



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

Regular Meeting Agenda

**2:00 p.m., May 24, 2023**

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

*To access online streaming of the meeting, go to <https://goshenindiana.org/calendar>*

**Call to Order by Mayor Jeremy Stutsman**

**Approval of Minutes: May 15, 2023**

**Approval of Agenda**

- 1) Fire Department:** Promotion of Shane D. McKerchie to Assistant Chief
- 2) Fire Department:** Promotion of Camden L. Bontrager to Fire Lieutenant
- 3) Fire Department:** Promotion of Jonathan M. Weishaupt to EMS Lieutenant
- 4) Fire Department:** Promotion of Matthew R. Stamm to Fire Sergeant
- 5) Fire Department:** Promotion of Lucas T. Wickey to EMS Sergeant
- 6) Edgar Saucedo request:** Approve a 42-foot driveway at 612 Mercer Avenue
- 7) Builder request:** Approve closure of sidewalk and one lane of Third Street for three days (6 a.m. to 3 p.m.) the week of June 12, 2023 for a building repair at 101 South Third Street
- 8) Downtown Goshen Inc. requests:** Additional street closures for 2023 for First Friday activities, in addition to the original requests in January
- 9) Legal Department:** Approve Resolution 2023-15, Approving Certain Revised City of Goshen Police Department Policies and Repealing Various Policies, effective May 29, 2023
- 10) Legal Department:** Approve and authorize the Mayor to execute, two agreements with Baker Tilly Municipal Advisors, LLC for their professional accounting services to provide financial management reports up to year end 2025 for Goshen's Water Utility at a cost of \$77,400 and for Goshen's Sewer Utility at a cost of \$77,400



**11) Engineering Department:** Approve Director of Public Works Dustin Sailor to sign the Indiana Finance Authorities Scope of Work Certification Form for accessing Type I and Type II funds valued at \$45,000 toward the costs of a lead service line inventory

**12) Engineering Department:** Approve Mayor Jeremy Stutsman signing the agreement with The Abonmarche Group for \$7,500.00 for the survey of 1402 W. Wilden Avenue

**13) Engineering Department:** Approve Change Order No. 1 for the 2023 Paving Project for an increase of \$134,718

**14) Engineering Department:** Approve the full closure on Indiana Avenue, from River Avenue to Wilden Avenue, beginning Tuesday, May 30 through Wednesday, May 31, 2023

#### **Privilege of the Floor**

### **CITY OF GOSHEN STORMWATER BOARD**

#### **Regular Meeting Agenda**

**2:00 p.m., May 24, 2023**

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

**Members:** Mayor Stutsman, Mike Landis and Mary Nichols

**15) Accept the post-construction stormwater management plan** for City of Goshen Airport -H2 Aviation as it has been found to meet the requirements of City Ordinance 4329

**16) Accept the post-construction stormwater management plan** for East College Avenue Industrial Park as it has been found to meet the requirements of City Ordinance 4329

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

#### ***Adjournment***



**BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD  
MINUTES OF THE MAY 15, 2023 REGULAR MEETING**

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

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

**Absent:** None

**CALL TO ORDER:** Mayor Jeremy Stutsman called the meeting to order at 2:00 p.m.

**REVIEW/APPROVE MINUTES:** Mayor Stutsman presented the minutes of the May 8, 2023 Regular Meeting. Board member Barb Swartley moved to approve the minutes of the May 8, 2023 meeting as presented. The motion was seconded by Board member Mary Nichols. Motion passed 4-0.

**REVIEW/APPROVE AGENDA:** Mayor Stutsman presented the meeting agenda. Board member Swartley moved to approve is as presented. Board member Nichols seconded the motion. Motion passed 4-0.

**1) OPENING OF DEVELOPMENT PROPOSALS: For Millrace Townhomes Lot and Third & Jefferson Street Development Lots (bids due 1:30 p.m., May 15, 2023)**

**Opportunity:** The City of Goshen, by and through the Redevelopment Commission, requested proposals for the purchase of certain real property in the City.

**The Millrace Townhomes Subdivision Redevelopment Property** to be purchased is located in the 500 block of River Race Drive and consists of three (3) parcels of real estate (1.01 acres) located between River Race Drive and South Second Street. The area is just south of Monroe Street and lies north of the Millrace Cohousing development. **The desire for the development is to be for housing** and the original plans included 24 townhome units. It is up the entity submitting the proposal regarding the density proposed for this project.

**The Third Street and Jefferson Street Redevelopment Property** to be purchased consists of the undeveloped lots west of Third Street, east of River Race Drive, north of Jefferson Street and south of the east/west alley between Jefferson Street and Washington Street consisting of four (4) parcels of real estate. The parcels are lots located at: 213 S. Third Street, 219 S. Third Street, 223 S Third Street and a lot on W. Jefferson Street. The property consists of one-half block of vacant land just west of Main Street in downtown Goshen. The total acreage for the available real estate is .69 acres and was originally developed as residential lots. The City demolished the homes that previously were on the properties

**The Redevelopment Commission's goal for the property is to create a pedestrian-oriented residential development to increase housing opportunities near downtown.** Limited commercial development is also acceptable. However, the primary focus of any proposal must be the construction of residential units. The exact mix of uses, housing density and price points will be up to the entity submitting a proposal.

It is anticipated that access to the project would be from West Jefferson Street, as Third Street is a state roadway controlled by INDOT with a center median. Public parking is available in the downtown area, but it is anticipated that the proposed development will incorporate parking into the redevelopment plan.



## BACKGROUND:

In March 2023, the City Redevelopment Commission issued a Request for Proposals to developers interested in proposing projects for the Millrace Townhomes site along River Race Drive as well as the Third Street and Jefferson Street lots that are vacant. On April 11, full-priced offers were welcomed at the Redevelopment Commission meeting. However, no offers were submitted for these properties. Per state statute, the City then could accept proposals offering a less than full price offer after an additional 30 days. Because that window passed the May Commission meeting, **proposals were instead due to be opened by the Board of Works on May 15, 2022.** The intent would be to have the name of the proposing entity and the offer price read aloud, with any proposals then being referred to the Legal Department for review with Redevelopment staff. **After accepting proposals for the additional period, the Redevelopment Commission may select the highest and best proposal using the criteria set forth in Request for Proposals with no minimum price.**

Mayor Stutsman opened and announced the following development proposals:

- **AP Development, LLC of Brownsburg, Indiana. It submitted a proposal, named “Millrace Townhomes,” for 54 market rate apartments for the 500 block of River Race Drive,** consisting of three (3) parcels and 1.01 acres. **Description:** 32 units of “workforce plus” townhome – 16 two-bedroom apartments and 16 one-bedroom apartments. **Total Development cost: \$9,000,000. Purchase price of real estate: \$75,000.**
- **AP Development, LLC of Brownsburg, Indiana. It submitted a proposal, named “3<sup>rd</sup> and Jefferson Townhomes,” for 22 market rate apartments over three stories for the four undeveloped lots west of Third Street,** east of River Race Drive, north of Jefferson Street and south of the east/west alley between Jefferson Street and Washington Street, and consisting of .69 acres. **Description:** 22 units of “workforce plus” townhome two-bedroom apartments. **Total development cost: \$6,200,000. Purchase price of real estate: \$25,000.**

**NOTE:** Although AP Development, LLC submitted separate proposals, the company is seeking to develop and finance both sites as a single project. AP Development is currently developing the Ariel Cycleworks, LLC apartment project at the former Western Rubber brownfield site located at 620 E. Douglas St.

- **Viewrail Holdings, LLC of Goshen. It submitted a proposal, named “Millrace Flats,” for 48 luxury apartments for the 500 block of River Race Drive,** consisting of three (3) parcels and 1.01 acres. **Description:** Millrace Flats would be comprised of 48 luxury apartment, divided evenly over three stories (36 would be two-bedroom apartments and 12 would have one bedroom). **Total development cost: \$15,950,000. Purchase price or real estate: \$1.**

Mayor Stutsman/Nichols moved to refer the proposals to City Redevelopment Director Becky Hutsell, the Redevelopment Commission and the City Legal Department for review. Motion passed 4-0.

## 2) Police Department: Conditional offer of employment to Diego Murillo-Magallanes

On behalf of the Police Department, **Shannon Marks, the Legal Compliance Administrator for the City Legal Department,** recommended that the Board extend a conditional offer of employment to **Diego Murillo-Magallanes,** as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor to execute the agreement on behalf of the City and the Board.



In a memorandum to the Board, **Marks** wrote that the agreement sets forth the conditions that Magallanes must meet prior to beginning employment with the Police Department as a probationary patrol officer, which includes being approved by the Board of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Once employed, Magallanes will be required to successfully complete all training requirements, including complete the Tier I basic training requirements and obtain certification with the Indiana Law Enforcement Training Board. Marks also wrote that the Police Department will request the Board to confirm the offer of employment when a position opening becomes available in the Police Department.

**Swartley/Nichols moved to extend a conditional offer of employment to Diego Murillo-Magallanes as a probationary patrol officer, approve the Conditional Offer of Employment Agreement with Magallanes, and authorize Mayor Stutsman to execute the agreement. Motion passed 4-0.**

### **3) Police Department: Conditional offer of employment to Austin J Shapland**

On behalf of the Police Department, **Shannon Marks, the Legal Compliance Administrator for the City Legal Department**, recommended that the Board extend a conditional offer of employment to **Austin J. Shapland**, as well as approve the attached Conditional Offer of Employment Agreement and authorize the Mayor to execute the agreement on behalf of the City and the Board.

In a memorandum to the Board, **Marks** wrote that the agreement sets forth the conditions that Shapland must meet prior to beginning employment with the Police Department as a probationary patrol officer, which includes being approved by the Board of the Indiana Public Retirement System for membership to the 1977 Police Officers' and Firefighters' Pension and Disability Fund. Once employed, Shapland will be required to successfully complete all training requirements, including complete the Tier I basic training requirements and obtain certification with the Indiana Law Enforcement Training Board. Marks also wrote that the Police Department will request the Board to confirm the offer of employment when a position opening becomes available in the Police Department.

**Swartley/Nichols moved to extend a conditional offer of employment to Austin J. Shapland as a probationary patrol officer, approve the Conditional Offer of Employment Agreement with Shapland, and authorize Mayor Stutsman to execute the agreement. Motion passed 4-0.**

### **4) West Goshen Neighborhood Association request: Discounted-cost dump trailer for the June 24, 2023 neighborhood clean-up day**

**Sandy Fribley, secretary of the West Goshen Neighborhood Association**, told the Board that a Neighborhood Clean-up Day is scheduled for Saturday, June 24, 8 a.m. until a City trash trailer is full. The City Street Department is scheduled to provide a trailer at Bakersfield Park. She asked for a reduction of the City's normal fee for the trailer.

In a written request to the Board, the neighborhood association promised to provide volunteers to ensure no one dumps items that are not allowed in the county landfill. The association will advertise this event via its 80-plus email contact list, on its Facebook page, and with yard signs posted around the neighborhood. The association requested the lowered fee of \$35 be offered to the neighborhood association for this service.

**City Attorney Bodie Stegelmann** clarified that the normal trailer fee is \$75, so a 50% reduction would be \$37.50.

**Swartley/Nichols moved to grant the request of the West Goshen Neighborhood Association for a reduced fee of \$37.50 for a City trash trailer for its June 24, 2023 clean-up day. Motion passed 4-0.**

### **5) Historic Southside Neighborhood Association requests: Discounted-cost dump trailers in June and September and the partial closure of 7th Street for an Aug. 19 block party**



**Terri Wentz, chair of the Historic Southside Neighborhood Association**, asked the Board to approve half-price rates for the use of three trailers in June for the neighborhood's Spring Clean-up and in September for its Fall Clean-up and to approve closing the 500 block of South 7th Street on the afternoon of Aug. 19 for its annual picnic.

In her written request, Wentz wrote that the clean-ups will be the weekends of June 9 and Sept. 8 and she asked for the use of the trailers for half of the usual cost of \$75 per trailer to be placed at three neighborhood locations to dispose larger items (no yard waste). The closure of the 500 block of South 7th would be from 4 p.m. to 8 p.m. on Aug. 19 for the association's annual picnic and block party. She also requested the use of City barricades.

**Swartley/Nichols moved to approve the Historic Southside Neighborhood Association's requests for reduced rates for City dump trailers for "Clean-ups" the weekends of June 9 and Sept. 8 and the closure of the 500 block of South 7th, from 4 p.m. to 8 p.m. on Aug. 19, for the association's annual picnic and block party. Motion passed 4-0.**

**6) Builder request: Allow a driveway width of 34 feet for a new home at 1914 Woodward Place**

**Nate Mateer Rempel, a partner with Dana Miller Building Solutions**, asked the Board to approve a variance to the requirement regarding the width of a driveway at its connection to the right of way as part of a new construction located at 1914 Woodward Place, and the requested width is 34 feet where 24 feet is the prescribed maximum.

**Rempel** said neighboring properties at 1910 Woodward Place and 1908 Woodward Place have driveways that exceed the prescribed maximum (31 feet and 36 feet, respectively), demonstrating precedent in the neighborhood.

**City Director of Public Works & Utilities Dustin Sailor** said there are no curbs and gutters on the street, so he would ask that drainage be maintained. In response to a question from **Board member Mike Landis**, **Rempel** said an area adjacent to the driveway would be maintained to facilitate drainage.

**Swartley/Nichols moved to approve the request from Nathan Mateer Rempel to allow a driveway width of 34 feet for a new home at 1914 Woodward Place with special attention to drainage. Motion passed 4-0.**

**7) Lacasa request: Approve the temporary closure of Cottage Avenue, south of East Jefferson Street, for a few days, May 15-29, 2023, to replace a sewer line**

No representative was present, but in a written request, **Aaron Lehman, the Housing Development Manager for Lacasa Inc.**, asked the Board for permission to temporarily close Cottage Avenue, immediately south of East Jefferson Street, for a few days. He indicated Lacasa is replacing the sewer line from 410 East Jefferson Street into the sewer main under Cottage Avenue. Lehman wrote that this work is dependent on weather, but will take place sometime before May 29, 2023.

**Lehman** indicated that depending on which days this work takes place, garage/recycling pick-up may be affected. He said Lacasa would move the garbage/recycling bins to the end of that block to minimize the disruption for the trucks and local residents. He added that Lacasa staff members have dropped off information about the closure to eight houses that border the section of South Cottage Avenue from East Jefferson Street south to the alley.

In response to a question from **Mayor Stutsman**, **Clerk Treasurer Richard R. Aguirre** said he forwarded the request to City staff and neighbors have been informed of the closure. **City Director of Public Works & Utilities Dustin Sailor** said City staff members were aware of the request and supported the project.

**Swartley/Nichols moved to approve the temporary closure of Cottage Avenue, immediately south of East Jefferson Street, before May 29, weather permitting, for replacement of a sewer line. Motion passed 3-0.**



**8) Goshen Theater request: Partial sidewalk closure and use of two parking spaces during repair of the theater marquee in June**

**Jerry Peters, Technical Director of the Goshen Theater, Inc.** asked the Board to allow Goshen Theater to partially block the sidewalk under/adjacent to the theater marquee for repair work and permission to use two parking spaces for several hours at a time. Peters said a scaffold used for the project would alternate from the street side of the sidewalk to the building side as needed.

In a written request, **Peters** indicated that less than 50% of the sidewalk would be blocked at any time. He said the work would take place on the north and south sides of the marquee first (scaffold on sidewalk), then work on the street (west) side (scaffold in parking spots). The electrician estimates the entire job will take 2-3 days.

**Peters** said workers would install safety measures (cones, caution tape) around the scaffold. For blocking the parking spaces, he asked that the City Street Department deliver two wooden barricades, which would be set up and moved as work progressed. Peters wrote that the theater was waiting on the electrician to provide a date for the execution of the project, but anticipated it would happen before the end of June, weather permitting.

**Board member Landis** asked if a pedestrian path would be provided. **Peters** said theater staff would position barricades so that no more than 50% of the sidewalk would be blocked. **City Civil Traffic Engineer Josh Corwin** said the theater's plan was acceptable as long as access was not be overly restricted.

**Swartley/Nichols moved to allow Goshen Theater to partially block the sidewalk under/adjacent to the theater marquee for repair work and to block off two parking spaces for several hours at a time for the work in June 2023, weather and the electrician's schedule permitting, and asked that theater staff work with the Engineering Department on its sidewalk restriction plans. Motion passed 4-0.**

**9) City Department of Environmental Resilience request: Use of a portion of the City parking lot at 300 West Washington Street, noon to 3:30 p.m. on May 21, 2023 for the staging of the Goshen Women's Ride**

**Aaron Sawatsky Kingsley, Director of the City Department of Environmental Resilience,** asked that the middle section of the public parking lot, located in the 300 block of West Washington Street, be closed to traffic from noon to 3 .pm. on May 21 for the staging before and after the Goshen Women's Ride.

In a written request, **Kingsley** indicated that his department is coordinating the Goshen Women's Ride at 2 p.m. on May 21. He wrote that women make up less than 30% of those who ride bicycles and concern for safety is a leading reason why. The Goshen Women's Ride is designed to offer a safe, casual event for those who want to ride but have been hesitant in the past.

**Kingsley** wrote that Jesse Sensenig, the owner of Goshen Brewing Company, confirmed that this would be the best space. Goshen Brewing Company, the Electric Brew, Fables Books, Lincoln Avenue Cycling, and Maple City Market are the five Bicycle-Friendly sponsors of the event. Participants will ride down the Millrace to downtown Goshen from the parking lot. This ride will feature three stops where actresses will perform a short living history of women who lived in Goshen in the late 1800s.

**Swartley/Nichols moved to allow the City Department of Environmental Resilience to block from traffic and use the middle section of the public parking lot located in the 300 block of West Washington Street from 12:00 p.m. to 3 .pm. on May 21 for the staging of the Goshen Women's Ride. Motion passed 4-0.**

**10) Legal Department: Approve and authorize Mayor to execute the amendment agreement with Cummins Sales and Service, Inc. for inspection and diagnostic testing of the two additional City generators at a cost not to exceed \$1,719.44.**



**Brandy Toms, a paralegal with the City Legal Department,** told the Board that attached for the Board's agenda packet for approval, and to authorize Mayor Stutsman to execute, was an amended agreement with Cummins Sales and Service, Inc. for inspection and diagnostic testing of City generators.

**Toms** said the parties have agreed to amend the existing contract by adding two generators, located at the 22<sup>nd</sup> Street Fire Station and at the Lift Station located at 3950 Midway Road, respectively, to the planned maintenance program at a cost not to exceed \$1,719.44.

**Swartley/Nichols moved to approve and authorize the Mayor to execute the amendment agreement with Cummins Sales and Service, Inc. for inspection and diagnostic testing of the two additional City generators at a cost not to exceed \$1,719.44. Motion passed 4-0.**

**11) Legal Department: Approve Resolution 2023-16, Authorizing Acceptance of Real Property, Grant of Easement, and Grant of Temporary Easement**

**City Attorney Bodie Stegelmann** told the Board that City staff have been in discussions with Goshen Community Schools for the transfer of certain real property located at the Riverdale Elementary School site. The Schools and City staff have agreed to the transfer of the playground area of the site to the City for use as a public park.

**Stegelmann** said the City commits to improving the vacated portion Huron Street (north of Wilkinson Street) and the Schools will grant an easement over the vacated Huron Street. He said it is recommended that the Board approve Resolution 2023-16 for the acceptance of transfer of the real property, acceptance of the Grant of Easement, and acceptance of a temporary easement for work required for the improvement of the vacated Huron Street.

**Mayor Stutsman** said approval of the resolution will allow for the creation of a park at the site.

**Swartley/Nichols moved to approve Resolution 2023-16, Authorizing Acceptance of Real Property, Grant of Easement, and Grant of Temporary Easement. Motion passed 4-0.**

**12) Engineering Department: Request to extend the College Avenue road closure, east of Brinkley Way East through County Road 31, from May 16 to July 7, 2023**

**City Director of Public Works & Utilities Dustin Sailor** told the Board that due to continued construction activities at the East College Avenue Industrial Park, College Avenue/ CR 36 has remained closed to through traffic from Century Drive to County Road 31. He said Abonmarche has notified the Engineering Department that a hard closure of College Avenue / CR 36 will be required east of Brinkley Way East through CR 31 from May 16 until July 7, 2023.

**Sailor** said temporary road patching has been completed, so that College Avenue may be re-opened to traffic from Century Drive to Brinkley Way East. Following additional pavement restoration, he said College Avenue will be re-opened to through traffic in time for the Elkhart County Fair.

**Swartley/Nichols moved to approve the extension of College Avenue road closure, east of Brinkley Way East. Motion passed 4-0.**

**13) Engineering Department: Request for temporary speed limit reduction, from 45 mph to 30 mph, on East College Avenue**

**City Director of Public Works & Utilities Dustin Sailor** told the Board that due to continued construction activities at the East College Avenue Industrial Park and current pavement conditions, the Engineering Department is requesting the speed limit along College Avenue, from Century Drive to Brinkley Way East, be temporarily reduced from 45 MPH to 30 MPH. The construction speed limit will be posted within the construction zone. In response to a question from **Mayor Stutsman**, **Sailor** said the 45 MPH speed limit will be restored after construction.





