tracts 1 & 3 from the Planned Unit District (PUD) Overlay

### **Rezoning Request**

The rezoning request includes the land currently identified as Tracts 1 & 3 within the Waterford Commons Business Park PUD. Both tracts are currently zoned Industrial M-1 PUD and total approximately 175 acres of vacant land. **Hoogenboom-Nofziger Corp.** currently has a purchase agreement in place with a local group interested in developing a residential development that will provide a variety of housing types. In advance of their closing on the property, they're requesting that the land be rezoned to Residential R-3 to ensure that residential use of this land is supported by the City of Goshen. If approved, their intent would be to fully design a subdivision and, if needed, request an additional rezoning to put in place a PUD Overlay District specific to their development plan. The only way a PUD will not be required is if the planned subdivision can meet all the existing requirements for the Residential R-3 district. Both the subdivision process and the **potential PUD process will provide multiple opportunities for community input moving forward.**

The remainder of the rezoning request includes the public rights-of-way and publicly-owned land adjacent to the property owned by the **Hoogenboom-Nofziger Corp.** and includes a mix of existing Residential R-1 PUD and Agricultural A-1 zoning. To be consistent with adjacent zoning, this request would rezone all the City-owned land to Residential R-3, as well.



## **PUD Major Change**

In order to remove Tracts 1 & 3 from the Waterford Commons Business Park PUD, a Major Change is required. This change removes the overlay district conditions set forth in previously approved ordinances and allows for the underlying land to be rezoned to Residential R-3.

### **SUMMARY OF OCT. 24, 2022 COUNCIL DISCUSSION AND FIRST READING OF ORDINANCE 5136:**

**Mayor Stutsman** said this is a project that has been previously discussed with Councilors and a housing study was conducted for this property. The Mayor said he met with the property owners about a year ago. He said tonight there would be presentations by **City Planning & Zoning Administrator Rhonda Yoder**, **City Redevelopment Director Becky Hutsell** and **CEO of Blue Diamond Communities Tonya Detweiler**, a representative of the Hoogenboom-Nofziger development group. Mayor Stutsman said Councilor members would then be given time to ask questions and comment on the proposal followed by a period for public comments.

**City Planning & Zoning Administrator Rhonda Yoder** outlined the background of the Plan Commission's unanimous approval of the rezoning from Industrial M-1PUD, Residential R-1PUD and Agricultural A-1 to Residential R-3, for a residential development with a variety of housing types, and a PUD major change to remove Tracts 1 and 3 from Waterford Commons Business Park PUD. She discussed the Plan Commission's rationale for its decision and provided context about the action and the issues surrounding the proposed residential development. She also discussed public feedback on the rezoning and the City's ongoing area traffic study.

**Mayor Stutsman** said years ago the project site was zoned for residential use and was rezoned for manufacturing. He said no manufacturing moved forward on the site, so the request is now to return the property to residential use.

**City Redevelopment Director Becky Hutsell** said the proposed rezoning was a joint request from the City Redevelopment Department as well as the developers, **Hoogenboom-Nofziger**. She said that for at least two years, it has been made clear that the City of Goshen has a housing shortage. Recently, she said the Indiana Legislative Assembly changed state law to allow for residential Tax Increment Finance districts for single-family housing.

**Hutsell** said that earlier this year, the City contracted with **American Structurepoint, Inc.** to conduct a study (included in the Council's meeting packet) to assess the extent of the City's housing shortage, determine the types of housing needed, and to propose housing types for the Hoogenboom-Nofziger site. She said American Structurepoint developed a conceptual plan for the site that included apartments, town houses, single-family homes and retail businesses. The consultant also developed various development options and Tax Increment Finance options. Hutsell said the study concluded that various types of housing were suitable for the site. She added that City staff was recommending that the site be returned to residential zoning.

**Mayor Stutsman** said that last December he and **Deputy Mayor Mark Brinson** met with **Greg Hoogenboom** and **Myrl Nofziger**, the property owners, and asked if they would entertain a rezoning, and that is how the process got started. He said he was grateful to the **Hoogenboom-Nofziger** group for considering the rezoning and for working with the City, as well as to **Tonya Detweiler** and her partners.

**Detweiler of Goshen**, representing **Blue Diamond Communities and Cherry Creek**, said she was excited to be appearing before the Council. She thanked the City for the Structurepoint report, which demonstrated the need for more housing in Goshen.



**Detweiler** said she believes she and her partners can help meet the City's need for more housing with this property and they are excited to get started. She said she is proud of the City and is excited to develop a project in the south side of the City that will meet the needs of many people who want to live in Goshen.

**Detweiler** said the developers are proposing a "lifestyle community" where people can live, play and work. She said she knows that when people can do all of those things in one area, it makes them want to stay and call home in Goshen for the duration. She thanked City staff for assistance and guidance. She also said the developers want to hear from residents about what amenities they would like on the site to make the area "come alive." **Detweiler** said she and her team will be ready to lead those community conversations if the rezoning is approved.

**Mayor Stutsman** responded that if approved, the Hoogenboom-Nofziger property could be the first residential Tax Increment Finance district in the area. He said this type of financing would help the developer pay infrastructure costs, which often are so high it makes it difficult for property owners to develop housing. The Mayor said the property is a good site for housing because it's already within the Goshen City limits, even though the development would require additional City services.

**Councilor Schrock** asked if the developer would be holding meetings to receive public input on the project.

**Detweiler** said the public will be invited to various meetings on the project.

**Mayor Stutsman** said that if the rezoning is approved tonight, there will be additional meetings and approvals required by the Board of Works & Safety and the Common Council. For example, he said Council approval would be required to create a Tax Increment Finance district and approve a bond for it. He said there would be many public meetings. He also applauded the developer for being willing to convene additional public meetings.

