



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

Regular Meeting Agenda

**2:00 p.m., September 18, 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 Gina Leichty**

### **Approval of Minutes: September 11, 2023**

### **Approval of Agenda**

**1) Legal Department request:** Approve Resolution 2023-19, *Approving Revisions to City of Goshen Vacation Leave; Beginning Wages; and Credit Card Use Policies*

**2) Legal Department request:** Approve Resolution 2023-30, *Declaring Surplus and Authorizing the Disposal of IT Equipment*

**3) Legal Department request:** Adopt Resolution 2023-31, *Concerning the purchase of a wheel loader*

**4) Legal Department request:** Award the bid for the purchase of a wheel loader to West Side Tractor Sales as the only responsive and responsible bidder and approve and authorize Mayor Leichty to execute the purchase agreement at a cost to the City of \$154,608.28 which includes the trade allowance of \$20,000 for the 2001 New Holland

**5) Legal Department request:** Approve and authorize the Mayor to execute the agreement with Abonmarche Consultants for Phase 1 of Goshen Violet Cemetery's Development Project at a cost of \$31,900 plus any requested duties or reimbursable expenses

**6) Legal Department request:** Approve and authorize the Mayor to execute the agreement with Signtech Sign Services for the maintenance, installation, and uninstallation of Downtown Goshen's Christmas décor for the 2023-2024 season at a cost not to exceed \$20,000, plus the cost of a lift rental should one be necessary

**7) Engineering Department request:** Approve the lane restriction on College Avenue for two days starting Wednesday, Sept. 20, 2023



**8) Engineering Department request:** Approve granting permission for Mayor Leichty to sign the right-of-entry agreements for 1824 and 1910 Lighthouse Lane, allowing the City access to these two properties to provide topsoil to correct an existing drainage issue

**Privilege of the Floor**

**Approval of Civil City and Utility Claims**

***Adjournment***



## BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD MINUTES OF THE SEPTEMBER 11, 2023 REGULAR MEETING

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

**Present:** Mayor Gina Leichty, Mike Landis, Orv Myers, Mary Nichols and Barb Swartley

**Absent:**

**CALL TO ORDER:** Mayor Gina Leichty called the meeting to order at 2:01 p.m.

**Mayor Leichty** announced that today she had appointed **Orv Myers**, who was present, to the Board of Works & Safety. She introduced and briefly described Myers' background and experience and welcomed him to the Board. The audience responded with applause.

**REVIEW/APPROVE MINUTES:** Mayor Leichty presented the minutes of the Aug. 14, 2023 Regular Meeting. **Board Member Barb Swartley moved to accept the minutes as presented and the motion was seconded by Board Member Mary Nichols. Motion passed 5-0.**

**REVIEW/APPROVE AGENDA:** Mayor Leichty presented the meeting agenda with the requested deletion of original agenda #12, *Legal Department request: Approve agreement for the Completion of Construction Project with Greenwood Rentals, LLC relative to the construction of the Indiana Avenue Apartments*, because it wasn't yet ready to be reviewed/approved by the Board. **Board member Swartley moved to approve the agenda as amended. Board member Nichols seconded the motion. Motion passed 5-0.**

**1) Police Department request: Approval to reduce the rank of Keith Miller from Captain to Patrol Officer, retroactive to Sept. 8, 2023**

**Goshen Police Chief José Miller** asked the Board to approve the request from **Capt. Keith Miller** for a reduction of rank, retroactive to Friday, Sept. 8, 2023, to Patrol Officer.

**Chief Miller** said Capt. Miller resigned from the position of Investigations Division Chief earlier this summer and voluntarily moved to his previous rank of Captain. Just recently, the position of Division Chief was filled by Capt. Ryan Adams, which opened up a vacancy as Captain in patrol. According to the agreement between the City of Goshen and the Elkhart F.O.P. Lodge 52, Inc., Capt. Miller would have been required to take the vacancy as Captain or voluntarily reduce his rank to Patrol Officer.

**Chief Miller** said on Aug. 31, 2023, Capt. Miller informed the chief, and provided an email, stating that he wished to decline the position of Captain and understood his rank would be reduced to Patrol Officer.

**Chief Miller** added, "Even though Capt. Miller would enjoy being a mentor for younger officers, he felt it would be best for the department to have a younger officer fill that position because of his upcoming retirement. I would like to thank Capt. Miller for his continuous dedication to the Goshen Police Department in the various roles and ranks he has held and look forward to his experience in our evidence department."

**Mayor Leichty** thanked the Chief and Capt. Miller.

**Swartley/Nichols moved to approve the request from Capt. Keith Miller for a reduction of rank, retroactive to Sept. 8, 2023, to Patrol Officer. Motion passed 5-0.**



**2) Police/Legal request: Approve conditional offer of employment to Guadalupe Mendoza-Rivera**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department,** recommended that the Board extend a conditional offer of employment to **Guadalupe Mendoza-Rivera** and approve a 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 Mendoza-Rivera 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, she 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. The Police Department will request that the Board to confirm an offer of employment when a position opening becomes available in the Police Department.

**Swartley/Nichols moved to extend a conditional offer of employment to Guadalupe Mendoza-Rivera as a probationary patrol officer and approve the Conditional Offer of Employment Agreement with Mendoza-Rivera and authorize the Mayor to execute the agreement. Motion passed 5-0.**

**3) Police/Legal request: Approve Conditional Offer of Employment to Austin Ray Whitford**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department,** recommended that the Board extend a conditional offer of employment to **Austin Ray Whitford** and approve a 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 Whitford 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, he 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. The Police Department will request the Board to confirm an 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 Ray Whitford as a probationary patrol officer and approve the Conditional Offer of Employment Agreement with Whitford and authorize the Mayor to execute the agreement. Motion passed 5-0.**

**4) Fire/Legal request: Approve and authorize the Mayor to execute an agreement with St. Vincent Health, Wellness & Prevention Care Institute, Inc., for Goshen Fire Department 2023-2025 physicals for \$120,514**

**Brandy Toms, a paralegal with the City Legal Department,** recommended that the Board approve and authorize Mayor Leichty to execute an agreement with St. Vincent Health, Wellness & Prevention Care Institute, Inc., doing business as Ascension St. Vincent Public Safety Medical (PSM) for the Goshen Fire Department's 2023-2025 physicals. Payment for these services will be as follows: 2023, \$38,988; 2024, \$40,160; and 2025, \$41,366. Total cost: \$120,514.

In response to a question from **Board member Landis, Goshen Fire Chief Dan Sink** said all 66 Fire Department employees will be covered by this agreement.



**Swartley/Nichols moved to approve and authorize Mayor Leichty to execute the agreement with St. Vincent Health, Wellness & Prevention Care Institute, Inc., dba Ascension St. Vincent Public Safety Medical (PSM) for Goshen Fire Department 2023-2025 physicals at a total cost of \$120,514 over the course of three years. Motion passed 5-0.**

**5) Wholesome Tortilla request: Approval of a Big Dipper W-350-IS mechanical grease interceptor for the property at 132 North Main Street, Goshen**

**Rafael Chavez and Magali Vergara, the owners of the Wholesome Tortilla,** asked the Board for approval of a Big Dipper mechanical grease interceptor at their restaurant at 132 North Main Street. Due to the location of the property, no adjacent land was available for a grease intercept.

**Mick Reese, Environmental Compliance Administrator for the City Wastewater Treatment Plant,** said City staff approved of the use of the requested Big Dipper and the property qualifies for its usage.

**Swartley/Nichols moved to approve the use of a Big Dipper mechanical grease interceptor at the Wholesome Tortilla restaurant, 132 North Main Street. Motion passed 5-0.**

**6) Janus Motorcycles request: Approval to close the parking lot north of its building for its annual owners rally, starting at 5 p.m. on Friday, Sept. 15 through Sunday, Sept. 17 at noon**

**Richard Worsham, CEO and founder of Janus Motorcycles of Goshen,** asked the Board to close the parking lot north of its building for Janus' annual owners rally. He requested the closure the same as last year, starting at 5 p.m. on Friday, Sept. 15 through Sunday, Sept. 17, at noon. The parking lot would be closed to the general public and used for Janus' attendees; motorcycles only. All businesses that use this parking lot have been notified.

In its written request, Janus staff indicated that on the night of Sept. 16, there will be a free community party open to the public where people will be able to walk around in the parking lot to see all of the Janus Motorcycles in one spot. Janus conceded that that the City Utility Office's section of the parking lot (4 marked spaces along with disabled person's parking spots) will need to stay open to be helpful for residents until the close of business (5 p.m.).

Afterward, Janus has requested that the full parking lot to be barricaded off until Sunday Sept. 17. The parking lot would be gated off, but the alley would not be blocked in any way. Janus requested the use of 12 cones with 12 "no parking" signs delivered on or before Sept. 13. Janus also requested the use of 10 City of Goshen barricades delivered on or before Sept. 14.

**Mayor Leichty** asked if Janus had spoken with the Street Department. **Worsham** said he was unsure, but **Street Commissioner David Gibbs** said he was OK with the requests.

**Swartley/Nichols moved to approve the closure of the parking north of its building for its annual owners rally, from 5 p.m. on Sept. 15 until noon on Sunday, Sept. 17, 2023. Motion passed 5-0.**

**7) Planning & Zoning Department request: Approval and authorization for the Mayor to sign the CBDO and CBDG agreements for Planning, Public Service and Housing activities for Program Year 2023**

**Theresa Cummings, Community Development Specialist,** asked the Board to approve and authorize the Mayor to sign the following CBDG agreements and CBDO (Community Based Development Organization) agreement for Program Year 2023:

**Planning Grant (for neighborhood outreach):**



Lacasa, Inc., \$7,000

**Public Service Grants:**

Boys and Girls Clubs of Elkhart County – Goshen Club, \$6,855

Council on Aging of Elkhart County, \$5,140

Elkhart County Clubhouse, \$4,160

Goshen Interfaith Hospitality Network, \$11,750

Maple City Health Care Center, Inc., \$5,385

Walnut Hill Early Childhood Center, \$13,710

**Housing Grants:**

Owner Occupied Rehab - Lacasa, Inc., \$58,010

Energy Conservation Multi Family Rehab – Lacasa, Inc. (CBDO), \$190,000

**Planning, Public Service, and Housing Grants total: \$302,010**

**Cummings** said the planning grant will be used for neighborhood outreach. The public service grants will be used to fund access to early childhood education, daily nutrition programs, mental health support, senior transportation, and primary healthcare. She said the housing grants will be used to fund the ongoing owner-occupied housing rehab program and a CBDO project for energy conservation for 38 affordable multi-family housing units.

**Swartley/Nichols moved to approve and authorize the Mayor to sign the CBDO and CDBG agreements for Planning, Public Services and Housing activities for Program Year 2023. Motion passed 5-0.**

**8) Planning & Zoning Department request: Approve and authorize Mayor Leichty to sign the amended Homeownership Assistance Agreement for the Community Development Block Grant with Lacasa for Program Year 2022**

**Theresa Cummings, Community Development Specialist**, told the Board that the Program Year 2022 Homeownership Assistance Agreement for the Community Development Block Grant has been amended and needs approval. She said the amendment adds an additional method to provide payment for the grant assistance. The sections being amended are as follows:

**2. Scope of Services.**

(e) Claims will be limited to the sum of Sixty Thousand Dollars (\$60,000.00) for the homeownership assistance project. The maximum CDBG contribution per household/property shall generally not exceed Fifteen Thousand Dollars (\$15,000.00). Payment will be made by one of the following methods. The Sub-Recipient will either be reimbursed by the City after closing for the direct homeownership assistance funding provided by Sub-Recipient on behalf of the homebuyer household only or funds will be paid directly by the City at closing on behalf of the homebuyer household.

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

**Cummings** attached to the Board agenda packet a copy of the amended agreement with the specified changes.

**Swartley/Nichols moved to approve and authorize Mayor Leichty to sign the amended Homeownership Assistance Agreement with Lacasa for Program Year 2022. Motion passed 5-0.**





**9) Legal Department request: Approve and authorize the Mayor to execute the Leaf Storage Agreement with Ozinga Ready Mix Concrete, Inc.**

**Brandy Toms, a paralegal with the City Legal Department,** asked the Board to approve and authorize the Mayor to execute the Leaf Storage Agreement with Ozinga Ready Mix Concrete, Inc.

According to the agreement, the City will lease space from Ozinga Ready Mix Concrete, Inc. at 1700 Egbert Avenue to store leaves for the 2023 leaf pick-up season. The rental is \$10.00 per month.

**Mayor Leichthy** noted that the price was very reasonable.

**Swartley/Nichols moved to approve and authorize the Mayor to execute the Leaf Storage Agreement with Ozinga Ready Mix Concrete, Inc. Motion passed 5-0.**

**10) Legal Department request: Approve/authorize Mayor Leichthy to sign the agreement with Peterson Consulting Services Inc. to assist the City with its financial reporting related to its capital assets for the fixed fee of \$5,725, plus reimbursable expenses not to exceed \$250**

**Brandy Toms, a paralegal with the City Legal Department,** asked the Board to approve an agreement with Peterson Consulting Services Inc. to assist the City with its financial reporting related to its capital assets as required by Government Accounting Standards Board (GASB) Statement No. 34 for the fixed fee of \$5,725, plus reimbursable expenses not to exceed \$250.

Peterson Consulting Services, Inc., which is based in LaGrange, Illinois, specializes in professional accounting services for the reporting of capital assets to the State of Indiana. The company will provide assistance to ensure the City meets the retroactive financial reporting standards related to capital assets and general infrastructure for the fiscal year ending Dec. 31, 2023 as delineated in GASB Statement No. 34.

The company's work will include assisting in the preparation of the capital asset worksheets for the fiscal year ending Dec. 31, 2023 for the following asset accounts and functional classifications: Land and rights-of-way; Buildings and land improvements; Equipment and vehicles; Computer software; and General infrastructure – streets, alleys, bridges, sidewalks, traffic signals and storm sewers.

In response to a question from **Board member Landis,** Toms confirmed the agreement is for work in 2023.

**Swartley/Nichols moved to approve an agreement with Peterson Consulting Services Inc. to assist the City with its financial reporting related to its capital assets as required by Government Accounting Standards Board Statement No. 34 for the fixed fee of \$5,725, plus reimbursable expenses not to exceed \$250. The motion passed 5-0.**

**11) Legal Department request: Approve settlement and release agreement, including participation agreements, with Central States, Southeast and Southwest Areas Health and Welfare Fund concerning employee health insurance coverage for certain City employees**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department,** recommended that the Board approve and ratify Mayor Leichthy's execution of a Settlement and Release Agreement, including the Participation Agreements, with Central States, Southeast and Southwest Areas Health and Welfare Fund ("Central States") concerning employee health insurance coverage for certain City employees.

In a memorandum to the Board, **Marks** wrote that as a result of a 2019 audit, it was revealed that the City did not pay weekly contributions to Central States for four part-time employees.



To settle this matter, the City paid Central States \$1,604.52 in October 2021, and the City has agreed to pay Central States an additional \$221.26 for delinquent interest. In addition, the City agrees to indemnify and hold Central States harmless for any damages awarded against or expenses incurred by Central States in connection with any claim asserted by the four part-time employees at issue, along with any other non-bargaining unit employee employed as a part-time, seasonal, casual, or temporary employee that asserted the employee was entitled to, but excluded from, health insurance coverage between Oct. 22, 2012 and Jan. 1, 2022. Central States agrees to release the City from any claim for contributions for the year 2019 and for any claim for contributions on any individuals excluded from coverage from Oct. 22, 2012 through Jan. 1, 2022.

As part of the agreement, the City will execute new Participation Agreements in which the City agrees to pay Central States a weekly contribution rate as set forth below for each eligible employee effective retroactive to Jan. 2, 2022. There are separate agreements for each group of employees represented by each of the three unions, and an agreement for those employees that are not represented by a union that are employed on a full-time basis and reasonably expected to have on average 30 or more hours of compensation each week.