**Swartley/Nichols moved to approve the temporary construction speed limit of 30 MPH along College Avenue, from Century Drive to Brinkley Way East. Motion passed 4-0.**

**14) Engineering Department: Request to temporary suspend the issuance of any permits to Comcast until a sidewalk replacement issue is resolved**

**City Civil Traffic Engineer Josh Corwin** told the Board to that in early March, Comcast removed a sidewalk panel along White Blossom Drive to complete the company's necessary work. Comcast obtained a permit for this work, but Comcast has not replaced the sidewalk panel or requested the required inspections as part of the permit.

**Corwin** said City staff contacted Comcast on March 27 to inform the company that the panel cannot be left as is and must at least be filled with suitable aggregate and compacted as a suitable solution until the concrete panel is replaced. Staff have yet to receive a response. **Corwin** said that at this time, the Engineering Department is requesting permission to temporarily suspend the issuance of any permits to Comcast until the issue is resolved. In response to a question from **Mayor Stutsman**, **Corwin** said the City would require the panel be replaced before new permits would be issued.

**Board member Landis** asked if the City had a usual time frame within which it expected contractors to replace sidewalk panels that had been removed. **Corwin** said ideally as fast as possible, but in this case it should be made passable. A resident said he saw a child riding a bicycle fall in the area, although the child wasn't hurt.

**Mayor Stutsman** asked the next steps if Comcast doesn't repair the sidewalk panel. **City Attorney Bodie Stegelmann** said the City could issue a stop-work order and go to court to enforce it if Comcast didn't comply.

**Swartley/Nichols moved to approve the Engineering Department's request to temporarily suspend the issuance of any permits to Comcast until a sidewalk replacement issue is resolved. Motion passed 4-0.**

**15) Business request: South Side Soda Shop request to waive a grease trap requirement**

Before agenda item #15 was introduced, **Mayor Stutsman** said he would be stepping aside and not voting on this matter because the request was coming from a family member. He said **Board member Mike Landis** would preside.

**BACKGROUND:**

**Provision 4.07 Grease Traps/Grease Interceptors of City Ordinance 4625 requires** that "any commercial user who sells food to be consumed on site or prepares food for sale or consumption **must apply for a food service permit**. At the time of original application or at the time of renewal of any existing permit, the Superintendent or a designee **may require the applicant to submit information pertaining to the type of food prepared, the size of the operation, the food preparation facilities on site, and the hours of operation.**

**"Based on this information and the facility's records of FOG (fats, oils and grease) water consumption at the location, an applicant shall be given points as set forth in the schedule" or score sheet the City has titled "Categories of Commercial Food Preparers."**

**The City schedule or score sheet assigns points based on:** food service operating hours per week; monthly flow attributable to food service by cubic feet; seating capacity or maximum number of meals normally served at one time if less than seating capacity (not assessed for church facilities); serving practices; deep fryer used (or not used) as part of normal food preparation; whether the facility has a commercial dishwasher; whether the facility has a three-bay sink and/or prep sink; whether the facility has a mop sink; whether the facility has floor drains; and whether the facility has a drive-thru. **Points are assigned on a 1-5 scale. The higher the point total, the greater number of conditions are required of the commercial food preparer.**



**An applicant is assigned a category by the Superintendent based on the following point total:**

- Twenty-four (24) or more points – Category A
- Six (6) to twenty-three (23) points – Category B
- Less than six (6) points – Category C

**Category A requirements:** Any applicant for a food service permit who is designated as Category A facility must install a one thousand (1, 000) gallon grease interceptor that captures flows from all floor drains, mop sinks, dishwashers and three-bay sinks. However, if a Category A applicant's building occupies at least ninety-five percent (95%) of the real estate on which the building is located, the Board of Public Works and Safety may allow a mechanical grease trap of at least thirty-five (35) gpm (gallons per minute) flow rate. The food service permit shall designate the minimum frequency that the grease interceptor or mechanical grease trap is serviced. The maintenance schedule shall be set to keep the grease interceptor or mechanical grease trap, in good working order and to minimize the introduction of fats, oils and grease into the City's sewer system. All mechanical grease traps must include an alarm system to alert the user when the trap requires cleaning.

**Category B requirements:** Any applicant for a food service permit who is designated as Category B facility must install a grease trap that captures flows from all kitchen floor drains, mop sinks, prep sinks and three-bay sinks. The food service permit shall designate the minimum frequency that the grease interceptor or grease trap is serviced. The maintenance schedule shall be set to keep the grease interceptor or grease trap in good working order and to minimize the introduction of fats, oils and grease into the City's sewer system. All grease traps shall have a flow restrictor that is properly sized to meet the design flow rate of the trap.

**City inspection and determination for South Side Soda Shop:** In a letter, dated April 21, 2023, Micky Reese, the Environmental Compliance Administrator for the City Wastewater Treatment Plant, notified Nick and Charity Boyd that upon a review of documents of South Side Soda Shop, "it has been evaluated that South Side Soda Shop is in the Class A category (Ordinance 4625) for a restaurant." The review indicated the restaurant had a total of 29 points.

Reese wrote that the restaurant had six months from the date of his notice to comply. He also notified the Boyds that they could contest the City's evaluation and request a review by the City Board of Works & Safety.

**Revised score:** In a May 11 memorandum to the Board of Works, Reese reported that he visited the Southside Soda Shop on April 6, 2023, met with the Boyds and went over the point system together. He informed them that the restaurant had scored a value of 29 points on the City's schedule. Reese wrote that the facility had a grease trap connected to a dishwasher and it was evaluated that South Side Soda Shop qualified as a Category A facility.

Reese further reported that the Boyds stated that the three-bay sink was used strictly as a hand wash sink and that the five points designated for this should be deducted from the schedule/score sheet. Reese wrote, "This would cut their points from 29 points to 24 points; therefore, getting the facility closer to not having to conform to a Class A facility standard. The three-bay sink is currently not connected to the grease trap."

**South Side Soda Shop requested a review of the City's evaluation:** On April 27, 2023, Charity and Nick Boyd contacted the Clerk-Treasurer's Office and requested a meeting with the Board of Works to discuss the City's evaluation pursuant to Ordinance 4625. The matter was scheduled for Board consideration on May 15, 2023.



**MAY 15 DISCUSSION AND DECISION UPHOLDING CATEGORY B RATING BY THE BOARD OF WORKS:**

**Acting Chair Landis** introduced agenda item #15, *Business request: South Side Soda Shop request to waive requirement of a grease trap*. He asked if anyone was present to represent the restaurant owners.

**Craig Buche, a Goshen attorney**, said he was present on behalf of his friends, **Charity and Nick Boyd, the owners of the South Side Soda Shop**. He said he didn't think he needed to be present, but offered to come because the Boyds are not accustomed to presenting this kind of information.

**Buche** said he wanted to clarify the record. He said South Side Soda Shop was not requesting a waiver of a grease trap requirement. He said the restaurant has a grease trap, which it has used for 10 years or more. He said the City was requesting the installation of a mechanical grease interceptor line be in place and installed.

**Buche** said the Boyds wanted to present several issues in regard to the inspection score sheet that was completed pursuant to City Ordinance 4625, the result of which indicated that the South Side Soda Shop should install a 1,000-gallon grease interceptor.

**First, Buche** said the Boyds were seeking a reconsideration of the point total that indicated the restaurant had received a score of 29 points, making it a Category A commercial food preparer. With the reconsideration, he said the restaurant wouldn't be required to install a grease line interceptor.

**Second, Buche** said there is a "grandfather provision" in the ordinance for businesses with a smaller grease interceptor than required. He said those facilities are not required to install a larger one if they can demonstrate that their grease interceptor is cleaned regularly and it would not exceed 33% of its capacity at any point, not creating any risk for the City Utilities Department. Buche pointed out that the restaurant has a 40-gallon grease trap, it is cleaned regularly and the restaurant would never exceed 33% of its maximum capacity. He said this also demonstrated that it was not necessary for the Soda Shop to install a grease line interceptor.

**Finally, Buche** said Ordinance 4625 allows an appeal for a grease trap to be permitted upon a demonstration that more frequent cleaning would meet the requirements of the permit or that a grease interceptor would be impractical because of space limitations. He said the restaurant can demonstrate both those conditions, and either one would be sufficient for the Board to find that a grease line interceptor would not be necessary.

**Buche** asked **Nick Boyd** to address the Board and discuss the restaurant's operations and history and to explain why the current operations would not create a risk to the City's sewer lines.

**Nick Boyd, the owner of South Side Soda Shop**, said he and his wife, Charity, have owned the restaurant for 37 years and have a grease trap in place. He said in February 2011, the City asked restaurants to install grease traps, which the Soda Shop did.

**Boyd** said that after **Micky Reese's** recent inspection, the restaurant was awarded five points for having a three-bay sink. He said the building was built in 1910 and in 1942, a Bastian Blessing unit, which consists of the soda fountain, the three-bay sink and a dipping cabinet.

When the restaurant was renovated in 1986, **Boyd** said a commercial dishwasher was installed. He said the three-bay sink is part of the restaurant's nostalgia and history and this was acknowledged by the Elkhart County Health Department and previous City inspectors. He said the restaurant had never been awarded five points for the three-bay sink, so he asked that those points be removed.

**Boyd** also said the restaurant was assigned three points for having a seating capacity of between 50 and 74 seats or meals. However, Boyd said he can only cook 25 meals at a time, so he asked for a reduction to one point for facilities that serve less than 25 meals.



Further, **Boyd** addressed the points awarded for serving practices, and in particular the assigning of five points for having a “full kitchen and serves food on dishes that are washed on site.” He said that the Soda Shop serves food in plastic baskets with paper trays that are disposable. He said all food that comes out of the fryer are served in disposable containers that are not washed. So, he asked for a one-point reduction in this category.

**Boyd** said that when the restaurant installed a grease trap, the City’s prior evaluations reflected that nothing had changed at the restaurant since 1986, except that the Soda Shop has reduced its hours by 50 percent. He also asked that this be taken into consideration.

Returning to the topic of the three-bay sink, **Boyd** said its purpose was to ensure equipment was washed, rinsed and sanitized. He said the Elkhart County Health Department and previous City inspectors did not award the restaurant five points for having a three-bay sink, so he asked that those points be removed.

**In summary, Boyd asked that South Side Soda Shop remain a Category B facility and continue operations without having to install a larger grease interceptor.**

In response to questions from **Board member Landis**, **Boyd** confirmed that in February 2011, the City implemented the grease trap requirement. **Boyd** said the restaurant was given two years to install the grease trap because it was determined to be a Category B facility. He said the added for five points for the triple sink, during a new inspection, has led to the Category A finding. He added that the Soda Shop doesn’t have a prep sink. **Board member Landis** noted that he served on a City committee that develop the City’s grease trap requirements.

**Board member Swartley** asked if the Board of Works had the authority to change the restaurant’s scoring. **City Attorney Bodie Stegelmann** said he wasn’t clear on that point. **Board member Landis** said he wasn’t sure what flexibility the Board had in hearing appeals, but that it did have the authority to waive the requirement of a 1,000-gallon interceptor in favor of a mechanical grease trap.

**Board member Landis** asked if the restaurant had any flow restrictors for the grease trap. **Boyd** said the restaurant did and has complied with the City requirement in that regard.

**Board member Landis** asked how often the grease trap was cleaned. **Boyd** responded that the Soda Shop has been “good stewards of the City” for 37 years and have made sure to clean the grease trap regularly. He said an outside company collects the grease, and he complies with City regulations. He said the grease is emptied every week or two and he keeps a record on a chart and the information is regularly reported to the City.

**Board member Landis** said he was struggling with the City’s recommendation to change the grease trap requirement and to reverse the finding that the Soda Shop was a Category B facility. **Board member Swartley** said **Boyd** had also made a good point about how food is served, on disposable trays. She also noted that the restaurant has reduced its hours by 50 percent.

**Board member Landis** asked if there was any way to put in a motion that as long as the current owners are managing the restaurant, that it remain a Category B facility because how well an operation is run determines how much grease is discarded. **City Attorney Stegelmann** responded that any permits are issued to the operator and not the location. Because **Craig Buche** mentioned a “grandfather exemption,” **Stegelmann** said he was struggling with the idea that the City previously found the restaurant in compliance but has now determined that isn’t the case.



**Board member Swartley** said she agreed with that assessment. Because she said it was unclear the Board could change the restaurant's point total, she wondered what the Board was being asked to do.

**Board member Landis** said in 2011, the Soda Shop complied with the new ordinance. **City Attorney Stegelmann** said he was struggling with the case because it appears the Soda Shop has reduced the amount of grease being generated and the standards haven't changed, but a new inspection showed they may not be in compliance now.

**Micky Reese, the City Environmental Compliance Administrator**, said the "grandfather" provision of the ordinance is for an applicant who installed a grease interceptor, with a capacity of less than 1,000 gallons, who is allowed to continue to use the smaller interceptor as long as it continues to operate properly and does not violate any requirements of the food service permit or other applicable local regulations or doesn't allow solids and grease to exceed 33% of the capacity of the interceptor. He said based on his knowledge, this does not apply to a grease trap, such as the one used at the South Side Soda Shop.

**Reese** said what is at issue in this case is the interpretation of the point system and how it applies to this business. He said an evaluation is based on what was determined during an inspection. He said in this case, the Soda Shop does have a three-basin sink that isn't hooked up to the grease trap. Reese said that Nick Boyd initially indicated that the three-bay sink was only used as a hand sink. And he repeated that he found a three-bay sink.

**Reese** said if the Board allows the Soda Shop to remain a Category B facility, what will happen with issues at other restaurants that City staff discovers in the future?

**Board member Swartley** thanked **Reese** for his comments and said she didn't think the Board was considering a "grandfather" provision for the Soda Shop. She said the Board was talking about something that was installed in 2011 to comply with those requirements and at time when the original point system was created.

**Board member Swartley** said he wasn't addressing the three-bay sink, but was considering the Soda Shop's serving practices as well as its seating capacity and the number of meals it was serving. She said there could be some leeway given in the point system because of the amount of food served in baskets. **Boyd** said 80% of food is served in baskets. **Board member Nichols** asked if any leeway was given in the scoring system

**Board member Landis** said when the City ordinance was created, there was so much restaurant grease going into the sewer system that it was creating a mess. He said City lift stations "were basically big grease traps" that City staff had to empty because restaurants didn't worry about it. So, he said the scoring system was established to distinguish between restaurants that were causing a problem and those that were not. While generally, he said it was clear what restaurant practices could require a bigger grease traps, there were "gray areas" and restaurants that might not clearly fit into one category or another.

**City Attorney Stegelmann** said that if he heard Micky Reese correctly, Reese was seeking help from the Board in interpreting the standards.

**Stegelmann** said the three-bay sink was mentioned several times and implicit in the discussion was the suggestion that it was being used to wash dishes and pots and pans and that it was not just being kept there for nostalgic purposes. **Board member Landis** asked the size of the three-bay sink. **Nick Boyd** responded that the three-bay sink is only used for hand washing. He said the restaurant installed a commercial dishwasher and that is used to clean the pots and pans.



**Nick Boyd** said the three-bay sink was used to wash dishes from 1942 until 1986, and the Elkhart County Health Department has acknowledged that it isn't used to clean dishes now. He said that he could have a welder install a sheet of metal over one of the basins and make it a two-bay sink and then five points could be deducted from the restaurant's score. Boyd said he will do this if required to do so, but pointed out that the Elkhart County Health Department has approved the restaurant's current operations.

**City Attorney Stegelmann** said implicit in the three-bay sink being a factor in the restaurant's score was the indication it was being used to wash dishes. If that isn't the case, he said Micky Reese was seeking an interpretation that that isn't what was intended by Ordinance 4625.

Likewise, **Stegelmann** said that in terms of the serving practices, the two factors that could be considered were "Full kitchen and serves food on dishes that are washed on site" (5 points) and "Full kitchen and serves food on disposable dishes or dishes that are not washed on site (4 points)." He said the Soda Shop would merit a score of four rather than five points. So, Stegelmann said, if Reese was seeking help to interpret that, the Board would have the ability to make that determination.

However, **Board member Landis**, said in order for the Board to reclassify the Soda Shop as a Category B facility, it would need to remove the five points awarded for the restaurant's three-bay sink and change the serving practices score from five to four points.

**Board member Swartley** said possible some consideration could be given for the fact the Soda Shop is a "retro" facility that has operated for many years and shouldn't be required to remove its old equipment just to comply. She said part of the charm of the restaurant is the old equipment that hasn't changed.

**Board member Landis** said he guessed a new restaurant couldn't install the kind of three-bay sink the Soda Shop has because that design probably doesn't have a NSF (National Sanitation Foundation) certification. He said it's essentially an antique piece that probably doesn't fit the current description of a three-bay restaurant sink.

**Reese** said that if the Board deletes the five points awarded to the Soda Shop for the three-bay sink, the restaurant would have 24 points. **Board member Landis** said if one point was deducted based on the Soda Shop's current serving practices, the score would drop to 23 points, meaning the restaurant would remain a Category B facility. However, **Landis** said the current permit is issued to the Boyd and if a future owner of the Soda Shop changed the operating practices, stopped sending required reports and stopped emptying the grease trap, the City would have the right to change the restaurant's score and category. **Stegelmann** confirmed that understanding, adding "it would be starting from scratch at that point "

**Board member Swartley** said she was in favor of waiving requirements or changing the Soda Shop's score.

**Stegelmann** said Reese was seeking help interpreting the two standards. **Board member Landis** responded, "if we're going to do anything, that's what we should do, get a clarification."

**Reese** said he made an interpretation of the ordinance and whether the three-bay sink needed to be connected to the grease trap. He said that if the Elkhart County Health Department has deemed it as a hand-washing sink, that's another issue. Still, he asked for a clarification of the point system. And he said that's what the Soda Shop also was seeking.

**Mayor Stutsman** asked **City Attorney Stegelmann** if he could comment on the history of the ordinance.

**Stegelmann** said he could.

**The Mayor** said he was serving on the Common Council when the grease trap ordinance was passed.



**Mayor Stutsman** said it was his understanding, based on the discussions at the time, that the Council wanted a process, through the Board of Works, to resolve disagreements between businesses and City staff on the scoring system and results. He said **Micky Reese** doesn't have to re-do the numbers on the score sheet; the Board can just decide whether there has been an interpretation error. So, he said the Board had the authority to act.

**Board member Landis** asked **City Attorney Stegelmann** if the Board could modify the scores and find, for example, that the determination that the Soda Shop was found to be a Category B facility historically and that rating should remain in effect.

**City Attorney Stegelmann** said the Board could do that and clarify that its finding to that effect was based on the existing three-bay sink not being the type of three-bay sink that was contemplated by Ordinance 4625 and that the Soda Shop's serving practices merited a score reduction. And, he said, with those adjustments the restaurant would remain a Category B facility.

**Board member Landis** made a motion that in the case involving the South Side Soda Shop, the Board finds that:

- The original scoring that determined the restaurant was a Category B facility should be maintained;
- That this determination was based on the Board also finding that the restaurant's three-bay sink doesn't fall under the current definition of a three-bay sink because it is historical in nature and part of a larger piece, and if those five points were deducted, that were never imposed before, the restaurant's score would be reduced to 24 points
- Also, because food is served in disposable paper trays and in baskets, and a reduction of one point makes the restaurant have a score of 23, which it allows it to maintain the B classification.
- And as long as the restaurant maintains its reporting to the City and cleans (the grease trap) on a regular basis, and the current ownership continues, it will be allowed to keep its current system (category ranking) in place.

**Board member Nichols** seconded the motion.

There were no further comments or discussion by the Board or public.

The motion then passed 3-0.

**Mayor Stutsman** thanked the Board and **Nick & Charity Boyd** and **Craig Buche** for coming to the meeting.

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

**Mayor Stutsman** opened **Privilege of the Floor** at 3:03 p.m. There were no comments.

**Approval of Civil City and Utility Claims**

As all matters before the Board of Public Works & Safety were concluded, **Mayor Stutsman/Board member Nichols** moved to approve Civil City and Utility claims and adjourn the meeting. Motion passed 4-0.