**Councilor Eichorn** thanked **Detweiler** for all of the work she has done in advance of the rezoning request to ensure it's a viable plan and for her commitment to consider changes in response to public input.

In response to a question from **Councilor Pérez**, **City Planning & Zoning Administrator Yoder** clarified the areas that would be rezoned. She said one of the three tracts has already been largely developed for industrial uses.

**Council President Weddell** asked **Redevelopment Director Hutsell** asked if City staff might eventually be proposing a Tax Increment Finance (TIF) district bond that would require 75% repayment over 20 years. **Hutsell** said that is what has been discussed with the developer. She said this would be different than any TIF done by the City and the details are still being explored.

In response to another question from **Council President Weddell**, **Hutsell** said that the tax revenue projections shared with the **Redevelopment Commission** were not included in the Council packet because they are being revised. She said when they are finalized, they will be shared with the Council.

**Council President Weddell** said the projections appear to show that the revenue raised would be able to cover the infrastructure expenses and provide additional revenue to the City for increased police, fire and other City services. He added that City staff would not be bringing forth this proposal if the TIF projections didn't show it was feasible.

**Councilor Eichorn** said that was good to know,

**Hutsell** said that tonight's proposal was just for a rezoning. She said that if the project eventually includes commercial uses, a Planned United Development (PUD) would be required. She added that many other approvals, including for a PUD, will be necessary over nine months.



**Councilor King** clarified that before the Council tonight was just a rezoning and not a final concept.

**Tonya Detweiler** confirmed that understanding and said the developers were still in the process of planning a "lifestyle community," which would include walking trails, amenities and retail space. She said a PUD will be developed based on feedback from neighbors and the Council. She said the goal is a development that helps the south end of the City "to come alive."

**Councilor King** said she was looking forward to learning more about the developer's plans, as well as best practices for creating a community and sustainability. **Detweiler** said she was looking forward to those discussions.

**Councilor Pérez** said he assumed officials from **Prairie View Elementary School** will also be engaged in those discussions because the school will be heavily impacted by the project. **Detweiler** said she has had many conversations with Goshen Community Schools Superintendent Steve Hope about the project. She said he supports the project. She said it is possible children will be able to get to Prairie View on trails by walking and biking without crossing any streets, which would greatly enhance public safety.

**Mayor Stutsman** said that to say Superintendent Hope is excited about the project is "an understatement."

**Council President Weddell** said before Goshen's new intermediate school was built there was a feasibility study that showed that Goshen had a lot of potential for growth.

**Mayor Stutsman** said over the past few weeks he has had several phone calls from people concerned about the impact on traffic if housing is built on the site. He said there would be studies to determine the impact of the project.

**Councilor Pérez** said that he recalls the study **Council President Weddell** mentioned. He said it showed that Goshen Community Schools had the capability to add more students.

**Councilor Schrock** asked Hutsell what would be involved in a mixed-use development.

**Hutsell** said there would be a variety of housing types, including multi-family properties and single-family homes at various price points, as well as some businesses on the west side of the property. She also pointed out that the City is conducting a comprehensive traffic study and that road improvements are planned because it's recognized that the south end of the City has traffic issues.

In response to a question from **Councilor Pérez**, **Mayor Stutsman** said the City has had initial discussions with Elkhart County Commissioners to improve traffic in the area. He said the traffic study will help to clarify the options.

**Councilor Pérez** said neighbors have expressed concerns about the impact of traffic in the area. He said he was glad the issue was being discussed. **Mayor Stutsman** responded that it will be easier for the City to deal with the traffic impacts of residential growth as compared to continued industrial growth.

**Council President Weddell** said that when the Redevelopment Commission approved the American Structurepoint study, it was believe the City would need to find a developer interested in building more housing. He said it was exciting a developer has already come forward with a proposal.

**Mayor Stutsman** said the proposal came together faster than he anticipated. He offered **Greg Hoogenboom** and another partner the opportunity to address the Council, but they declined.

There were no further comments or questions from Councilors. So at 6:36 p.m., **Mayor Stutsman** opened a public hearing on Ordinance 5136, which was before the Council for a First Reading.





**Scott Alwine of Goshen** said he lives near the subject property in a home that has been owned by his family since 1970. He said he supports rezoning the property from manufacturing to residential uses, but is concerned about the impact on homes that have been in the area for many years. He said the area has had many changes over the years. He said that when City officials talk about the need for more housing, they are referring to people who don't now live in the area, but that he's speaking for those who live there now. Alwine said traffic in the area is terrible, noting that he is regularly awakened at 3 a.m. by traffic noise. He said the project will worsen traffic and said any improvements will make roads wider and move traffic even closer to homes. Alwine also said three-story buildings would be out of character in the area. He said he wants to make sure the eventual development is done correctly.

**Mayor Stutsman** said he shared Alwine's sentiments about wanting a quality development.

**Councilor Pérez** asked **Alwine** to further describe what he fears will be the detrimental impact of the housing development on existing home owners.

**Alwine** said he currently has a view across a field at a sunset and doesn't want to look at a three-story building instead of a sunset. He also said that other residents probably have a similar feeling.

**Richard Becola of Goshen** said he shared **Scott Alwine's** sentiments and said he was representing the views of his neighbors in the Villas at Waterford. He said traffic, especially from factory employees and the school, is a growing problem. He said adding homes will worsen the traffic, especially if any streets are closed. Becola also commented on the impact of 1,000 or more homes on fire services. Becola said neighbors also are worried about the density of the project. He said if done right, it could be a good project, but he doesn't want large multi-family dwellings added to the area. Becola said he moved the area 4½ years and wants to make sure any development is done right. Regarding fire services, **Mayor Stutsman** responded that the Board of Works & Safety earlier today approved hiring three additional firefighters and that the City has been working with the Redevelopment Commission to add a fourth fire station near the airport.