- Effective Jan. 2, 2022, \$453.86 per week
- Effective Jan. 1, 2023, \$473.86 per week
- Effective Dec. 31, 2023, \$507.08 per week
- Effective Dec. 29, 2024, \$532.40 per week
- Effective Jan. 4, 2026, not to exceed \$564.30 per week

**Swartley/Nichols moved to approve and ratify Mayor Leichthy's execution of a Settlement and Release Agreement, including the Participation Agreements, with Central States, Southeast and Southwest Areas Health and Welfare Fund concerning employee health insurance coverage for certain City employees. The motion passed 5-0.**

**12) Legal Department request: Dedicate for public right-of-way purposes the real estate upon which Waterford Mills Parkway is constructed between Regent Street and Dierdorff Road**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department,** recommended that the Board dedicate for public right-of-way purposes the real estate upon which Waterford Mills Parkway is constructed, between Regent Street and Dierdorff Road, and authorize Mayor Leichthy to execute the attached Deed of Dedication.

**Swartley/Nichols moved to dedicate for public right-of-way purposes the real estate upon which Waterford Mills Parkway is constructed between Regent Street and Dierdorff Road, and authorize Mayor Leichthy to execute the attached Deed of Dedication. Motion passed 5-0.**

**13) Legal Department request: Resolution 2023-25 - Interlocal Memorandum of Understanding for 2023 Edward Byrne Memorial Justice Grant Formula Program Award**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department,** told the Board that Elkhart County, the City of Elkhart, and City of Goshen have submitted a joint application for funding under the Edward Byrne Memorial Justice Assistance Grant Formula Program. The County and Goshen would each receive \$33,960 for fiscal year 2023 to be used for criminal justice purposes. Elkhart City has declined participation in the 2023 JAG program.





Attached to the Board's packet was a draft resolution to approve the terms and condition of the Interlocal Memorandum of Understanding and ratify Mayor Leichthy's execution of the Interlocal Memorandum of Understanding on behalf of the Board of Public Works and Safety and the City.

**Swartley/Nichols moved to adopt Resolution 2023-25, Interlocal Memorandum of Understanding for 2023 Edward Byrne Memorial Justice Assistance Grant Formula Program Award. Motion passed 5-0.**

**14) Legal Department request: Resolution 2023-26 – Interlocal Agreement with the County of Elkhart for East College Avenue/C.R. 36 Reconstruction from the Fairgrounds to C.R. 31**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department,** told the Board that attached to the Board's meeting packet was a draft resolution is to approve the terms and condition and authorize execution of the Interlocal Agreement with the County of Elkhart for East College Avenue/County Road 36 Reconstruction from the Fairgrounds to County Road 31.

Under this agreement, as part of the City's existing contract with Niblock Excavating, the City and County will share in the cost for Niblock to pulverize and pave East College Avenue/County Road 36 between the back entrance to the Elkhart County 4-H Fairgrounds and County Road 31. The County will pay \$78,819 of the cost of the work.

**Swartley/Nichols moved to adopt Resolution 2023-26, Interlocal Agreement with the County of Elkhart for East College Avenue/C.R. 36 Reconstruction from the Fairgrounds to C.R. 31. Motion passed 5-0.**

**15) Legal Department request: Resolution 2023-27 – Approving the Termination of the Goshen Dam Pond Interlocal Agreement**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department,** told the Board that the City of Goshen, Elkhart County, and the Goshen Dam Pond Economic Improvement District entered into an Interlocal Agreement in December 2015 to coordinate activities to pursue maintenance dredging of sediment from the Dam Pond. No dredging was done and the parties determined that the Interlocal Agreement should be terminated.

Attached to the Board's agenda packet was a draft resolution is to approve the terms and conditions of the Termination of the Goshen Dam Pond Interlocal Agreement and authorize Mayor Leichthy to execute the Termination on behalf of the Board of Public Works and Safety and Stormwater Board and the City.

**Swartley/Nichols moved to adopt Resolution 2023-27, Approving the Termination of the Goshen Dam Bond Interlocal Agreement. Motion passed 5-0.**

**16) Legal Department request: Resolution 2023-28 - Exchange of Real Property**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department,** told the Board that attached to the Board's agenda packet was a joint resolution with the Goshen Redevelopment Commission to approve the exchange of certain real estate with the Elkhart County Board of Commissioners. The Redevelopment Commission was scheduled to consider this joint resolution at its Sept. 12 meeting and the Board of Commissioners has considered or will also be considering a substantially identical resolution.

**Marks** said the City-owned real estate to be transferred includes five parcels located south of the railroad tracks on the west side of the 300 block of North Main Street.



Title to this real estate is currently vested in the City of Goshen for the Use and Benefit of its Department of Redevelopment.

The County-owned real estate to be transferred to the City of Goshen includes a buffer strip between Westmoor Parkway and U.S. 33. In addition, there are four parcels of real estate generally located south of Pike Street, north of Clinton Street, west of New Street, and east of the Elkhart River to be transferred to the City of Goshen for the Use and Benefit of its Department of Redevelopment.

In addition to the adoption of this Resolution, Marks asked the Board to authorize Mayor Leichty to execute any and all documents on behalf of the City to effectuate the exchange of the real estate contemplated by this resolution.

**Board member Landis** asked if the County had a planned use of the property. **Marks** said she didn't know.

**Swartley/Nichols moved to adopt Resolution 2023-28, Exchange of Real Property, and to authorize Mayor Leichty to execute any and all documents on behalf of the City of Goshen to effectuate the exchange of the real estate contemplated by Resolution 2023-28. Motion passed 5-0.**

#### **17) Legal Department request: Resolution 2023-29 – Declaring Surplus and Authorizing the Disposal of Vehicles and Equipment**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department**, told the Board that the City wished to dispose of personal property that is no longer needed or is unfit for the purpose for which it was intended. Resolution 2023-29, which was attached to the agenda packet, would declare the property as surplus and authorize its disposal in accordance with the provisions of Indiana Code § 5-22-22-4 by engaging an auctioneer to advertise the sale of the property and conduct a public auction. In addition, the City will give notice of the sale by publication of the time, place and terms of the sale at least 15 days before the date of the sale (Oct. 27, 2023).

**According to the Resolution 2023-29, the following would be declared surplus property:**

1. 2013 Chevy Impala, VIN/Serial Number 2G1WD5E35D1250948 (Police Department Asset #120)
2. 2013 Tahoe 2WD, VIN/Serial Number 1GNLC2E03DR305509 (Police Department Asset #130)
3. 2009 Impala (K-9), VIN/Serial Number 2G1WS57M391303200 (Police Department Asset #134)
4. 2007 Audi Q7, VIN/Serial Number WA1BY74L27D072331 (Police Department Asset #1111)
5. 2010 Chevy Impala, VIN/Serial Number 2G1WD5EM7A1257212 (Police Department Asset #PD1113)
6. 2010 Chevy Impala, VIN/Serial Number 2G1WD5EM4A1260228 (Police Department Asset #PD1115)
7. 2010 Ford Transit, VIN/Serial Number NM0KS9BN3AT013029 (Police Department Asset #PPD1128)
8. 2009 Chevy Impala, VIN/Serial Number 2G1WS57M991303542 (Police Department Asset #1132)
9. 1993 Chevy Van, VIN/Serial Number 1GCEG25K7PF329504 (Police Department Asset #1139)
10. 2009 Pontiac Montana Van, VIN/Serial Number 1GMDU03119D100300 (Police Department Asset #1140)
11. 2005 Ford Freestar Van, VIN/Serial Number 2FMZA58235BA10188 (Police Department Asset #1144)
12. 2008 Ford F150 2WD, VIN/Serial Number 1FTRF12228KB30212 (Parks Department Asset #205)
13. 2005 Ford F250 4x4, VIN/Serial Number 1FTNF21595EC97662, with 2005 Boss straight blade, VIN/Serial Number 6904 (Parks Department Asset #213 and Asset #213A)
14. 2005 Ford F250 4x4, VIN/Serial Number 1FTNF21575EC97661, with Boss V Plow, VIN/Serial Number 92946 (Parks Department Asset #PK214 and Asset #PK214A)



15. 1998 Cozy Cove Trailer, VIN/Serial Number 4Y0MP1118W1000274, with 1996 Jet Ski, VIN/Serial Number ZZND7478K596 (Parks Department Asset #2251 and Asset #2250)
16. Stihl String Trimmer, VIN/Serial Number 511595971 (Parks Department Asset #PK2257)
17. Stihl String Trimmer, VIN/Serial Number 509487899 (Parks Department Asset #PK2259)
18. 1995 International Single Axle Dump, VIN/Serial Number 1HTSDAAR9SH643082 (Street Department Asset #306)
19. 2008 Ford F550 4WD Dump, VIN/Serial Number 1FD5F57R98EB43612 (Street Department Asset #308)
20. Truck Bed from 2011 F350, VIN/Serial Number unknown (Street Department Asset #trk bed)
21. 2017 Stepp Crack Sealer, VIN/Serial Number 4S9BF3001HS127063 (Street Department Asset #366)
22. 1998 Ford Single Axle Dump, VIN/Serial Number 1FDYS80E8WVA33522, with 1998 Slide-in Salt Spreader, VIN/Serial Number unknown (Street Department Asset #381 and Asset #381A)
23. 2010 Huskee LT4200 Mower, VIN/Serial Number 1D270B50126 (Street Department Asset #389)
24. Massey Ferguson Mower, VIN/Serial Number 1034 (Cemetery Department Asset #766)
25. 1987 Ford F350 Dump Bed, VIN/Serial Number 1FDJF37L9HNA99464 (Cemetery Department Asset #773)
26. 1995 K2500 4WD, VIN/Serial Number 1GCFK24H7SZ198719, with 1993 Western Plow 7'6", VIN/Serial Number 60381/3700071 (Cemetery Department Asset #794 and Asset #794A)
27. 2004 Buick Lesabre, VIN/Serial Number 1G4HP52K94U108816 (Central Garage Asset #711)
28. 2002 Chevrolet Venture Van, VIN/Serial Number 1GNDX03EX2D311314 (Central Garage Asset #720)
29. Miller Walk Behind Saw, VIN/Serial Number unknown (Water/Sewer Department Asset #6601)
30. 2006 Sullair Air Compressor, VIN/Serial Number 200608220109 (Water/Sewer Department Asset #6630)
31. Ex-Cell 5000w Generator, VIN/Serial Number 9912120159 (Wastewater Department Asset #964)
32. 10 HP Generator, VIN/Serial Number 190722Y0 (Wastewater Department Asset #966)

**Swartley/Nichols moved to pass and adopt Resolution 2023-29 - Declaring Surplus and Authorizing the Disposal of Vehicles and Equipment. Motion passed 5-0.**

**18) Legal Department request: Approve Consignment Agreement with Bright Star Realty and Auctions, LLC to sell the City's surplus property at Bright Star's consignment auction**

**Shannon Marks, the Legal Compliance Administrator for the City Legal Department,** told the Board that Board Resolution 2023-29, which was just approved, authorized the disposal of surplus property by engaging an auctioneer to advertise the sale of the property and conduct a public auction. Marks said the City Central Garage would like to consign the City's surplus property with Bright Star Realty and Auctions, LLC to be sold at Bright Star's upcoming consignment auction to be held on Oct. 27, 2023 at 11751 County Road 12, in Middlebury.

Attached to the Board's agenda packet for approval and authorization for Mayor Leichy to execute was a Consignment Agreement and Addendum with Bright Star Realty and Auctions, LLC to sell the City's surplus property at Bright Star's Oct. 27, 2023 consignment auction. Under the agreement, Bright Star's commission to sell the surplus property is \$25 per lot plus 5% of the gross proceeds from the sale of the surplus property.

**Swartley/Nichols moved to approve and authorize the Mayor to execute the Consignment Agreement and Addendum with Bright Star Realty and Auctions, LLC to sell the City's surplus property at Bright Star's consignment auction. Motion passed 5-0.**



**19) Water & Sewer Office request: Move \$7,608.79 in uncollected finaled accounts from active to collection, sewer liens and write offs**

**Kelly Saenz, Manager of the Goshen City Utilities Office**, said that the original amount of unpaid final Water/Sewer accounts for this period, through May 31, 2023, was \$9,787.64. Collection letters were sent out and payments of \$2,178.85 were collected. The uncollected amount was \$7,608.79. So, Saenz asked the Board to move the office's uncollected final accounts from active to Collection, Sewer Liens and Write offs.

**Swartley/Nichols made a motion to move the Goshen Water and Sewer Office's uncollected finaled accounts from active to Collection, Sewer Liens and Write offs. Motion passed 5-0.**

**20) Water Utility request: Approve the recommended 2023 allocation of the monthly sewer and water bill repair fee to 0 cents to the Water Maintenance Fund and \$1.10 cents to the Sewer Maintenance Fund for the remainder of the year**

**Kent Holdren, Superintendent of the City Water Treatment and Sewer Department**, told the Board that due to an unforeseen large number of claims to the Sewer Maintenance Fund, the Goshen Water and Sewer Department is requesting permission to adjust the 2023 allotted amount of \$0.70 cents for Sewer Maintenance Fund and \$0.40 cents to the Water Maintenance Fund. He requested the allocation of \$1.10 to the Sewer Maintenance Fund for the remaining 2023 calendar year. He also provided the following summary:

**Sewer:**

Collected \$45,345.76

Claims Paid \$66,293.47

Beginning Balance \$ 19,262.29

Current Balance: -\$16,897.95

**Water:**

Collected: \$26,037.85

Claims Paid: \$37,822.10

Beginning Balance: \$38,644.52

Current Balance: \$26,859.87

**Holdren** said he would ask for another adjustment in January.

**Board member Landis** asked if there was a pattern of the costs. **Holdren** said there wasn't, but sewer repair costs are always higher.

**Swartley/Nichols moved to allocate \$1.10 to the Sewer Maintenance Fund for the remaining 2023 calendar year. Motion passed 5-0.**

**21) Engineering Department request: Approve the lane restriction on College Avenue for two days, the week of Sept. 11, 2023, for the Goshen College Westlawn remodel project**

**City Director of Public Works & Utilities Dustin Sailor** told the Board that for the Goshen College Westlawn remodel project, C&E Excavating has requested a lane restriction on College Avenue, between Main Street and South 9th Street, for two days during the week of Sept. 11, 2023.

The traffic control plan was attached to the Board's agenda packet. When the Engineering Department has more information regarding exact dates, the information will be posted via social media.



**Swartley/Nichols moved to approve the lane restriction on College Avenue for two days the week of Sept. 11, 2023 Motion passed 5-0.**

**22) Engineering Department request: Approve the extended closure of Wilden Avenue, until Nov. 10, 2023, to address unexpected conflicts and issues requiring project work outside the original scope**

**City Director of Public Works & Utilities Dustin Sailor** told the Board that Rieth-Riley has provided an updated schedule for the Wilden Avenue Road Reconstruction project.

**Sailor** said it is anticipated that new utility installation will be complete by the end of September, but Wilden Avenue is expected to remain closed at 1st Street to Main Street until Friday, Nov. 10, 2023. Unexpected underground conflicts and issues requiring project work outside the original scope have both contributed to delays.

He said through traffic should still follow the detour via Indiana Avenue/County Road 21 to County Road 26 to Main Street/State Road 15.

**Swartley/Nichols moved to approve the extended closure of Wilden Avenue, until Nov. 10, 2023, to address unexpected conflicts and issues requiring project work outside the original scope Motion passed 5-0.**

**23) Engineering Department request: Authorize Mayor Leichty to sign the agreement amendment with American StructurePoint for an environmental evaluation of the property at 2703 College Avenue for an additional fee of \$29,526.32**

**City Director of Public Works & Utilities Dustin Sailor** told the Board that Agreement Amendment No. 1 is requested with American StructurePoint for the College Avenue Phase I project.

**Sailor** said per the Indiana Department of Transportation (INDOT) project review, INDOT is requiring an environmental evaluation of Lippert's property at 2703 College Avenue. The environmental evaluation will screen for potential environmental hazards that could impact the project during construction.

**Sailor** said StructurePoint will perform a Phase II environmental evaluation to address INDOT's comments for an additional fee of \$29,526.32.

**Board member Landis** asked if this location was Lippert's property. **Sailor** said it is, but that eventually it will be the City's property as part of its right-of-way purchase.