**Adjournment:**

**Mayor Stutsman** adjourned the Board of Works & Safety meeting at 3:04 p.m.



**APPROVED:**

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**Mayor Jeremy P. Stutsman**

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**Mike Landis, Member**

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**Mary Nichols, Member**

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**Barb Swartley, Member**

**ATTEST**

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**Richard R. Aguirre, City of Goshen Clerk-Treasurer**





**Danny C. Sink, Chief**  
**FIRE DEPARTMENT, CITY OF GOSHEN**  
209 North Third Street • Goshen, IN 46526-3201

Phone (574) 533-7878 • Fax (574) 534-2804 • TDD (574) 534-3185  
dannysink@goshencity.com • www.goshenindiana.org

May 22, 2023

To: Board of Works and Public Safety

RE: Promotion of Shane D. McKerchie to Assistant Chief

From: Fire Chief Danny Sink

**Shane D. McKerchie** has passed all of the required tests and standards required for promotion at GFD.

It is my pleasure to request your approval for the promotion of Shane to the rank of Assistant Chief for the Goshen Fire Department retroactive to May 22, 2023. Thank you



**Danny C. Sink, Chief**  
**FIRE DEPARTMENT, CITY OF GOSHEN**

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May 22, 2023

To: Board of Works and Public Safety

RE: Promotion of Camden L. Bontrager to Fire Lieutenant

From: Fire Chief Danny Sink

**Camden L. Bontrager** has passed all of the required tests and standards required for promotion at GFD.

It is my pleasure to **request your approval for the promotion of Camden to the rank of Fire Lieutenant for the Goshen Fire Department retroactive to May 22, 2023.** Thank you



**Danny C. Sink, Chief**  
**FIRE DEPARTMENT, CITY OF GOSHEN**

209 North Third Street • Goshen, IN 46526-3201

Phone (574) 533-7878 • Fax (574) 534-2804 • TDD (574) 534-3185  
dannysink@goshencity.com • www.goshenindiana.org

May 22, 2023

To: Board of Works and Public Safety

RE: Promotion of Jonathan M. Weishaupt to EMS Lieutenant

From: Fire Chief Danny Sink

**Jonathan M. Weishaupt** has passed all of the required tests and standards required for promotion at GFD.

It is my pleasure to request your **approval for the promotion of Jonathan to the rank of EMS Lieutenant for the Goshen Fire Department retroactive to May 22, 2023.** Thank you



**Danny C. Sink, Chief**  
**FIRE DEPARTMENT, CITY OF GOSHEN**

209 North Third Street • Goshen, IN 46526-3201

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dannysink@goshencity.com • www.goshenindiana.org

May 22, 2023

To: Board of Works and Public Safety

RE: Promotion of Matthew R. Stamm to Fire Sergeant

From: Fire Chief Danny Sink

**Matthew R. Stamm** has passed all of the required tests and standards required for promotion at GFD.

It is my pleasure to request your **approval for the promotion of Matthew to the rank of Fire Sergeant for the Goshen Fire Department retroactive to May 22, 2023.** Thank you



**Danny C. Sink, Chief**  
**FIRE DEPARTMENT, CITY OF GOSHEN**

209 North Third Street • Goshen, IN 46526-3201

Phone (574) 533-7878 • Fax (574) 534-2804 • TDD (574) 534-3185  
dannysink@goshencity.com • www.goshenindiana.org

May 22, 2023

To: Board of Works and Public Safety

RE: Promotion of Lucas T. Wickey to EMS Sergeant

From: Fire Chief Danny Sink

**Lucas T. Wickey** has passed all of the required tests and standards required for promotion at GFD.

It is my pleasure to request your approval for the promotion of Lucas to the rank of EMS Sergeant for the Goshen Fire Department retroactive to May 22, 2023. Thank you



**City Clerk-Treasurer  
CITY OF GOSHEN**

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

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

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

**To:** Board of Works & Safety  
**From:** Deputy Clerk-Treasurer Jeffery Weaver  
**Date:** May 24, 2023  
**Subject:** Edgar Saucedo request for 42' concrete driveway  
612 Mercer Avenue, Goshen

***The Clerk-Treasurer's Office received the following request:***

May 19, 2023

Mr. Richard R. Aguirre, Clerk-Treasurer  
Goshen City Hall, 202 S 5th St. Suite 2  
Goshen, IN 46528-3714

**To:** Board of Public Works & Safety

**Subject:** Request to extend 42' concrete driveway

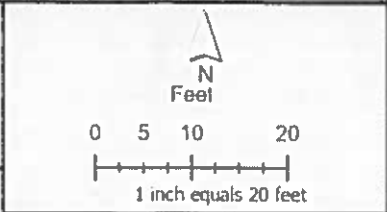
**Narrative:** Edgar Saucedo currently has a 24' concrete driveway with an additional 18' stone driveway. This combination is causing drainage issues. Mr. Saucedo wishes to pour concrete in the stone portion which would extend the concrete area to 42' and solve some of the drainage issues.

Mr. Saucedo has met with both the Planning and Engineering departments, and both departments are familiar with his request. He also provided both departments with copies of the attached sketches in order to better outline his plans.

**Suggested motion: Approve Edgar Saucedo's variance request to extend the concrete portion of his driveway by 18' feet.**



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



612 Mercer Ave

2021 Aerial  
Printed on 5/17/2023

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



Paul D Hochstetler, Jr

54824 County Road 33

Middlebury, IN 46540

Ph. (574) 202-6505

May 11, 2023

Goshen Board of Works

To whom it may concern,

Freedom Builders would like to request permission to close the sidewalk and one lane of S 3<sup>rd</sup> Street for three days, weather permitting, the week of June 12<sup>th</sup>, 2023, from 6 am to 3 pm in order to repair the east side of the second story of the building located at 101 S 3<sup>rd</sup> Street. Closing one lane of the street would enable us to set up scaffolding and a scissor lift and ensure falling debris would not injure any passersby. If inclement weather would prevent us from performing the aforementioned repairs, we would like to reschedule as weather allows.

Regards,

Paul D. Hochstetler, Jr





324 S 5th St. Goshen, IN 46528  
amanda@eyedart.com  
(574) 203-2034 ext. 2

Board of Works Request  
May 19, 2023

Downtown Goshen Inc. is requesting additional street closures for the year of 2023 for purposes of First Friday activities. This is in addition to the original request in January.

1. What parking spaces/streets do you want to close/use?

- In addition to previous request for June 2nd and 3rd, First Fridays is requesting the half block of West Washington from 8 am June 2 to 4 pm June 3.

2. Why do you want to close them? What activities will take place? Downtown Goshen First Fridays

3. When do you want to start the closure, and when will the closure end? From 8 am on June 2 until 4 pm on June 3.

4. Are there any affected businesses, and are they supportive of your request to close the parking spaces? There are businesses on the street affected by the closure. They will be informed of our intent to attend the next Board of Works meeting in case of any concerns. These street closures can also be found online at [downtowngoshen.org](http://downtowngoshen.org).

5. Do you require any barricades from the Street Department to accomplish the closure for your event? We will require barricades at each end of the street closure.

Thank you for your consideration.

Amanda McMahan  
Director of First Fridays - Eyedart Creative Studio



## CITY OF GOSHEN LEGAL DEPARTMENT

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

Phone (574) 537-3820 • Fax (574) 537-3817 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

**To:** Board of Public Works and Safety  
**From:** Bodie J. Stegelmann  
**Date:** May 24, 2023  
**Subject:** Resolution 2023-15 – Approving Certain Revised City of Goshen Police Department Policies and Repealing Certain Policies

The Board of Public Works and Safety previously approved City of Goshen Police Department Policies developed in coordination with Lexipol, LLC. The Police Department and Lexipol LLC staff have identified certain, additional revisions to policies deemed appropriate due to legislative or other changed circumstances.

Attached to Resolution 2023-15 are redlined portions of policies to show the revisions suggested. If Resolution 2023-15 is approved, the redlines will be removed and the policies will be put in final form.

**Suggested Motion:** Move to approve Resolution 2023-15 - Approving Certain Revised City of Goshen Police Department Policies and Repealing Various Policies, effective May 29, 2023.

**BOARD OF PUBLIC WORKS AND SAFETY  
RESOLUTION 2023-15**

**Approving Certain Revised City of Goshen Police Department  
Policies and Repealing Certain Policies**

WHEREAS, on December 7<sup>th</sup>, 2020, the Board of Works and Safety approved an agreement with Lexipol LLC to review, revise, and keep up-to-date the City of Goshen Police Department's policies;

WHEREAS, the Board has previously approved new Police Department policies developed and suggested by Lexipol LLC, as well as revisions thereto;

WHEREAS, as part of the process of keeping its policies up-to-date, the Police Department and Lexipol LLC staff have identified certain additional revisions to policies deemed appropriate due to legislative or other changed circumstances; and

WHEREAS, the Goshen Board of Public Works and Safety finds that it is appropriate to approve the revised policies identified below, and to repeal policies previously approved, separately identified below.

NOW, THEREFORE, BE IT RESOLVED by the Goshen Board of Public Works and Safety finds that the following revised City of Goshen Police Department Policies, pertinent portions of which are attached hereto and made a part hereof to show the portions of the policies being revised (the portions of these policies not shown shall remain in full force and effect), are hereby approved, as amended May 24, 2023, effective May 29, 2023:

- 300 Response to Resistance
- 304 Conducted Energy Device
- 306 Firearms
- 428 First Amendment Assemblies
- 502 Vehicle Towing
- 605 Unmanned Aerial System

BE IT FURTHER RESOLVED by the Goshen Board of Public Works and Safety that, upon the approval of the above-described Policies, the following current City of Goshen Police Department policies are hereby repealed, effective immediately:

- 300 Response to Resistance
- 304 Electronic Control Device
- 306 Firearms
- 428 First Amendment Assemblies
- 502 Vehicle Towing
- 605 Unmanned Aerial System

PASSED and ADOPTED by the Goshen Board of Public Works and Safety on May \_\_\_\_\_, 2023.

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Jeremy P. Stutsman, Mayor

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Mary Nichols, Member

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Michael A. Landis, Member

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Barb Swartley, Member

# Response to Resistance

## 300.1 PURPOSE AND SCOPE

### Best Practice

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner.

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Conducted Energy Device policies.

### 300.1.1 DEFINITIONS

#### Federal

Definitions related to this policy include:

**Deadly force** - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

**Feasible** - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

**Force** - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

**Imminent** - Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

**Totality of the circumstances** - All facts and circumstances known to the officer at the time, taken as a whole, including the conduct of the officer and the subject leading up to the use of force.

## 300.2 POLICY

### Best Practice

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

## *Response to Resistance*

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### 300.4.1 MOVING VEHICLES

**Best Practice**

Shots fired at or from a moving vehicle involve additional considerations and risks, and are rarely effective.

When feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

### **300.5 REPORTING THE USE OF FORCE**

**Best Practice** **MODIFIED**

Any use of force by a member of this department shall be documented promptly, completely, and accurately in the Response to Resistance report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.

To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

[Response to Resistance Form \(2022\)](#)

#### 300.5.1 NOTIFICATIONS TO SUPERVISORS

**Best Practice** **MODIFIED**

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of the **conducted energy** **electronic control** device or control device.
- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

# Goshen Police Department

## Policy Manual

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## Conducted Energy Device ~~Electronic Control~~

### 304.1 PURPOSE AND SCOPE

Best Practice

This policy provides guidelines for the issuance and use of the ~~electronic control~~ conducted energy device (CED).

### 304.2 POLICY

Best Practice

The ~~electronic control device~~ CED is used in an attempt to control a violent or potentially violent individual. The appropriate use of such a device may result in fewer serious injuries to officers and suspects.

### 304.3 ISSUANCE AND CARRYING CEDS

Best Practice MODIFIED

Only members who have successfully completed department-approved training may be issued and may carry the ~~electronic control device~~ CED.

~~Electronic control devices~~ CED s are issued for use during a member's current assignment. Those leaving a particular assignment may be required to return the device to the department inventory.

Officers shall only use the ~~electronic control device~~ CED and cartridges that have been issued by the Department. All devices must be inspected and approved by the Training Lieutenant or designee. Cartridges should not be used after the manufacturer's expiration date.

Uniformed officers who have been issued the ~~electronic control device~~ CED shall wear the device in an approved holster. Members carrying the ~~electronic control device~~ CED should perform a spark test prior to every shift.

When carried while in uniform, officers shall carry the ~~electronic control device~~ CED in a position as to not be confused with a firearm.

- (a) Whenever practicable, officers should carry additional cartridges on their person when carrying the ~~electronic control device~~ CED .
- (b) Officers shall be responsible for ensuring that the issued ~~electronic control device~~ CED is properly maintained and in good working order.
- (c) Officers should not hold a firearm and the ~~electronic control device~~ CED at the same time.

Non-uniformed officers may secure the CED in a concealed, secure location in the driver's compartment of their vehicles.



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### 304.3.1 USER RESPONSIBILITIES

Best Practice MODIFIED

Officers shall be responsible for ensuring that the issued CED is properly maintained and in good working order. This includes a function test and battery life monitoring, as required by the manufacturer, and should be completed prior to the beginning of the officer's shift.

CEDs that are damaged or inoperative, or cartridges that are expired or damaged, shall be returned to the [Taser Instructor](#) for disposition. Officers shall submit documentation stating the reason for the return and how the CED or cartridge was damaged or became inoperative, if known.

### 304.4 VERBAL AND VISUAL WARNINGS

Best Practice

A verbal warning of the intended use of the ~~electronic control device~~ CED should precede its application, unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to:

- (a) Provide the individual with a reasonable opportunity to voluntarily comply.
- (b) Provide other officers and individuals with a warning that the electronic control

device CED may be deployed. If, after a verbal warning, an individual fails to voluntarily comply with an officer's lawful orders

and it appears both reasonable and feasible under the circumstances, the officer may, but is not required to, activate any warning on the device, which may include display of the electrical arc, an audible warning, or the laser in a further attempt to gain compliance prior to the application of the ~~electronic control device~~ CED. The laser should not be intentionally directed into anyone's eyes.

The fact that a verbal or other warning was given or the reasons it was not given shall be documented by the officer deploying the ~~electronic control device~~ CED in the related report.

### 304.5 USE OF THE ~~ELECTRONIC CONTROL DEVICE~~ CED

Best Practice MODIFIED

The ~~electronic control device~~ CED has limitations and restrictions requiring consideration before its use. The ~~electronic control device~~ CED should only be used when its operator can safely deploy the device within its operational range. Although the ~~electronic control device~~ CED may be effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options.

#### 304.5.1 APPLICATION OF THE ~~ELECTRONIC CONTROL DEVICE~~ CED

Best Practice

The ~~electronic control device~~ CED may be used when the circumstances reasonably perceived by the officer at the time indicate that such application reasonably appears necessary to control a person who:

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- (a) Is violent or is physically resisting.
- (b) Has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, themselves, or others.

Mere flight from a pursuing officer, without additional circumstances or factors, is not good cause for the use of the **electronic control device CED** to apprehend an individual.

The **electronic control device CED** shall not be used to psychologically torment, to elicit statements, or to punish any individual.

### 304.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS

Best Practice MODIFIED

The use of the **electronic control device CED** on certain individuals should **generally** be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the officer, the subject, or others, and the officer reasonably believes that the need to control the individual outweighs the **potential** risk of using the device. This includes:

- (a) Individuals who are known to be pregnant.
- (b) Elderly individuals or obvious juveniles.
- (c) Individuals with obviously low body mass.
- (d) Individuals who are handcuffed or otherwise restrained.
- (e) Individuals **known to have** been recently sprayed with a flammable chemical agent or who are otherwise **known to be** in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capsicum (OC) spray.
- (f) Individuals whose position or activity is likely to result in collateral injury (e.g., falls from height, **located in water**, operating vehicles).

~~Because the application of the electronic control device Any CED capable of being applied in the drive-stun mode (i.e., direct contact without probes) relies primarily on pain compliance as a primary form of pain compliance) the use of the drive-stun mode~~ should be limited to supplementing the probe-mode to complete the circuit, or as a distraction technique to gain separation between officers and the subject, thereby giving officers time and distance to consider other force options or actions or when the totality of the circumstances justify the use of the drive-stun.

### 304.5.3 TARGETING CONSIDERATIONS

Best Practice MODIFIED

~~The preferred targeting areas include the individual's back or front or lower-center mass. The head, neck, chest and groin should be avoided when reasonably practicable. If the dynamics of a situation or officer safety do not permit the officer to limit the application of the electronic control device probes to a precise target area, officers should monitor the condition of the subject if one or more probes strikes the head, neck, chest or groin until the subject is examined by paramedics or other medical personnel.~~ Recognizing that the dynamics of a situation and movement of the subject may affect target placement of probes, when practicable, officers should attempt to target

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the back, lower center mass, and upper legs of the subject, and avoid intentionally targeting the head, neck, area of the heart, or genitals. If circumstances result in one or more probes inadvertently striking an area outside of the preferred target zones, the individual should be closely monitored until examined by paramedics or other medical personnel.

#### 304.5.4 MULTIPLE APPLICATIONS OF THE ELECTRONIC CONTROL DEVICE CED

Best Practice MODIFIED

Officers should apply the ~~electronic control device~~ CED for only one standard cycle and then evaluate the situation before applying any subsequent cycles. Officers should not intentionally apply more than one ~~electronic control device~~ CED at a time against a single individual.

If the first application of the ~~electronic control device~~ CED appears to be ineffective in gaining control of an individual, the officer should evaluate the situation and consider certain factors before additional applications of the ~~electronic control device~~ CED, including:

- (a) Whether it is reasonable to believe that the need to control the individual outweighs the potentially increased risk posed by multiple applications.
- (b) Whether the probes are making proper contact.
- (c) Whether the individual has the ability and has been given a reasonable opportunity to comply.
- (d) Whether verbal commands, other options or tactics may be more effective.

#### 304.5.5 ACTIONS FOLLOWING DEPLOYMENTS

Best Practice MODIFIED

Officers should take appropriate actions to control and restrain the individual to minimize the need for longer or multiple exposures to the ~~electronic control device~~ CED. As soon as practicable, officers shall notify the police dispatcher any time the electronic control device has been discharged. Expended cartridges should be collected and the expended cartridge, along with both probes and wire, should be disposed according to training in the biohazard bin located in the evidence processing area.

#### 304.5.6 DANGEROUS ANIMALS

Best Practice

The CED may be deployed against an animal if the animal reasonably appears to pose an imminent threat to human safety.

#### 304.5.7 OFF-DUTY CONSIDERATIONS

Best Practice MODIFIED

Officers are not authorized to carry department ~~electronic control device~~ CED while off-duty unless working in a police capacity or while driving the assigned police vehicle.

Officers shall ensure that ~~electronic control device~~ CED are secured while in their homes, vehicles or any other area under their control, in a manner that will keep the device inaccessible to others.

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**304.6 DOCUMENTATION****Best Practice** **MODIFIED**

Officers shall document all **electronic control device** CED discharges in the related arrest/crime reports and the Response to Resistance forms. Notification shall also be made to a supervisor in compliance with the Response to Resistance Policy. Unintentional discharges, pointing the device at a person if observed by the person or another person, laser activation and arcing the device, other than for testing purposes, will also be documented on the report form. Officers should photograph the site of drive-stun applications and the location of probes prior to and after removal.

**304.6.1 CED REPORT FORM****Best Practice** **MODIFIED**

Items that shall be included in the Response to Resistance form are:

- (a) The type, brand, and serial number of **electronic control device** CED.
- (b) Date, time and location of the incident.
- (c) Whether any display, laser or arc deterred a subject and gained compliance.
- (d) The number of **electronic control device** CED activations.
- (e) The range at which the **electronic control device** CED was used.
- (f) The type of mode used (probe or drive-stun).
- (g) Location of any probe impact.
- (h) Location of contact in drive-stun mode.
- (i) Description of where missed probes went.
- (j) Whether medical care was provided to the subject.
- (k) Whether the subject sustained any injuries.
- (l) Whether any officers sustained any injuries.

The Training Lieutenant or designee should periodically analyze the report forms to identify trends, including deterrence and effectiveness. The Training Lieutenant or designee should also conduct audits of data downloads and reconcile **electronic control device** CED report forms with recorded activations. **electronic control device** CED information and statistics, with identifying information removed, should periodically be made available to the public.

**304.6.2 REPORTS****Best Practice**

The officer should include the following in the arrest/crime report:

- (a) Identification of all personnel firing **electronic control device** CEDs
- (b) Identification of all witnesses
- (c) Medical care provided to the subject
- (d) Observations of the subject's physical and physiological actions

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- (e) Any known or suspected drug use, intoxication, or other medical problems

**304.7 MEDICAL TREATMENT**

Best Practice MODIFIED

Consistent with local medical personnel protocols and absent extenuating circumstances, only appropriate medical personnel or officers in accordance with training, should remove ~~electronic control device~~ CED probes from a person's body. Used ~~electronic control device~~ CED probes shall be treated as a sharps biohazard, similar to a used hypodermic needle, and handled appropriately. Universal precautions should be taken.

All persons who have been struck by ~~electronic control device~~ CED probes or who have been subjected to the electric discharge of the device or who sustained direct exposure of the laser to the eyes shall be medically assessed prior to booking. Additionally, any such individual who falls under any of the following categories should, as soon as practicable, be examined by paramedics or other qualified medical personnel:

- (a) The person is suspected of being under the influence of controlled substances and/or alcohol and has become a danger to themselves or others.
- (b) The person may be pregnant.
- (c) The person reasonably appears to be in need of medical attention.
- (d) The ~~electronic control device~~ CED probes are lodged in a sensitive area (e.g., groin, female breast, head, face, neck).
- (e) The person requests medical treatment.

Any individual exhibiting signs of distress or who is exposed to multiple or prolonged applications (i.e., more than 15 seconds) shall be examined or medically evaluated prior to booking. If any individual refuses medical attention, such a refusal should be witnessed by another officer and/or medical personnel and shall be fully documented in related reports. If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

The transporting officer shall inform any person providing medical care or receiving custody that the individual has been subjected to the application of the ~~electronic control device~~ CED (see the Medical Aid and Response Policy).

**304.8 SUPERVISOR RESPONSIBILITIES**

Best Practice MODIFIED

When possible, supervisors should respond to calls when they reasonably believe there is a likelihood the ~~electronic control device~~ CED may be used. A supervisor should respond to all incidents where the ~~electronic control device~~ CED was activated.

A supervisor should review each incident where a person has been exposed to an activation of the ~~electronic control device~~ CED. The device's onboard memory should be downloaded through the data port by a certified CEW instructor, saved in a data file, and retained by the Training Lieutenant or designee.

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**304.9 TRAINING****Best Practice** **MODIFIED**

Personnel who are authorized to carry the ~~electronic control device~~ CED shall be permitted to do so only after successfully completing the initial department-approved training. Any personnel carrying the ~~electronic control device~~ CED must be initially certified with the device and attend annual training prior to carrying or using the device.

Proficiency training for personnel who have been issued ~~electronic control device~~ CEDs should occur every year. A reassessment of an officer's knowledge and/or practical skills may be required at any time if deemed appropriate by the Training Lieutenant or designee. All training and proficiency for ~~electronic control device~~ CEDs will be documented in the officer's training files.