**Angela Becola of Goshen** said the City's traffic study should be conducted seasonally because the factories vary their hours. For example, she said during the summer some factories start work earlier and release workers earlier. However, they release employees later in the fall. Becola also said she would not want multi-story buildings in her backyard.

**Keith Hostetler of Goshen** said he agreed with the comments of **Scott Alwine** and **Richard and Angela Becola**. He said he believed many older residents were concerned about the proposed development, but could not attend the Council meeting. Hostetler said he would appreciate the addition of trails so students could get to school more safely. But he said he was concerned about the impact of tornadoes on three-story buildings. Hostetler also said he hoped the developer will build nicer homes on bigger lots.

There were no further public comments, so at 6:51 p.m., Mayor Stutsman closed the public hearing on Ordinance 5136. The Mayor asked if Councilors had any additional comments.

**Councilor Schrock** said he did some research over the weekend about urban sprawl. He said he already knew about this issue, which was one of the reasons that he said he supported the Aerial Cycleworks housing development near downtown.



**Councilor Schrock** said there are consequences for high- and low-density housing that should be considered before this housing development is approved and in the future. He said the Council should consider the overburdening on City departments as well as first responders. He said some City departments are already understaffed. He also said sprawling also increases car transportation dependency at a time the City is trying to reduce such dependency. He said the proposed housing development will increase traffic. Schrock also said all of those affected need to have an opportunity to provide their feedback and that the impacts of urban sprawl should be considered.

**Councilor Pérez** asked Councilor Schrock if he was saying that people in Goshen should be less dependent on cars. **Councilor Schrock** responded, "Sure, why not?"

**Council President Weddell** joked that perhaps Councilor Schrock wanted people to be dependent on motorcycles.

**Councilor Schrock**, who owns Cycle Works, Inc., thanked the Council President for that comment.

**Councilor Pérez** said he wanted to make sure that he heard **Councilor Schrock** correctly. He said perhaps the City can build more bike paths. **Councilor Schrock** said the research he conducted showed that a large housing development will increase people's dependency on cars even if it has bike trails.

**Council President Weddell** said any new development will impact traffic in the immediate vicinity; but it could positively affect traffic in other areas. He said the Structurepoint report stated that 23,000 vehicles are driven into the City of Goshen every day and 9,000 vehicles are driven out. He said he used to live off Kercher Road and was aware of the heavy traffic. However, he said perhaps more housing could decrease the traffic.

**Councilor Eichorn** said the other positive impact could be related to the number of people who are moving out of Goshen because they cannot find or afford housing. She said more housing could stabilize the cost of housing. He said the high cost of housing may be related to the decline of students in Goshen. She added that more housing could also make local homes more affordable.

**Councilor King** said she appreciated **Councilor Schrock** raising some concerns. She also said it was good that the developer was already considering amenities, such as stores, to keep people from using their cars whenever they need something. She also said she supported the proposed bike trails.

**Councilor Pérez** said he was intrigued by the comment that traffic in the area varies by season. He asked if the City traffic study would consider that issue.

**Mayor Stutsman** responded that traffic studies include counts at various times and can estimate counts over an entire year.

**City Director of Public Works & Utilities Dustin Sailor** said City staff met last week with its traffic consultant. He said a 12-hour study was planned. However, Sailor said the consultant identified an earlier peak traffic period, so there now will be an 18-hour traffic study. And he said it will cover traffic to and from the school.

**Councilor Eichorn** said she knows residents of one neighborhood near the proposed housing development who aren't excited about losing their views, but are glad they won't be losing their views to more factories.

**Councilor Riegsecker** said there already is a lot of housing in the area. He said he hopes the developer will respond to neighborhood concerns. He also pointed that if more manufacturing was approved in the area, that would worsen the housing shortage, so a rezoning to allow more housing is probably a good idea.

**Council President Weddell** read a statement from **Goshen Chamber of Commerce President and CEO Nick Kieffer** in support of the rezoning. Kieffer said the development would help meet the City's work force and housing needs. Kieffer was out of town and could not attend the Council meeting and discuss the proposal.



**Council President Weddell** added that based on previous housing Tonya Detweiler has developed in Goshen, he believes she can build another quality project.

Asked by **Mayor Stutsman** if she wanted to make any additional comments, **Detweiler** said she was excited about the opportunity to return to the Council with a Planned United Development that will include hiking and biking trails and the connectivity that so many people support. She said she believes more people need to recognize biking as a form of transportation and not just a type of exercise or recreation. She said this shift in mindset could lead more people to prioritize trails in other parts of the City if it is seen as a valid form of transportation.

**Youth Advisor Velasquez Valdes** said she wanted to affirm comments by **Councilor Eichorn** about the need for more housing. She said she has known many people at Goshen High School who have had to move away because housing became too expensive and they couldn't find other viable options. She said students are having to leave Goshen and they would rather stay. So, Velasquez Valdes said she supported the rezoning.

**Council President Weddell** thanked **Velasquez Valdes** for her perspective.

There were no further comments from Councilors. Councilors also indicated they were ready to vote. **Mayor Stutsman** asked the Clerk-Treasurer to conduct a roll call vote.