**Swartley/Nichols moved to authorize Mayor Leichty to sign the agreement amendment with American StructurePoint for an environmental evaluation of the property at 2703 College Avenue for an additional fee of \$29,526.32. Motion passed 5-0.**

**24) Engineering Department request: Approve Change Order No. 3 for the Geo-grid to bridge the poor soils for an increase of \$21,168 and add 19 additional days to the 2023 Paving Project schedule making the final completion date Sept. 29, 2023**

**City Director of Public Works & Utilities Dustin Sailor** told the Board that after removal of asphalt pavement, Homeacre Drive was found to have subgrade issues. The Engineering Department hired a soil technician from Weaver Consultants to assess the site. Weaver Consultants Group recommended placing geo-grid and stone to bridge the poor soils below.





**Sailor** said Niblock Excavating requested 19 more days to the project schedule for the additional Geo-grid work and six rain delay days on Homeacre Drive. Attached to the Board's agenda packet was Change Order No.3 for the 2023 Paving Project, for the cost of the geo-grid and the additional 19 days to complete the project.

**Swartley/Nichols** moved to approve Change Order No. 3 for the Geo-grid to bridge the poor soils for an increase of \$21,168 and add 19 additional days to the 2023 Paving Project schedule making the final completion date Sept. 29, 2023. Motion passed 5-0.

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

Mayor Leichty opened Privilege of the Floor at 2:42 p.m. There was no comments from the public.

At 2:42 p.m., Mayor Leichty temporarily closed the Board of Works & Safety meeting and convened the City of Goshen Stormwater Board to consider one agenda item.

## **CITY OF GOSHEN STORMWATER BOARD MINUTES OF THE Sept. 11, 2023 REGULAR MEETING**

*Convened at 2:42 p.m. in the Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana*

**Members Present:** Mayor Leichty, Mike Landis and Mary Nichols

**Members Absent:** none

**25) Accept the post-construction stormwater management plan for Dollar General Parke North as it has been found to meet the requirements of City Ordinance 4329**

**City Director of Public Works & Utilities Dustin Sailor** told the Board that the developer of the Dollar General Parke North project, affecting one or more acres of land and located at 811 East Kercher Road, has submitted a sufficient post-construction plan that is compliant with Ordinance 4329, "Uniform Requirements for Post-Construction Stormwater Management." The Stormwater Department requested the Stormwater Board's acceptance of the plan.

**Nichols/Landis** moved to accept the post-construction stormwater management plan for the Dollar General Parke North project as it meets the requirements of City Ordinance 4329. Motion passed 3-0.

Mayor Leichty adjourned the City of Goshen Stormwater Board and reconvened the Board of Works & Public Safety meeting at 2:43 p.m.

**Approval of Civil City and Utility Claims**

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

**Adjournment**

Mayor Leichty adjourned the Board of Works meeting at 2:43 p.m.





**APPROVED:**

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**Mayor Gina Leichy**

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**Mike Landis, Member**

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**Orv Myers, 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**



## 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:** September 18, 2023  
**Subject:** Resolution 2023-19 – Approving Certain City of Goshen Policies and Repealing Certain Policies

On January 24, 2022, the Goshen Board of Public Works and Safety approved certain City-wide policies, in the form of a Policy Manual, identified in Resolution 2022-05. City staff has determined that certain revisions to the City's Vacation Leave, Beginning Wages, and Credit Card Use policies would be appropriate. I have provided a red-line version of the three policies for which revisions are suggested, to show the revisions.

### **Suggested Motion:**

Move to approve Resolution 2023-19 - Approving Revisions to City of Goshen Vacation Leave; Beginning Wages; and Credit Card Use Policies.

## VACATION ~~DAYS~~ LEAVE

Adopted By: Common Council

Date Adopted: July 18, 1995

Revised: January 24, 2022 (Board of Public Works and Safety)

Employees Affected: All Employees

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### Section 1. Vacation ~~Allowance~~ Leave

- ~~A.~~ The vacation allowance for An eligible employees for each vacation year employee shall be ~~based upon each employee's length of service according to~~ entitled to time off work and receive paid vacation leave pursuant to the current Compensation Ordinance applicable ~~Salary Ordinance.~~
- ~~B.A.~~ Employees are not eligible for paid vacation during to the employee's first year of employment, unless negotiated at the time of the employee's hire and with the Mayor's approval employee.
- ~~C.B.~~ Length of service is defined as the number of years an employee has worked for the City of Goshen figured from the date of full-time employment with the ~~city, and not calendar years~~ City, and not calendar years. Continuous service will be from the date of full-time employment and will not be considered interrupted by short-term disability or sickness. Accrual will not continue during long-term disability, and any unpaid leave of absence.

### Section 2. Eligibility Provisions - General.

- ~~A.~~ Vacation benefits under this Policy apply to all permanent ~~full-time~~ employees and ~~permanent part-time employees normally in a position~~ scheduled to work at least ~~20~~ one thousand forty (1,040) hours ~~per week~~ each year, as described in the applicable Compensation Ordinance.
- ~~B.~~ ~~Part time employees normally scheduled to work less than 20 hours per week and part-time temporary employees are not eligible for paid vacation benefits.~~

### Section 3. ~~Eligibility Provisions—Holidays, Leave of Absence;~~ Illness Occurring During Vacation.

- A. If a designated holiday is observed during an employee's scheduled vacation period, the employee ~~will be eligible for additional~~ need not use vacation time ~~off with pay equal to~~ for the observed holiday ~~time off for which the employee is eligible.~~
- B. An employee will not receive additional vacation time ~~off~~ due to illness ~~or disability~~ occurring while on the employee's scheduled vacation.

### Section 4. Vacation Pay.

- ~~A.~~ ~~Weekly vacation pay for eligible part-time employees will be computed by multiplying the employee's current straight time hourly rate by the average number of hours the employee worked, per week, during the previous vacation year (total number of hours worked during the previous year, divided by the number of weeks the employee worked).~~

~~B. Weekly vacation pay for bi-weekly payroll employees is at the employee's current weekly salary rate.~~

Vacation leave shall be paid at the employee's current wage rate.

**Section 5. Vacation Scheduling.**

- A. ~~Vacations will be scheduled by~~ Employees shall schedule vacation leave with the employees' department heads ~~with,~~ who shall give due consideration ~~given~~ to staffing requirements, employee's length of service with the City, and employee preferences, in the order listed. Employees covered by ~~the contract between Chauffeurs, Teamsters, and Helpers, Local Union No. 364a~~ collective bargaining agreement will select vacation ~~times~~ leave in accordance with the applicable provisions of the Union contract. ~~Employees are notified of the scheduled starting date of vacations not less than 60 days in advance, except where individual employee circumstances preclude such notice.~~
- B. A vacation may be scheduled at any time during the employee's vacation year and may be taken over the vacation year end, provided it commences in the vacation year in which due.
- C. Vacations should normally be taken in units of one week. An employee may, however, take one week of ~~his or her~~ vacation ~~allowance~~ leave in separate days, subject to department head approval. Any employee wishing to take a vacation of longer than one week must first gain approval of the employee's department head, and the department head must notify the Mayor and all other department heads.
- D. ~~Employees shall take their total vacation during the vacation year in which it is due~~ accrues. If workload ~~or,~~ staffing requirements ~~preclude, or other valid reason precludes~~ an employee from taking their total vacation leave during the vacation year in which it ~~is due~~ accrues, upon receiving written request from the employee, the Mayor may authorize, in writing, the employee to carry over the unused vacation leave into the following vacation year. ~~However,~~
- ~~D.~~ Employees should strive to not carry over vacation ~~cannot be carried over~~ leave in consecutive years. The amount of vacation that may be carried over to the following vacation year may not exceed one-half of the vacation leave that accrued during the vacation year from which vacation is sought to be carried forward, and only with the approval of the employee's Department Head and the Mayor. Pay in lieu of vacation will not be granted.
- E. Each department head will keep records of all vacation ~~time earned~~ leave accrued and ~~taken used by each employee.~~
- F. An employee's vacation year begins on his or her date of hire anniversary date, and ends on the employee's ~~date of hire~~ next anniversary ~~day one year later~~ date.
- G. Employees who were employed by the City of Goshen on or before December 31, 1988, shall continue to have their vacations determined under the vacation method which was used in their department as of December 31, 1988, even though that method may conflict

with this Policy. Employees hired by the City of Goshen on or after January 1, 1989, shall have their vacations determined on an anniversary date method as outlined herein.

~~Section 6. Section 1. Eligibility Provisions The City Terminating Employees.~~

- ~~. In all cases, a terminating employee will receive pay in lieu of any unused vacation allowance earned as of the employee's most recent employment anniversary date—terminating employees may not use vacation days after the last day the terminating employee provides services to the City.~~
- ~~. Additionally, a terminating employee will receive pay in lieu of vacation allowance accrued during the current vacation year, provided the termination was due to one of the following reasons:
  - ~~0. Resignation with notice;~~
  - ~~0. Release of the employee, including termination of grant;~~
  - ~~0. Retirement; or~~
  - ~~0. Death of the employee.~~~~

~~**Section 13.** For the purpose of vacation, continuous service will be from the date of full-time employment and will not be considered interrupted by short-term disability or sickness. Accrual will not continue during long-term disability, and any leave of absence, including, but not limited to maternity leave, military leave, etc.~~

~~**Section 14.H.** The city intends that every employee shall take the vacation to which he or she is entitled, but if for any reason, an employee forgoes his or her vacation at the city's City's request, the employee will be given his or her vacation pay in addition to his or her regular pay for time actually worked.~~

~~**Section 6. Terminating Employees.**~~

~~A terminating employee will receive pay in lieu of any unused vacation leave and vacation leave accrued and not used since the employee's last anniversary date pursuant to the applicable Compensation Ordinance. Terminating employees may not use vacation leave after the last day the terminating employee provides services to the City. A Terminating employee must be eligible under the conditions contained in the applicable Compensation Ordinance for pay in lieu of unused vacation.~~

## BEGINNING WAGES

Adopted By: Board of Public Works and Safety

Date Adopted: February 7, 2000

Revised: January 24, 2022

Employees Affected: All Full-time, Non-Union Employees

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Department Heads and supervisors, in consultation with the Human Resources Manager, when hiring new employees shall ~~endeavor to~~ establish the new employee's starting wage ~~at approximately ninety percent (90%) of the Midpoint for~~within the pay Grade in which the employee's position falls, as set out in the City's Salary Compensation Ordinance. Starting wages ~~may deviate from the approximately ninety percent (90%) of the Midpoint wages,~~shall be based on the discretion of the Department Head, ~~where circumstances justify such a deviation. The Department Head may consider~~taking into consideration the new employee's skills, experience, compatibility with the job description for the position, and other relevant factors ~~when determining starting wages, including those used in the Compensation Ordinance.~~

Department Heads and supervisors, in consultation with the Human Resources Manager, shall endeavor to increase ~~a new~~an employee's wages to the Midpoint ~~within six (6) months~~ of the ~~new~~ employee's ~~start date~~Grade at the appropriate time, assuming the employee started below the Midpoint ~~and,~~ that the employee is progressing in employment satisfactorily, and the employee meets the City's performance expectations for the position under normal supervision.



## CREDIT CARD USE

Adopted By: Board of Public Works and Safety

Date Adopted: May 16, 2005

Revised: January 24, 2022

Employees Affected: All Departments, Offices, and Employees

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### ~~Section 1. Policy~~

### Section 1. Purpose

The Purpose of this Policy is to allow flexibility for purchases that require a credit card and for convenient travel purchases while limiting the City's credit card use to necessary spending. This Policy is to inform employees of documentation requirements and responsibilities that fall on every card user in the City's employment.

### Section 2. Policy

- A. The City Clerk-Treasurer shall maintain on-line access to the credit card account and records pertaining to specific cards, limits, signature logs, request forms, and acknowledgements.
- B. Only City employees (including elected officials) with authorization from a department head may use City credit cards.
- ~~A.C.~~ Any employee, excluding the Mayor, wishing to use the City credit card for City business may do so with the approval of ~~his or her~~the employee's department head. Each department maintaining a City credit card shall keep any credit card in a secure location. An employee using a City credit card must log-out the card by providing the employee's name and position, destination, intended use, estimated amounts to be charged, fund and account numbers to be charged, and date logged-out. ~~Employees shall request a tax exempt certificate along with the credit card to ensure that City is not charged sales tax when the credit card is used for making purchases.~~The card logs are subject to occasional audit by the Clerk-Treasurer's office.
- D. Upon completion of an employee's use of a credit card, the employee must log-in and return the credit card and all receipts related to the use of the credit card no later than the next working day.
- ~~B.E.~~ A department head, including the Mayor, may be issued a City credit card in the department head's own name, but are otherwise subject to all other requirements in this Policy. Any employee with a credit card issued in the employee's name must sign an acknowledgement form stating the employee is subject to this Policy.
- ~~C.F.~~ The employee returning and logging-in a credit card must provide charge slips and itemized receipts for all purchases made with the City credit card. If an employee is not able to provide an itemized invoice or receipt for a purchase made by the employee with

a City credit card, the employee ~~will~~must personally reimburse the City for the purchases made with the City credit card while it was in his or her possession.

G. Employees must request a tax-exempt certificate when logging-out a credit card to ensure that the City is not charged sales tax when the credit card is used for making purchases. IF sales taxes are incurred, the employee must document a “fair effort” attempt at achieving reimbursement of the sales tax. A fair effort includes an e-mail from the employee to the vendor providing the City’s tax-exempt form, response from the vendor denying the tax-exempt status, or documentation of the employee’s challenge in contacting the vendor. Even with sufficient documentation, an employee will be liable to reimburse the City all sales taxes incurred by the employee if requested by a State Board of Accounts examination or audit.

~~D.H.~~ All departments must submit to the Clerk-Treasurer’s office within the 30-day billing cycle completed vouchers with detailed invoices and receipts attached ~~to the Clerk-Treasurer’s office within the 30-day billing cycle,~~thereto. Should interest accrue due to an employee’s or department’s failure to submit a completed voucher within the 30-day billing cycle or failure to furnish proper documentation, then all interest charges incurred shall be the responsibility of that employee.

~~E.I.~~ If a City credit card is lost or stolen while it is in an employee’s possession, the employee must report the loss immediately to the employee’s Department Head. The employee must personally reimburse the City for any purchases made with the lost or stolen credit card, but such reimbursement shall not exceed Fifty Dollars (\$50.00).

J. City-issued credit cards shall have a credit limit of Two-Thousand Five Hundred Dollars (\$2,500.00), except when approved as follows:

1. The Clerk-Treasurer or Deputy Clerk-Treasurer may approve a temporary increase upon written request of the cardholder, or
2. The Mayor and Clerk-Treasurer may jointly approve a permanent increase upon written request of the cardholder. The cardholder must demonstrate a continued need for the increased credit limit to both the Mayor and Clerk-Treasurer.

~~F.K.~~ By signing a credit card out for use, the employee is agreeing to follow the terms of this Policy, and acknowledging that the privilege of using the card may be revoked if the terms are violated.

~~G.L.~~ The use of City credit cards by employees is a privilege for the convenience of those employees using the card and the department. If the terms of this Policy are violated, abused, or are otherwise deemed unworkable, then this privilege may be discontinued for the employee or department.

M. Any reward earned from a credit card transaction is the property of the City. Employees may not use the employee’s personal credit card to make a purchase involving City business, and seek reimbursement for the expense, where a reward is earned unless the value of the reward earned is paid to the City.

### ~~Section 2.~~Section 3. Appropriate Expenses

- A. The City credit card may be used for the following types of purchases:
1. Hotel or motel room;
  2. Hotel or motel charges for telephone calls pertaining to City business;
  3. Meals while away on City business; (may include tax subject to per diem, charges over per diem are reimbursed by employee; employee must provide itemized receipt, not the transaction receipt);
  4. Fees associated with attending schools, conventions, seminars, etc.;
  5. Gasoline; (should be paid from fuel cards issued through Central Garage); or
  6. Other charges not otherwise excluded below for which the department head has given prior approval. This includes charges for equipment, supplies, or services.
- B. The City credit card shall NOT be used for the following types of purchases:
1. Alcoholic beverages;
  2. Room service;
  3. Charges for telephone calls NOT pertaining to City business (an employee away from home on City business will be permitted to make one charged telephone call to the employee's family over a three-day period);
  4. In-room movies; ~~or~~
  5. Personal expenses of any kind; ~~;~~
  6. Utility payments, except for one-time security deposits;
  7. Payments to vendors listed in the City's vendor listing;
  8. Regularly recurring expenses, except when required by a vendor for security purposes;
  9. Payments that could have easily been invoiced and paid by check under the normal claims process; or
  10. Credit card purchases with the intention of circumventing W-9 requirements or vendor documentation challenges.