Command staff, supervisors and investigators should receive ~~electronic control device~~ CED training as appropriate for the investigations they conduct and review.

Officers who do not carry ~~electronic control device~~ CEDs should receive training that is sufficient to familiarize them with the device and with working with officers who use the device.

The Training Lieutenant or designee is responsible for ensuring that all members who carry ~~electronic control device~~ CEDs have received initial and annual proficiency training. Periodic audits should be used for verification.

Application of ~~electronic control device~~ CEDs during training could result in injuries or exposures should not be mandatory for certification.

The Training Lieutenant or designee should ensure that all training includes:

- (a) A review of this policy.
- (b) A review of the Response to Resistance Policy.
- (c) Performing weak-hand draws or cross-draws to reduce the possibility of unintentionally drawing and firing a firearm.
- (d) Target area considerations, to include techniques or options to reduce the unintentional application of probes near the head, neck, chest, and groin.
- (e) Handcuffing a subject during the application of the ~~electronic control device~~ CED and transitioning to other force options.
- (f) De-escalation techniques.
- (g) Restraint techniques that do not impair respiration following the application of the ~~electronic control device~~ CED.

# Firearms

## 306.1 PURPOSE AND SCOPE

Best Practice MODIFIED

This policy provides guidelines for issuing firearms, the safe and legal carrying of firearms, firearms maintenance and firearms training.

This policy does not apply to issues related to the use of firearms that are addressed in the Response to Resistance or Officer-Involved Deadly Force incidents policies.

This policy only applies to those members who are authorized to carry firearms.

## 306.2 POLICY

Best Practice

The Goshen Police Department will equip its members with firearms to address the risks posed to the public and department members by violent and sometimes well-armed persons. The Department will ensure firearms are appropriate and in good working order and that relevant training is provided as resources allow.

## 306.3 AUTHORIZED FIREARMS, AMMUNITION AND OTHER WEAPONS

Best Practice MODIFIED

Members shall only use firearms that are issued or approved by the Department and that have been thoroughly inspected and approved by the Training Lieutenant or designee. Except in an emergency or as directed by a supervisor, no firearm shall be carried by a member who has not qualified with that firearm at an authorized department range.

All other weapons not provided by the Department, including, but not limited to, edged weapons, chemical or electronic weapons, impact weapons or any weapon prohibited or restricted by law or that is not covered elsewhere by department policy, may not be carried by members in the performance of their official duties without the express authorization of the Chief of Police or designee. This exclusion does not apply to the carrying of a single folding pocketknife that is not otherwise prohibited by law.

### 306.3.1 HANDGUNS

Best Practice MODIFIED

The authorized department-issued handgun is the Sig Sauer P320 9mm.

### 306.3.2 PATROL RIFLES

Best Practice MODIFIED

The authorized department-issued patrol rifle is the M-16/AR15 platform rifle in 5.56 NATO.

Members may deploy the patrol rifle in any circumstance where the member can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the patrol rifle may include, but are not limited to:

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### Firearms

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At least annually, all members carrying a firearm should receive practical training designed to simulate field situations including low-light shooting.

#### 306.6.1 NON-CERTIFICATION OR NON-QUALIFICATION

**Best Practice** **MODIFIED**

If any member fails to meet minimum standards for firearms training or qualification for any reason, including injury, illness, duty status or scheduling conflict, that member shall submit a written report to his/her immediate supervisor prior to the end of the required training or qualification period.

Those who fail to meet minimum standards or qualify on their first shooting attempt shall be provided remedial training and will be subject to the following requirements:

- (a) Additional range assignments may be scheduled to assist the member in demonstrating consistent firearm proficiency.
- (b) Members shall be given credit for a range training or qualification when obtaining a qualifying score or meeting standards after remedial training.
- (c) No qualification range credit will be given for the following:
  1. Unauthorized range make-up
  2. Failure to meet minimum standards or qualify after remedial training

Members who repeatedly fail to meet minimum standards will be removed from field assignment and may be subject to disciplinary action and/or termination.

#### 306.7 FIREARM DISCHARGE

**Best Practice** **MODIFIED**

Except during training or recreational use, any member who discharges a firearm intentionally or unintentionally, on- or off-duty, shall immediately notify the supervisor. The supervisor will immediately notify the Police Administration. If the discharge results in injury or death to another person, additional statements and reports shall be made in accordance with the Officer-Involved Deadly Force Incidents Policy. If a firearm was discharged as a use of force, the involved member shall adhere to the additional reporting requirements set forth in the Response to Resistance Policy.

In all other cases, written reports shall be made as follows:

- (a) If on-duty at the time of the incident, the member shall file a written report with his/her supervisor and the Police Administration or provide a recorded statement to investigators prior to the end of shift, unless otherwise directed.
- (b) If off-duty at the time of the incident, the member shall submit a written report or a recorded statement no later than the end of the next regularly scheduled shift, unless otherwise directed by a supervisor or Police Administration.

#### 306.7.1 DESTRUCTION OF ANIMALS

**Best Practice**



## Firearms

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Members are authorized to use firearms to stop an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective.

In circumstances where there is sufficient advance notice that a potentially dangerous animal may be encountered, department members should develop reasonable contingency plans for dealing with the animal (e.g., fire extinguisher, conducted energy device, oleoresin capsicum (OC) spray, animal control officer). **Nothing in this policy shall prohibit any member from shooting a dangerous animal if circumstances reasonably dictate that a contingency plan has failed, becomes impractical, or if the animal reasonably appears to pose an imminent threat to human safety.**

### 306.7.2 INJURED ANIMALS

**Best Practice**

With the approval of a supervisor, a member may euthanize an animal that is so badly injured that human compassion requires its removal from further suffering and where other dispositions are impractical.

### 306.7.3 SHOTS FOR SUMMONING AID

**Best Practice** **MODIFIED**

Generally, shots fired for the purpose of summoning aid are discouraged and may not be discharged unless the member reasonably believes that they appear necessary, effective and reasonably safe.

### 306.7.4 WARNING SHOTS

**Agency Content**

Warning shots are strictly prohibited.

## 306.8 TRAINING LIEUTENANT OR DESIGNEE'S DUTIES

**Best Practice** **MODIFIED**

The range will be under the exclusive control of the Training Lieutenant. All members attending will follow the directions of the Training Lieutenant or designee. The Training Lieutenant will maintain a roster of all members attending the range and will submit the roster to the Training Division for record keeping. Failure of any member to sign in and out with the Training Lieutenant may result in non-participation or non-qualification.

The range shall remain operational and accessible to department members during hours established by the Department.

The Training Lieutenant has the responsibility of making periodic inspection of all duty firearms carried by members of this department to verify proper operation. The Training Lieutenant or designee has the authority to deem any department-issued or personally owned firearm unfit for service. The member will be responsible for all repairs to the member's personally owned firearm; it will not be returned to service until it has been inspected and approved by the Training Lieutenant or designee.

# First Amendment Assemblies

## 428.1 PURPOSE AND SCOPE

**Best Practice**

This policy provides guidance for responding to public assemblies or demonstrations.

## 428.2 POLICY

**Best Practice**

The Goshen Police Department respects the rights of people to peaceably assemble. It is the policy of this department not to unreasonably interfere with, harass, intimidate or discriminate against persons engaged in the lawful exercise of their rights, while also preserving the peace, protecting life and preventing the destruction of property.

## 428.3 GENERAL CONSIDERATIONS

**Best Practice**

Individuals or groups present on the public way, such as public facilities, streets or walkways, generally have the right to assemble, rally, demonstrate, protest or otherwise express their views and opinions through varying forms of communication, including the distribution of printed matter.

These rights may be limited by laws or ordinances regulating such matters as:

- Obstruction of traffic (I.C. § 35-44.1-2-13)
- Trespass (I.C. § 35-43-2-2)
- Noise (I.C. § 35-45-1-3)
- Picketing
- Unlawful Assembly (I.C. § 16-41-22-1 et seq.)
- Distribution of handbills and leafleting
- Loitering
- Rioting (I.C. § 35-45-1-2)
- Disruptive conduct at funerals or memorial services (I.C. § 35-45-1-3)
- Disorderly conduct (I.C. § 35-45-1-3)
- Control of mass gatherings (I.C. § 16-41-22-1 et seq.)
- Flag desecration (I.C. § 35-45-1-4)
- Unlawful promotion, organization or participation in combative fighting (I.C. § 35-45-18-2; I.C. 35-45-18-3)
- Obstruction of a firefighter (I.C. § 35-44.1-4-8)
- Obstruction of an emergency medical person (I.C. § 35-44.1-4-9)

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### *First Amendment Assemblies*

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- Resisting law enforcement (I.C. § 35-44.1-3-1)

However, officers shall not take action or fail to take action based on the opinions being expressed.

Participant behavior during a demonstration or other public assembly can vary. This may include, but is not limited to:

- Lawful, constitutionally protected actions and speech.
- Civil disobedience (typically involving minor criminal acts).
- Rioting.

All of these behaviors may be present during the same event. Therefore, it is imperative that law enforcement actions are measured and appropriate for the behaviors officers may encounter. This is particularly critical if force is being used. Adaptable strategies and tactics are essential.

The purpose of a law enforcement presence at the scene of public assemblies and demonstrations should be to preserve the peace, to protect life and prevent the destruction of property.

Officers should not:

- Engage in assembly or demonstration-related discussion with participants.
- Harass, confront or intimidate participants.
- Seize the cameras, cell phones or materials of participants or observers unless an officer is placing a person under lawful arrest.
- [Use of excessive force against individuals participating in non-violent assemblies or physically bar entrance to or exit from a facility or location which is the subject of such non-violent assemblies.](#)

Supervisors should continually observe department members under their commands to ensure that members' interaction with participants and their response to crowd dynamics is appropriate.

#### 428.3.1 PHOTOGRAPHS, VIDEO RECORDINGS AND OTHER INFORMATION

##### **Best Practice**

Photographs, video recordings and other information may be collected at assemblies and demonstrations as they can serve a number of purposes, such as support of criminal prosecutions, assistance in evaluating department performance, serving as training material, recording the use of dispersal orders and facilitating a response to allegations of improper law enforcement conduct.

Photographs, video recordings and other information shall not be maintained on the political, religious or social activities, views or associations of any individual, group or organization unless those activities, views or associations directly relate to an investigation of criminal activity and there is reasonable suspicion that the subject of the information is involved in criminal conduct.

#### 428.4 UNPLANNED EVENTS

##### **Best Practice**

When responding to an unplanned or spontaneous public gathering, the first responding officer should conduct an assessment of conditions, including, but not limited to, the following:

- Location

# Vehicle Towing

## 502.1 PURPOSE AND SCOPE

**Best Practice**

This policy provides guidance related to vehicle towing. Nothing in this policy shall require a member of this department to tow a vehicle.

## 502.2 POLICY

**Best Practice**

The Goshen Police Department will tow vehicles when appropriate and in accordance with the law.

## 502.3 REMOVAL OF VEHICLES DUE TO HAZARD

**Best Practice** **MODIFIED**

When a vehicle should be towed because it presents a hazard, the owner or operator should arrange for the towing. Department members may assist by communicating requests through Elkhart County 911 Center to expedite the process.

If the owner or operator is unable to arrange for towing and the vehicle presents a hazard, the vehicle may be towed at the direction of the department member (I.C. § 9-21-16-3; I.C. § 9-21-16-4).

- (a) Unattended Vehicles - Any vehicle left unattended upon a street or alley and is illegally parked [(IC 9-21-16-(3-5), City Code 4.1.1.21(a) (1-4)] so as to constitute a definite hazard or obstruction to the normal movement of traffic, then the vehicle shall be impounded. This includes any instances a vehicle must be moved for any reasonable purpose to include the cleaning of streets.
  1. Vehicles shall be issued a parking ticket.
  2. Prior to impounding the vehicle, the officer shall make a reasonable attempt to locate the owner or driver to rectify the problem in lieu of impounding the vehicle.
  3. If the owner or operator is unable to arrange for towing and the vehicle presents a hazard, the vehicle may be towed at the direction of the department member (I.C. § 9-21-16-3; I.C. § 9-21-16-4).
  4. In the event of impound, a Vehicle Inventory Report shall be completed by the impounding officer.
  5. Officers shall not unlock any secured vehicle solely for the purpose of an inventory. A “plain view” inventory of the vehicle shall be conducted and noted on the inventory form.
- (b) Seventy-two Hour Violations - Any vehicle which is parked on a city street in excess of 72 hours may be considered abandoned and may be impounded. [IC 9-22-1-(11-14), City Code 4.4.1.11, City Code 4.6.1.(3-14)]
  1. It shall be documented that the vehicle was not moved within the 72-hour limit.
  2. A parking ticket shall be issued.

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### Vehicle Towing

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appropriate, by having the vehicle towed, such as when the vehicle presents a traffic hazard or the vehicle would be in jeopardy of theft or damage if left at the scene.

Officers are not required to investigate whether alternatives to towing a vehicle exist after an arrest. However, a vehicle should not be towed if reasonable alternatives exist. When considering whether to leave a vehicle at the scene, officers should take into consideration public safety as well as the reasonable safety of the vehicle and its contents.

The following are examples of situations where a vehicle should not be towed:

- The vehicle can be legally parked, left in a reasonably secure and safe location and is not needed as evidence.
- The vehicle is parked on private property, on which the arrestee or owner is legally residing, or the property owner does not object to the vehicle being parked at that location.
- The arrestee or owner of the vehicle requests that it be released to a person who is present, willing and able to legally take control of the vehicle.
- The vehicle is legally parked and the arrestee or owner requests that it be left at the scene. In such cases the requester should be informed that the Department will not be responsible for theft or damages.

## 502.5 TRAFFIC ACCIDENTS

### Agency Content

- (a) Any vehicle which is inoperable or unsafe to continue on the roadway shall be towed. A VEHICLE INVENTORY REPORT IS NOT REQUIRED IN THIS INSTANCE.
1. Upon arrival at the scene, the officer shall request a wrecker from the rotation list unless the driver or owner should indicate a preference for another wrecker service.
  2. The officer shall use the preferred service, unless: the traffic conditions are such that waiting for the preferred service would be impractical or the length of response time for the preferred service would create too long of a delay in clearing the scene, etc. In these instances, the officer would be justified in using one of the wrecker services from the rotation list.
- (b) If the operator is incapacitated the vehicle shall be impounded AND A VEHICLE INVENTORY REPORT SHALL BE REQUIRED, unless:
1. The operator has given permission to someone at the scene to drive the vehicle, or;
  2. Another individual at the scene has legal standing in the vehicle to take responsibility for the vehicle and/or vehicle's contents.
  3. Under the conditions outlined in b. i. and ii., a Vehicle Inventory Report will not be required.

# Unmanned Aerial System

## 605.1 PURPOSE AND SCOPE

### Best Practice

The purpose of this policy is to establish guidelines for the use of an unmanned aerial system (UAS) and for the storage, retrieval and dissemination of images and data captured by the UAS.

### 605.1.1 DEFINITIONS

#### Best Practice | MODIFIED

Definitions related to this policy include:

**Unmanned aerial system (UAS)** - An unmanned aircraft of any type that is capable of sustaining directed flight, whether preprogrammed or remotely controlled (commonly referred to as an unmanned aerial vehicle (UAV)), and all of the supporting or attached systems designed for gathering information through imaging, recording or any other means (I.C. § 35-31.5-2-342.3; I.C. § 35-33-5-0.5(7); I.C. § 35-33-5-0.5(8)).

**PIC:** Pilot In Charge is the individual responsible for the overall flight operations of a specific mission.

**COA:** For public operation, the Federal Aviation Administration (FAA) issues a Certificate of Authorization or waiver that permits public agencies and organizations to operate a particular area. The COA allows an operator to secure a defined block of airspace and includes special safety provisions unique to the proposed operation. COA's usually are issued for a specific period, up to two (2) years in many cases.

**VO:** Visual Observer is responsible for monitoring the flight characteristics of the aircraft while in communication with the PIC to ensue proper flight and that the aircraft remains clear of obstacles and low flying air traffic.

## 605.2 POLICY

### Best Practice | MODIFIED

It is the policy of the Goshen Police Department to provide and maintain an Unmanned Aircraft System for use in the provision of special services to the community to include surveying natural disasters, hazardous material incidents, locating missing persons, crime/crash investigations, and training. The use of the Unmanned Aircraft System will be coordinated with law enforcement officers conducting specific missions as guided by the Certificate of Authorizations (COA) issued by the Federal Aviation Administration (FAA). This policy is designed to minimize risk to person, property, and aircraft during the operation of the UAS while safeguarding constitutional protections and the privacy of all persons.

A UAS may be utilized to enhance the department's mission of protecting lives and property when other means and resources are not available or are less effective. Any use of a UAS will be in strict accordance with constitutional and privacy rights and Federal Aviation Administration (FAA) regulations.

## Unmanned Aerial System

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### 605.3 PRIVACY PROTECTIONS AND TRANSPARENCY

Best Practice | MODIFIED

The use of the UAS potentially involves privacy considerations. Absent a warrant or exigent circumstances, operators and observers shall adhere to FAA altitude regulations and shall not intentionally record or transmit images of any location where a person would have a reasonable expectation of privacy (e.g., residence, yard, enclosure) (I.C. § 35-33-5-9). Operators and observers shall take reasonable precautions to avoid inadvertently recording or transmitting images of areas where there is a reasonable expectation of privacy. Reasonable precautions can include, for example, deactivating or turning imaging devices away from such areas or persons during UAS operations.

~~(a) UAS operators will comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the "Privacy Act"), which, among other things, restricts the collection and dissemination of individuals' information that is maintained in systems of records, including personally identifiable information (PII), and permits individuals to seek access to and amendment of records.~~

~~(b) Every 3 years, the Police Department will examine these UAS policies and procedures relating to the collection, use, retention, and dissemination of information obtained by UAS, to ensure that privacy, civil rights, and civil liberties are protected. The Police Department shall update their policies and procedures, or issue new policies and procedures, as necessary.~~

~~(c) The Police Department shall only collect information using UAS, or use UAS-collected information, to the extent that such collection or use is consistent with and relevant to an authorized purpose.~~

~~(d) Retention~~

~~1. Information collected using UAS that may contain personally identifiable information shall not be retained for more than 180 days unless retention of the information is determined to be necessary to an authorized mission, is maintained in a system of records covered by the Privacy Act, or is required to be retained for a longer period by any other applicable law or regulation.~~

~~(e) Dissemination~~

~~1. UAS-collected information that is not maintained in a system of records covered by the Privacy Act shall not be disseminated outside of the agency unless dissemination is required by law, or fulfills an authorized purpose and complies with agency requirements.~~

~~(f) To protect civil rights and civil liberties:~~

~~1. UAS recorded data will not be collected, disseminated or retained solely for the purpose of monitoring activities protected by the U.S. Constitution, such as the First Amendment's protections of religion, speech, press, assembly, and redress of grievances (e.g., protests, demonstrations);~~

~~2. Collection, use, dissemination, or retention of UAS recorded data should not be based solely on individual characteristics (e.g., race, ethnicity, national origin,~~

# Goshen Police Department

## Policy Manual

### Unmanned Aerial System

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sexual orientation, gender identity, religion, age, or gender), which is a violation of the law.

3. All UAS activities will be performed in a manner consistent with the Constitution and applicable laws, Executive Orders, and other Presidential directives; and

4. Any privacy, civil rights, and civil liberties complaints will be handled and investigated following the Internal Investigations and Public Complaints section of this handbook.

(g) To provide for effective oversight, the Police Department will:

1. Conduct annual audits and assessments ensuring compliance with existing agency policies and regulations, including ensuring any data-sharing agreements or policies, data use policies, and record management policies applicable to UAS continue to conform to applicable laws, regulations, and policies;

2. Verify the existence of rules of conduct and training for Federal Government personnel and contractors who work on UAS programs, and procedures for reporting suspected cases of misuse or abuse of UAS technologies;

3. Provide oversight of individuals who have access to sensitive information (including any PII) collected using UAS; and

4. Ensure that all uses of the UAS were conducted while safeguarding individuals' privacy, civil rights, and civil liberties.

(h) To promote transparency about UAS activities within the NAS (National Airspace System), the Police Department shall, while not revealing information that could reasonably be expected to compromise law enforcement or national security:

1. Provide notice to the public regarding where the agency's UAS are authorized to operate in the NAS;

2. Keep the public informed about the agency's UAS program as well as changes that would significantly affect privacy, civil rights, or civil liberties; and

3. Make available to the public, on an annual basis, a general summary of the agency's UAS operations during the previous fiscal year, to include a brief description of types or categories of missions flown, and the number of times the agency provided assistance to other agencies, or to State, local, tribal, or territorial governments

(i) Any requests for UAS support when requested by any Federal, State, local, tribal, or territorial government operations shall be permitted when authorized by the ranking officer in charge.