**On a roll call vote, Councilors unanimously passed Ordinance 5136 on first reading by a 7-0 margin, with all Councilors voting "yes" at 7:04 p.m. Youth Adviser Velazquez Valdes also voted "yes."**

**Mayor Stutsman** called for the introduction, on second reading, of Ordinance 5136: *Amend Ordinance 3011 by Rezoning Real Estate Hereinafter Described from Industrial M-1PUD, Residential R-1PUD and Agricultural A-1 to Residential R-3 District, and Amend Ordinance 4768, Known as the Waterford Commons Business Park PUD (Planned Unit Development)*. Council President Weddell asked the Clerk-Treasurer to read Ordinance 5136 by title only, which was done.

**Weddell/Pérez** moved to approve Ordinance 5136 on second and final reading.

**Councilor King** said she wasn't sure the Council could approve a rezoning on second reading at the same meeting. **Mayor Stutsman** said rezonings automatically go to a second reading, although a vote could be tabled.

At 7:06 p.m., **Mayor Stutsman** invited additional public comment on Ordinance 5136, which was before the Council for a Second Reading.

**Glenn Null of Goshen** said Goshen needs more housing, noting that "when the pie gets bigger, my piece of the pie gets smaller." He said this housing may not be developed for years, but it will still help when he gets older by contributing to the City's tax base. Null said he isn't a fan of three-story housing, but overall it will be a positive for the community. He also said traffic is a "nightmare" at any time and is getting as bad as Chicago, especially when there is construction. Still, Null said more housing will widen the tax base and residents will pay less.

**Mayor Stutsman** jokingly responded that he was in Chicago over the weekend and that he loves Goshen's traffic.



**Councilor Schrock** said he wanted to make sure that the residents who spoke tonight, whether they live in the City or the county, will have opportunities to be heard by the developers.

**Mayor Stutsman** cautioned that the housing proposals suggested by Structurepoint were only its ideas and not necessarily what will be proposed by the developers. He said the developers will need to determine what fits on the property and how they want to move forward. The Mayor also said this was the first time developers have said they wanted to hear from residents before developing a housing plan. He said that spoke well for Detweiler and her partners and how they wanted to proceed.

There were no further comments or questions from members of the audience or Councilors. Councilors also indicated they were ready to vote.

**On a voice vote, Councilors unanimously approved Ordinance 5136 on second and final reading by a 7-0 margin, with all Councilors and the Youth Advisor voting "yes" at 7:09 p.m.**

## **2) Public Hearing: Community Development Block Grant (CDBG) Substantial Amendment to the Five Year Consolidated Plan (2020-2024) and Program Year 2022 Annual Action Plan for Homeownership Assistance**

### **BACKGROUND:**

A proposed amendment for the City of Goshen's CDBG 2020-2024 Five Year Consolidated Plan and 2022 Annual Action Plan was prepared and was available for public review and comment for a period of 30 days, beginning Oct. 6, 2022, and continuing through November 4, 2022, and was presented at a public hearing on October 24, 2022, as part of a regular Common Council meeting. The amendment was available at: <http://goshenindiana.org/cdbg>

The CDBG Citizen Participation Plan outlines the citizen input process for CDBG and establishes the process to amend CDBG plans, what amendments may be made, and how amendments are defined. A substantial amendment includes the initiation of new activities not included in CDBG plans, and requires a public hearing and 30-day comment period. The 2020-24 Five Year Consolidated Plan will be amended to formalize Homeownership Assistance as a goal to be linked to future annual plans, and the 2022 Annual Action Plan will be amended to include Homeownership Assistance as a new activity.

Homeownership services was identified as a potential CDBG funding area in the 2020-2024 Five Year Consolidated Plan, part of the overall Housing Opportunities priority, but a specific goal was not included, so that goal was being added to the five-year plan, and the new activity will be added to the 2022 Annual Action Plan.

Homeownership assistance would be available for low/moderate income homebuyers purchasing single unit homes within the City, and eligible households could receive financial assistance in the form of a five-year forgivable grant towards closing costs, first year mortgage insurance premiums, up to 50% of the required down payment, and reduction of mortgage principal and interest rates. An affordability lien will be attached to the property for the five-year grant period.

Homebuyers will qualify with income not exceeding 80% AMI (area median income), will be required to contribute to the purchase price, and will be required to complete financial literacy/homebuyer training through a combination of education and one-on-one counseling.



The Homeownership Assistance activity was being proposed because low/moderate income homebuyers may face challenges with initial purchase costs, partially due to increasing construction costs and rising interest rates. The goal is to support affordable housing purchases for low/moderate income households in Goshen. As the need for homeownership assistance has increased, the single unit housing rehab program has had a downturn in requests for assistance, so funds are available to reallocate without impacting the single unit housing rehab program, and the reallocated funds will contribute to meeting the expanding need for homeownership assistance.

The amendment does not change the overall 2022 CDBG budget, but would reduce the amount of funds budgeted to single unit housing rehab from \$100,325 to \$59,000, and would allocate the reduction of \$41,325 to the new Homeownership Assistance activity.

Following the amendment, the use of CDBG funds for Program Year 2022 would be as follows:

1. Public Service Grants \$47,000
  2. Single Unit Housing Rehab \$59,000
  3. Homeownership Assistance \$41,325
  4. Multi-unit Housing Rehab \$130,000
  5. Planning & Administration \$60,000
- TOTAL \$337,325

The amendment updates the following sections of the 2022 Annual Action Plan: Executive Summary, Consultation, Participation, Expected Resources, Annual Goals and Objectives, Projects, Affordable Housing, Barriers to Affordable Housing, and Other Actions. Changes were also made to the following sections of the Consolidated Plan: Citizen Participation, Strategic Plan Overview, Priority Needs, and Goals Summary. Comments may be submitted no later than Nov. 4, 2022, to Theresa Cummings, Goshen City Planning, 204 E. Jefferson Street, Suite 4, Goshen; [theresacummings@goshencity.com](mailto:theresacummings@goshencity.com); 574-533-9370. The amendment and comments will be submitted to HUD following the public comment period.