**GOSHEN BOARD OF PUBLIC WORKS AND SAFETY  
RESOLUTION 2023-19**

**Approving Revisions to City of Goshen  
Vacation Leave; Beginning Wages; and Credit Card Use Policies**

WHEREAS, on January 24, 2022, the Goshen Board of Public Works and Safety approved certain City-wide policies, in the form of a Policy Manual identified in and approved by Resolution 2022-05;

WHEREAS, City staff has determined that certain revisions to three (3) City policies found in the Policy Manual would be appropriate; and

WHEREAS, the Goshen Board of Public Works and Safety now finds that it is appropriate to approve the revisions to the policies identified below, and to repeal prior versions of such policies.

NOW, THEREFORE, BE IT RESOLVED by the Goshen Board of Public Works and Safety that the following City of Goshen policies, copies of which are attached hereto and made a part hereof, are hereby revised, as stated in the attached versions of the policies: Vacation Leave; Beginning Wages; and Credit Card Use.

BE IT FURTHER RESOLVED by the Goshen Board of Public Works and Safety that, upon the approval of the above-described revised, the following current City of Goshen policies are hereby repealed: Vacation Leave; Beginning Wages; and Credit Card Use.

BE IT FURTHER RESOLVED by the Goshen Board of Public Works and Safety that the policies found in the Policy Manual not revised by this Resolution remain in full force and effect.

PASSED and ADOPTED by the Goshen Board of Public Works and Safety on September 18, 2023.

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Gina M. Leichty, Mayor

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Michael A. Landis, Member

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Mary Nichols, Member

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Barb Swartley, Member

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Orv Myers, Member

## VACATION LEAVE

**Adopted By: Common Council**

**Date Adopted: July 18, 1995**

**Revised: January 24, 2022 (Board of Public Works and Safety)**

**Employees Affected: All Employees**

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### **Section 1. Vacation Leave**

- A. An eligible employee shall be entitled to time off work and receive paid vacation leave pursuant to the current Compensation Ordinance applicable to the employee.
- B. Length of service is defined as the number of years an employee has worked for the City of Goshen figured from the date of full-time employment with the City, and not calendar years. Continuous service will be from the date of full-time employment and will not be considered interrupted by short-term disability or sickness. Accrual will not continue during long-term disability, and any unpaid leave of absence.

### **Section 2. Eligibility Provisions - General.**

Vacation benefits under this Policy apply to all permanent employees in a position scheduled to work at least one thousand forty (1,040) hours each year, as described in the applicable Compensation Ordinance.

### **Section 3. Holidays; Illness Occurring During Vacation.**

- A. If a designated holiday is observed during an employee's scheduled vacation period, the employee need not use vacation time for the observed holiday.
- B. An employee will not receive additional vacation time due to illness occurring while on the employee's scheduled vacation.

### **Section 4. Vacation Pay.**

Vacation leave shall be paid at the employee's current wage rate.

### **Section 5. Vacation Scheduling.**

- A. Employees shall schedule vacation leave with the employees' department heads, who shall give due consideration to staffing requirements, employee's length of service with the City, and employee preferences, in the order listed. Employees covered by a collective bargaining agreement will select vacation leave in accordance with the applicable provisions of the Union contract.
- B. A vacation may be scheduled at any time during the employee's vacation year and may be taken over the vacation year end, provided it commences in the vacation year in which due.
- C. Vacations should normally be taken in units of one week. An employee may, however, take one week of vacation leave in separate days, subject to department head approval. Any employee wishing to take a vacation of longer than one week must first gain

approval of the employee's department head, and the department head must notify the Mayor and all other department heads.

- D. Employees shall take their total vacation during the vacation year in which it accrues. If workload, staffing requirements, or other valid reason precludes an employee from taking their total vacation leave during the vacation year in which it accrues, upon receiving written request from the employee, the Mayor may authorize, in writing, the employee to carry over the unused vacation leave into the following vacation year.

Employees should strive to not carry over vacation leave in consecutive years. The amount of vacation that may be carried over to the following vacation year may not exceed one-half of the vacation leave that accrued during the vacation year from which vacation is sought to be carried forward, and only with the approval of the employee's Department Head and the Mayor. Pay in lieu of vacation will not be granted.

- E. Each department head will keep records of all vacation leave accrued and used by each employee.
- F. An employee's vacation year begins on his or her date of hire anniversary date, and ends on the employee's next anniversary date.
- G. Employees who were employed by the City of Goshen on or before December 31, 1988, shall continue to have their vacations determined under the vacation method which was used in their department as of December 31, 1988, even though that method may conflict with this Policy. Employees hired by the City of Goshen on or after January 1, 1989, shall have their vacations determined on an anniversary date method as outlined herein.
- H. The City intends that every employee shall take the vacation to which he or she is entitled, but if for any reason, an employee forgoes his or her vacation at the City's request, the employee will be given his or her vacation pay in addition to his or her regular pay for time actually worked.

**Section 6. Terminating Employees.**

A terminating employee will receive pay in lieu of any unused vacation leave and vacation leave accrued and not used since the employee's last anniversary date pursuant to the applicable Compensation Ordinance. Terminating employees may not use vacation leave after the last day the terminating employee provides services to the City. A Terminating employee must be eligible under the conditions contained in the applicable Compensation Ordinance for pay in lieu of unused vacation.



## **BEGINNING WAGES**

**Adopted By: Board of Public Works and Safety**

**Date Adopted: February 7, 2000**

**Revised: January 24, 2022**

**Employees Affected: All Full-time, Non-Union Employees**

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Department Heads and supervisors, in consultation with the Human Resources Manager, when hiring new employees shall establish the new employee's starting wage within the pay Grade in which the employee's position falls, as set out in the City's Compensation Ordinance. Starting wages shall be based on the discretion of the Department Head, taking into consideration the new employee's skills, experience, compatibility with the job description for the position, and other relevant factors, including those used in the Compensation Ordinance.

Department Heads and supervisors, in consultation with the Human Resources Manager, shall endeavor to increase an employee's wages to the Midpoint of the employee's Grade at the appropriate time, assuming the employee started below the Midpoint, that the employee is progressing in employment satisfactorily, and the employee meets the City's performance expectations for the position under normal supervision.

## **CREDIT CARD USE**

**Adopted By: Board of Public Works and Safety**

**Date Adopted: May 16, 2005**

**Revised: January 24, 2022**

**Employees Affected: All Departments, Offices, and Employees**

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### **Section 1. Purpose**

The Purpose of this Policy is to allow flexibility for purchases that require a credit card and for convenient travel purchases while limiting the City's credit card use to necessary spending. This Policy is to inform employees of documentation requirements and responsibilities that fall on every card user in the City's employment.

### **Section 2. Policy**

- A. The City Clerk-Treasurer shall maintain on-line access to the credit card account and records pertaining to specific cards, limits, signature logs, request forms, and acknowledgements.
- B. Only City employees (including elected officials) with authorization from a department head may use City credit cards.
- C. Any employee, excluding the Mayor, wishing to use the City credit card for City business may do so with the approval of the employee's department head. Each department maintaining a City credit card shall keep any credit card in a secure location. An employee using a City credit card must log-out the card by providing the employee's name and position, destination, intended use, estimated amounts to be charged, fund and account numbers to be charged, and date logged-out. The card logs are subject to occasional audit by the Clerk-Treasurer's office.
- D. Upon completion of an employee's use of a credit card, the employee must log-in and return the credit card and all receipts related to the use of the credit card no later than the next working day.
- E. A department head, including the Mayor, may be issued a City credit card in the department head's own name, but are otherwise subject to all other requirements in this Policy. Any employee with a credit card issued in the employee's name must sign an acknowledgement form stating the employee is subject to this Policy.
- F. The employee returning and logging-in a credit card must provide charge slips and itemized receipts for all purchases made with the City credit card. If an employee is not able to provide an itemized invoice or receipt for a purchase made by the employee with a City credit card, the employee must personally reimburse the City for the purchases made with the City credit card while it was in his or her possession.
- G. Employees must request a tax-exempt certificate when logging-out a credit card to ensure that the City is not charged sales tax when the credit card is used for making purchases.

IF sales taxes are incurred, the employee must document a “fair effort” attempt at achieving reimbursement of the sales tax. A fair effort includes an e-mail from the employee to the vendor providing the City’s tax-exempt form, response from the vendor denying the tax-exempt status, or documentation of the employee’s challenge in contacting the vendor. Even with sufficient documentation, an employee will be liable to reimburse the City all sales taxes incurred by the employee if requested by a State Board of Accounts examination or audit.

- H. All departments must submit to the Clerk-Treasurer’s office within the 30-day billing cycle completed vouchers with detailed invoices and receipts attached thereto. Should interest accrue due to an employee’s or department’s failure to submit a completed voucher within the 30-day billing cycle or failure to furnish proper documentation, then all interest charges incurred shall be the responsibility of that employee.
- I. If a City credit card is lost or stolen while it is in an employee’s possession, the employee must report the loss immediately to the employee’s Department Head. The employee must personally reimburse the City for any purchases made with the lost or stolen credit card, but such reimbursement shall not exceed Fifty Dollars (\$50.00).
- J. City-issued credit cards shall have a credit limit of Two-Thousand Five Hundred Dollars (\$2,500.00), except when approved as follows:
  - 1. The Clerk-Treasurer or Deputy Clerk-Treasurer may approve a temporary increase upon written request of the cardholder, or
  - 2. The Mayor and Clerk-Treasurer may jointly approve a permanent increase upon written request of the cardholder. The cardholder must demonstrate a continued need for the increased credit limit to both the Mayor and Clerk-Treasurer.
- K. By signing a credit card out for use, the employee is agreeing to follow the terms of this Policy, and acknowledging that the privilege of using the card may be revoked if the terms are violated.
- L. The use of City credit cards by employees is a privilege for the convenience of those employees using the card and the department. If the terms of this Policy are violated, abused, or are otherwise deemed unworkable, then this privilege may be discontinued for the employee or department.
- M. Any reward earned from a credit card transaction is the property of the City. Employees may not use the employee’s personal credit card to make a purchase involving City business, and seek reimbursement for the expense, where a reward is earned unless the value of the reward earned is paid to the City.

**Section 3. Appropriate Expenses**

- A. The City credit card may be used for the following types of purchases:
  - 1. Hotel or motel room;
  - 2. Hotel or motel charges for telephone calls pertaining to City business;

3. Meals while away on City business (may include tax subject to per diem, charges over per diem are reimbursed by employee; employee must provide itemized receipt, not the transaction receipt);
4. Fees associated with attending schools, conventions, seminars, etc.;
5. Gasoline (should be paid from fuel cards issued through Central Garage); or
6. Other charges not otherwise excluded below for which the department head has given prior approval. This includes charges for equipment, supplies, or services.

B. The City credit card shall NOT be used for the following types of purchases:

1. Alcoholic beverages;
2. Room service;
3. Charges for telephone calls NOT pertaining to City business (an employee away from home on City business will be permitted to make one charged telephone call to the employee's family over a three-day period);
4. In-room movies;
5. Personal expenses of any kind;
6. Utility payments, except for one-time security deposits;
7. Payments to vendors listed in the City's vendor listing;
8. Regularly recurring expenses, except when required by a vendor for security purposes;
9. Payments that could have easily been invoiced and paid by check under the normal claims process; or
10. Credit card purchases with the intention of circumventing W-9 requirements or vendor documentation challenges.



**CITY OF GOSHEN LEGAL DEPARTMENT**

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

September 18, 2023

To: Board of Public Works and Safety  
From: Shannon Marks  
Subject: Resolution 2023-30 - Declaring Surplus and Authorizing the Disposal of IT Equipment

The Information Technology Department wishes to dispose various items of IT equipment that is no longer needed or are unfit for the purpose for which it was intended because it is broken or obsolete. The equipment includes 1 power supply, 1 battery backup, 38 ram sticks, 21 towers, 1 camera, 1 keyboard and 1 wireless mouse. Resolution 2023-30 is to declare the property as surplus and authorize its disposal in accordance with the provisions of Indiana Code § 5-22-22-8 by demolishing or junking property that is worthless or of no market value, including recycling components where possible.

**Suggested Motion:**

**Move to pass Resolution 2023-30 - Declaring Surplus and Authorizing the Disposal of IT Equipment.**







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September 18, 2023

To: Board of Public Works and Safety and Stormwater Board  
From: Brandy L. Toms, Paralegal  
Subject: Resolution 2023-31, Concerning the purchase of a wheel loader

The City solicited sealed bids for the purchase of a wheel loader and received five (5) bids. Of those five bids, the only responsive and responsible bidder is a unit manufactured in Austria and not in the United States.

**Suggested Motion:**

**Move to adopt Resolution 2023-31, Concerning the purchase of a wheel loader.**

**Goshen Board of Public Works and Safety  
Resolution 2023-31**

**Concerning the Purchase of a Wheel Loader**

WHEREAS, Indiana Code 5-22-15-21 and Ordinance 3828 as amended by Ordinance 5077, provide that the City shall promote the purchase of supplies manufactured in the United States unless the Board of Public Works & Safety, as purchasing agency, makes a determination otherwise.

WHEREAS, the City is interested in acquiring a wheel loader.

WHEREAS, the City solicited sealed bids for the purchase of a wheel loader and five (5) bids were received.

WHEREAS, the wheel loader offered by the only responsive and responsible bidder is manufactured in Austria.

NOW THEREFORE, BE IT RESOLVED by the Goshen Board of Public Works and Safety that the City shall not be limited to purchasing a wheel loader manufactured in the United States because:

the City believe that the quality of the components used in the manufacturing and assembly process in Austria will be acceptable.

PASSED and ADOPTED on September 18, 2023.

\_\_\_\_\_  
Gina Leichty, Mayor

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

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

\_\_\_\_\_  
Orv Myers, Member

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



## 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

September 18, 2023

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

**From:** Brandy L. Toms, Paralegal

**Subject:** Award Quote for purchase of Wheel Loader and Purchase Agreement with West Side Tractor Sales

The City solicited sealed bids for the purchase of wheel loader for the Street Department. The bids were opened by this Board on August 14, 2023. The following is a summary of the bids received:

1. Hardings, Inc - \$170,303.00
2. West Side Tractor Sales - \$174,608.28
3. Weaver Ag & Lawn Equipment, LLC - \$174,299.00
4. Weaver Ag & Lawn Equipment, LLC – 149,942.67
5. Weaver Ag & Lawn Equipment, LLC - \$183,764.00

The wheel loader offered by West Side Tractor Sales is they only responsive and responsible bidder.

The bid also included an option for a trade in allowance for a 2001 New Holland, Model #LW1710 the City current owns. The trade allowance offered by West Side Tractor Sales is \$20,000, reducing the cost of the purchase of the wheel loader to \$154,608.28

It is recommended that West Side Tractor Sales be awarded the bid and have Mayor Leichthy execute the attached purchase agreement.

### **Suggested motions:**

Move to award the bid for the purchase of a wheel loader to West Side Tractor Sales as the only responsive and responsible bidder and approve and authorize Mayor Leichthy to execute the purchase agreement regarding the same at a cost to the City of \$154,608.28 which includes the trade allowance of \$20,000 for the 2001 New Holland.

# PURCHASE AGREEMENT FOR A WHEEL LOADER

THIS PURCHASE AGREEMENT (“Agreement”) is entered into on \_\_\_\_\_, 2023, which is the last signature date set forth below, by and between **West Side Tractor Sales** (“Supplier”), whose mailing address is 25166 SR 2, South Bend, Indiana 46619, 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. Effective Date**

The Agreement shall become effective on the day of execution and approval by both parties.