## 605.4 PROGRAM COORDINATOR

### Best Practice

The Chief of Police will appoint a program coordinator who will be responsible for the management of the UAS program. The program coordinator will ensure that policies and procedures conform to current laws, regulations and best practices and will have the following additional responsibilities:



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- Coordinating the FAA Certificate of Waiver or Authorization (COA) application process and ensuring that the COA is current, [and/or coordinating compliance with FAA Part 107 Remote Pilot Certificate, as appropriate for department operations.](#)
- Ensuring that all authorized operators and required observers have completed all required FAA and department-approved training in the operation, applicable laws, policies and procedures regarding use of the UAS.
- Developing uniform protocol for submission and evaluation of requests to deploy a UAS, including urgent requests made during ongoing or emerging incidents. Deployment of a UAS shall require written authorization of the Chief of Police or the authorized designee, depending on the type of mission.
- [Coordinating the completion of the FAA Emergency Operation Request Form in emergency situations, as applicable \(e.g., natural disasters, search and rescue, emergency situations to safeguard human life\).](#)
- Developing protocols for conducting criminal investigations involving a UAS, including documentation of time spent monitoring a subject.
- Implementing a system for public notification of UAS deployment.
- Developing an operational protocol governing the deployment and operation of a UAS including, but not limited to, safety oversight, use of visual observers, establishment of lost link procedures and secure communication with air traffic control facilities.
- Developing a protocol for fully documenting all missions.
- Developing a UAS inspection, maintenance and record-keeping protocol to ensure continuing airworthiness of a UAS, up to and including its overhaul or life limits.
- Developing protocols to ensure that all data intended to be used as evidence are accessed, maintained, stored and retrieved in a manner that ensures its integrity as evidence, including strict adherence to chain of custody requirements. Electronic trails, including encryption, authenticity certificates and date and time stamping, shall be used as appropriate to preserve individual rights and to ensure the authenticity and maintenance of a secure evidentiary chain of custody.
- Developing protocols that ensure retention and purge periods are maintained in accordance with established records retention schedules.
- Facilitating law enforcement access to images and data captured by the UAS.
- Recommending program enhancements, particularly regarding safety and information security.
- Ensuring that established protocols are followed by monitoring and providing periodic reports on the program to the Chief of Police.
- [Maintaining familiarity with FAA regulatory standards, state laws and regulations, and local ordinances regarding the operations of a UAS.](#)
-

# Goshen Police Department

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#### **605.5 PILOT IN CHARGE (PIC)**

##### **Agency Content**

- (a) The PICs primary duty is the safe and effective operation of the UAS in accordance with the manufacturers approved flight manual, FAA regulations, and agency's policy and procedures. PICs must remain knowledgeable of all departmental policies, directives, and orders, FAA regulations, COA, UAS manufacturers' flight manual, and bulletins. The PIC is responsible for UAS assembly, flight preparation, post flight procedures, disassembly, and storage procedures.
  
- (b) The Chief of Police, Assistant Chief, Division Chief(s), or the UAS Commander for reasons including but not limited to performance, proficiency, physical condition, etc. may temporarily remove the PIC from flight status at any time. If this becomes necessary, the PIC will be notified verbally and in writing of the reason, further action to be taken and expected duration of such removal.

#### **605.6 VISUAL OBSERVERS (VO)**

##### **Agency Content**

- (a) VO's will be provided with sufficient training to communicate clearly to the PIC any turning instructions required to stay clear of conflicting traffic. The VO's primary duty is to communicate to the PIC any information required to remain clear of conflicting traffic, terrain, obstructions, and provide navigational awareness.
- (b) VO's are responsible for all safety functions related to ground operations during flight so the PIC can operate without interruption.
- (c) VO's are responsible for contacting local air traffic control prior to flying in their air traffic area.

#### **605.7 CAMERA OPERATOR**

##### **Agency Content**

- (a) The Camera Operator is responsible for all aspects of the camera and recordings during flight. The Camera Operator will position the camera to any area the PIC requests for purposes of navigation.
- (b) The PIC is responsible for processing videos and/or photo evidence gathered during the operation and processed in accordance with agency procedures.
- (c) The PIC is responsible for replacing the UAS memory card at the conclusion of a flight so the UAS is prepared for future flights.
- (d) If the Camera Operator is not available during a flight operation, the PIC will assume the responsibility of the Camera Operator.

## 605.8 FLIGHT AUTHORIZATION AND USE OF UAS

Stat **MODIFIED**

(a)

~~When feasible a supervisor will screen all initial requests to use the UAS from patrol or investigation units. All reasonable requests are forwarded to the UAS Commander for consideration. In the absence of the commander, the request is sent to either Division Chief.~~

(b) ~~UAS Commander will screen the request using the following factors:~~

- ~~1. Is the proposed use of the UAS within the capabilities of the UAS equipment and personnel to perform?~~
  - ~~2. Does the proposed use of the UAS fall within the FAA and agency policies and regulations for UAS usage?~~
-

# Goshen Police Department

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### Unmanned Aerial System

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~~3. Can the UAS be deployed safely given current weather conditions?~~

~~4. If the UAS deployment requires a warrant, has one been requested and approved?~~

~~5. Are there sufficient trained and qualified personnel available, to safely operate the UAS?~~

~~(c) The UAS Commander will either accept or decline the request for UAS support. If the request is denied, the Commander will provide a reason for declining the support request to the person requesting the flight. If the mission is accepted, this policy and procedure will be followed.~~

~~(d) If the Patrol or Detective Captain accepts the support request, the UAS Commander will contact a UAS PIC and VO who will be provided with all available mission information.~~

~~(e) The UAS PIC is responsible for transporting the UAS and all required equipment to the scene. Upon arriving at the requested location, the UAS VO is responsible for contacting the on-scene Incident Commander and will check in and receive a briefing on the mission requested. The UAS PIC will make an on-scene determination of the ability of the UAS to perform the requested mission safely and within agency and FAA policies and procedures.~~

~~(f) If the UAS PIC determines the use of the UAS will violate agency policies or directives, then the UAS VO will inform the Incident Commander of the potential conflict along with recommendations for modifying the requested mission to conform to the agency's policies and directives. As this is a change from the original approved mission, the UAS PIC will contact the UAS Commander for direction on how to proceed. As soon as possible after the completion of the mission, the UAS VO will make a full report of the circumstances and their concerns to the UAS Commander.~~

~~(g) UAS PICs will have sole discretion for declaring safety or violation of FAA rules. If the UAS PIC determines that a requested mission would violate FAA rules or endanger civilians, then the UAS PIC will respectfully inform the Incident Commander of the reasons for refusing to operate the UAS and contact the UAS Commander immediately. The UAS will not be flown in this circumstance and the authority of the UAS PIC is final.~~

~~(h) If the UAS PIC determines the requested mission will potentially damage the UAS or its associated equipment, the UAS PIC will inform the Incident Commander of their concerns. The UAS PIC will contact the UAS Commander, as this is a deviation of the original, approved mission. The UAS PIC will fully document and send a report to the UAS Commander.~~

~~1. If several separate requests for UAS support are received simultaneously, they will be prioritized. In general terms, requests for UAS support are prioritized as:~~

~~2. Life Safety, and~~

~~3. Evidence / Documentation.~~

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Only authorized operators who have completed the required training shall be permitted to operate the UAS.

Use of vision enhancement technology (e.g., thermal and other imaging equipment not generally available to the public) is permissible in viewing areas only where there is no protectable privacy interest or when in compliance with a search warrant or court order. In all other instances, legal counsel should be consulted.

- (i) UAS operations should only be conducted consistent with FAA regulations. ~~during daylight hours and a UAS should not be flown over populated areas without FAA approval.~~

Absent a warrant or consent of the property owner, a UAS shall not be used to gather evidence, surveil, or record private property or a person on private property who has a reasonable expectation of privacy (I.C. § 35-33-5-9).

#### 605.9 MINIMUM PERSONNEL REQUIREMENTS

Agency Content

- (a) Due to the nature of the law enforcement mission, the minimum personnel required on all missions will be a PIC and VO. Under no circumstances, will an operator attempt to complete a deployment alone.
- (b) Although training is not considered a mission, a VO will be used.

#### 605.10 PERSONAL EQUIPMENT

Agency Content

- (a) Although there is no specific, uniform for the UAS unit or required for proper operation of the UAS, the PIC/VO/Camera operator will take necessary measures to deploy in a professional manner. PICs and VOs will wear clothing that easily identifies them as members of the Goshen Police Department. PICs/VOs will take into consideration the current weather conditions when planning to deploy, and wear appropriate clothing to deploy comfortably.
- (b) Use of radio, cell phone, or other device is prohibited by the PIC during flight per the COA.

#### 605.11 FLIGHT BOUNDARIES

Agency Content

- (a) There may be requests for UAS support outside the jurisdiction of this agency and the FAA Certification of Authorization (COA) for the UAS may restrict deployment to certain areas.
- (b) Maximum altitude will not be set more than 400 feet per the FAA COA unless near a structure and then the maximum altitude will not be more than 400 feet above that structure.
- (c) Line of Sight: All UAS operations will be conducted within line of sight of the PIC and/or VO such that the PIC or VO may detect and avoid hazards such as aircraft or property.



**Legal Department  
CITY OF GOSHEN**

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

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

May 24, 2023

**To:** Board of Public Works and Safety  
**From:** Brandy L. Toms  
**Subject:** Agreements with Baker Tilly Year End Reports -Water Utility and Sewer Utility

City of Goshen wishes to enter into two (2) Agreements with Baker Tilly for their professional accounting services to provide financial management reports – one Agreement is for the Water Utility and one is for the Sewer Utility.

The scope of work is identical for each Utility and requires deliverables of a series of 9 reports for a total cost of \$77,400 for each Utility Agreement.

June 30, 2020	\$6,850.00
Year End Journal Entries 2020	\$5,500.00
Year End 2020	\$9,450.00
June 30, 2021	\$7,100.00
Year End Journal Entries 2021	\$5,700.00
Year End 2021	\$9,850.00
June 30, 2022	\$7,400.00
Year End Journal Entries 2022	\$5,900.00
Year End 2022	<u>\$10,250.00</u>
	\$68,000.00

**Suggested Motion:**

Move to approve and authorize Mayor Stutsman to execute, two (2) agreements with Baker Tilly Municipal Advisors, LLC for their professional accounting services to provide financial management reports up to year end 2025 for Goshen's Water Utility at a cost of \$77,400 and for Goshen's Sewer Utility at a cost of \$77,400.

**AGREEMENT WITH BAKER TILLY MUNICIPAL ADVISORS, LLC  
FOR THE PREPARATION OF FINANCIAL MANAGEMENT REPORTS AND  
YEAR-END ADJUSTING JOURNAL ENTRIES FOR THE CITY OF GOSHEN'S  
WATER UTILITY**

THIS AGREEMENT is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023, between Baker Tilly Municipal Advisors, hereinafter referred to as "Consultant", and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as "City".

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

**Section 1. Contractor Duties**

Consultant shall provide City the services for the professional accounting services for the City's Water Utility financial management reports, which services are more particularly described in Consultant's May 10, 2023 Engage Letter attached as Exhibit A (hereinafter referred to as "Duties").

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

**Section 2. Report Schedule**

<b><u>Reports</u></b>	<b><u>Date Due to City</u></b>
June 30, 2023	September 30, 2023
Year End Journal Entries 2023	March 31, 2024
Year End 2023	April 15, 2024
June 30, 2024	September 30, 2024
Year End Journal Entries 2024	March 31, 2025
Year End 2024	April 15, 2025
June 30, 2025	September 30, 2025
Year End Journal Entries 2025	March 31, 2026
Year End 2025	April 15, 2026

**Section 3. Effective Date; Term**

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) This agreement shall be effective for a period of the three (3) consecutive calendar years of 2023, 2024 and 2025.
- (C) Consultant acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Consultant shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.

- (D) Consultant shall commence the Duties on as soon as practical after receiving a notice to proceed from City.

#### **Section 4. Compensation**

- (A) City agrees to compensate Consultant the sum of \$77,400 for performing all Duties.
- (B) City agrees to compensate Consultant as follows for performing all Duties:

<b><u>Reports</u></b>	<b><u>Cost</u></b>
June 30, 2023	\$ 7,800
Year End Journal Entries 2023	\$ 6,200
Year End 2023	\$10,800
June 30, 2024	\$ 8,100
Year End Journal Entries 2024	\$ 6,500
Year End 2024	\$11,200
June 30, 2025	\$ 8,400
Year End Journal Entries 2025	\$ 6,700
Year End 2025	<u>\$11,700</u>
	\$77,400

#### **Section 5. Payment**

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

City of Goshen  
c/o Clerk-Treasurer's Office  
202 S. 5<sup>th</sup> Street  
Goshen, IN 46528

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

#### **Section 6. Ownership of Documents**

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



## **Section 7. Independent Contractor**

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

## **Section 8. Non-Discrimination**

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

## **Section 9. Employment Eligibility Verification**

- (A) Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Contractor is not required to participate in the E-Verify program should the program cease to exist. Contractor is not required to participate in the E-Verify program if Contractor is self-employed and does not employ any employees.
- (B) Contractor shall not knowingly employ or contract with an unauthorized alien, and contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.
- (C) Contractor shall require their subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- (D) City may terminate the contract if Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by City of a breach.

## **Section 10. Contracting with Relatives**

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

## **Section 11. No Investment Activities in Iran**

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

## **Section 12. Indemnification**

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

## **Section 13. Insurance**

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

## **Section 14. Force Majeure**

- (A) Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.
- (B) If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

## **Section 15. Default**

- (A) If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the services or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
- (C) Contractor may also be considered in default by the City if any of the following occur:
  - (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this contract.
  - (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - (3) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.
  - (4) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
  - (5) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.
  - (6) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the services described under these Specification Documents.
  - (7) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.

**Section 16. Termination**

- (A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all services performed and expenses reasonably incurred prior to notice of termination.
- (B) City may terminate this agreement, in whole or in part, in the event of default by Contractor.
- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

**Section 17. Notice**

Any notice required or desired to be given under this agreement shall be deemed sufficient if it is made in writing and delivered personally or sent by regular first-class mail to the parties at the following addresses, or at such other place as either party may designate in writing from time to time. Notice will be considered given three (3) days after the notice is deposited in the US mail or when received at the appropriate address.

City: City of Goshen, Indiana  
Attention: Goshen Legal Department  
204 East Jefferson St., Suite 2  
Goshen, IN 46528

Contractor: Baker Tilly Municipal Advisors, LLC  
Attention: Eric J. Walsh  
112 Iron Works Avenue, Suite C  
Mishawaka, IN 46544

**Section 18. Subcontracting or Assignment**

Contractor shall not subcontract or assign any right or interest under the agreement, including the right to payment, without having prior written approval from City. Any attempt by Contractor to subcontract or assign any portion of the agreement shall not be construed to relieve Contractor from any responsibility to fulfill all contractual obligations.

**Section 19. Amendments**

Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the agreement shall be of no force and effect.

**Section 20. Waiver of Rights**

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

## **Section 21. Applicable Laws**

- (A) Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances. All contractual provisions legally required to be included are incorporated by reference.
- (B) Contractor agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the services. Failure to do so may be deemed a material breach of agreement.

## **Section 22. Miscellaneous**

- (A) Any provision of this agreement or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the agreement. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.
- (B) This agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.
- (C) In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

## **Section 23. Severability**

In the event that any provision of the agreement is found to be invalid or unenforceable, then such provision shall be reformed in accordance with applicable law. The invalidity or unenforceability of any provision of the agreement shall not affect the validity or enforceability of any other provision of the agreement.

## **Section 24. Binding Effect**

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

## **Section 25. Entire Agreement**

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

## **Section 26. Authority to Execute**

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

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

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

**Baker Tilly Municipal Advisors, LLC**

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

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

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

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

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

**RE: Financial Management Reports and Year-End Adjusting Journal Entries for the  
City of Goshen's Water Utility**

**DATE: May 10, 2023**

This Scope Appendix is attached by reference to the above-named engagement letter (the "Engagement Letter") between the City of Goshen, Indiana, by its Board of Public Works and Safety (the "Client") and Baker Tilly Municipal Advisors, LLC.

### **SCOPE OF WORK**

Baker Tilly Municipal Advisors, LLC ("BTMA") will perform the following services:

BTMA's services under this Agreement consist of professional accounting services for the Client's Water Utility financial management reports which are more particularly described below.

**A. Interim Period Report**

1. Provide summary of funds available for capital improvements.
2. Analyze Water Utility fund balances for compliance with outstanding bond ordinances and other legal and local requirements.
  - a. Prepare schedule of suggested fund transfers and explanations, as necessary, for Client approval.
  - b. Analyze fund balances for funds available for capital expenditures.
3. Prepare analysis of year-to-date revenues and expenditures in comparison with the Water Utility's revenues and expenditures budget or prior year-to-date actual results.
  - a. Identify unusual variations from the revenues and expenditures budget.
  - b. Provide explanation of adjustments, as necessary.
4. Analyze the transactions for the period to determine appropriateness and consistency of transaction posting.
  - a. Provide proposed adjusting transactions, if necessary, for Client approval.
  - b. Provide explanation of adjustments, as necessary.
5. Prepare reports and be available to attend one meeting with the officials of the Client to discuss findings and recommendations.

**B. Year End Report:**

1. Analyze Water Utility fund balances for compliance with outstanding bond ordinances and other legal and local requirements.
  - a. Prepare schedule of suggested fund transfers and explanations, as necessary.
  - b. Analyze fund balances for funds available for capital expenditures.
2. Prepare analysis of year-to-date revenues and expenditures in comparison with the Water Utility's revenues and expenditures budget, as necessary.
  - a. Identify unusual variations from the revenues and expenditures budget for Client approval.
  - b. Provide explanation of adjustments, as necessary.
3. Assist the Water Utility to prepare an annual budget of estimated revenues and expenditures, as necessary.
4. Obtain information from Water Utility officials, the Client's consulting engineers, and/or other sources necessary to assist the Client in the development of a capital budget.

**SCOPE APPENDIX to  
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Baker Tilly Municipal Advisors, LLC**

5. Provide evaluation of current rates.
6. Assemble the financial statements without audit or review for each Water Utility.
7. Provide summary of capital asset activity for the year.
8. Provide summary of large users and usage, if available.
9. Analyze the transactions for the period to determine appropriateness and consistency of transaction posting.
  - a. Provide proposed adjusting transactions, if necessary, for Client approval.
  - b. Provide explanation of adjustments, as necessary.
10. Prepare reports and be available to attend one meeting with the officials of the Client to discuss findings and recommendations.

**C. Year-End Adjusting Journal Entries**

Assist Client bookkeeper(s) or other designee to adjust the books of accounts in order to prepare a working trial balance from which financial statements can be prepared. Client bookkeeper(s) or designee will provide BTMA with a detailed trial balance and any supporting schedules BTMA requires.

BTMA shall inform the Client if, during performance of their professional services, BTMA becomes aware of any material errors, any evidence or information that fraud may have occurred, and any evidence or information regarding illegal acts that may have occurred.

While BTMA does not audit, review or examine the information provided to BTMA by the Client and is dependent upon the Client to provide BTMA with accurate and reliable information, BTMA shall assist the Client by analyzing the Client's accounting data for consistency and accuracy.

BTMA shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety and environmental statutes, rules or regulations in the performance of the services for the Client.

**SCHEDULE**

BTMA shall deliver to the Client the following reports on or before the dates specified below:

<b><u>Report</u></b>	<b><u>Date Due to Client</u></b>
June 30, 2023	September 30, 2023
Year End Journal Entries 2023	March 31, 2024
Year End 2023	April 15, 2024
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**SCOPE APPENDIX to  
Engagement Letter dated: May 10, 2023  
Between the City of Goshen, Indiana and  
Baker Tilly Municipal Advisors, LLC**

Compensation and Invoicing

The Client agrees to compensate BTMA for the services in this agreement in accordance with BTMA's fee schedule as set forth in the table below for the amount of Seventy-seven Thousand Four Hundred Dollars (\$77,400.00).

<u>Report</u>	<u>Cost</u>
June 30, 2023	\$ 7,800
Year End Journal Entries 2023	6,200
Year End 2023	10,800
June 30, 2024	8,100
Year End Journal Entries 2024	6,500
Year End 2024	11,200
June 30, 2025	8,400
Year End Journal Entries 2025	6,700
Year End 2025	<u>11,700</u>
	<u>\$77,400</u>

*Billing rates are subject to change periodically due to changing requirements and economic conditions. Baker Tilly will notify Client thirty (30) days in advance of any change to fees. If Client does not dispute such change in fees within that thirty (30) day period, Client will be deemed to have accepted such change. The fees billed will be the fees in place at the time services are provided. Actual fees will be based upon experience of the staff assigned and the complexity of the engagement.*

**BILLING PROCEDURES**

**Normally, you will receive a monthly statement showing fees and costs incurred in the prior month.** Occasionally, we may bill on a less frequent basis if the time involved in the prior month was minimal or if arrangements are made for the payment of fees from bond proceeds. The account balance is due and payable on receipt of the statement.

Nonattest Services

As part of this engagement, we will perform certain nonattest services. For purposes of the Engagement Letter and this Scope Appendix, nonattest services include services that the *Government Auditing Standards* refers to as nonaudit services.

We will not perform any management functions or make management decisions on your behalf with respect to any nonattest services we provide.

In connection with our performance of any nonattest services, you agree that you will:

- Continue to make all management decisions and perform all management functions, including approving all journal entries and general ledger classifications when they are submitted to you.
- Designate an employee with suitable skill, knowledge, and/or experience, preferably within senior management, to oversee the services we perform.
- Evaluate the adequacy and results of the nonattest services we perform.
- Accept responsibility for the results of our nonattest services.
- Establish and maintain internal controls, including monitoring ongoing activities related to the nonattest function.

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Conflicts of Interest

Attachment A to the Engagement Letter contains important disclosure information that is applicable to this Scope Appendix.

We are unaware of any additional conflicts of interest related to this Scope Appendix that exist at this time.