#### **SUMMARY OF OCT. 24, 2022 PUBLIC HEARING AND COUNCIL DISCUSSION:**

**At 7:09 p.m., Mayor Stutsman opened a public hearing on the Community Development Block Grant (CDBG) Substantial Amendment to the Five Year Consolidated Plan (2020-2024) and Program Year 2022 Annual Action Plan for Homeownership Assistance.**

The Mayor invited comments from Theresa Cummings, the City Community Development Specialist. Cummings provided an overview of the proposal, its rationale and how the program will work.

There were no public comments or questions, so Mayor Stutsman closed the public hearing at 7:12 p.m. The matter was then concluded. There was no Council action.

#### **3) Resolution 2022-25: Resolution of the Common Council of the City of Goshen Approving Establishment of the Indiana Avenue Allocation Area**

Mayor Stutsman called for the introduction of Resolution 2022-25, *Resolution of the Common Council of the City of Goshen Approving Establishment of the Indiana Avenue Allocation Area*. Council President Weddell asked the Clerk-Treasurer to read Resolution 2022-25 by title only, which was done.

Weddell/Nisley moved to approve Resolution 2022-25.



**BACKGROUND:**

**Resolution 2022-25** was presented for approval as the final step in the process of amending the River Race TIF to establish the Indiana Avenue Allocation Area as its own, independent allocation area. This TIF boundary amendment has been approved by the Goshen Redevelopment Commission, the Goshen Plan Commission and the plan for this was previously presented to the Council and approved.

Once this step is complete, City staff will move forward with bond closing to allow for the Indiana Avenue apartment project to continue. Staff requested the Council's approval of **Resolution 2022-25**.

**SUMMARY OF OCT. 24, 2022 DISCUSSION AND PASSAGE OF RESOLUTION 2022-25:**

**Mayor Stutsman** joked that he has been assured by Redevelopment Director **Becky Hutsell** that Resolution 2022-25 is the last step in the Indiana Avenue apartment project, but he has heard that before from Hutsell.

**Hutsell** explained why the project was back before the Council, but assured Councilors this was the last step and that the City would be closing on the bond next week.

At 7:13 p.m., Mayor Stutsman invited public comments on Resolution 2022-25, but there were none.

There were no questions or comments from Councilors, who also indicated they were ready to vote.

**On a roll call vote, Councilors approved Resolution 2-22-25, Resolution of the Common Council of the City of Goshen Approving Establishment of the Indiana Avenue Allocation Area, by a 6-1 margin, with Councilors Eichorn, Nisley, Pérez, Riegsecker, Schrock and Weddell voting "yes" and Councilor King voting "no" at 7:14 p.m. Youth Advisor Velasquez Valdes voted "pass."**

4) Resolution 2022-23: To elect the amount of revenue loss claimed and allocating remaining funds received under the Coronavirus local fiscal recovery fund established under the American Rescue Plan Act Mayor Stutsman called for the introduction of Resolution 2022-23: *To elect the amount of revenue loss claimed and allocating remaining funds received under the Coronavirus local fiscal recovery fund established under the American Rescue Plan Act.* Council President Weddell asked the Clerk-Treasurer to read Resolution 2022-23 by title only, which was done. Weddell/Schrock moved to approve Resolution 2022-23.

**BACKGROUND:**

Resolution 2022-23, To elect the amount of revenue loss claimed and allocating remaining funds received under the Coronavirus local fiscal recovery fund established under the American Rescue Plan Act.

According to Resolution 2022-23:

- Congress adopted the American Rescue Plan Act in March 2021 ("ARPA") which allocated approximately \$65 billion in recovery funds to cities, towns, and villages across the country.
- ARPA funds are intended to provide support to state, local, and tribal governments in responding to the impact of COVID-19 and in their efforts to contain COVID-19 in their communities.
- A total of \$6,692,508.00 was allocated to the City of Goshen ("City") pursuant to the ARPA.



- The Coronavirus State and Local Fiscal Recovery Funds provide to local governments resources intended to fight the pandemic and support families and businesses struggling with its public health and economic impacts, maintain vital public services, even amid declines in revenue, and build a strong, resilient, and equitable recovery by making investments that support long-term growth and opportunity.
- In May 2021, the U.S. Department of Treasury published the Interim Final Rule describing eligible and ineligible uses of funds as well as other program provisions, sought feedback from the public on these program rules, and began to distribute funds.
- On Jan. 6, 2022, Treasury issued its final rule, which delivered broader flexibility and greater simplicity in the program, responsive to feedback in the comment process. The final rule offered a standard allowance for revenue loss of up to \$10 million, allowing recipients to select between a standard amount of revenue loss or complete a full revenue loss calculation.
- Recipients that selected the standard allowance were allowed to use that amount, in many cases their full award, for government services, with streamlined reporting requirements.
- On April 18, 2022, the City, by and through its Common Council, adopted Resolution 2022-09 electing the Standard Allowance available under the Revenue Loss provision of the American Rescue Plan Act in the full amount of its ARPA grant of \$6,692,508.00 to be used for the General Provision of Government Services
- On or after July 11, 2022, the City entered into 19 ARP Subrecipient Agreements under which it distributed a total of \$294,664 in ARP Funding to non-profit organizations serving the City of Goshen.
- The distributions under the ARP Subrecipient Agreements were made consistent with the City's ARP Fund Plan adopted by the Common Council as Resolution 2021-31 on Nov. 2, 2021.
- On August 15, 2022, the Treasury contradicted its previously titled "Final Rule" by releasing updated Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities.
- Under the Treasury's updated Reporting Guidance, the City cannot use ARP Funding classified as Revenue Replacement under the City's standard allowance election to fund the \$294,667 awarded to the Subrecipient non-profits.
- The Treasury has now extended the deadline for municipalities such as the City to make Revenue Loss elections through April 2023 and any change in election will supersede the prior election.
- Previously reported program expenditures can be reallocated among expenditure categories in future Project and Expenditure Reports.
- In order to comply with the Treasury's updated Reporting Guidance, the City must change the allocation of ARP Funding set forth in Resolution 2022-09, reducing the amount of "Revenue Replacement" elected to \$6,397,844 and reallocating the \$294,667 in Subrecipient Funding to §602(c)(1)(A) of the Act which permits ARP Funding to be used: To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.
- As a result, the City of Goshen, Indiana elects the Standard Allowance available under the Revenue Loss provision of the American Rescue Plan Act in the amount of \$6,397,844 to be used for the General Provision of Government Services.