## **Section 2. Purchase; Trade-In Allowance**

- (A) Subject to the terms and conditions set forth in this Agreement, Supplier shall provide to City the items, goods, materials, or equipment (hereinafter referred to as “Supplies”) as specified in accordance with the attached Specifications entitled Detailed Specifications” attached as Attachment A.
- (B) In addition, Supplier shall accept from City a 2001 New Holland, Model #LW170, Serial # ZEFOLW1700570187, and the trade in allowance of Twenty Thousand Dollars (\$20,000) shall be applied to the purchase price of the Supplies.
- (C) In the event of any conflict between the terms of this Agreement and the terms contained in the Specifications (Attachment A) or Supplier’s Proposal (Attachment B), the documents shall be given precedence in order as listed (this Agreement first, Specifications second, and Proposal third).

## **Section 3. Delivery**

- (A) Supplier agrees to deliver all supplies within one hundred eighty (180) calendar days from the effective date of this agreement.
- (B) The Supplies shall be delivered FOB Destination to the following address:

City of Goshen Central Garage  
230 Steury Ave  
Goshen, IN 46528

All deliveries shall be made Monday through Friday, excluding holidays, during normal business hours unless other prior arrangements are made with City.

- (C) Delivery date shall be the date the complete items, goods, materials, or equipment (“Supplies”), installed and/or ready to operate (if applicable), has been delivered to City. To be accepted, the Supplies must successfully pass an inspection by City. The inspection shall include an operational test (if applicable) to ensure the Supplies meet both the specifications and are operable. Unless otherwise noted in the specifications, the inspection will be completed within fifteen (15) calendar

days of the delivery date. Unless otherwise noted in the specifications, the warranty for the Supplies shall become effective on the date of acceptance. Acceptance also requires the delivery of all manuals, ownership papers, and a certificate of origin, if required, for the Supplies.

#### **Section 4. Purchase Price; Payment**

- (A) City agrees to compensate Supplier for the Supplies provided in accordance with Supplier's proposal the sum of \$154,608.28. This compensation is based on a purchase price of \$174,608.28 for the Supplies and a trade in allowance of \$20,000.
- (B) City shall pay Supplier after delivery and final acceptance of the Supplies, and upon receipt of a detailed invoice from Supplier. Any payment made by the City before final acceptance of the Supplies shall not affect the obligation of Supplier to repair or replace any defective parts or equipment.
- (C) The invoice shall be sent to the following address, or at such other address as City may designate in writing.

City of Goshen Street Department  
475 Steury Ave  
Goshen, IN 46528
- (D) 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.
- (E) Supplier 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. Inspection**

- (A) Supplier shall conduct final inspections on all Supplies prior to delivery to City. City has the right to inspect the Supplies to the extent practicable, at any time and place. If City determines as a result of inspection that the Supplies do not conform to all requirements of this Agreement, City may at City's sole option and discretion:
  - (1) require Supplier, at Supplier's sole cost, promptly to correct the defects to the non-conforming Supplies where practicable; or
  - (2) reject the non-conforming Supplies and require Supplier, at Supplier's sole cost, to complete the order by delivering conforming Supplies.
- (B) When the defects for any Supplies cannot be corrected practicably, City may at City's sole option and discretion:
  - (1) by contract or otherwise, correct the defects and charge Supplier any costs incurred by City directly related to the cost of correcting the defects; or
  - (2) reduce the Agreement compensation to reflect the reduced value of the Supplies.
- (C) If Supplier fails to correct performance or take necessary action to ensure future performance, in conformity with Agreement requirements, or when the defects for any Supplies cannot be corrected practicably, City may:

- (1) require Supplier to take necessary action to ensure that future performance conforms to Agreement requirements; and/or
- (2) terminate the Agreement for default.
- (D) If, for any reason, City rejects the Supplies delivered by Supplier, City shall not be responsible for any shipping, restocking, or similar charges incurred by Supplier.
- (E) Any remedy provided by this section shall not limit City's other remedies available under this Agreement or as provided by applicable law.

## **Section 6. Workmanship and Quality; Warranty**

Unless otherwise stated in the Specifications, Supplier shall guarantee the Supplies for a period of one hundred eighty days (180) from date of acceptance. Failure of any portion of the Supplies due to improper materials or workmanship, materials of construction or design may result, at City's option, in a refund to City of the purchase price of that portion which failed or, in the alternative, in replacement of that portion which failed at no cost to City, in addition to all other remedies provided by law and by this Agreement. City shall be the sole judge of the sufficiency of workmanship and quality of materials.

## **Section 7. Independent Contractor**

Supplier shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Supplier shall be under the sole and exclusive direction and control of Supplier and shall not be considered employees, agents or subcontractors of City. As such, Supplier is solely responsible for all taxes and none shall be withheld from the sums paid to Supplier. Supplier acknowledges that Supplier is not insured in any manner by City for any loss of any kind whatsoever. Supplier has no authority, express or implied, to bind or obligate City in any way.

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

Supplier agrees to comply with all federal and Indiana civil rights laws, including, but not limited to Indiana Code 22-9-1-10. Supplier or any subcontractors, or any other person acting on behalf of Supplier 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) Supplier shall enroll in and verify the work eligibility status of all Supplier's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Supplier is not required to participate in the E-Verify program should the program cease to exist. Supplier is not required to participate in the E-Verify program if Supplier is self-employed and does not employ any employees.
- (B) Supplier shall not knowingly employ or contract with an unauthorized alien, and Supplier shall not retain an employee or continue to contract with a person that the Supplier subsequently learns is an unauthorized alien.

- (C) Supplier shall require their subcontractors, who perform work under this contract, to certify to the Supplier 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. Supplier agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- (D) City may terminate the contract if Supplier 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 Supplier 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 Supplier certifies that Supplier 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, Supplier certifies that Supplier does not engage in investment activities in Iran as defined by Indiana Code § 5-22-16.5-8.

## **Section 12. Indemnification**

Supplier shall indemnify and hold harmless the City of Goshen and City's agents, officers, and employees from and against (1) 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 Supplier or any of Supplier's agents, officers and employees; or (2) any defect in materials or workmanship of any supply, material, mechanism, or other product or service which Supplier or any of Supplier's officers, agents, employees, or subcontractors has supplied to City or has used in connection with this Agreement. Such indemnity shall include reasonable attorney's fees and all reasonable litigation costs and other expenses incurred by City only if Supplier 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, if any, under this Agreement.

## **Section 13. Insurance**

- (A) Prior to commencing work, the Supplier 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. Supplier 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) Supplier 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**

- (D) 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.
- (E) 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 Supplier fails to provide the Supplies or comply with the provisions of this Agreement, then Supplier may be considered in default.
- (B) It shall be mutually agreed that if Supplier fails to provide the Supplies or comply with the provisions of this Agreement, City may procure the same or similar items, goods, materials, or equipment from the open market. If the market price of those items, goods, materials, or equipment is greater than the Agreement price, Supplier shall be liable to City for the difference between the market price and the Agreement price, plus Supplier shall be liable to City for any incidental or consequential damages incurred by City as a result of Supplier's breach.
- (C) Supplier may also be considered in default by the City if any of the following occur:
  - (1) There is a substantive breach by Supplier of any obligation or duty owed under the provisions of this contract.
  - (2) Supplier is adjudged bankrupt or makes an assignment for the benefit of creditors.
  - (3) Supplier becomes insolvent or in an unsound financial condition so as to endanger performance under the Agreement.
  - (4) Supplier 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 Supplier or any of Supplier's property.



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

**Section 16. Termination**

- (D) The Agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties.
- (E) City may terminate this Agreement, in whole or in part, in the event of default by Supplier.
- (F) 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

Supplier: West Side Tractor Sales  
25166 SR 2  
South Bend, IN 46619

**Section 18. Subcontracting or Assignment**

- (A) Supplier 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 Supplier to subcontract or assign any portion of the Agreement shall not be construed to relieve Supplier from any responsibility to fulfill all contractual obligations.
- (B) In the event that City approves of any such subcontracting, assignment or delegation, Supplier shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Supplier shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Supplier 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**

- (C) Supplier 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.
- (D) Supplier 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**

- (E) 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.
- (F) 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.
- (G) 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 Supplier.

**Section 26. Authority to Bind Supplier**

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

**West Side Tractor Sales**

\_\_\_\_\_  
Gina Leichty, Mayor

\_\_\_\_\_

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

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

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

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

## ITEMIZED BID

### Purchase Wheel Loader

The original signed proposal must be submitted to the City of Goshen Clerk-Treasurer's Office, 202 South 5th Street, Goshen, Indiana 46528, by the specified due date and time to receive consideration. The Supplier certifies that the information provided by it in its offer is accurate and complete. The execution of this proposal is certification that the undersigned individual represents the Supplier and has read and understands the instructions, terms, conditions and specifications of this solicitation, and agrees to fulfill the requirements of any awarded contract at the prices offered. By executing this offer, the undersigned individual further certifies that they are duly authorized to execute contracts on behalf of the Supplier and have obtained all necessary or applicable approvals to make this contract fully binding upon the Supplier.

Supplier: WEST SIDE TRACTOR SALES

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CARL LUETH Company Name SALES Signature Carl Lueth

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Print Name Title Signature

Address: 25166 IN-2, SOUTH BEND, IN 46619

Telephone Number (s): Business: 574-232-1461 Cell: 574-210-9370

Acknowledgement of Addenda Number(s): \_\_\_\_\_

The above bidder hereby submits the following offer to meet all of the requirements in the Specification Documents for the following cost:

ITEM NO.		TOTAL BID:
1	<b>2023 or newer wheel loader</b> Year: <u>2023</u> Make: <u>JOHN DEERE</u> Model: <u>344P</u>	\$174,608.28
OPTION NO. 1	TRADE-IN – 2001 New Holland, Model #LW170, Serial # ZEFOLW1700570187	\$20,000

**DELIVERY:** The goods, materials and/or equipment to be purchased for this project shall be delivered within one hundred eighty (180) calendar days from receipt of a notice to proceed from the City. (Please refer to page 7, General Terms and Conditions, #1 Delivery; Liquidated Damages of this Specifications Document.)

## DETAILED SPECIFICATIONS

MINIMUM SPECIFICATIONS FOR LOADER	Compliance
<b>ENGINE</b>	
Four Cylinder, turbocharged, diesel engine	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Engine shall be certified to EPA Interim Tier 4 emissions	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Engine shall have a wet-sleeve cylinder liner design for improved cylinder cooling over dry sleeve and cast-in- bore design and for improved cylinder and piston ring durability.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Engine displacement shall be no less than 4.5 liters (275 cu.in.)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Engine net rated power shall be no less than 103 hp (76 kW) @ 2,000 rpm	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Engine shall develop no less than 299 lb-ft (405 Nm) net torque at 1,600 rpm.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Under-hood engine air cleaner shall be dry type, dual element with dust evacuator valve and prescreener. The loader will have an in-cab filter restriction indicator.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Engine oil life shall have a 500-hour service life. Loader will have an environmentally-friendly engine oil drain.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Engine oil cooler shall be standard equipment	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>ELECTRICAL</b>	
The electrical system shall be 12 volt with a minimum 90 amp alternator	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Loader will have two standard batteries with at least 1,700 CCA, 176-minute rated reserve	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The loader will be equipped with a master electrical disconnect switch.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The loader will have four front work lights, two rear work lights, and a roof beacon provided	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
AM/FM/Bluetooth Radio	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>COOLING</b>	
The cooling fan shall be proportionally controlled, hydraulically driven to reduce fuel consumption and noise level.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Unit shall have a coolant recovery tank provided and fan-guard	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Fluid level should be easily checked by sight gauges or overflow tank	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The radiator must be fully accessible for easy clean-out	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>POWER TRAIN</b>	
The loader shall have a single lever, low-effort shift control, F-N-R with two speed ranges	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The transmission shall be hydrostatic with infinite speed control and inching pedal which allows infinitely reduced travel speeds while maintaining full engine rpm and hydraulic flow	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Sight gauge showing reservoir fluid shall be at ground-level	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Transmission filter restriction shall be displayed in the cab	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The machine shall be able to reach up to 24.9 mph (40 km/h) working in high speed range.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>AXLES/BRAKES</b>	
The final drives shall be heavy-duty outboard planetary	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The service brake shall be hydraulically actuated and self-adjusting	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The parking brake shall be automatic spring applied and hydraulically released	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The rear axle shall be capable of oscillating 20 degrees; 10 degrees axle oscillation plus 10 degrees frame oscillation for sharper turning without articulating for better stability under load.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No



<b>HYDRAULIC SYSTEM</b>	
Hydraulic tank capacity should be no less than 30 gallons (115 L) for extended hydraulic fluid intervals and cooler system temperature	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Unit will be provided with automatic bucket return-to-dig control and float detent	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
A sight gauge will be provided for checking hydraulic reservoir fluid	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Unit shall be equipped with ride control	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>OPERATOR STATION</b>	
Unit shall be equipped with cab with ROPS/FOPS protection, and be multiplane isolation mounted for noise/vibration reduction	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Operator shall be able to access the cab from either the left or right side with fully opening cab doors.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The cab shall be equipped with heater/defroster, intermittent front and rear windshield wipers and washers, tinted safety glass, full-width adjustable sun visor and left and right doors.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The operator seat shall be deluxe high-back cloth seat with retractable seat belt	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Handholds and step shall be slip resistant and ergonomically located	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Steering column shall be tiltable	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Cab shall have cup holder, holder/storage compartment for operator's manual, and rubber floor mat	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>GENERAL SPECIFICATIONS</b>	
The loader shall be equipped with 17.5R25 EM L3 single star radial tires on single-piece rims	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Front and rear tires shall be covered with fenders	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The counterweight shall be built-in	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Unit will be provided with a drawbar with locking pin	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Unit shall have an articulation locking bar	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Unit shall have a vandal protection package that includes a lockable engine enclosure and fuel fill	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The unit shall be provided with a loader boom service locking bar	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Fuel tank capacity shall be no less than 40.9 gallons (155 L)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Operating weight with standard equipment, 2 cu yd (1.5 m <sup>3</sup> ) pin-on bucket, 17.5R25 tires, ROPS cab, 175 lb (79 kg) operator and full fuel tank shall be no less than 19,533 lbs (8860 kg)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Bucket breakout force shall be no less than 16,411 lbs (7444 kg) with pin-on 2.0 cu yd (1.5 m <sup>3</sup> ) bucket Bucket to be 4 in 1 multi use	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Ground clearance under the loader shall be no less than 16.9 in (430 mm)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Unit shall have height to hinge pin no less than 12 ft 2 in. (3720mm) fully raised	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Machine full turn static tipping load shall be at least 12,677 lbs (5750 kg) with standard Z Bar and GP 2.0 cu yd (1.5 m <sup>3</sup> ) pin on bucket.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Dump clearance at 44 degree bucket angle, full height shall be no less than 9 ft 7 in (2920 mm)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Quick coupler diagnostic ports will be standard for hydrostatic pressures (3).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
ISO quick coupler for bucket and attachments	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

## EXCEPTIONS

Contractor shall indicate below whether the Contractor's proposal contains any deviation from or exception taken to the stated Specification Documents.

Any product, materials or method that City, in its sole discretion, determines to be equal or better to that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended will be considered, provided the Contractor submits information that details how the method, goods, materials, and/or equipment offered for substitution will meet or exceed the minimum requirements of criteria and quality to that named in the Specification Documents.

Contractor is cautioned that any exception taken and deemed by City to be a material qualification or variance from the terms of the Specification Documents may result in this proposal being rejected as non-responsive.

In the absence of any stated deviation or exception, the proposal will be accepted as in strict compliance with all terms and conditions of the Specification Documents, and the Contractor shall be held liable for strict compliance.

**NO**, this proposal does not contain any deviation from or exception taken to the stated Specification Documents, and this proposal shall be accepted as in strict compliance with all terms and conditions of the Specification Documents.

**YES**, this proposal does contain deviation from or exception taken to the stated Specification Documents which is/are detailed more fully below (attach additional pages if needed):

EVERYTHING MEETS SPECIFICATIONS LISTED.  
THIS TRACTOR IS SCHEDULED TO ARRIVE 10-1-2023  
IT IS THE ONLY TRACTOR THIS SIZE WE HAVE AVAILABLE  
ON ORDER. ADDITIONAL EQUIPMENT ON THIS 344P THAT WAS  
NOT REQUESTED IS AUTOMATIC REVERSING FAN, AND 3 FUNCTION  
CONTROL VALVE.





