



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m., December 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: December 11, 2023

Approval of Agenda

- 1) Downtown Goshen Inc. requests:** Approval for multiple street closures and related City resources and services for 2024 First Friday activities

- 2) Legal Department request:** Approve and authorize the Mayor to execute the agreements with VFP Fire Systems, Inc. for fire sprinkler system inspections required at the Police and Courts building, Wastewater Treatment Plant and Combined Sewer Overflows site for \$6,127

- 3) Legal Department request:** Approve contract with New Avenues Inc. - 2024 Employee Assistance Program – A la Carte Service Contract for City Employees

- 4) Legal Department request:** Approve contract with New Avenues Inc. - 2024 Employee Assistance Program - Full Service Contract for the Police Department

- 5) Legal Department request:** Approve the Letter Agreement with Sun Brookside Manor LLC, with the Mayor given authority to execute the agreement, for the City's acquisition of property near the intersection of Peddlers Village Road and Reliance Road

- 6) Engineering Department request:** Approve a two-day closure of 10th Street, south of Douglas Street, and approve parking restrictions on Douglas Street and 11th Street between Jan. 2 and Jan. 11, 2024, so Niblock can install a water main across 10th Street as part of the Tenth Street Reconstruction project

- 7) Engineering Department request:** Approve lane restrictions on 10th Street, Plymouth Avenue, and Reynolds Street, and approve daytime parking restrictions along 10th Street from Jan. 8, 2024, until Feb. 16, 2024, so NIPSCO can complete a planned gas main relocation in preparation for the Tenth Street Reconstruction project



8) Engineering Department request: Approve the closure of East Douglas Street between South Main Street (SR 15) and South 6th Street, so NIPSCO can complete a gas valve replacement from Jan.8, 2024, thru Jan. 12, 2024

9) Engineering Department request: Approve the agreement with Arcadis, U.S., Inc. for \$93,000 for consulting engineering services to develop a Lead Service Line Replacement Plan and Indiana Finance State Revolving Fund application

10) Engineering Department request: Approve the agreement with Rejuvtec, Inc. for the 2024 Asphalt Paving Rejuvenation project in the amount of \$102,176.10

11) Stormwater Department request for Boar of Public Works & Safety: Approve and authorize the Board to execute the agreement with Last Dance, LLC for the completion of the construction project at 1280 Brinkley Way East

Privilege of the Floor

**CITY BOARD OF PUBLIC WORKS & SAFETY PUBLIC HEARINGS:
2:00 p.m., December 18, 2023**

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

Members: Mayor Leichty, Mike Landis, Orv Myers, Mary Nichols, Barb Swartley

12) Review of the Order of the City of Goshen Building Commissioner for 407 Center Street (Ronald E. Davidhizar, property owner)

13) Review of the Order of the City of Goshen Building Commissioner for 218 N. 9th Street (Ronald E. Davidhizar, property owner)

14) Review of the Order of the City of Goshen Building Commissioner for 602 N. 5th Street (Ronald E. Davidhizar, property owner)

Approval of Civil City and Utility Claims

Adjournment



BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD
MINUTES OF THE DECEMBER 11, 2023 REGULAR MEETING
Convened in the Goshen Police & Court Building, 111 East Jefferson St., Goshen, Indiana

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

Absent: None

CALL TO ORDER: Mayor Gina Leichty called the meeting to order at 2:00 p.m.