- Further, the \$294,667 in funding distributed under the 19 Subrecipient Agreements shall be allocated to §602(c)(1)(A) of the Act which authorizes the use of ARP Funding to provide assistance to nonprofit organizations projects and programs.

#### **SUMMARY OF OCT. 24, 2022 DISCUSSION AND PASSAGE OF RESOLUTION 2022-23:**

**Mayor Stutsman** said he hoped this would be the final revision to the City's allocation of federal funds received from the American Rescue Plan Act. He said this third resolution is needed because of a third change in federal regulations. He said he hoped this would be the final change and noted that the City Attorney and the Clerk-Treasurer have worked to make the necessary adjustments. The Mayor said this resolution will not change the allocations, but only the way the City tracks and reports its spending.

**Mayor Stutsman** said he has spoken to state and federal officials and informed them of the stress this has imposed on City staff and asked that they not continually change rules. He said the officials have been receptive, but haven't committed to any changes in their procedures.

In response to a question from **Councilor Schrock**, **Mayor Stutsman** said many other communities in the state were affected by this change in regulations.

**City Attorney Bodie Stegelmann** provided additional background on the need for Resolution 2022-23. He said the spending plan approved by the Common Council would not change as a result of Resolution 2022-23.

**Stegelmann** said the only change is that the City cannot claim all of the federal funds as revenue loss because the "final, final" federal rules said funds provided to non-profit agencies was not permitted under the standard allowance. He said the funds provided to the non-profit agencies must be reported separately. He said the matter has probably caused more stress than necessary and will create more paperwork.

**Councilor Pérez** confirmed with **Mayor Stutsman** that the City can still help the non-profits. **Mayor Stutsman** provided a further explanation.

**Councilor King** said she appreciated that City staff worked through the details and could still help the non-profits.

**Stegelmann** said funds were already distributed to the non-profits, which make the change in regulations more stressful. The **Mayor** said there initially was a fear the City would have to seek a return of the funds.

**Clerk-Treasurer Aguirre** said state auditors informed him during the summer that there had been a change in the regulations and there would be enhanced reporting requirements. He said this will cause an increase in paperwork and more auditing, which was unfortunate because City staff previously was told this would not be necessary.

**Councilor Pérez** responded that evaluation and documenting work is never easy, but it is good for non-profit agencies to evaluate and report on their work. **Mayor Stutsman** agreed, but noted that the problem is that there was an abrupt change in the reporting requirements.

At 7:20 p.m., **Mayor Stutsman** invited public comments on Resolution 2022-23. There were none.

**Councilors** indicated they were ready to vote.

**On a voice vote, Councilors approved Resolution 2022-23, To elect the amount of revenue loss claimed and allocating remaining funds received under the Coronavirus local fiscal recovery fund established under the American Rescue Plan Act, by a 7-0 margin, with all Councilors voting "yes" at 7:21 p.m.**





### Elected Official Reports:

**Mayor Stutsman** said that at today's Board of Works & Safety meeting, the six finalists for Kid Mayor made presentations. They described what they wanted to do if elected Kid Mayor. The Mayor said an election will be conducted by the school system and the winner will be announced at the Nov. 21 Common Council meeting.

**Mayor Stutsman** said the Nov. 7 Council meeting may not be necessary. He said the only matter that might have been necessary would have been the second reading of Ordinance 5136 if the rezoning had not been approved tonight. The Mayor said he and the Clerk-Treasurer were unaware of any matters that needed to come before the Council on Nov. 7. He asked if it would be OK to cancel the meeting. No Councilors responded.

**Councilor Nisley** distributed a report on Airport operations. He also encouraged Councilors to visit the Airport.

**Councilor Eichorn** said the Community Relations Commission has decided to move its monthly meetings from Monday to Tuesday. Eichorn said she spoke today to **Councilor Riegsecker, Mayor Stutsman and CRC Director A.J. Delgadillo** about who should serve as Council liaison to the CRC. Councilor Eichorn said that Councilor Riegsecker had agreed to serve as liaison earlier this year because Eichorn could not attend Monday CRC meetings because she had to attend Goshen school board meetings. However, she can attend Tuesday CRC meetings, so it has been decided that Councilor Eichorn will again serve as the Council's liaison to the CRC.

**Councilor Eichorn** also commented about Indigenous People's Day event at the Goshen Theater. She thanked the Mayor for allowing her to speak on the City's behalf. She said it was a moving experience and that she learned a lot about the county. She said she would like to see more events like that about people in the community.

**Councilor King** echoed Councilor Eichorn's positive comments about Indigenous People's Day. She said the event left her wanting to know more.