**WEST SIDE TRACTOR SALES**  
 25166 State Road 2 South Bend IN 46619  
 (574) 232-1461



Carl Lueth - Sales Representative - Clueth@wstsales.com

August 14, 2023

0  
**CITY OF GOSHEN CENTRAL GARAGE**  
**320 STEURY AVE**  
**GOSHEN, IN**

**2023 John Deere 344 P Compact Loader**  
**SOURCEWELL Cooperative Contract 032119-JDC**

*Please note that this quote is valid for 30 days.*

Code	Machine Configuration Description	Unit Price
<i>All the prices in the detailed sections are Per machine basis. Qty (1)</i>		
01J0T	344 P FOUR WHL DRIVE LOADER	202,235.00
202	DESTINATION CODE US	-
259	OPERATORS MANUAL ENGLISH	-
451	STANDARD Z-BAR LINKAGE	-
506	AG/WASTE HANDLER LOADER	7,730.00
950	LESS VISION SYSTEM	-
1100	LESS OBSTACLE INTELLIGENCE	-
183B	LESS JDLINK	-
3003	HYDRO W/2 SPD TRANS-HI SPD	-
4007	FT4 ENGINE	-
5311	17.25R25 MICHELIN XTLA	562.00
6052	HALOGEN WORK LIGHTS	-
7404	HYDRAULIC COUPLER ISO STYLE	7,247.00
7500	LESS FORK FRAME	-
7802	BUCKET ISO 2.0 M3 (2.6 YD3)	8,153.00
<b>List Price</b>		<b>\$ 225,927.00</b>
<b>Discount 26%</b>		<b>\$ 58,741.02</b>
<b>Net Price</b>		<b>\$ 167,185.98</b>

Custom Jobs Description	Qt	Price
Factory Freight Destination South Bend, IN 46619	1	2,800.00
Dlr provide Pre-Delivery Inspection, Supplies and Fuel Fill	1	2,500.00
Dealer Provided Delivery	1	600.00
Labor for field installed kits	1	823.50
*Remove this bucket to inventory	1	(7,289.74)
LED AMBER BEACON LIGHT	1	125.08
RE596823 RADIO INSTALL	1	510.09
<b>Total Price</b>		<b>\$ 7,422.30</b>

Quote Summary (per unit)		Prices
Machine Net Price		\$ 167,185.98
Custom Jobs		\$ 7,422.30
<b>Total Net Price</b>	<b>Quantity (1)</b>	<b>\$ 174,608.28</b>
		-
		-

**Adjusted Net Price** **\$ 174,608.28**

Less Trade-in	
2001 New Holland LW170 with 10761 hours	20,000.00
0	-
	-
	-

**Payoff to Trade** -  
**Net Price less Trade-Ins** **\$ 154,608.28**  
Warranty Terms



# West Side Tractor Sales

25166 State Road 2 • South Bend, IN 46619  
(574) 232-1461



## PRICE QUOTATION

<b>TO:</b> COMPANY NAME: <b>CITY OF GOSHEN CENTRAL GARAGE</b>		DATE: <b>August 14, 2023</b>	
ADDRESS: <b>320 STEURY AVE</b>		MODEL NUMBER: <b>344 P</b>	WSTS STOCK NUMBER: <b>059087</b>
CITY, STATE, ZIP: <b>GOSHEN IN 46528</b>		PROPOSED SHIPPING DATE:	TERMS: <b>Payment Upon Delivery</b>
CONTACT:	PHONE NUMBER: <b>(574) 534-3703</b>	SALESPERSON: <b>Carl Lueth</b>	TO BE SHIPPED VIA:

**HERE IS OUR QUOTATION ON THE GOODS NAMED, SUBJECT TO THE CONDITIONS NOTED:**

CONDITIONS: The prices and terms on this quotation are not subject to verbal changes or other agreements unless approved in writing by the home office of the seller. All quotations and agreements are contingent upon strikes, accidents, fires, availability of materials and all other causes beyond our control. Prices are based on costs and conditions existing on date of quotation and are subject to change by the seller before final acceptance.

Typographical and stenographical errors subject to correction. Purchaser agrees to accept overage or shortage not in excess of ten percent to be charged for pro-rata. Purchaser assumes liability for patent and copyright infringement when goods are made to purchasers specification. When quotations specifies material to be furnished by the purchaser, ample allowance must be made for reasonable spoilage and material must be suitable quality to facilitate efficient production.

Conditions not specifically stated herein shall be governed by established trade customs. Terms inconsistent with those stated herein which may appear on Purchasers formal order will not be binding on the seller.

QUANTITY	DESCRIPTION	
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1	<b>2023 John Deere 344 P Compact Loader</b> Serial Number <b>NEW FACTORY</b> With <b>1</b> Approximate Hours Prior Use	<b>ALL IN STOCK UNITS SUBJECT TO PRIOR SALE</b> Quote valid for 30 days
---	--	--

Equipped With:

HYDROSTATIC TRANSMISSION  
 JOHN DEERE POWERTECH™ 4045T TURBO DIESEL ENGINE RATED 106HP  
 344 P FOUR WHL DRIVE LOADER  
 DESTINATION CODE US  
 OPERATORS MANUAL ENGLISH  
 STANDARD Z-BAR LINKAGE  
 AG/WASTE HANDLER LOADER  
 HYDRO W/2 SPD TRANS-HI SPD  
 FT4 ENGINE  
 HALOGEN WORK LIGHTS  
 HYDRAULIC COUPLER ISO STYLE  
 JD ISO CPLR 344L  
 JD 2.0 CU. YD. GERNERAL PURPOSE BUCKET ISO STYLE  
 LED AMBER BEACON LIGHT  
 RE596823 RADIO INSTALL

• Full Machine Warranty for 24 Mo OR 2000 Hr whichever occurs first

	Sell Price	\$174,608.28
Trade-In: 2001 New Holland LW170 with 10761 hours	Less Trade-ins	(\$20,000.00)
	Sales Tax	\$ -
		\$ -
		\$ -
		\$ -
	Balance Due	\$ 154,608.28



**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

September 18, 2023

To: Board of Public Works and Safety

From: Brandy L. Toms

Subject: Agreement with Abonmarche Consultants for the Goshen Violet Cemetery Development Project.

It is recommended that the Board approve and authorize Mayor Leichthy to execute the attached agreement with Abonmarche Consultants for the Goshen Violet Cemetery Development Project. The following services will be performed under this agreement:

Task	Description	Cost
1	Survey Services: Boundary Retracement Survey (undeveloped land)	\$ 6,500
	Topographic Survey (Master Plan)	\$ 3,500
2	Subdivision Plat Process (Phase 1)	\$ 9,500
3	Construction Stormwater General Permit (CSGP)	\$ 7,400
	Stormwater Management Design (Master Plan)	\$ 2,500
	SWPPP/ Permit Applications (Phase 1)	\$ 2,500
4	Set Control Points (4 Sections)	\$ 2,500
	TOTAL	\$31,900

Total expenses are subject to additional tasks that Abonmarche may perform at the requested of City. These include the following:

Construction staking estimated to cost approximately \$6,000 and any reimbursable expenses.

**Suggested Motion:**

Approve and authorize Mayor Leichthy to execute the agreement with Abonmarche Consultants for Phase 1 of Goshen Violet Cemetery's Development Project at a cost of \$31,900 plus any requested duties or reimbursable expenses under the scope of work in this agreement.

Abonmarche Project Number: \_\_\_\_\_

AGREEMENT between (Client name), City of Goshen (Date) August 25, 2023

(Client address) 202 South 5th Street, Goshen, IN 46528 (Phone) (574) 536-1478

(Cell) \_\_\_\_\_ (Fax) \_\_\_\_\_ (Email) burtmatteson@goshencity.com hereinafter referred

to as the Client, and Abonmarche Consultants, Inc., referred to as Abonmarche, located at: 303 River Race Drive, Unit 206, Goshen, Indiana

The Client contracts with Abonmarche to perform professional services regarding the Client's project generally referred to as:

(Project Name) Goshen Violet Cemetery – New Phase (Location) Violet Road and Egbert Road, Goshen, Indiana

The professional services to be provided by Abonmarche, collectively referred to as the Work Plan, are as follows:

(Scope of work) As Set Forth in the Attached Proposal

(Project schedule) As Outlined in the Attached Proposal

(Special Provisions) \_\_\_\_\_

Abonmarche's proposal/work plan, dated August 25, 2023 is incorporated into this Agreement by reference, and is limited to the services described therein. Abonmarche's Terms and Conditions for Professional Services are incorporated by client's Authorization signature below.

The Client agrees to promptly pay for services provided by Abonmarche for the Scope of Work according to the following:

(Fee/Type) \$31,900.00 (Lump Sum) plus Task #5 and Any Reimbursables

Prior to commencement of services, the Client will specify any and all documentation that the Client requires for submission with the invoice for services provided by Abonmarche. Absent any special request from the Client, Abonmarche will send its standard form of invoice.

If, after receipt of an invoice from Abonmarche, the Client has any questions, objections, or if there are any discrepancies in the invoice, the Client shall identify the issue in writing within ten (10) days of its receipt. If no written objection is made within the ten (10) day period, any such objection shall be deemed waived.

Abonmarche invoices are due upon receipt and shall be considered past due if not paid within 30 calendar days of the invoice date. The parties agree that interest of 1.5% per month will be added to any unpaid balance after 30 days. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

The Client has designated Mr. Burt Matteson, Dir. of Cemeteries, Violet Cemetery as its Representative. The Representative shall have the authority to execute any documents pertaining to this Agreement or amendments thereto, and for the approval of all change orders, addenda, and additional services to be performed by Abonmarche. The representative shall be the contact person for submission of all documents, invoices or communications.

**Authorization to Proceed and Guarantee of Payment:** By signing this Agreement, the Client authorizes Abonmarche to provide services described above, and that the Client is the responsible party for making payment to Abonmarche. *By signing below, I acknowledge that I have received and agree to the Terms and Conditions on Pages 2-4 of this Agreement, and I understand that the Terms and Conditions take precedence over all prior oral and written understandings.* These Terms and Conditions can only be amended, supplemented, modified, or canceled by a written instrument signed by both parties. Any notice or other communications shall be in writing and shall be considered to have been duly given when personally delivered or upon the third day after being deposited into first class certified mail, postage prepaid, return receipt requested.

Authorized Client Representative	If Individual	Authorized Abonmarche Representative
Client: _____	<b>Signature:</b> _____	<b>Signature:</b> _____
<b>Signature:</b> _____	Printed Name: _____	Printed Name: <u>Bradley E. Mosness, PE</u>
Printed Name: _____	Date of Birth: _____	Title: <u>Vice President</u>
Date Signed: _____	Driver's License #: _____	Originating Office: <u>Abonmarche Consultants, Inc.</u>
Federal Tax ID: _____	Employed by: _____	<u>303 River Race Drive</u>
	Address: _____	<u>Unit 206</u>
	City/State: _____	<u>Goshen, IN 46526</u>
	Date Signed: _____	Date Signed: _____

## **TERMS AND CONDITIONS OF PROFESSIONAL SERVICES AGREEMENT**

1. **Agreement.** These Terms and Conditions shall be incorporated by reference and shall prevail as the basis of the Client's Agreement to Abonmarche. Any Client document or communication in addition to or in conflict with these Terms and Conditions shall be subordinate and subject to these provisions.
2. **Execution.** Abonmarche has the option to render this Agreement null and void, if it is not executed within thirty (30) days of delivery.
3. **Client Responsibilities.** The Client will provide all criteria and information concerning the requirements of the Project. Abonmarche shall be entitled to rely on the accuracy and completeness of services and information furnished by the Client, including services and information provided by design professionals or consultants directly to the Client. These services and information include, but are not limited to, surveys, tests, reports, diagrams, drawings, and legal information. The Client will assume responsibility for interpretation of contract documents and for construction observation and will waive all claims against Abonmarche that may be in any way connected, unless Abonmarche's services under this Agreement include full-time construction observation or review of contractor's performance. The Client shall designate in writing a person with authority to act on Client's behalf on all matters related to Abonmarche's services.
4. **Performance.** The standard of care for services performed by or provided by Abonmarche will be the care and skill ordinarily used by Abonmarche's profession practicing under similar circumstances at the same time and in the same locality. Abonmarche makes no warranty, expressed or implied, with respect to any services provided by Abonmarche. Abonmarche may be liable for claims, damages, cost, loss or expense (including reasonable attorney's fees) to the extent caused by the negligent acts, errors, or omissions of Abonmarche.
5. **Billing and Payment.** The client shall make an initial payment of \$0.00 (retainer) upon execution of this Agreement. The retainer shall be held by Abonmarche and applied against the final invoice. If the Client fails to make payments when due and Abonmarche incurs any costs in order to collect overdue sums from the Client, the Client agrees that all such collection costs incurred shall immediately become due and payable to Abonmarche. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable Abonmarche staff costs at standard billing rates for Abonmarche's time spent in efforts to collect. This obligation of the Client to pay Abonmarche's collection costs shall survive the term of this Agreement or any earlier termination by either party.
6. **Hourly Billing Rates.** If payment is on an hourly rate, Client will pay Abonmarche at the current hourly billing rates. The hourly rates are adjusted annually or as deemed appropriate.
7. **Reimbursable Expenses.** Reimbursable expenses, the actual costs incurred directly or indirectly for the Client's Project, will be charged at Abonmarche's current rates. Examples of reimbursable expenses include, but are not limited to: mileage, tests and analyses, special equipment services, postage and delivery charges, telephone and telefax charges, copying, printing, and binding charges, commercial transportation, meals, lodging, special fees, licenses, and permits. Subconsultant and outside technical or professional services will be charged on the basis of the actual costs times a factor of 1.15.
8. **Additional Services.** Additional services that may be provided pursuant to the Agreement or any subsequent modification of the Agreement will be authorized by written amendment signed on behalf of the Client and Abonmarche. Additional services performed by

Abonmarche are subject to all Terms and Conditions and the Client will be responsible for payment. Should the Client, regulatory agency, or any public body or inspector direct modification or addition to services covered by this Agreement, including costs relating to the relationship between the Client and a third party i.e. punch lists, change orders, and disputes, the cost will be added to the agreed price. Requests for extra services should be made in writing via a change order, but nonetheless, Abonmarche is entitled to be paid for extra services provided whether or not it is in writing.

9. **Underground Structures or Buried Utilities.** The Client is responsible for identification and location of all public and private buried structures on the Client's property and the Project site, such as, but not limited to, storage tanks and lines, or gas, water, sewer, electrical, phone, cable, or any other public or private utilities. It is agreed that Abonmarche is not responsible for accidental damage to utilities or underground structures, whether known, unknown or improperly located. The client shall be responsible for design fees if changes are necessary. Utility locating or marking services provided by Abonmarche are not substitutes for complying with the utility owner notification requirements or the locating services (811 systems) required prior to an excavation. Utilities shown as located by ground penetrating radar are approximate only. No excavation took place to verify the positions shown or to verify the type of utility (except as noted). Careful excavation is required for verification of the buried utility. The owner or customer assumes the risk of error and the actual location of the underground utility. Abonmarche is not providing any certification or guarantee regarding the exact location of any underground utility.
10. **Hazardous or Contaminated Materials/Conditions.** Abonmarche does not provide environmental services. As such, Client will advise Abonmarche, in writing and prior to the commencement of services, of all known or suspected hazardous or contaminated materials/conditions present at the site(s). Abonmarche and the Client agree that the discovery of unknown or unconfirmed hazardous or contaminated materials/conditions constitutes a changed condition that may require Abonmarche to renegotiate the scope of work or terminate its services. Abonmarche and Client also agree that the discovery of said materials/conditions may make it necessary for Abonmarche to take immediate measures to protect health, safety, and welfare of those performing services. Client agrees to compensate Abonmarche for any costs incident to the discovery of said materials/conditions. Client acknowledges that Abonmarche cannot guarantee that contaminants do not exist at a project site. Similarly, a site which is in fact unaffected by contaminants at the time of Abonmarche's surface or subsurface exploration may later, due to natural phenomenon or human intervention, become contaminated. Client waives any claim against Abonmarche, and agrees to defend, indemnify and hold Abonmarche harmless from any claims or liability for injury or loss in the event that Abonmarche does not detect the presence of contaminants through techniques commonly applied in the provision of their services.
11. **Underground Conditions.** Abonmarche shall have no responsibility for the identification of existing or unforeseen/differing underground conditions. The Contractor shall have sole responsibility for determining the nature of underground conditions and the means and methods of dealing with those conditions. Abonmarche is entitled to rely upon the information provided by geotechnical consultants and shall have no responsibility for the accuracy or correctness of the data contained in the geotechnical reports.
12. **Site Access and Security.** With the exception of access rights that land surveyors are afforded by law, the Client will provide Abonmarche access to the Project site and the Client will be responsible for obtaining any necessary



permission from any affected third-party property owners for use of their lands. The Client is solely responsible for site security.