Termination

Notwithstanding termination provisions contained in the Engagement Letter, this Scope Appendix is intended to be ongoing and applicable individually to specific services including financings, arbitrage computations, and/or continuing disclosure engagement, ("Sub-engagements") as if they are the sole subject of the Scope Appendix. As such, termination may occur for a specific Sub-engagement without terminating the Scope Appendix itself. On termination of a Sub-engagement or the Scope Appendix, all fees and charges incurred prior to termination shall be paid promptly. Unless otherwise agreed to by the Client and Baker Tilly, the scope of services provided in a Sub-engagement performed under this Scope Appendix will terminate 60 days after completion of the services for such Sub-engagement.

If this Scope Appendix is acceptable, please sign below and return one copy to us for our files. We look forward to working with you on this important project.

Sincerely,



**Eric J. Walsh, Partner**

**Signature Section:**

The services and terms as set forth in this Scope Appendix are agreed to on behalf of the Client by:

Client of Goshen, Indiana  
Board of Public Works and Safety

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

**Date**



**Legal Department  
CITY OF GOSHEN**

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

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

May 24, 2023

**To:** Board of Public Works and Safety  
**From:** Brandy L. Toms  
**Subject:** Agreements with Baker Tilly Year End Reports -Water Utility and Sewer Utility

City of Goshen wishes to enter into two (2) Agreements with Baker Tilly for their professional accounting services to provide financial management reports – one Agreement is for the Water Utility and one is for the Sewer Utility.

The scope of work is identical for each Utility and requires deliverables of a series of 9 reports for a total cost of \$77,400 for each Utility Agreement.

June 30, 2020	\$6,850.00
Year End Journal Entries 2020	\$5,500.00
Year End 2020	\$9,450.00
June 30, 2021	\$7,100.00
Year End Journal Entries 2021	\$5,700.00
Year End 2021	\$9,850.00
June 30, 2022	\$7,400.00
Year End Journal Entries 2022	\$5,900.00
Year End 2022	<u>\$10,250.00</u>
	\$68,000.00

**Suggested Motion:**

Move to approve and authorize Mayor Stutsman to execute, two (2) agreements with Baker Tilly Municipal Advisors, LLC for their professional accounting services to provide financial management reports up to year end 2025 for Goshen's Water Utility at a cost of \$77,400 and for Goshen's Sewer Utility at a cost of \$77,400.

**AGREEMENT WITH BAKER TILLY MUNICIPAL ADVISORS, LLC  
FOR THE PREPARATION OF FINANCIAL MANAGEMENT REPORTS AND  
YEAR-END ADJUSTING JOURNAL ENTRIES FOR THE CITY OF GOSHEN'S  
SEWER UTILITY**

THIS AGREEMENT is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023, between Baker Tilly Municipal Advisors, hereinafter referred to as “Consultant”, and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as “City”.

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

**Section 1. Contractor Duties**

Consultant shall provide City the services for the professional accounting services for the City's Sewer Utility financial management reports, which services are more particularly described in Consultant’s May 10, 2023 Engage Letter attached as Exhibit A (hereinafter referred to as “Duties”).

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

**Section 2. Report Schedule**

<b><u>Reports</u></b>	<b><u>Date Due to City</u></b>
June 30, 2023	September 30, 2023
Year End Journal Entries 2023	March 31, 2024
Year End 2023	April 15, 2024
June 30, 2024	September 30, 2024
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Year End 2024	April 15, 2025
June 30, 2025	September 30, 2025
Year End Journal Entries 2025	March 31, 2026
Year End 2025	April 15, 2026

**Section 3. Effective Date; Term**

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) This agreement shall be effective for a period of the three (3) consecutive calendar years of 2023, 2024 and 2025.
- (C) Consultant acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Consultant shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.

- (D) Consultant shall commence the Duties on as soon as practical after receiving a notice to proceed from City.

#### **Section 4. Compensation**

- (A) City agrees to compensate Consultant the sum of \$77,400 for performing all Duties.
- (B) City agrees to compensate Consultant as follows for performing all Duties:

<b><u>Reports</u></b>	<b><u>Cost</u></b>
June 30, 2023	\$ 7,800
Year End Journal Entries 2023	\$ 6,200
Year End 2023	\$10,800
June 30, 2024	\$ 8,100
Year End Journal Entries 2024	\$ 6,500
Year End 2024	\$11,200
June 30, 2025	\$ 8,400
Year End Journal Entries 2025	\$ 6,700
Year End 2025	<u>\$11,700</u>
	\$77,400

#### **Section 5. Payment**

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

City of Goshen  
c/o Clerk-Treasurer's Office  
202 S. 5<sup>th</sup> Street  
Goshen, IN 46528

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

#### **Section 6. Ownership of Documents**

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

## **Section 7. Independent Contractor**

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

## **Section 8. Non-Discrimination**

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

## **Section 9. Employment Eligibility Verification**

- (A) Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Contractor is not required to participate in the E-Verify program should the program cease to exist. Contractor is not required to participate in the E-Verify program if Contractor is self-employed and does not employ any employees.
- (B) Contractor shall not knowingly employ or contract with an unauthorized alien, and contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.
- (C) Contractor shall require their subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- (D) City may terminate the contract if Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by City of a breach.

## **Section 10. Contracting with Relatives**

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

### **Section 11. No Investment Activities in Iran**

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

### **Section 12. Indemnification**

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

### **Section 13. Insurance**

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

### **Section 14. Force Majeure**

- (A) Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.
- (B) If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

## **Section 15. Default**

- (A) If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the services or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
- (C) Contractor may also be considered in default by the City if any of the following occur:
  - (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this contract.
  - (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - (3) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.
  - (4) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
  - (5) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.
  - (6) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the services described under these Specification Documents.
  - (7) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.



**Section 16. Termination**

- (A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all services performed and expenses reasonably incurred prior to notice of termination.
- (B) City may terminate this agreement, in whole or in part, in the event of default by Contractor.
- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

**Section 17. Notice**

Any notice required or desired to be given under this agreement shall be deemed sufficient if it is made in writing and delivered personally or sent by regular first-class mail to the parties at the following addresses, or at such other place as either party may designate in writing from time to time. Notice will be considered given three (3) days after the notice is deposited in the US mail or when received at the appropriate address.

City: City of Goshen, Indiana  
Attention: Goshen Legal Department  
204 East Jefferson St., Suite 2  
Goshen, IN 46528

Contractor: Baker Tilly Municipal Advisors, LLC  
Attention: Eric J. Walsh  
112 Iron Works Avenue, Suite C  
Mishawaka, IN 46544

**Section 18. Subcontracting or Assignment**

Contractor shall not subcontract or assign any right or interest under the agreement, including the right to payment, without having prior written approval from City. Any attempt by Contractor to subcontract or assign any portion of the agreement shall not be construed to relieve Contractor from any responsibility to fulfill all contractual obligations.

**Section 19. Amendments**

Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the agreement shall be of no force and effect.

**Section 20. Waiver of Rights**

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

## **Section 21. Applicable Laws**

- (A) Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances. All contractual provisions legally required to be included are incorporated by reference.
- (B) Contractor agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the services. Failure to do so may be deemed a material breach of agreement.

## **Section 22. Miscellaneous**

- (A) Any provision of this agreement or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the agreement. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.
- (B) This agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.
- (C) In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

## **Section 23. Severability**

In the event that any provision of the agreement is found to be invalid or unenforceable, then such provision shall be reformed in accordance with applicable law. The invalidity or unenforceability of any provision of the agreement shall not affect the validity or enforceability of any other provision of the agreement.

## **Section 24. Binding Effect**

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

## **Section 25. Entire Agreement**

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

## **Section 26. Authority to Execute**

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

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

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

**Baker Tilly Municipal Advisors, LLC**

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

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

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

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

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

**RE: Financial Management Reports and Year-End Adjusting Journal Entries for the  
City of Goshen's Sewer Utility**

**DATE: May 10, 2023**

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Year End Journal Entries 2025	6,700
Year End 2025	<u>11,700</u>
	<u>\$77,400</u>

*Billing rates are subject to change periodically due to changing requirements and economic conditions. Baker Tilly will notify Client thirty (30) days in advance of any change to fees. If Client does not dispute such change in fees within that thirty (30) day period, Client will be deemed to have accepted such change. The fees billed will be the fees in place at the time services are provided. Actual fees will be based upon experience of the staff assigned and the complexity of the engagement.*

**BILLING PROCEDURES**

**Normally, you will receive a monthly statement showing fees and costs incurred in the prior month.** Occasionally, we may bill on a less frequent basis if the time involved in the prior month was minimal or if arrangements are made for the payment of fees from bond proceeds. The account balance is due and payable on receipt of the statement.

Nonattest Services

As part of this engagement, we will perform certain nonattest services. For purposes of the Engagement Letter and this Scope Appendix, nonattest services include services that the *Government Auditing Standards* refers to as nonaudit services.

We will not perform any management functions or make management decisions on your behalf with respect to any nonattest services we provide.

In connection with our performance of any nonattest services, you agree that you will:

- Continue to make all management decisions and perform all management functions, including approving all journal entries and general ledger classifications when they are submitted to you.
- Designate an employee with suitable skill, knowledge, and/or experience, preferably within senior management, to oversee the services we perform.
- Evaluate the adequacy and results of the nonattest services we perform.
- Accept responsibility for the results of our nonattest services.
- Establish and maintain internal controls, including monitoring ongoing activities related to the nonattest function.

**SCOPE APPENDIX to  
Engagement Letter dated: May 10, 2023  
Between the City of Goshen, Indiana and  
Baker Tilly Municipal Advisors, LLC**

Conflicts of Interest

Attachment A to the Engagement Letter contains important disclosure information that is applicable to this Scope Appendix.

We are unaware of any additional conflicts of interest related to this Scope Appendix that exist at this time.

Termination

Notwithstanding termination provisions contained in the Engagement Letter, this Scope Appendix is intended to be ongoing and applicable individually to specific services including financings, arbitrage computations, and/or continuing disclosure engagement, ("Sub-engagements") as if they are the sole subject of the Scope Appendix. As such, termination may occur for a specific Sub-engagement without terminating the Scope Appendix itself. On termination of a Sub-engagement or the Scope Appendix, all fees and charges incurred prior to termination shall be paid promptly. Unless otherwise agreed to by the Client and Baker Tilly, the scope of services provided in a Sub-engagement performed under this Scope Appendix will terminate 60 days after completion of the services for such Sub-engagement.

If this Scope Appendix is acceptable, please sign below and return one copy to us for our files. We look forward to working with you on this important project.

Sincerely,



**Eric J. Walsh, Partner**

**Signature Section:**

The services and terms as set forth in this Scope Appendix are agreed to on behalf of the Client by:

Client of Goshen, Indiana  
Board of Public Works and Safety

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

**Date**



**Engineering Department  
CITY OF GOSHEN**

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

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185  
engineering@goshencity.com • www.goshenindiana.org

## MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

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

RE: **LEAD SERVICE LINE INVENTORY  
(JN: 2023-0027)**

DATE: May 19, 2023

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Per Federal Registrar 40 CFR §141, National Primary Drinking Water Regulations, public water systems are required to inventory their water system for the presence of lead, and the inventory is to be completed by October 16, 2024.

Inventorying the water system for lead is a significant task, and the Indiana Finance Authority (IFA) is offering Indiana public water systems financial assistance. There are currently three types of grant money available to assist community water systems.

**Project Type I - Utility Records Review & Analysis (\$25,000).** The gathering, researching, digitizing, and reviewing of utility records, local codes, tax parcel information, and other available data to generate a records-based inventory.

**Project Type II - LSL Replacement Planning (\$20,000).** The development of a plan to replace lead service lines in conjunction with other city projects and/or prioritizing at-risk or disadvantaged communities as well as other activities related to the incorporation of service line information into the water system's Asset Management Program.

**Project Type III - Service Line Inspection & Inventory Validation (\$300,000).** Onsite investigations of service line materials to supplement, inform or validate utility records or inventory models.

The Goshen Water Utility believes it is eligible to receive both Type I and Type II grant funding.

Unlike other programs and service engagements, if a public water system is interested in applying for the Type I and Type II grant funds, the water system needs to engage a consultant, and IFA will enter into a contract directly with the public water system's consultant. Goshen Water Utility has been working with Abonmarche Consulting for over a year and a half, developing Goshen's Lead Inventory program. The work effort has been positive, and Goshen Water Utility would like to continue its relationship with Abonmarche Consulting.

To engage Abonmarche Consulting, the City must sign IFA's Lead Service Line Inventory (LSLI) Scope of Work Certification Form. The form is a one-page document that is signed by both the City and Abonmarche. There is a brief description of the work to be performed. Because the

F:\Projects\2023\2023-0027 \_ Lead Service Line Inventory\Board Of Works\2023.05.19\_Goshen Board Of Works - IFA Certification To Engage Abonmarhce Consulting.Doc



work description allowed on the form is limited, the City worked with Abonmarche Consulting to draft a detailed scope of work so both parties fully understand what is expected of the other.

With the LSLI Work Certification Form due by June 9, 2023, Goshen Water Utility is requesting the Board of Public Works and Safety authorize Director of Public Works Dustin Sailor to sign the Indiana Finance Authorities LSLI Scope of Work Certification Form for accessing Type I and Type II funds valued at \$45,000.

**Requested Motion:** Move to approve Director of Public Works Dustin Sailor to sign the Indiana Finance Authorities Scope of Work Certification Form for accessing Type I and Type II funds valued at \$45,000.



# Indiana Finance Authority

## LSLI Grant Program

Spring 2023

### Scope of Work Certification Form

I certify that I am an Authorized Representative for the utility named below and I approve of the Scope of Work summarized below and submitted with IFA’s LSLI Grant Program Application. I further certify the Service Provider below has been selected by the utility to perform the work set forth in our utility’s grant application. Our utility will collaborate with the Service Provider to ensure the project is completed within 6 months as required.

<b>Utility Name</b>	Goshen Water Utility
<b>Utility PWSID</b>	IN5220009
<b>Name of Authorized Representative</b>	Dustin Sailor, PE
<b>Title of Authorized Representative</b>	Director of Public Works & Head of Engineering Dept.
<b>Phone:</b> 574.534.2201	<b>Email:</b> dustinsailor@GoshenCity.com

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

I certify that I am an Authorized Representative of the company/firm named below and I approve of the Scope of Work briefly described below and submitted in IFA’s LSLI Community Grant Program Application, which I have reviewed. If the project is awarded, I agree to enter into a Professional Services Agreement (PSA) with the IFA and can complete the Scope of Work briefly outlined below and included in the Community’s application within 6 months of executing the PSA.

<b>Company Name</b>	Abonmarche Consultants
<b>Name of Authorized Representative</b>	John Linn
<b>Title of Authorized Representative</b>	Principal/Chairman of the Board
<b>Brief Description of Scope of Work:</b>	
We have tailored our scope of services pursuant to IFA guidelines for LSL inventory.	
Type I work includes identification and organization of all available record documents that could potentially help determine service line material. An initial desktop analysis will then be performed to create a GIS based dataset representing each service line maintained by the Public Water System and showing assumed values of lead or non-lead for both the customer and publicly maintain sections of the service line. Work may also include, if the budget allows, updates to assumed material values using predictive modeling, heads up digitization, or other methods available.	
Type II work includes prioritization of replacement of lead service lines, development of a Customer Outreach program and website, and a Preliminary Engineering Report to coordinate capital projects in need of replacement. Work may also include, if the budget allows, updates to the Asset Management program that will increase the level of accuracy of service line material data.	
A Not To Exceed (NTE) amount has been identified based on IFA Type I and Type II grant funds and number of services. It is anticipated that all available funds will be utilized to increase the inventory data accuracy. Based on your community size and number of services the NTE amount is \$25,000.000 for Type I and 20,000 for Type II. These are the funds available for a Community Water System with 10001-15000 service lines. Type III which is \$300,000.00 is not currently part of this	
<b>Phone:</b>	<b>Email Address:</b> jlinn@abonmarche.com

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

May 8, 2023

Dustin Sailor  
City of Goshen, Engineering Department  
204 East Jefferson Street, Suite 1  
Goshen, IN 46528

RE: Lead Service Line Inventory - Scope of Work

Dear Dustin,

Attached for your review and approval is our proposal to provide engineering and information technology services for the City of Goshen. These services include providing the city with a turnkey solution to build and maintain a lead service line inventory. Costs for all services identified in this scope of works are 100% covered under the IFA Lead Service Line Inventory Funding Grant. AbonmarCHE will work with the IFA directly for billing and payments.

The turnkey Lead Service Line Inventory solution may consist of the following:

- Web based applications to manage lead service line information
- Mobile applications to collect lead service line information
- Workflows and Standard Operating Procedures to maintain lead service line inventory
- Dashboards and public facing website to provide updates and information to the public
- An Excel spreadsheet (data matrix) to provide a framework for updating the lead service line inventory
- An established inventory based on available data to set initial assumptions for lead
- Any necessary training and training documentation to ensure city staff have the knowledge and ability to manage the lead service line inventory
- A Lead Service Line Replacement Plan template that exceeds EPA and IFA requirements
- GIS Utility Data support as needed

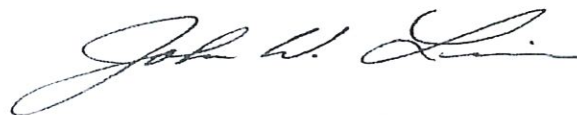
AbonmarCHE is a leader in our area for Lead and Copper Inventory and Lead Replacement, and we know that we can provide you with the highest quality of tools and resources to not only prepare you for developing your Lead Service Line Replacement Program, but also give you the ability to maintain and manage your program for years to come

Thank you for this opportunity and we look forward to working with the city on this project. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,  
AbonmarCHE Consultants, Inc.

A handwritten signature in black ink, appearing to read 'Jeffrey Weaver'.

Jeffrey Weaver, GISP  
Director of Digital Solutions

A handwritten signature in black ink, appearing to read 'John Linn'.

John Linn, PE  
Principal/Chairman of the Board

## Work Plan

### Project Scope

The U.S. Environmental Protection Agencies (EPA) Lead and Copper Rule (LCR) requires communities to develop a lead service line inventory for all water services. All water utilities must provide a materials inventory of their service lines, regardless of if they have lead or not. A recent update to the U.S. EPA's Lead and Copper Rule (LCRR) requires all water utilities to also develop a lead service line replacement program prior to October 16, 2024. Part of the LCRR 2024 regulation includes keeping a publicly accessible inventory. Communities who have identified lead service lines will also have to create a lead service line replacement plan to meet the LCRR 2024 compliance deadline. Homeowners with confirmed lead service lines must be notified and kept abreast of replacement plan progress.

Replacing lead service lines is the best way to reduce the risk of exposure to lead in drinking water across a community. Water utilities are required to create and maintain a lead service line inventory under the Lead and Copper Rule Revisions. Having authoritative information about the number and location of lead service lines is the first step in creating a lead service line removal program to safeguard the health of the community. Lead service line inventory is typically implemented by water utilities that want to quickly begin mapping lead service lines and monitoring compliance with federal regulations.

This project will focus on the development of a lead and copper inventory, implementation of digital GIS based tools to track lead and copper, and dashboards to provide status of the program, identification of existing or creation of new workflows to help identify service materials within the water system, training and documentation to update and maintain the lead and copper digital tools, and a website that can be integrated into the city's existing website or act as a standalone website that provides information for citizens regarding the LCR and LCRR requirements.

Scope of Services: We have tailored our scope of services pursuant to our meeting with your office and our understanding of the services necessary to support the tasks outlined by your city. We have assigned Mr. Jeff Weaver, GISP, to be the project manager for this project and to ensure the services are efficiently delivered and the city's goals are met. Our proposed services for the above-described project are outlined in the tasks as follows:

#### **Task #1 – Utility Records Review and Analysis**

- \* Quality Control (QC) of the number of services in the City and geolocation based on Utility Billing records, (meter accounts, sewer only accounts, records on shared services, etc.)
- \* QC of the initial tap card record review effort
- \* Updated workflows and Standard Operating Procedures (SOPs) to maintain lead service line inventory
- \* Necessary scripting or other methodology for transforming GIS-based template inventory required for submitting to the PWS portal

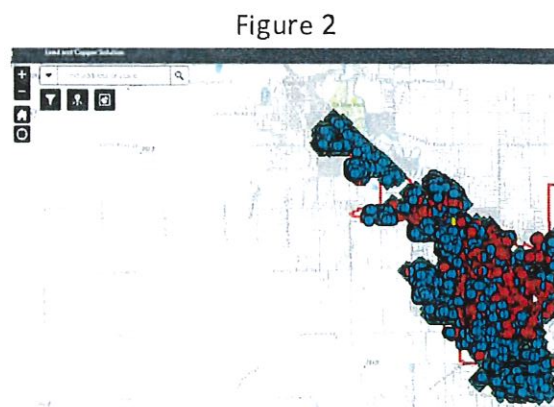
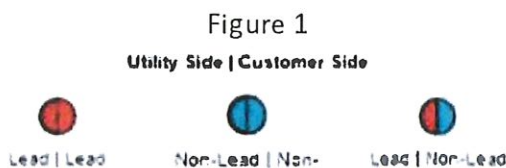
The next step will be to perform data analysis and statistical modeling to determine probable lead service line locations or to check accuracy of existing records. This step will include the implementation of the GIS Lead and Copper Inventory Application (LSL Inventory app). This app will be deployed on either the City's existing Ferri GIS

Platform, or from a Project Delivery Esri GIS Platform that is managed and maintained by Abonmarche and turned over to the City upon completion of the project. This LSL Inventory app will be the data repository for all data collection efforts when identifying lead services. Abonmarche will populate the app with points on a map representing each water service within the Cities service area. A preliminary analysis will be performed, based on any GIS based information to identify the year installed for both the public and private service lines. If no immediate data is available, then all points on the map representing service lines will be identified as “unknown”. Any point on the map that utilizes record documents or statistical modeling will be given the appropriate “confidence value” based on source used to identify service line material. For example, any point that used the water main or building age will be given a confident value of 3, stating that it was used to determine the assumption of lead or non-lead material for that service line.