**Councilor Riegsecker** said the next meeting of the CRC will be Nov. 14 – the normal second Monday of the month – and that he will attend. He said there will be a change in the date of the December meeting. He also said two new members attended the last CRC meeting. He said the CRC now has eight people – one less than authorized.

**Councilor Pérez** said **Youth Advisor Velasquez Valdes** is working hard to understand what happens at Council meeting. He thanked her for doing so. He also said he would be meeting with her on Thursday to help her better understand the content of the Council meeting packet. He thanked Velasquez Valdes for asking questions so she could learn more.

**Youth Advisor Velasquez Valdes** said she is studying economics and this has been very helpful. She also said she is taking an accounting class and is trying to better understand tax issues before the council.

**Council President Weddell** jokingly said that perhaps the Youth Adviser can explain some matters to Councilors.

**Councilor Pérez** said he wanted to thank the Street Department for its work. He also thanked the Councilors who contacted him regarding the recent death of a Goshen College student. He said it was a difficult loss for the college community and for the student's family. He said he hopes Councilors will continue to support one another.

**Council President Weddell** asked for an update on the status of the Plymouth Avenue bridge reconstruction.



**City Director of Public Works & Utilities Dustin Sailor** said the state reported that the bridge is still scheduled to be completed in November.

**Council President Weddell** congratulated the Goshen High School cross country team for qualifying for the state meet. He said the team has qualified for the state meet for several years.

**Council President Weddell** said voting for the Nov. 8 mid-term election has started. He encouraged people to vote, noting that there were important school board, state and federal races.

**Council President Weddell** also announced that the City will need to make appointments to City boards and commissions on Jan. 1. He said the Council will need to make: two appointments to the Redevelopment Commission, one appointment to the Shade Tree Board; one appointment to the Community Relations Commission; one appointment to the Library Board and two appointments to the Board of Building Appeals. He said he would notify the incumbents and ask if they would like to be reappointed and City Communications Coordinator will post the vacancies on the City's website and Facebook page.

**Councilor King** asked if the City Street Department picked up branches and other debris after the recent storm.

**Mayor Stutsman** said crews are picking up leaves, collected some brush today and will collect more next week.

**Councilor Schrock** said the East Goshen Neighborhood Association met recently and discussed the idea of building large storm shelters for people in some neighbors. He said it might be good to consider creating shelter for large housing developments. **Mayor Stutsman** said large shelters might not be practical because of the time it would take to reach shelters in extreme emergencies.

**Clerk-Treasurer Aguirre** reminded Councilors of upcoming meetings scheduled for Nov. 21, Dec. 5, Dec. 19 and Tuesday, Dec. 27. He also said he will be proposing a 2023 meeting schedule at one of the December meetings.

There were no further comments by the elected officials.

**Councilor Nisley** made a motion to adjourn the meeting, which was seconded by **Councilor Eichorn**. Councilors unanimously approved the motion to adjourn the meeting.

**Mayor Stutsman** adjourned the meeting at 7:37 p.m.

APPROVED:

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

ATTEST:

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



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

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**To:** Goshen Common Council  
**From:** Clerk-Treasurer Richard R. Aguirre  
**Date:** Nov. 21, 2022  
**Subject:** Presentation of Kid Mayor finalists and winning candidate

**Wendy Clark**, a parent liaison at Model Elementary School and the coordinator of the **Kid Mayor program**, will introduce the Kid Mayor finalists and announcing the winner for 2022-2023 at the Common Council meeting on Nov. 21, 2022.

The Kid Mayor program began in 2020 at Model Elementary and has expanded to all of the City's elementary schools. Fourth-graders participate in the program by completing an application and identifying an issue important to the Goshen community. The students then record and submit brief videos introducing themselves and their issues. The videos are reviewed by a selection committee and six finalists are selected.

On Oct. 24, 2022, the candidates gave brief speeches to the Board of Works & Safety about projects they would promote if elected Kid Mayor. Goshen's fourth-graders viewed the candidate videos and voted for their preferred candidate earlier today.

The 2022-2023 candidates for Kids Mayor are: **Eliza Bell**, Waterford Elementary; **Paul Conner Gwaltney**, Prairie View Elementary; **Matthew Demott**, Waterford; **Zoey McDonald**, Chamberlain Elementary; **Avery McPhail**, Prairie View; and **Amelia Troyer**, Chamberlain.

The six candidates and their families are scheduled to attend the Nov. 21 Common Council meeting.



City Clerk-Treasurer  
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TO: Mayor Jeremy Stutsman and the Goshen Common Council

FROM: Jeffery Weaver, Deputy Clerk-Treasurer

RE: Proposed Council Resolution 2022-21, Category Transfer

DATE: November 21, 2021

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Thank you for considering Resolution 2022-21, Category Transfer, which requests authorization from the Council and Mayor to move available resources between major categories within the City's funds. The Mayor and Clerk-Treasurer requested this resolution because the Common Council is the City's fiscal body which authorizes the City's budget and any budget adjustments.

An appropriation is "permission to spend available money" and is tied to a specific fund. Within a fund there are four spending categories and multiple accounts. The Department of Local Government Finance ("DLGF") requires Council approval to move an appropriation from one category to another. The Council can approve this when a department needs additional room to spend in one category and has available appropriations in another category.

By moving an appropriation from one category to another, the Council is only changing the category from which the City pays an expenditure. The Council is not approving any additional spending, so the fund's total appropriation remains the same.