13. **Consultants.** Abonmarche may engage Consultants at the request of the Client to perform services which are typically the Client's responsibility, such as surveys, geotechnical and environmental assessments. The Client agrees that Abonmarche will not be responsible for, or in any manner guarantee, the performance of services by the Consultants. The Client further agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless Abonmarche, its officers, directors, employees and subconsultants (collectively, Abonmarche) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising or allegedly arising from subsurface penetrations in locations authorized by the Client or from the inaccuracy or incompleteness of information provided to Abonmarche by the Client, except for damages caused by the sole negligence or willful misconduct of Abonmarche.
14. **Opinions of Cost.** Any opinions of probable construction cost and/or total project cost provided by Abonmarche will be on the basis of experience and judgment, but these are only estimates. Abonmarche has no control over market or contracting conditions and does not warrant that bids or ultimate construction or total project costs will not vary from such estimates.
15. **Ownership of Instruments of Service.** Abonmarche will remain the owner of all original drawings, reports, and other materials provided to the Client, whether in hard copy or electronic media form. The Client is authorized to use the copies provided by Abonmarche only in connection with the Project. Any other use or reuse by the Client for any purposes whatever will be at the Client's risk and full legal responsibility, without liability to Abonmarche and the Client will defend, indemnify, and hold Abonmarche harmless from all claims, damages, losses, and expenses, including attorney fees arising out of or resulting there from.
16. **Electronic Media.** Copies of data, reports, drawings, specifications, and other materials furnished by Abonmarche that may be relied upon by the Client are limited to the printed copies (also known as hard copies) that are delivered to the Client pursuant to the services under this Agreement. Computer files of text, data, graphics, or of other types of electronic media are the sole possession of Abonmarche, unless specifically stated otherwise in an amendment to this Agreement. Any electronic media provided under this Agreement to the Client are only for the convenience of the Client. Any conclusions or information obtained or derived from such electronic files will be at the user's sole risk.
17. **Bonds and Permits.** The Client will be responsible for the adoption of any site access or right of way bonds that may be initiated on their behalf. At completion of Abonmarche's services, the Client will take responsibility and pay any ongoing bond or permit costs for any bonded or permitted services.
18. **Insurance.** The Client will cause Abonmarche and Abonmarche's employees to be listed as additional insured on the general liability policies carried by the Client that are applicable to the Project. Upon request, the Client and Abonmarche will each deliver to the other certificates of insurance evidencing their coverage. The Client will require the Contractor to purchase and maintain general liability, automobile liability, workers compensation and other insurance as specified in the Contract Documents and to cause Abonmarche and Abonmarche's employees to be listed as additional insured with on a primary and non-contributory basis under the general liability and automobile insurance policies as respect to such liability and other insurance purchased and maintained by the Contractor for the Project. A certificate of insurance evidencing the additional insured and primary coverage status of Abonmarche under the General and Automobile liability from the Contractor shall be provided to Abonmarche.
19. **Third Party Invoicing.** If the Client directs Abonmarche to invoice third party payers, Abonmarche will do so, but the Client agrees to be ultimately responsible for Abonmarche's compensation until the Client provides Abonmarche with the third party's written acceptance of all terms of this Agreement and until Abonmarche agrees to the substitution.
20. **Third Party Beneficiaries.** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Abonmarche. Abonmarche's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against Abonmarche because of this Agreement or performance or nonperformance of services hereunder. The Client and Abonmarche agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.
21. **Suspension of Services.** In the event of non-payment or other breach by Client, Abonmarche will have the absolute right and without any liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, Abonmarche shall resume services under this Agreement, and the schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for Abonmarche to resume performance.
22. **Contractor's Work.** Abonmarche shall have no authority to direct or control the Work of the Contractor or to stop the Work of the Contractor. Abonmarche shall not be liable to any party for the failure of the Contractor to perform the Work consistent with the Plans and Specifications and applicable Codes and Regulations. Neither the performance of the services by Abonmarche, nor the presence of Abonmarche at a project construction site, shall impose any duty on Abonmarche, nor relieve the construction contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the construction work in accordance with the plans and specifications and any health or safety precautions required by any regulatory agencies or applicable law. Abonmarche and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client agrees that the construction contractor shall be solely responsible for jobsite and worker safety.
23. **ADA and Code Compliance.** The Americans with Disabilities Act (ADA) provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are accessible to persons with disabilities. The Client acknowledges that the requirements of ADA will be subject to various and possibly contradictory interpretations. To the extent applicable, Abonmarche will use its reasonable professional efforts and judgement to interpret ADA requirements and other federal, state, and local laws, rules, codes, ordinances, and regulations as they may apply on the Project. Abonmarche does not warrant or guarantee that the Project will comply with all interpretations of the ADA requirements and/or the requirements of other federal, state and local codes, rules, laws, ordinances, and regulations as they may apply to the Project. Client shall pay Abonmarche its customary hourly fees plus reimbursable expenses for any design changes made necessary by newly enacted laws, codes and regulations, or changes to existing laws, codes, or regulations after the date that this Agreement is executed.
24. **Notice of Lien Rights.** Abonmarche hereby notifies, and the Client acknowledges that Abonmarche has lien rights on the Client's land and property when Abonmarche provides labor and materials for Projects on the Client's land and the Client

does not pay for those services except when the Client is a governmental agency and lien rights do not apply.

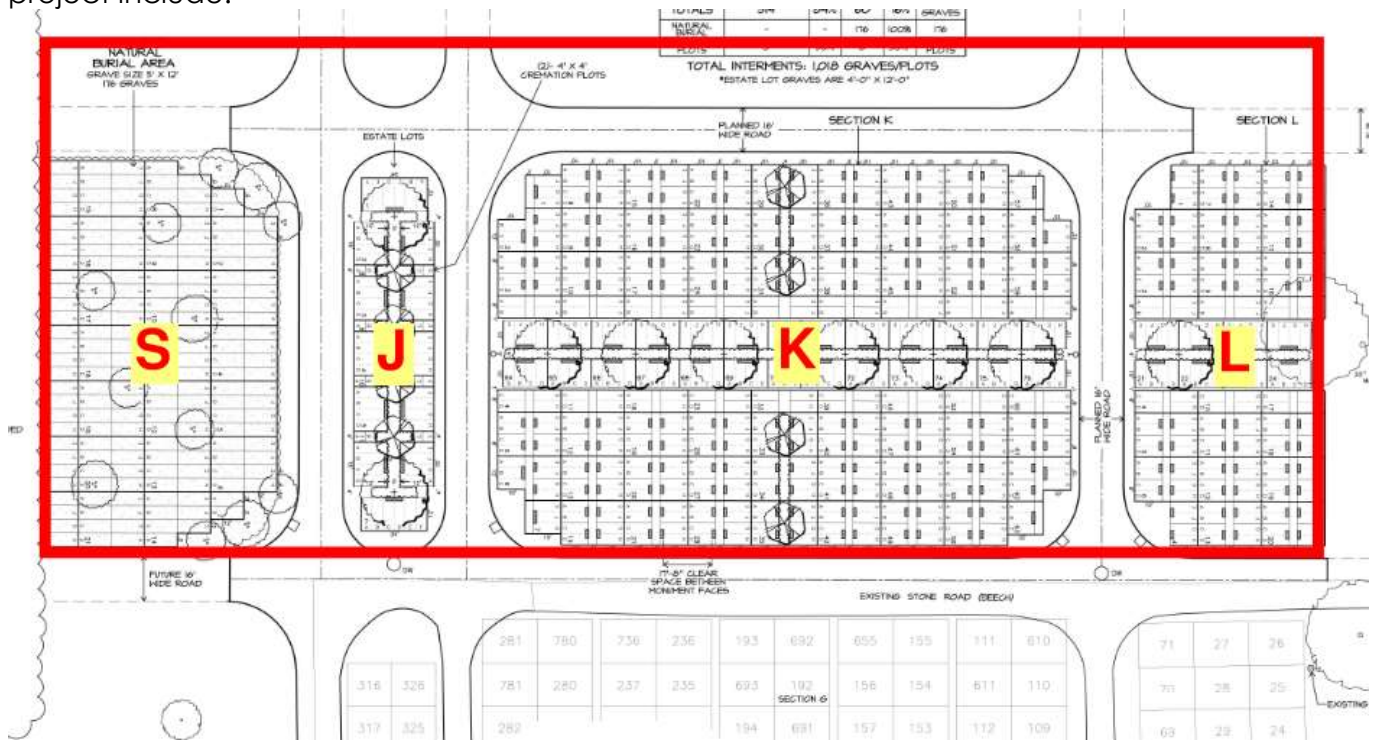
25. **Legal Expenses.** If Abonmarche brings a lawsuit against the Client to collect invoiced fees and expenses, the Client shall be legally liable to pay Abonmarche's expenses, including its actual attorney fees and costs.
26. **Liability Limitation.** In recognition of the relative risks and benefits of the Project to both the Client and Abonmarche, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, and not withstanding any other provision of this Agreement, to limit the total liability, in the aggregate, of Abonmarche and Abonmarche's officers, directors, partners, employees, shareholders, owners and subconsultants, for any and all claims, losses, costs, or damages of any nature whatsoever, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims and expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by Abonmarche under this Agreement, or the total amount of \$50,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action, including without limitation active and passive negligence, however alleged or arising, unless otherwise prohibited by law. In no event shall Abonmarche's liability exceed the amount of available insurance proceeds. Client acknowledges that Abonmarche is a corporation and agrees that any claim made by Client arising out of any act or omission of any director, officer, or employee of Abonmarche, in execution or performance of this Agreement, shall be made against Abonmarche and not against such director, officer, or employee.
27. **Contractor and Subcontractor Claims** The Client further agrees, to the fullest extent permitted by law, to limit the liability of Abonmarche and Abonmarche's officers, directors, partners, employees, shareholders, owners and subconsultants to all construction contractors and subcontractors on the Project for any and all claims, losses, costs, damages of any nature whatsoever or claims and expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of Abonmarche and Abonmarche's subconsultants to all those named shall not exceed \$50,000, or Abonmarche's total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising unless otherwise prohibited by law.
28. **Consequential Damages.** The Client and Abonmarche waive consequential damages for claims, disputes, or other matters in question relating to services provided as a part of this Agreement, including for example, but not limited to, loss of business.
29. **Governing Law.** This Agreement will be deemed to have been made in the location where the services are performed, and shall be governed by and construed in accordance with the laws of that state.
30. **Exclusive Choice of Forum.** Each party irrevocably and unconditionally agrees that it will not bring any action, litigation, or proceeding against any other party in any way arising from or relating to this Agreement in any forum other than the courts of the state and county where the work is performed. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of those courts and agrees to bring any such action, litigation, or proceeding only in those courts. Each party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
31. **Considerations.** The successors, executors, administrators, and legal representatives of the Client and Abonmarche are hereby bound onto the other with respect to the covenants, Agreements, and obligations of this Agreement.
32. **Acts of God.** Neither the Client nor Abonmarche will have any liability for nonperformance caused in whole or in part by causes beyond Abonmarche's reasonable control. Such causes include, but are not limited to, Acts of God, civil unrest and war, labor unrest and strikes, acts of authorities, and events that could not be reasonably anticipated.
33. **Termination.** Either the Client or Abonmarche may terminate this Agreement by giving ten (10) days written notice to the other party. In such an event, the Client will pay Abonmarche in full for all services previously authorized and performed prior to the effective date of the termination, plus (at the discretion of Abonmarche) a termination charge to cover finalization of services necessary to bring ongoing services to a logical conclusion. Such charge will not exceed thirty (30) percent of all charges previously incurred. Upon receipt of such payment, Abonmarche will return to the Client all documents and information that are the property of the Client. If the Client fails to make payment to Abonmarche in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by Abonmarche.
34. **Severability.** In the event that one or more provisions contained in this Agreement are declared invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of the Agreement shall not be affected or impaired.
35. **Dispute Resolution.** Any claims or disputes made during design, construction or post-construction between the Client and Abonmarche shall be submitted to non-binding mediation. The Client and Abonmarche agree to include a similar mediation agreement with all contractors, sub-contractors, sub-consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties. The mediation shall be governed by the then current Construction Industry Mediation Rules of the American Arbitration Association ("AAA"). Mediation shall be a condition precedent to the initiation of any other dispute resolution process, including court actions.
36. **Entire Agreement.** This Agreement contains the entire agreement between the parties and there are no agreements, representations, statements, or understandings which have been relied on by the parties which are not stated in this Agreement.

[End of Agreement](#)

## WORK PLAN

### PROJECT UNDERSTANDING

The City of Goshen is planning a new phase to Violet Cemetery as shown below in the graphic consisting of proposed Sections S, J, K, and L totaling about 2 acres. This area is part of a larger undeveloped tract owned by the City containing about 16 acres. The City hired a consultant to prepare a Master Plan showing new burial plots on approximately 8 acres (part of the larger undeveloped tract) as well as a Master Drainage and Grading Plan. Major objectives for this project include:



- It is recommended that a Pre-Development Meeting is scheduled with City Staff to discuss the proposed project, subdivision platting, technical review, and required permitting for construction. We propose to coordinate this meeting as the first step.
- A topographic survey is proposed to measure the actual ground elevations across the proposed Master Plan (8± acres). The actual elevations will be used to perform the stormwater management design.
- A subdivision plat meeting the City's Subdivision Control Ordinance and the State of Indiana Statute shall be prepared for Phase 1 (Sections S, J, K, L) and reviewed by City Staff through the technical review process.
- Stormwater management design shall be in accordance with the City of Goshen Drainage Ordinance and include proposed drainage features and calculations.
  - The provided master drainage and grading plan prepared by others will be used as a basis to design the drainage collection features (retention, drywells, inlets).



- Since the provided plans indicate new drywells, the published permeability rates contained in the Elkhart County Soil Survey will be used in the calculations. Please note this Work Plan does not include performing on-site infiltration testing to determine the actual permeability rate of the soils.
- The City Stormwater Department may require the drywells to be registered with the EPA which our office can help prepare the registration form.
- The subdivision plat and detailed site plans will need reviewed by the City technical review committee. It is proposed to include the provided plan sheets prepared by your consultant in the submittal. If there are City comments on the provided plan sheets, we will need your consultant's assistance to address.
- Since land disturbance is anticipated to be greater than one acre, a Construction Stormwater General Permit will be required prior to any earthwork operations. This permit will need to be coordinated with the City Stormwater Department and Elkhart County Soil & Water Conservation District.

## **SCOPE OF SERVICES**

We have tailored our scope of services pursuant to your request, and our current understanding of the project. The following tasks are services we expect to deliver for this project.

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

#### Boundary Retracement Survey (Undeveloped Land)

This task includes performing a Rule 12 Boundary Retracement Survey of the remaining undeveloped land of the cemetery for the subdivision plat. This task includes research of record information to obtain current deeds, section corners, right-of-way, and any adjacent or existing surveys. A boundary retracement survey drawing shall be prepared and recorded in the Office of Recorder of Elkhart County, and referenced on the subdivision plat as required by Indiana Code. This task also includes setting the external boundary corners where none currently exist.

#### Topographic Survey (Master Plan)

This task includes performing a topographic survey of the Master Plan to locate existing features and the actual ground elevations for use in designing the required stormwater management.

### **Task #2: Subdivision Plat Process (Phase 1)**

This task includes preparing a subdivision plat on 18"x24" drawing size (per the County Recorder's Office) for the next phase using the burial plot layout prepared by others. The plat drawing shall identify the proposed layout of burial plots with dimensions, site access, legal description, and the required dedication statements and signature lines. The plat drawings shall be prepared in accordance with the City of Goshen Subdivision Control Ordinance and the Indiana Code. This task also includes coordinating with the Client on various items related to the subdivision process and sharing progress in PDF format and paper copies as requested.