Below is the confidence value chart and explanation of each value:

Confidence Value	Document Source	Explanation
1	Photo	A photo of the service line was used
2	Record Document	A record document was used
3	Water Main and Building Age	The age of the main or building was used
4	Surrounding Data	Was assumed based on adjacent locations
5	Best Guess	A best guess was used based on institutional knowledge

Following this analysis, the service line points will be symbolized based on the general assumption that the public and private service lines are lead or non-lead. Figure 1 below is an example of the symbology that will be used on the map, and Figure 2 is an example of what the LSL Inventory app will look like following the initial analysis.



The next step will be to increase the confidence value of the source data, which indicates a record document was identified and used to determine the service was lead or non-lead. For this step, a Lead and Copper Data Matrix will be used. This Data Matrix is a list of all documentation available from the city that would include identification



or service line materials. This could include tap cards, record drawings, field notes, meter inspections, or any other document or data that may indicate the year the service line was put into place, or the material used. Abonmarche will facilitate staff interviews with key work groups to better understand operations and maintenance processes so that documentation can be identified, logged into the Data Matrix, and then used to develop a strategic approach to utilizing this data to enhance the identification of lead service lines in the system.

The final step in updating the service line inventory will be to change any service line confidence values to a 1 using photos from underground work, meter inspections, potholing locations, or any other photos where the service line is exposed, and a photo document can be used. This can be done in several ways, based on the type of data the city maintains or the type of workflows used by field crews. An example of this is that many utilities have photos of meters placed during installs or change outs. These photos often show the service line coming into the home. If the material of pipe can be determined from this photo, then it can be used as a confidence value of 1 source document.

In addition to the LSL Inventory App, a mobile field map will be developed to support identification of lead lines and updates to the inventory data through a mobile device. This Mobile LSL Inventory App will allow for field crews to perform the same type of inventory updates in the field and include pictures or attachments to support updating confidence values. This application can be used on any Android or iOS mobile device; however, it is recommended that these devices are secure and well maintained. If Type I grant budget is available, Abonmarche can provide field staff to support home visits/verification of the visible portion of the pipe within a home or any other activities that involve engagement with customers to assist with service line material verification.

Finally, in order to meet Project Type I requirements, Abonmarche will work with the city to take the Lead Service Line data that has been collected thus far, and successfully upload this data to both the IDEM PWS Portal and the State of Indiana's dashboard.

**Deliverable(s):**

- Web based applications to manage lead service line Inventory
- Mobile application to collect lead service line information
- Workflows and Standard Operating Procedures to maintain lead service line inventory
- A Data Matrix to identify and provide a framework for updating the lead service line inventory
- An established preliminary inventory based on available data to set initial assumptions for lead
- Any necessary training and training documentation to ensure city staff have the knowledge and ability to manage the lead service line inventory
- Submittal of Lead Service Line data to PWS Portal and State of Indiana's dashboard

**Task #2 – Lead Service Line Replacement Planning**

- \* Public outreach materials (door hangers, mailers, etc.) that compliment the public facing Hub Site
- \* Transformation of inventory into GIS water service line assets to support the Asset Management Program
- \* Training as many as twenty (20) staff members on messaging and public outreach
- \* Assist with communication utilizing inserts for utility bill mailers
- \* Public Relations (PR) related to Lead Service Line inventory
- \* Community engagement/a public meeting on lead service line inventory with residents
- \* English/Spanish translation of lead service line marketing materials

Engineering Report (PER) to help identify future LSL Replacement projects. The PER will consider the Lead Service Line inventory created in Task 1 and incorporate additional data such as existing or future capital funding plans that could be combined replacements from the LSL Program. These collaborative opportunities could help to reduce overall costs and impact on citizens.

If the city maintains a current Asset Management Program (AMP), Abonmarche will work to incorporate the LSL data into the AMP. This could include updating existing GIS data with the newly identified LSL data from Task 1. It could also include tasks such as integrating the location of service lines into the city's GIS if they do not currently exist, and establishing workflows to continue to maintain the service line inventory in the AMP. Abonmarche brings extensive experience with CMMS and Work Order Management systems such as Cityworks, Lucity, Cartegraph, Maximo, Accela, CloudGin, and asset management systems such as GraniteNet and PipeLogix.

If the city does not maintain an Asset Management Program, Abonmarche can provide a template and recommendations for establishing a cost-effective program that could integrate directly with the LSL data collected in Task 1.

Abonmarche will provide an ArcGIS Hub website that will provide lead and copper rule information to the public and a live dashboard. This website and dashboard are completely configurable, and updates or changes can be made at any time to ensure the public is receiving accurate information. Below is an example of a Hub and Dashboard site that is currently live for the City of Benton Harbor, Michigan.

<https://lead-service-line-inventory-abonmarche.hub.arcgis.com/>

The Lead Service Line Inventory created in Task 1 will be used to develop a Lead Service Line Replacement Program that allows the city to monitor the replacement of service lines required to comply with the EPA's Lead and Copper Rule Revisions and the 2024 deadline to begin offering lead service line replacement.

This Lead Service Line Replacement Program set of applications delivers capabilities that help inventory lead service lines, validate service line materials in the field, manage the construction and replacement of lead services, monitor replacement activities and regulatory compliance, and share information with the public.

This program was established to allow field crews, administrators, inspectors, and project managers to easily reference and retrieve the planning, construction, and follow up information during the implementation of the Lead Replacement Program created in Task 2. Using the applications, field crews/engineers use a GIS-based Web Map to access LSL work. Applications also allow for the editing of a Web Map to update information or show that a LSL has been completed. The program will be deployed on the city's ArcGIS platform.

Any available hours from this task can be used towards any customization to help support construction management workflows.

Below are the 8 apps, dashboards, and public facing websites that will be included in this option.



App Name	Type	Used by	Description
LSL Project Manager App	Web Application	Project Managers, Administrators	Data in this application is symbolized based on what work has been done. This app is used for scheduling work and utilizes the Batch Editor widget to update replacement start and end dates in bulk.
LSL Desktop App	Web Application	Project Managers, Administrators	This application is used to update Right of Entry status and track issues for individual LSL replacement. It utilizes a comments field where PMs and Admins can update and load documents to for historical archiving.
LSL GIS Admin App	Web Application	GIS Admin	This application is used by the GIS Administrator to update data and make necessary changes that cannot be done by the Admins or PMs.
LSL Recent Verification Dashboard	Dashboard	Project Managers, Administrators	This dashboard provides vital information regarding work being performed. Queries and filters built into the dashboard allows PMs and Admins the ability to identify specific data and maintain an overall operational picture of the LSL program.
LSL Construction Field Map	Web Map	Contractors	Web Map used in ESRI Field Map mobile application that allows contractors to enter updates to LSL data and upload photos and other documentation.
LSL Inspector Field Map	Web Map	Inspectors	Web Map used in ESRI Field Map mobile application that allows Inspectors to verify quantities and other related line items information entered by Contractors in the LSL Construction Field Map.
LSL Public Viewer App	Web Application	Public Viewers	Web application, embedded in the ArcGIS Hub Site, that allows any user the ability to view the status of their service line.
LSL Public Dashboard	Dashboard	Public Viewers	Dashboard that allows any user that ability to view the status of their service line and track overall progress of the LSL program.

Deliverable(s):

- Lead Service Line Replacement Plan document
- Integration of GIS data into Asset Management Program
- Support to develop an Asset Management Program if one does not exist
- Dashboards and public facing website to provide updates and information to the public
- 8 apps, dashboards, and public viewable website





- Standard Operating Procedures for updating and maintaining application and service line replacement
- Customization to support specific workflows

**Assumptions**

- Meetings will be done remotely, whenever possible, via use of Microsoft Teams
- The city will provide Abonmarche access to all necessary servers and software

**Summary of Fees**

Abonmarche shall receive, as payment for the work performed under this contract, a not to exceed amount of \$45,000 for Tasks 1 and 2.

Task	Cost
1. Utility Records Review and Analysis	<b>\$25,000</b>
2. Lead Service Line Replacement Planning	<b>\$20,000</b>

**ANTICIPATED SCHEDULE**

	<b>Commencement</b>	<b>Completion</b>
Lead and Copper Inventory	May 25, 2023	November 25, 2023



## Standard Hourly Rates

### **Engineering**

Firm Principal	\$240-275
Senior Project Engineer/ Manager/ Group Director	\$180-210
Project Engineer / Project Manager	\$125-195
Staff Engineer	\$90-135
Landscape Architect	\$90-135
CADD Technician	\$80-120
Senior Construction Technician/Construction Technician/ Office Technician	\$70-110
Structural Engineer	\$180-210
Senior Urban Planner	\$130-140
Engineering Intern	\$40-55

### **Architecture**

Lead Architect	\$180-200
Senior Licensed Architect/Project Manager	\$130-180
Project Architect/Project Manager	\$115-150
Architectural Draftsman/Designer	\$90-120
Architectural Intern	\$40-55

### **Surveying**

Senior Surveyor/Project Manager/Group Director	\$120-160
Project Surveyor	\$110-140
Survey Crew Manager	\$105-125
Survey Crew Chief	\$80-115
Survey Technician	\$65-110
CADD Technician	\$70-105

### **Digital Services**

Group Director	\$210
GIS Specialist/Analyst	\$110-125

### **Auxiliary Services**

IT Support Technician/Manager	\$140-185
Administrative/Executive Assistant/Graphic Designer/Grant Specialist	\$70-95
Development Services Professionals	\$100-200

Effective 01/01/2023 Rates Subject to Change





**Engineering Department  
CITY OF GOSHEN**

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

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185  
engineering@goshencity.com • www.goshenindiana.org

## MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering Department

RE: **1402 W. WILDEN AVENUE SURVEY AGREEMENT  
(JN: 2023-0012 & 2023-0022)**

DATE: May 24, 2023

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On April 12, 2023, we received quotes for the survey of 1402 W. Wilden Avenue. The property was recently purchased by the City and requires a survey for the installation of a security chain linked fence and gate. The lowest responsive quoter was The Abonmarche Group with a quote of \$7,500.00.

**Requested Motion: Motion to approve Mayor Jeremy Stutsman signing the agreement with The Abonmarche Group for \$7,500.00 for the survey of 1402 W. Wilden Avenue.**

## **AGREEMENT**

### **With Abonmarche Consultants for Professional Surveying Services at 1402 Wilden Avenue**

THIS AGREEMENT is entered into on \_\_\_\_\_, 2023, which is the last signature date set forth below, by and between **The Abonmarche Groups** (“Consultant”), whose mailing address is 303 River Race Drive, Unit 206, Goshen, Indiana, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

#### **Section 1. Contractor Duties**

Consultant shall provide City the services for the insert general description, which services are more particularly described in Consultant’s April 12, 2023 proposal attached as Exhibit A (hereinafter referred to as “Duties”).

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

Consultant’s Duties under this agreement include:

- (A) Survey of 1402 Wilden Avenue- boundary and topographic survey with hub and tack every 25’ and each side of drive alone right-of-way to mark for future fence installation, and place T-bar post at all property corners.

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

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

Consultant shall commence the Duties on as soon as practical after receiving a notice to proceed from City.

#### **Section 3. Compensation**

City agrees to compensate Consultant the sum of \$7,500 for performing all Duties.

#### **Section 4. Payment**

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

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

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

#### **Section 5. Ownership of Documents**

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

#### **Section 6. Licensing/Certification Standards**

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

#### **Section 7. Independent Contractor**

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

## **Section 8. Non-Discrimination**

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

## **Section 9. Employment Eligibility Verification**

- (A) Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Contractor is not required to participate in the E-Verify program should the program cease to exist. Contractor is not required to participate in the E-Verify program if Contractor is self-employed and does not employ any employees.
- (B) Contractor shall not knowingly employ or contract with an unauthorized alien, and contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.
- (C) Contractor shall require their subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- (D) City may terminate the contract if Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by City of a breach.

## **Section 10. Contracting with Relatives**

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

## **Section 11. No Investment Activities in Iran**

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

## **Section 12. Indemnification**

Contractor shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against any and all liability, obligations, claims, actions, causes of action, judgments, liens, damages, penalties or injuries arising out of any intentional, reckless or negligent act or omission by Contractor or any of Contractor's agents, officers and employees during the performance of services under

this agreement. Such indemnity shall include reasonable attorney's fees and all reasonable litigation costs and other expenses incurred by City only if Contractor is determined liable to the City for any intentional, reckless or negligent act or omission in a judicial proceeding, and shall not be limited by the amount of insurance coverage required under this agreement.

### **Section 13. Force Majeure**

- (A) Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.
- (B) If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

### **Section 14. Default**

- (A) If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the services or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
- (C) Contractor may also be considered in default by the City if any of the following occur:
  - (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this contract.
  - (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - (3) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.
  - (4) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
  - (5) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.

- (6) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the services described under these Specification Documents.
- (7) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.

### **Section 15. Termination**

- (A) The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all services performed and expenses reasonably incurred prior to notice of termination.
- (B) City may terminate this agreement, in whole or in part, in the event of default by Contractor.
- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

### **Section 16. Notice**

Any notice required or desired to be given under this agreement shall be deemed sufficient if it is made in writing and delivered personally or sent by regular first-class mail to the parties at the following addresses, or at such other place as either party may designate in writing from time to time. Notice will be considered given three (3) days after the notice is deposited in the US mail or when received at the appropriate address.

City: City of Goshen, Indiana  
Attention: Goshen Legal Department  
204 East Jefferson St., Suite 2  
Goshen, IN 46528

Contractor: The Abonmarche Group  
Attention: Brad Mosness, PE  
303 River Race Drive, Unit 206  
Goshen, IN 46526

### **Section 17. Subcontracting or Assignment**

Contractor shall not subcontract or assign any right or interest under the agreement, including the right to payment, without having prior written approval from City. Any attempt by Contractor to subcontract or assign any portion of the agreement shall not be construed to relieve Contractor from any responsibility to fulfill all contractual obligations.

### **Section 18. Amendments**

Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the agreement shall be of no force and effect.



### **Section 19. Waiver of Rights**

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

### **Section 20. Applicable Laws**

- (A) Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances. All contractual provisions legally required to be included are incorporated by reference.
- (B) Contractor agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the services. Failure to do so maybe deemed a material breach of agreement.

### **Section 21. Miscellaneous**

- (A) Any provision of this agreement or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the agreement. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.
- (B) This agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.
- (C) In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

### **Section 22. Severability**

In the event that any provision of the agreement is found to be invalid or unenforceable, then such provision shall be reformed in accordance with applicable law. The invalidity or unenforceability of any provision of the agreement shall not affect the validity or enforceability of any other provision of the agreement.

### **Section 23. Binding Effect**

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

### **Section 24. Entire Agreement**

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

**Section 25. Authority to Execute**

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

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

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

**The Abonmarche Group**

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

\_\_\_\_\_  
Bradley E. Mosness, PE, Vice President

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

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

April 12, 2023

Mr. Jason Hoffman, Technician  
City of Goshen Engineering Department  
204 East Jefferson Street  
Goshen, IN 46528-3405

RE: **PROPOSAL FOR PROFESSIONAL SURVEYING SERVICES**

**1402 Wilden Avenue Boundary and Topographic Survey**  
City of Goshen, Indiana  
City Project No. 2023-0012

Dear Mr. Hoffman:

ABONMARCHE CONSULTANTS is pleased to present this proposal to provide professional surveying services for the proposed project referenced above. We have tailored our scope of services based upon your Request for Survey Quotes dated March 28, 2023.

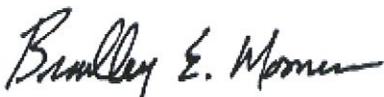
This proposal includes our Work Plan, which consists of our Scope of Services, Fees for Services, and Anticipated Schedule.

I will be the primary contact and can be reached at the office at (574) 314-1024 or by email at [bmosness@abonmarche.com](mailto:bmosness@abonmarche.com).

We appreciate the opportunity to submit our proposal and look forward to working with you. If you have any questions regarding this proposal, please do not hesitate to contact me.

Sincerely,

ABONMARCHE CONSULTANTS, INC.



Bradley E. Mosness, PE  
Vice President / Goshen Office Director

## WORK PLAN

### PROJECT UNDERSTANDING

The City of Goshen's current need is to perform survey services on the following parcels.

1. **1402 Wilden Avenue** – boundary and topographic survey with hub and tack every 25' and each side of drive along r/w to mark for future fence installation, and place T-bar post at all property corners
2. **Parcel 11-08-228-001-015** – boundary survey required in order to place T-bar post at all property corners and additional 2 posts equally spaced along the eastern property line
3. **Parcel 11-09-104-001-015** – boundary survey required in order to place T-bar post at all property corners and additional 2 posts equally spaced along eastern property line

### SCOPE OF SERVICES

We have tailored our scope of services based upon your survey request, and our experience with these types of surveys. A brief listing of services we expect to deliver are listed below.

#### **Task #1: Survey Services**

This task includes performing survey services on the specified parcels listed in the project understanding and in accordance with the requirements set forth in the survey request attached to this proposal.

### DELIVERABLES

Deliverables shall be in accordance with the survey request.

### FEES FOR SERVICES

ABONMARCHE shall receive as payment for the work performed under this contract the total lump sum amount listed below unless a supplement is executed by the parties which increases the maximum amount payable. All services below are firm for 90 days.

#### Task #1 Survey Services

Survey #1.....	\$ 7,500
Survey #2.....	\$ 4,900
Survey #3.....	\$ 3,500
<b>TOTAL LUMP SUM:</b> .....	<b>\$15,900</b>



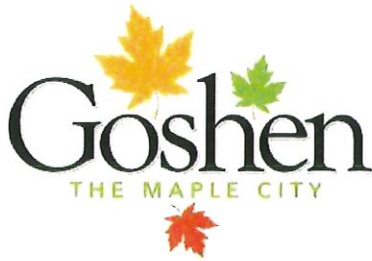
### **ANTICIPATED PROJECT TIMELINE**

If a signed contract is furnished by March 19, 2023, ABONMARCHE proposes to complete and deliver the requested survey by the end of day on June 2, 2023 (weather permitting and subject to utility locates).

### **INFORMATION TO BE PROVIDED BY CITY, IF AVAILABLE**

1. Existing surveys, plans, construction records, and rights-of-way records
2. Existing sanitary lateral and water service cards (1402 Wilden Avenue)





**Engineering Department  
CITY OF GOSHEN**

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

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185  
engineering@goshencity.com • www.goshenindiana.org

March 28, 2023

A&Z Engineering  
1220 Ruston Pass  
Fort Wayne, IN 46825

Jones Petrie Rafinski Corp.  
325 S. Lafayette Blvd.  
South Bend, IN 46601

The Abonmarche Group  
303 River Race Dr., Unit 206  
Goshen, IN 46526

Attention: Nitin Timble, PE, PS

Attention: Andrew Cunningham

Attention: Brad Mosness, PE

**RE: 1402 WILDEN AVENUE BOUNDARY AND TOPO SURVEY QUOTE  
(JN: 2023-0012)**

The City of Goshen is seeking a quote for the preparation of a boundary and topographical survey for Parcel 11-05-452-005-015 (1402 Wilden Avenue). The boundary survey drawing and legal description shall be on a single 24"x36" sheet that is sealed by a surveyor showing the final product.

Parcels 11-09-104-001-015, 11-08-228-001-015 and 11-08-228-002-015 require the property corners to be marked with T bar post and re-established if required only, see attached maps. No drawing or legal description requested.

If your firm is interested in submitting a quote on this work, please submit your quote to the Goshen Engineering Department by 3:00 pm Wednesday, April 12, 2023. E-mail submission of the quote will be accepted and should be forwarded to [jasonhoffman@goshencity.com](mailto:jasonhoffman@goshencity.com). This request for quote is being provided to three qualified survey companies.

**SURVEY WORK**

**BOUNDARY**

The boundary shall include the following:

- Locate existing property corners and mark with a T bar post. Re-establish missing property corners as required for Parcels 11-09-104-001-015, 11-08-228-001-015 and 11-08-228-002-015. Place two additional T bar post spaced equally along eastern property line.
- Locate existing property corners and mark with a T bar post. Re-establish missing property corners as required for Parcel 11-05-452-005-015 (1402 Wilden Avenue). Mark the right-of-way line along Wilden Avenue, hub with tack, every 25' and each side of the drive flush with existing grade. Marking right-of-way for future fence installation.

## TOPOGRAPHY

See attached map for the location of topographical survey limits.