For each of the category transfers in Resolution 2022-21, a department head recognized a need in one of their budget categories, reported the need to the Mayor and Clerk-Treasurer, and request that the Council approve the transfer so they can continue their operations:

- Police Officers are required to pass exams before being admitted to the pension fund which the Police Department pays for. The first category transfer should cover the medical exams through the end of the year.
- The Police Department also requested a category transfer to cover fuel costs through the end of the year, necessitated by rising fuel costs.
- The Parks Department requested a category transfer to cover remaining water and sewer charges through the year end.

If the Council approves the proposed category transfers, the Clerk-Treasurer will then register the adjustments in the City's books and communicate the transfers to the departments. These category transfers are adjustments that only require Council approval to be final, and do not require notification to the DLGF.

**GOSHEN COMMON COUNCIL  
Resolution 2022-21**

**Category Transfer**

WHEREAS it is necessary to transfer funds budget categories to cover expenses.

WHEREAS certain existing budget appropriations have unobligated funds that are available for the category transfer.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Common Council approves the transfer of funds between the following budget categories:

**GENERAL FUND CATEGORY TRANSFER FROM:**

Budget Category: Supplies  
Line Number: 101-520-11-422.0153  
Line Name: Police / Drug Unit  
Amount of the Transfer: (\$3,500.00)

**GENERAL FUND CATEGORY TRANSFER TO:**

Budget Category: Other Services & Charges  
Line Number: 101-520-11-431.0501  
Line Name: Police / Medical Expenses  
Amount of the Transfer: \$3,500.00  
Purpose of Transfer: To cover expenses for PERF exams required for new officers

**GENERAL FUND CATEGORY TRANSFER FROM:**

Budget Category: Personal Services  
Line Number: 101-520-11-411.0130  
Line Name: Police / Full-Time Wages  
Amount of the Transfer: (\$50,000.00)

**GENERAL FUND CATEGORY TRANSFER TO:**

Budget Category: Supplies  
Line Number: 101-520-11-422.0211  
Line Name: Police / Gas, Diesel, Propane  
Amount of the Transfer: \$50,000.00  
Purpose of Transfer: To cover expected fuel costs until the end of the year due to the rise in fuel costs this year

PARKS FUND CATEGORY TRANSFER FROM:

Budget Category: Capital Outlays  
Line Number: 204-550-00-442.0001  
Line Name: Parks / Capital Projects  
Amount of the Transfer: (\$36,800.00)

PARKS FUND CATEGORY TRANSFER TO:

Budget Category: Other Services & Charges  
Line Number: 204-550-00-435.0401  
Line Name: Parks – Water & Sewer  
Amount of the Transfer: \$36,800.00  
Reason for Transfer: To pay for water and sewer charges through the end of the year

PASSED by the Goshen Common Council on November \_\_\_\_\_, 2022.

\_\_\_\_\_  
Presiding Officer

ATTEST:

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

PRESENTED to the Mayor of the City of Goshen on November \_\_\_\_\_, 2022, at \_\_\_\_\_ a.m./p.m.

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

APPROVED and ADOPTED on November \_\_\_\_\_, 2022.

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

**ORDINANCE 5143**

**ESTABLISHING AN ELKHART TOWNSHIP FIRE SUPPORT FUND**

WHEREAS, the City of Goshen entered into an Interlocal Agreement with Elkhart Township to provide fire protection service and emergency medical service to the unincorporated areas of Elkhart Township;

WHEREAS, the City of Goshen will be receiving compensation under the Interlocal Agreement Between the City of Goshen and Elkhart Township for Fire and Ambulance Services for services the City provides to Elkhart Township.

WHEREAS, to have a clear record of the actual cost of the Township Agreement it is necessary to establish a separate fund to account for all receipts and expenditures of funds associated with the provision of fire protection and emergency medical services provided under the Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Goshen Common Council that:

**Section 1. Fund Established**

A Township Fire Support Fund is established to:

1. Record receipts from Elkhart Township under the Interlocal Agreement Between the City of Goshen and Elkhart Township for Fire and Ambulance Services, dated December 21, 2021, and recorded with the Elkhart County Recorder as Instrument Number 2022-00858 (“Township Agreement”); and
2. Pay expenditures according to the Township Agreement.

**Section 2. Source of Funding**

The source of funding of the Township Fire Support Fund shall be the compensation the City receives under the Township Agreement.

**Section 3. Use of Fund**

The Township Fire Support Fund shall be used to pay for eligible costs of the fire and emergency medical services provided to Elkhart Township as set forth in the Township Agreement, including payroll for an anticipated addition of new firefighters, and other expenses incurred by the City of Goshen in providing services to Elkhart Township.

**Section 4. Fiscal Year-End Balance; Termination**

- (A) Any balance remaining in the Township Fire Support Fund at the end of a fiscal year shall be carried over in the fund for the following year and not be transferred to any other fund.
- (B) The Township Fire Support Fund shall terminate without further action of the Common Council upon termination of the Township Agreement once all funds

have been received and expended for fire and emergency medical support services provided under the Agreement.

PASSED by the Goshen Common Council on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Presiding Officer

ATTEST:

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

PRESENTED to the Mayor of the City of Goshen on \_\_\_\_\_, 2022, at the hour of \_\_\_\_:\_\_\_\_.m.

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

APPROVED and ADOPTED on \_\_\_\_\_, 2022.

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



**GOSHEN COMMON COUNCIL**

**RESOLUTION 2022-26**

**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 Common Council 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.

PASSED by the Goshen Common Council on \_\_\_\_\_, 2022.

\_\_\_\_\_  
Presiding Officer

ATTEST:

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

PRESENTED to the Mayor of the City of Goshen on \_\_\_\_\_, 2022, at \_\_\_\_\_  
a.m./p.m.

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

APPROVED and ADOPTED on \_\_\_\_\_, 2022.

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

**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](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:	City of Goshen
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*