This task also includes submitting the subdivision plat, section plan and master drainage and grading plan prepared by others, stormwater management design and SWPPP (prepared under the following task) to the City of Goshen Technical Review Committee for review and consideration. Our office shall prepare the City's technical review application and attend the Technical Review Meeting to discuss the project and to receive any feedback/concerns. We recommend that a representative from your office attend the meeting with us to help respond to questions, as necessary. Since this is a City of Goshen project, we anticipate the review fees to be waived.

This task also includes providing assistance with the final recording of the approved plat at the Elkhart County Recorder's Office.

### **Task #3: Construction Stormwater General Permit (CSGP)**

#### Stormwater Management Design (Master Plan)

This task includes using the provided Master Grading and Drainage Plan as a basis of designing stormwater management requirements for the Master Plan, and preparing drainage/retention calculations in accordance with the City of Goshen Drainage Ordinance. Construction notes shall be shown on the plan to further detail the design. This task also includes coordinating with the Client on various items related to the stormwater design and progress designs shall be shared in PDF format and paper copies as requested.

#### SWPPP / Permit Applications (Phase 1)

Since there is more than one acre of proposed land disturbance, this task includes preparing a Storm Water Pollution Prevention Plan (SWPPP) for the proposed phase, construction details, schedules, and methods for controlling soil erosion in accordance with State Regulation and the City of Goshen's MS4 Program. These documents, along with the required permit applications, shall be submitted for local review/approval and to IDEM prior to any earthwork activities. The required filing fees shall be provided by the client and the advertisement charge shall be included on our invoice as a reimbursable expense. This task does not include monitoring and onsite evaluations.

#### Post-Construction Stormwater Management Plan

Since this project is by the City of Goshen, the required Post-Construction Stormwater Management Plan is anticipated to be waived for the Construction Stormwater General Permit. Therefore, this task is not included in the proposed Work Plan.



#### **Task #4: Set Control Points (4 Sections)**

This task includes setting the outside corners of the four (4) sections (S, J, K, L). This task includes setting a maximum of 20 control points so the City can determine and set the individual burial plots and monuments. The setting of additional points shall be performed hourly as requested.

#### **Task #5: Construction Staking (Hourly)**

As requested, this task includes performing staking to facilitate the construction of the project. Staking and re-staking services requested shall be billed hourly. Our field crew rate is \$180.00/hr. and our CADD department's rate to reduce and generate staking data for the field crew is \$110.00/hr. The following staking tasks are anticipated one-time for the project.

- Grading changes for excavation of Phase 1 (S, J, K, L)
- Drainage features (retention, drywells, structures)
- Road locations around Phase 1 (J, K, L)



**FEES FOR SERVICES**

ABONMARCHE shall receive as payment for the work performed under this contract the total lump sum amount for each task listed below and hourly rates where specified. All services below are firm for 90 days. If not completed within one year, Abonmarche reserves the right to adjust all uncompleted items for cost-of-living increase.

Please note the below costs do not include filing, permitting, and advertising fees. These fees shall be paid separately by the client.

Task #1	Survey Services	
	Boundary Retracement Survey (Undeveloped Land) .....	\$ 6,500
	Topographic Survey (Master Plan) .....	\$ 3,500
Task #2	Subdivision Plat Process (Phase 1) .....	\$ 9,500
Task #3	Construction Stormwater General Permit (CSGP)	
	Stormwater Management Design (Master Plan) .....	\$ 7,400
	SWPPP / Permit Applications (Phase 1) .....	\$ 2,500
Task #4	Set Control Points (4 Sections) .....	\$ 2,500
Task #5	Construction Staking (Hourly) .....	As Requested
		(Estimated Fee = \$ 6,000)
	Reimbursable Expenses.....	As Requested

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TOTAL: .....\$ 31,900 plus Task #5 and Any Reimbursables

**NOTE:**

Please note that any special requirements, imposed upon this project by a reviewing governmental entity or the client, that are necessary to proceed with the project and are beyond the scope identified in this proposal, will be considered as additional services. We will contact you for authorization prior to commencing with said services.



## **ANTICIPATED SCHEDULE**

Below is a general schedule with estimated durations for each task with an estimated start date of September 25, 2023.

Pre-Development Meeting with City	Schedule Upon Receipt of Signed Agreement Estimate 2-3 weeks depending on City Availability
Boundary and Topographic Survey	8 weeks after Receipt of Signed Agreement
Subdivision Platting Process Stormwater Management and SWPPP	8 weeks after Survey is Completed
▪ Technical Review Process	February / March 2024 (**Subject to City Filing Dates)
▪ CSGP	After Technical Review is Completed
Start Construction	TBD
Set Control Points Construction Staking Services	TBD

## **INFORMATION AND SERVICES TO BE FURNISHED BY CLIENT**

1. Access to Property
2. Available Utility Maps
3. Existing Cemetery Drawings

## **ADDITIONAL SERVICES OFFERED BY ABONMARCHE**

1. Stake Individual Burial Plots with Rebars
2. Post-Construction Stormwater Management Plan, if required
3. Platting of Additional Phases
4. Soil Infiltration Testing (on-site)
5. Construction Inspection





**CITY OF GOSHEN LEGAL DEPARTMENT**

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

Phone (574) 537-3820 • Fax (574) 533-8626 • TDD (574) 534-3185  
[www.goshenindiana.org](http://www.goshenindiana.org)

September 18, 2023

To: Board of Public Works and Safety

From: Brandy L. Toms

Subject: Agreement with Signtech Sign Services for the Installation of Downtown Goshen's Christmas décor for the 2023-2024 season.

It is recommended that the Board approve and authorize Mayor Leichty to execute the attached agreement with Signtech Sign Services for the maintenance, installation, and uninstallation of Downtown Goshen's Christmas décor for the 2023-2023 season at a cost to the City not to exceed \$20,000 plus the cost of a lift rental should one be necessary.

**Suggested Motion:**

Approve and authorize Mayor Leichty to execute the agreement with Signtech Sign Services for the maintenance, installation, and uninstallation of Downtown Goshen's Christmas décor for the 2023-2024 season at a cost to the City not to exceed \$20,000 plus the cost of a lift rental should one be necessary

**AGREEMENT**  
**WITH SIGNTECH SIGN SERVICES FOR THE INSTALLATION OF**  
**DOWNTOWN GOSHEN’S CHIRSTIMAS DÉCOR FOR THE 2023-2024 SEASON**

THIS AGREEMENT is entered into on \_\_\_\_\_, 2023, which is the last signature date set forth below, by and between **Signtech Sign Services** (“Contractor”), whose mailing address is PO Box 835, Goshen, Indiana 46527, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

**Section 1. Contractor Duties**

Contractor shall provide City the services for the maintenance, installation, and uninstallation of Christmas décor for the 2023-2024 season, which services are more particularly described in Contractor’s September 11, 2023 proposal attached as Exhibit A, and made a part of this agreement, (hereinafter referred to as “Duties”).

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

**Section 2. Effective Date; Term**

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Contractor shall commence all Duties as indicated in the time line included in Contractor’s September 11, 2023 proposal referenced in Section 1.

**Section 3. Compensation**

- (A) City agrees to compensate Contractor for performing all Duties as outlined in Exhibit A at the hourly rate of Fifty-Five Dollars per hour (\$55.00 per hour), but in no event will the total compensation exceed Twenty Thousand Dollars (\$20,000).
- (B) Compensation in Section 3, subsection B does not include of the rental cost of an 80’ lift. This expense will be at cost per house of usage in needed. Contractor agrees to contact City if a lift will need to be rented to perform any Duties prior to renting the same.

**Section 4. Payment**

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

City of Goshen  
c/o Economic Improvement District  
Attention: Scott Woldruff  
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) Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

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

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

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

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

### **Section 7. 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. 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:**

Signtech Sign Services  
Attention: Todd Lehman  
PO Box 835  
Goshen, IN 46527

## **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 Contractor.

**Section 26. Authority to Execute**

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

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

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

**Signtech Sign Services**

\_\_\_\_\_  
Gina Leichty, Mayor

\_\_\_\_\_  
Todd Lehman, Owner

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

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



**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

RE: **RESCHEDULED COLLEGE AVENUE LANE RESTRICTION  
(JN: 2023-2001)**

DATE: September 18, 2023

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With the Goshen College Westlawn Nursing Renovation project, C&E Excavating is requesting a lane restriction on College Avenue between Main Street and S 9<sup>th</sup> Street starting Wednesday, September 20 through Thursday, September 21, 2023. The traffic control plan is attached. Due to delays in receiving the required documents, the permit could not be issued in time for work to be completed last week.

**Requested Motion: Move to approve the lane restriction on College Avenue for two days starting Wednesday, September 20, 2023.**

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

\_\_\_\_\_  
Gina Leichty, Mayor

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

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

\_\_\_\_\_  
Orv Myers, Member

\_\_\_\_\_  
Michael Landis, Member



College Avenue Lane Restriction

Wednesday, 9/20/23 and  
Thursday, 9/21/23

Legend



WORK AREA

Temp Equip Parking



200 ft





**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 Board of Public Works and Safety**

**FROM:** Stormwater Department

**RE: RIGHT OF ENTRY AGREEMENTS FOR 1824 AND 1910 LIGHTHOUSE LANE  
THE CROSSING SUBDIVISION (JN: 2006-2057)**

**DATE:** September 18, 2023

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During the construction of the homes along the south side of Lighthouse Lane in The Crossing Subdivision soil was placed within an existing drainage swale to build up the lots. This resulted in a low area being created between 1910 and 1824 Lighthouse Lane where stormwater collects until it can soak into the ground or evaporate (see the image on page 2).

The homeowners approached the Goshen Engineering and Stormwater Departments in 2022 to request help in addressing this problem during the Crossing Subdivision Drainage Improvements project (JN: 2020-0033) but because this issue lies outside of the project area it could not be fixed.

Due to the elevations of the newly constructed swale to the south of the homes and the height of the front yard between the homes installing a pipe to the south and north was deemed unfeasible and the only viable option is to raise the yard up. Thus, the City came to an agreement with the homeowners in which the City would provide topsoil and the homeowners would spread out the topsoil to eliminate the low spot.

To move forward with this arrangement two right of entry agreements between the property owners and the City were prepared and the Stormwater Department is requesting the Board of Public Works and Safety's approval to allow Mayor Leichty to sign the agreements.

**Requested Motion:** Approve granting permission for Mayor Leichty to sign the right of entry agreements for 1824 and 1910 Lighthouse Lane allowing the City access to these two properties to provide topsoil to correct an existing drainage issue.



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## RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT is entered into on \_\_\_\_\_, 2023 which is the last signature date set forth below, between the City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana, by its Goshen Board of Public Works and Safety, hereinafter referred to as "City," and **Jesus E. Araujo Gutierrez and Agny C. Medina De Araujo**, Husband and Wife, hereinafter referred to as "Property Owner."

WHEREAS City is planning to deliver topsoil to improve drainage on the property of 1910 Lighthouse Lane in the Crossing subdivision, hereinafter referred to as "the Project;" Property Owner shall be responsible for any grading of the soil.

WHEREAS as part of the Project, it is necessary for City to enter onto Property Owner's property for delivery of topsoil on the real property described below, and on the real property directly east of 1910 Lighthouse Lane.

WHEREAS Property Owner is willing to grant a temporary right of entry to allow City and City's employees, agents, and contractors entry upon the described real estate for the purpose of proceeding with the Project and performing the Work.

NOW, THEREFORE, City and Property Owner agree as follows:

1. Property Owner grants City, and its employees, agents, and contractors, the right to enter upon the Property Owner's real estate located at **1910 Lighthouse Lane, Goshen, Indiana**, and more particularly described as follows:

Lot Numbered Twenty-four (24) as the said Lot is known and designated on the recorded Plat of The Crossing, a subdivision in Elkhart township, Elkhart County, Indiana, as per plat thereof recorded December 26, 2007, in Plat Book 32, page 37, and in Instrument No. 2007-35154, in the Office of the Recorder of Elkhart County, Indiana.

2. This right of entry shall permit the City, including City's employees, agents, and contractors, to enter upon the above-described real estate of Property Owner for the purpose of proceeding with the Project and performing Work. The City is merely delivering topsoil, and it will place plywood over paved improvements on the above-described real property and take other reasonable steps to protect improvements on the subject real property. City and Property Owner agree that the city will not be liable for damage to vegetation or other improvements incidental to the delivery of topsoil that is inherent in the delivery of topsoil and the placement of protections over paved surfaces. The City shall promptly pay for or otherwise rectify any other types of damages that may be caused to Property Owner's real estate as a result of or in connection with the Work performed under this right of entry agreement.
3. This right of entry shall be effective when fully executed by the Property Owner and City, and the term of this right of entry shall terminate December 31, 2023, or upon completion of the Work, whichever occurs first.

IN WITNESS THEREOF, the undersigned have executed this Right of Entry Agreement on the dates set forth below.

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

Property Owner

\_\_\_\_\_  
Gina Leichty, Mayor

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

*Jesus E. Araujo*

\_\_\_\_\_  
Jesus E. Araujo Gutierrez

Date: *09-14-2023*

*Agn C. Medina*

\_\_\_\_\_  
Agn C. Medina De Arajuo

Date: *09-14-2023*

**RIGHT OF ENTRY AGREEMENT**

THIS RIGHT OF ENTRY AGREEMENT is entered into on \_\_\_\_\_, 2023 which is the last signature date set forth below, between the City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana, by its Goshen Board of Public Works and Safety, hereinafter referred to as "City," and **Tyler Kevin Rothhaar and Lillian Rothhaar**, Husband and Wife, hereinafter referred to as "Property Owner."

WHEREAS City is planning to deliver topsoil to improve drainage on the property of 1824 Lighthouse Lane in the Crossing subdivision, hereinafter referred to as "the Project;" Property Owner shall be responsible for any grading of the soil.

WHEREAS as part of the Project, it is necessary for City to enter onto Property Owner's property for delivery of topsoil on the real property described below, and on the real property directly west of 1824 Lighthouse Lane.

WHEREAS Property Owner is willing to grant a temporary right of entry to allow City and City's employees, agents, and contractors entry upon the described real estate for the purpose of proceeding with the Project and performing the Work.

NOW, THEREFORE, City and Property Owner agree as follows:

1. Property Owner grants City, and its employees, agents, and contractors, the right to enter upon the Property Owner's real estate located at **1824 Lighthouse Lane, Goshen, Indiana**, and more particularly described as follows:

Lot Numbered Twenty-Five (25) as the said Lot is known and designated on the recorded Plat of The Crossing, a subdivision in Elkhart township, Elkhart County, Indiana, as per plat thereof recorded December 26, 2007, in Plat Book 32, page 37, and in Instrument No. 2007-35154, in the Office of the Recorder of Elkhart County, Indiana.

2. This right of entry shall permit the City, including City's employees, agents, and contractors, to enter upon the above-described real estate of Property Owner for the purpose of proceeding with the Project and performing Work. The City is merely delivering topsoil, and it will place plywood over paved improvements on the above-described real property and take other reasonable steps to protect improvements on the subject real property. City and Property Owner agree that the city will not be liable for damage to vegetation or other improvements incidental to the delivery of topsoil that is inherent in the delivery of topsoil and the placement of protections over paved surfaces. The City shall promptly pay for or otherwise rectify any other types of damages that may be caused to Property Owner's real estate as a result of or in connection with the Work performed under this right of entry agreement.
3. This right of entry shall be effective when fully executed by the Property Owner and City, and the term of this right of entry shall terminate December 31, 2023, or upon completion of the Work, whichever occurs first.

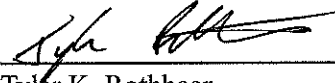
IN WITNESS THEREOF, the undersigned have executed this Right of Entry Agreement on the dates set forth below.

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

Property Owner

\_\_\_\_\_  
Gina Leichty, Mayor

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

  
\_\_\_\_\_  
Tyler K. Rothhaar

Date: 9-14-23

  
\_\_\_\_\_  
Lillian Rothhaar

Date: 9/14/23