The topographic information collected shall include the following information:

- Location of buildings and accessory structures when located within the defined survey limits.
- Property addresses, when appropriate shall be labeled in model space, text height to be 1.6 for 20 scale, 3.2 for 40 scale or equivalent to .08 in paper space.
- Right-of-way as determined from the record information and identified property corners (i.e. iron pipes, iron pins, etc.).
- All utilities (i.e. gas, water, sewer, electric, cable telephone, fiber optic, etc.), which includes all utility markers, valves, manholes, catch basins, hydrants, culverts, and cleanouts through the specified corridor. Specify material type of structures and pipes.
- Label all existing surface types with 'Ex.', for example Ex. Concrete Sidewalk, (i.e. gravel, concrete, grass, asphalt, brick, and pavers)
- All pavements, which include pavement markings, centerline markings, edge of pavement, curbs, sidewalks, service walks, retaining walls and driveways.
- All landscaping, which includes trees and their diameters, landscape areas, bushes, shrubs, and other decorative amenities.
- Surface utility information, which includes, but may not be limited to, septic tank lids, sewer cleanouts, pedestals, utility poles with notes regarding underground power drops, and utility reference/warning posts.
- The rim, inverts, and bottom of structure for sewer structures, utility manholes, and vaults.
- Structure number that are same as the survey point shall be labeled on the drawing in AutoCAD as part of the labeling of the rim, inverts, size, material of pipes inside of the structure, diameter of the inside of the structure.
- Measure downs to top of water valve nuts.
- Cross section spacing no greater than 50'.

## VERTICAL CONTROL AND DOCUMENTATION

- Tie survey to established benchmarks. No assumed benchmarks.
- Two (2) benchmarks are to be established with spike and enumerated tag (i.e. Benchmark number and elevation), one at the east and one at west end of the parcel. When benchmarks are established on utility poles, the line number and pole number shall be provided as accessory information. Copies of the bench loop field notes are to be provided as part of the deliverables.
- Utility elevations for all manholes, catch basins, inlets and pipes including rim, invert, sump, bottom of structures, and material of pipes shall be provided. Pipe elevations taken on angle measure downs shall be angle corrected. Copies of the utility survey notes are to be provided as part of the deliverables.

- Roadway elevations shall consist of centerline, edge of pavement, gutters, top of curbs, sidewalks, service walks, drive approaches, retaining walls, etc. Cross section spacing no greater than 50'. Collect points 15' beyond ROW to generate contours.
- Provide a TIN file

#### HORIZONTAL CONTROL AND DOCUMENTATION

- Copies of the horizontal control field notes shall be provided as part of the deliverables.
- Temporary Control points shall be established with ½" rebar and cap.
- Horizontal control shall be witness tied.

#### CORRDINATE SYSTEM

- NAD 1983 StatePlane Indiana East FIPS 1301 (US Feet)

#### INCORPORATION OF REFERENCE INFORMATION

- The City will provide available sewer lateral and water service cards (water and sewer card) for each customer inside the survey area.
- This information shall be included as part of the final survey drawing.

#### **COMPLETION TIMELINE**

Upon acceptance of the proposal by the City, the work shall be completed within the following timetable:

- Boundary and Topographical Surveys Delivery – Completion by June 2, 2023.

#### **DELIVERABLE**

- Survey field notes.
- Utilities survey field notes (measure downs on sewer structures with structure number that are the same point number from the survey, shall include rim, invert, material, and size of any pipe inside the structure, along with the bottom elevation of the structure).
- Electronic processed .txt file from survey (points).
- Copies of the private utility markups.
- Copy of bench loop notes.
- Copy of horizontal control.
- Copy of any adjoining deeds, plats, surveys and easements used to establish the parcel or right-of-way.
- The completed survey may be emailed to [jasonhoffman@goshencity.com](mailto:jasonhoffman@goshencity.com) or downloaded to the City's ftp site (directions provided upon request) in AutoCAD Civil 3D 2019 or better, but not to exceed AutoCAD Civil 3D 2022. Reduced information shall be scaled for a 20 scale drawing.
- No custom line types.
- One hard copy.



- A copy of the consultants AutoCAD \*.ctb file to allow the City to reproduce plotted line weights.
- Legend for the consultant's line types and symbols.
- TIN file with generated contours and labels.
- Provide copies of recorded plats, surveys and deeds.
- Fixed benchmark.
- Fixed control points for future construction.

## **QUOTATION SUBMITTAL REQUIREMENTS**

### QUOTATION SUBMITTAL FORMAT

The proposal shall include the following:

- Firm name, address and telephone number.
- Names of primary contact.
- Sub-consultants and/or associates usually retained.
- Detailed list of services to be provided and associated fees for the base survey work.
- Project timeline. The City would like to have the work by June 2, 2023.
- Standard hourly rates for all classifications. Information used in contract preparation.
- Show a separate quote amount for each location within the total quote amount.

Thank you for your time and effort on this proposal. If you have any questions, please feel free to call me at (574) 534-2201.

Sincerely,

**CITY OF GOSHEN**

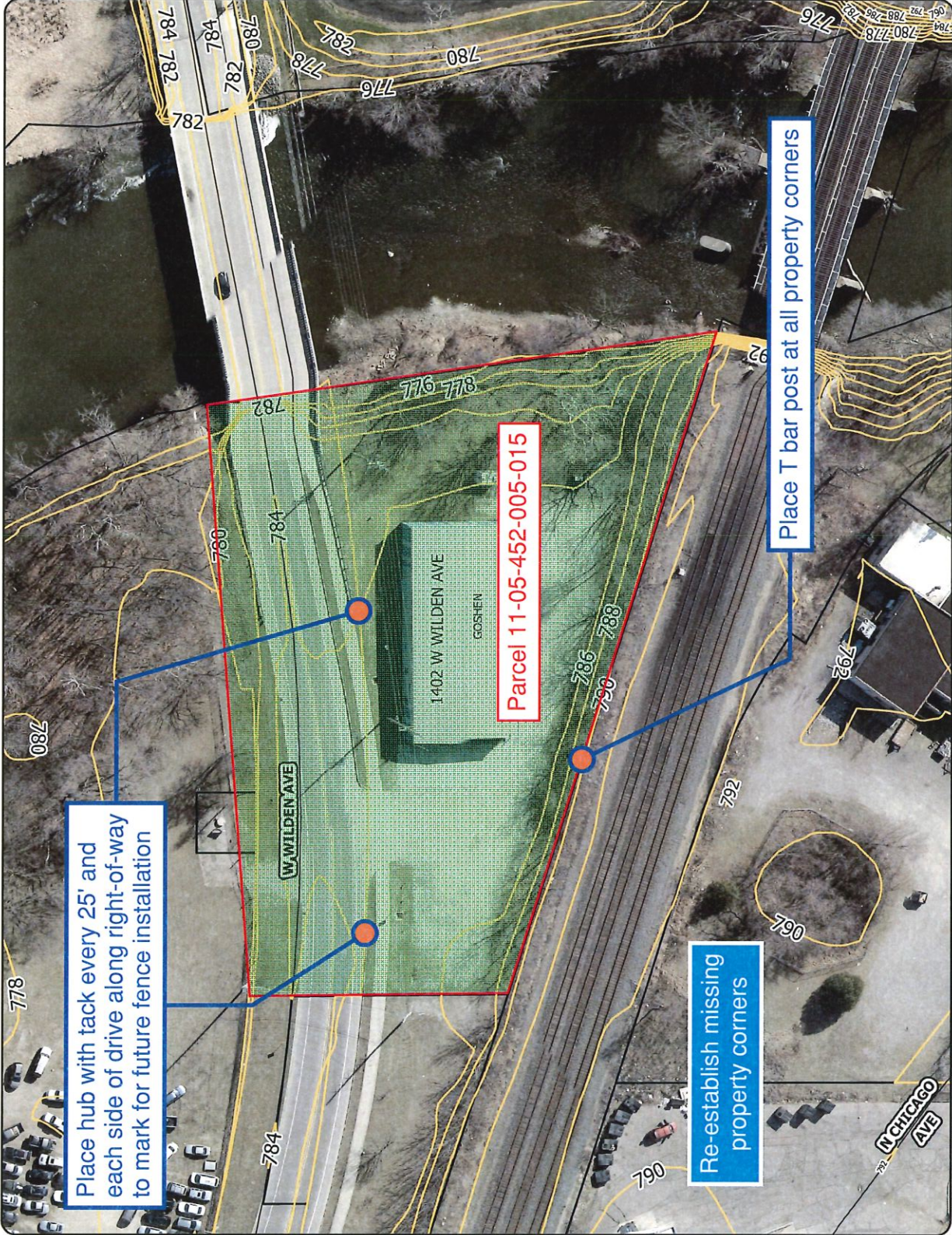
*Jason Hoffman*

Jason Hoffman  
Technician

Enclosure

# City of Goshen Engineering Department

## 1402 Wilden Avenue Boundary and Topographical Survey RFQ

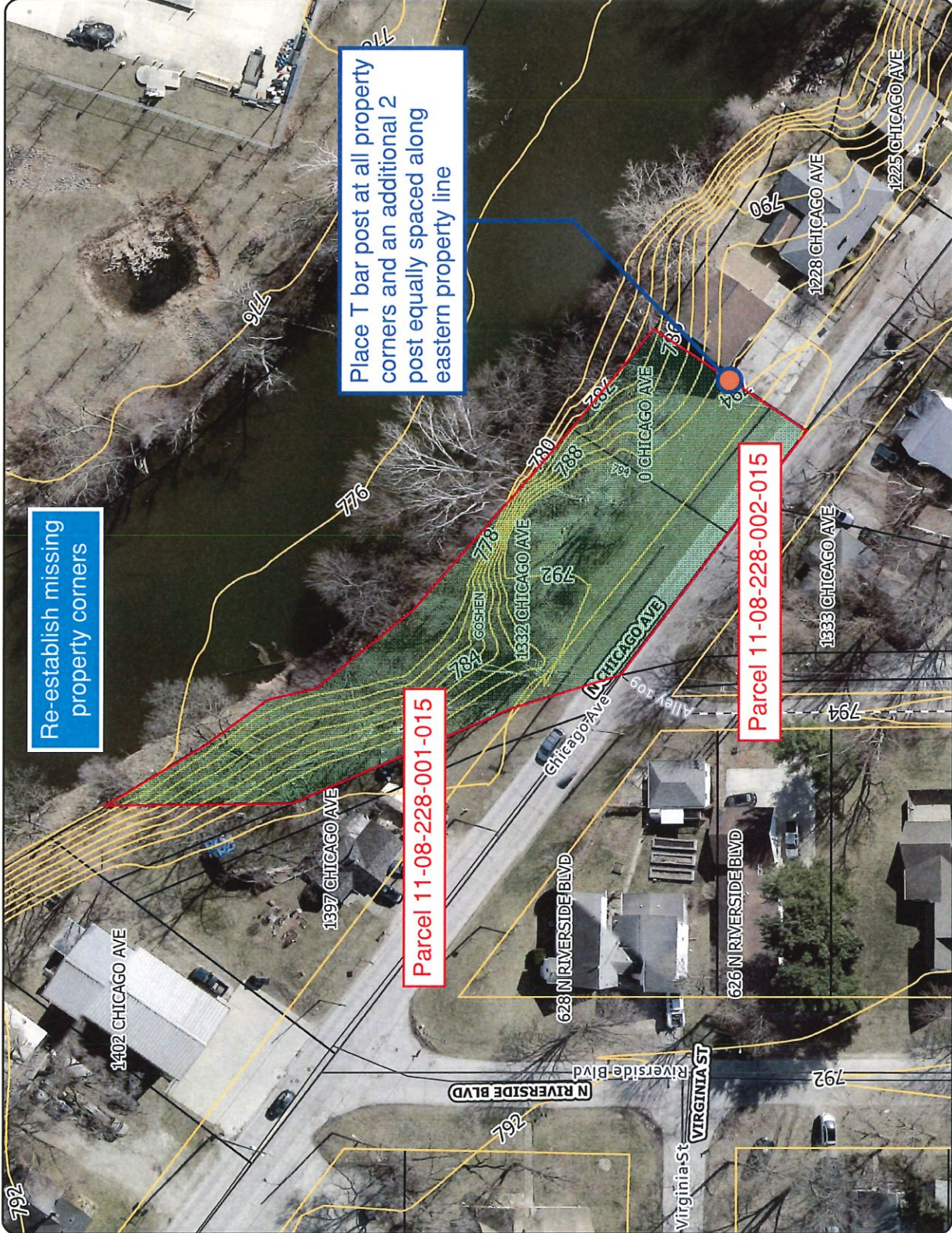


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# City of Goshen Engineering Department

## College Avenue Boundary RFQ

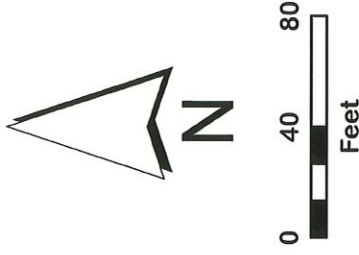


Re-establish missing property corners

Place T bar post at all property corners and an additional 2 post equally spaced along eastern property line

Parcel 11-08-228-001-015

Parcel 11-08-228-002-015



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# City of Goshen Engineering Department

## Indiana Avenue and River Avenue Boundary RFQ



Place T bar post at all property corners and an additional 2 post equally spaced along eastern property line

Parcel 11-09-104-001-015

Re-establish missing property corners



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**Engineering Department  
CITY OF GOSHEN**

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

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185  
engineering@goshencity.com • www.goshenindiana.org

## MEMORANDUM

TO: Board of Public Works and Safety

FROM: Goshen Engineering Department

RE: **CHANGE ORDER NO. 1 FOR 2023 ASPHALT PAVING PROJECT  
(JN: 2023-0002)**

DATE: May 24, 2023

---

The Wilson Avenue pavement condition was reevaluated during the spring of 2023 and it was determined the condition of the pavement had substantially worsened since the original evaluation in 2022 while preparing the 2023 paving project package. A cost analysis was completed between increasing the full depth patching or removing all the existing pavement and rebuilding the entire roadway. The cost to complete all the required full depth patching was higher than removing all the existing pavement and rebuilding the roadway. The Engineering Department determined rebuilding the entire roadway had the least cost and provided the best long term benefit.

Attached please find Change Order No. 1 for the 2023 Paving Project, which provides for the following additional work:

Maintaining Access to Driveways, Item CO1.1

- Additional material and labor will be required to maintain driveway access to the residents once the full depth pavement has been removed. Not part of original bid.

Fine Grading, Item CO1.2

- Once the existing asphalt pavement is removed, the contractor will fine grade the subbase and compact with a roller in preparation for the new asphalt pavement. Not part of original bid.

4", HMA, Type B, Base, 25.0 mm, Item CO1.3

- 4" of HMA base will be required to reconstructed Wilson Avenue. The HMA base was not required under the original bid of milling 1.5" of asphalt surface and placing 1.5" of new asphalt surface. Not part of original bid.

The original contract amount was \$2,477,613.50. The additional work increases the contract by \$134,718.00, for a revised contract amount of \$2,612,331.50, an increase of 5.44%. The contract completion date will not be modified.

**Requested motion: Move to approve Change Order No. 1 for the 2023 Paving Project for an increase of \$134,718.00.**

**CHANGE ORDER FORM**

Pg 1 of 3

Change Order No. 1

Date: 5/24/23

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

OWNER: City of Goshen  
PROJECT NAME: 2023 Asphalt Paving Project  
PROJECT NUMBER: 2023-0002  
CONTRACTOR: Niblock Excavating, Inc.

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

Wilson Avenue will have full depth replacement of the existing asphalt pavement instead of the original bid of 1.5" of milling and 1.5" of new asphalt surface. An additional cost to maintain access to driveways during the process and to fine grade the subbase for the new asphalt pavement will be incurred, items CO1.1 and CO1.2. An estimated additional cost for 4" of HMA base, item CO1.3, has been provide. HMA base was not a part of the original bid for Wilson Avenue.

CO1.1	Maintaining access to driveways	1 LSUM	@	\$5,700.00	\$5,700.00
					-----
CO1.2	Fine grading of subbase	6,938 SYD	@	\$1.00	\$6,938.00
					-----
CO1.3	4", HMA, Type B, Base, 25.0 mm	1,526 TON	@	\$80.00	\$122,080.00
					-----
				Subtotal -	\$134,718.00

# CHANGE ORDER FORM

Pg 2 of 3

Change Order No. 1

## II. ADJUSTMENTS IN AMOUNT OF CONTRACT

1. Amount of original contract	\$2,477,613.50
2. Net (Addition/ <del>Reduction</del> ) due to all Previous Contract Supplements Numbers 0 to <u>0</u>	\$0.00
3. Amount of Contract, not including this supplement	\$2,477,613.50
4. Addition/ <del>Reduction</del> to Contract due to this supplement	\$134,718.00
5. Amount of Contract, including this supplemental	\$2,612,331.50
6. Total (Addition/ <del>Reduction</del> ) due to all Change Orders (Line 2 + Line 4)	\$134,718.00
7. Total percent of change in the original contract price Includes Change Order No. 1 to <u>1</u> (Line 6 divided by Line 1)	5.44%

## III. CONTRACT SUPPLEMENT CONDITIONS

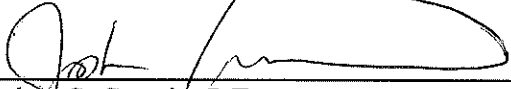
1. The contract completion date established in the original contract or as modified by previous Contract Supplement(s) is hereby extended/~~reduced~~ by \_\_\_ calendar days
2. Any additional work to be performed under this Contract supplement will be carried out in compliance with the specifications included in the preceding Description of Work Involved, with the supplemental contract drawing designed as \_\_\_\_\_, and under the provisions of the original contract including compliance with applicable equipment specifications, general specifications and project specifications for the same type of work.
3. This Contract Supplement, unless otherwise provided herein, does not relieve the contractor from strict compliance with the guarantee provisions of the original contract, particularly those pertaining to performance and operation of equipment.
4. The contractor expressly agrees that he will place under coverage of his Performance and Payment Bonds and contractor's insurance, all work covered by this Contract Supplement. The contractor will furnish to the owner evidence of increased coverage of this Performance and Payments bonds for the accrued value of all contract supplements, which exceed the original contract price by twenty (20) percent.

**CHANGE ORDER FORM**

Pg. 3 of 3

Change Order No. 1

**RECOMMENDED FOR ACCEPTANCE**



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Joshua S. Corwin, P.E.  
City Civil Engineer

**ACCEPTED:** BOARD OF PUBLIC WORKS AND SAFETY  
CITY OF GOSHEN, INDIANA

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Mayor

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Member

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Member

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Member

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Member

**ACCEPTED:** CONTRACTOR

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Niblock Excavating, Inc.

**BY:**

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Signature of authorized representative

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Printed

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Title





**Engineering Department  
CITY OF GOSHEN**

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

Phone (574) 534-2201 • Fax (574) 533-8626 • TDD (574) 534-3185  
engineering@goshencity.com • www.goshenindiana.org

## MEMORANDUM

TO: Goshen Board of Public Works & Safety

FROM: Goshen Engineering Department

RE: **NIPSCO GAS ROAD CLOSURE - INDIANA AVE.**

DATE: May 24, 2023

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NIPSCO Gas is requesting permission to fully close both lanes on Indiana Ave. on the north side of the RR tracks. Indiana Ave. will be closed to through traffic between River Avenue and Wilden Avenue. Access to the new recycling drop-off site will be maintained from Wilden Avenue. Traffic will be detoured onto Wilden Ave., Beaver Lane, Bashor Road and Chicago Ave. Signs and barricades will be placed per the current MUTCD standards; the detour will be marked with signs.

**Requested Motion: Move to approve the full closure on Indiana Avenue, from River Avenue to Wilden Avenue, beginning Tuesday, May 30 through Wednesday, May 31, 2023.**

**APPROVED:  
BOARD OF PUBLIC WORKS & SAFETY  
CITY OF GOSHEN, INDIANA**

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Jeremy Stutsman, Mayor

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Michael Landis, Member

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Mary Nichols, Member

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Barb Swartley, Member





STORMWATER DEPARTMENT  
CITY OF GOSHEN  
204 East Jefferson Street, Suite 1 • Goshen, IN 46528-3405  
Phone (574) 534-2201 • Fax (574) 533-8626  
stormwater@goshencity.com • www.goshenindiana.org

## MEMORANDUM

**TO: City of Goshen Stormwater Board**

**FROM: Stormwater Department**

**RE: POST-CONSTRUCTION PLAN APPROVAL  
CITY OF GOSHEN AIRPORT – H2 AVIATION (JN: 2019-2023)**

**DATE: May 24, 2023**

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The developer of City of Goshen Airport – H2 Aviation, affecting one (1) or more acres of land and located at 17229 County Road 42, has submitted a sufficient post-construction plan that is compliant with Ordinance 4329, “Uniform Requirements for Post-Construction Stormwater Management.”

The Stormwater Department requests the Stormwater Board’s acceptance of the plan.

Full document available upon request.

**Requested Motion: Accept the post-construction stormwater management plan for City of Goshen Airport – H2 Aviation as it has been found to meet the requirements of City Ordinance 4329.**

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STORMWATER DEPARTMENT  
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## MEMORANDUM

**TO:** City of Goshen Stormwater Board

**FROM:** Stormwater Department

**RE:** **POST-CONSTRUCTION PLAN APPROVAL**  
**East College Avenue Industrial Park (JN: 2021-2050)**

**DATE:** May 24, 2023

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The developer of East College Avenue Industrial Park, affecting one (1) or more acres of land and located on both the north and south sides of East College Avenue and along Brinkley Way W and Brinkley Way E, has submitted a sufficient post-construction plan that is compliant with Ordinance 4329, "Uniform Requirements for Post-Construction Stormwater Management."

The Stormwater Department requests the Stormwater Board's acceptance of the plan.

Full document available upon request.

**Requested Motion: Accept the post-construction stormwater management plan for East College Avenue Industrial Park as it has been found to meet the requirements of City Ordinance 4329.**

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