REVIEW/APPROVE MINUTES: Mayor Leichty presented the minutes of the Dec. 4, 2023 Regular Meeting that were prepared by Clerk-Treasurer Aguirre. **Board Member Mary Nichols moved to approve the minutes as presented and the motion was seconded by Board Member Barb Swartley. Motion passed 5-0.**

REVIEW/APPROVE AGENDA: Mayor Leichty presented the agenda as submitted by the Clerk-Treasurer with one proposed addition – 9) *Ancon Construction request: Approve lane restriction on Wilden Avenue, Dec. 12-15, 2023, for access to a water main.* **Board member Nichols moved to accept the agenda as suggested with the added agenda item. Board member Swartley seconded the motion. Motion passed 5-0.**

1) Opening of sealed bid: Mini excavator for the Cemeteries Department

On behalf of the City Cemeteries Department, the Board of Public Works & Safety opened a sealed offer submitted to the City for the **purchase of a new mini excavator for the Cemeteries Department. Offers also were solicited for the following optional item: TRADE-IN – John Deere Model #310D, Serial #T0310DG801642.**

Sealed quotes were due to be submitted to the Clerk-Treasurer's Office by 1:45 p.m. on Dec. 11, 2023.

Mayor Leichty announced that one offer was received from:

Bobcat of Michiana, Inc. of Elkhart, Indiana. Offer: \$70,489.92. Option #1 (Trade-in): \$12,000.

Nichols/Swartley moved that the bid be referred to the City Legal Department for review. Motion passed 5-0.

2) Opening of sealed bid: 2024 Pavement Rejuvenation Project for the Engineering Department

On behalf of the City Engineering Department, the Board of Public Works & Safety opened a sealed offer submitted to the City for the **2024 Pavement Rejuvenation Project.**

Sealed quotes were due to be submitted to the Clerk-Treasurer's Office by 1:45 p.m. on Dec. 11, 2023.

Mayor Leichty announced that one offer was received from:

Rejuvtec, Inc. of Indianapolis, Indiana. Offer: \$102,176.10, with a completion date change to June 30, 2024.

Nichols/Swartley moved that the bid be referred to the City Legal Department for review. Motion passed 5-0.

3) Police Department request: Approve the promotion of Officer Zachary J. Bechtel from the rank of Patrol Officer to the rank of Sergeant, retroactive to Dec. 1, 2023

City Police Chief José Miller asked that the Board approve the promotion of **Zachary J. Bechtel** from the rank of Patrol Officer to the rank of Sergeant, retroactive to Dec. 1, 2023.

Chief Miller said that after reviewing the results of all officers who tested, Officer Bechtel was selected as the candidate for the position. The Chief said Officer Bechtel has worked at the police department over four (4) years "and has demonstrated he will be an asset to supervisory team on the Goshen Police Department. He has not only served our department as a Patrol Officer, but he's also one of our department's field training officers."



Nichols/Swartley made a motion to approve the promotion of Zachary J. Bechtel from the rank of Patrol Officer to the rank of Sergeant, retroactive to Dec. 1, 2023. Motion passed 5-0.
After the Board approved the promotion, Mayor Leichty swore Sergeant Bechtel into office.

4) Environmental Resilience Department request: Approve and authorize the Mayor to sign contracts for the creation of the South Wellfield Bee and Butterfly Sanctuary

Aaron Sawatsky Kingsley, Director of the City Department of Environmental Resilience, asked for approval of three agreements to create a Bee and Butterfly Sanctuary on the site of the City's new South Wellfield.

In a memorandum to the Board, **Kingsley** wrote that in 2021, the City of Goshen created a climate action plan to address climate concerns and improve resilience. Part of this plan included goals to reduce emissions.

Kingsley wrote that the City owns a significant amount of land within City limits, which is maintained via mowing or rented out for agriculture. These activities emit a large amount of greenhouse gasses, increasing city emissions.

Kingsley wrote that the Department of Water and Sewer has agreed to use 48 acres of their newly acquired land for the new wellfield to plant wildflowers and prairie grasses. This type of habitat is essential for pollinator species like honeybees and monarch butterflies, which have been devastated by habitat loss.

Working with three organizations, **Kingsley** wrote that the City will be able to access funding (\$14,310.00 for seed) to provide habitat for plant and insect species. The City will spend an additional \$14,206.00 over three years for installation, monitoring and maintenance (including a prescribed burn) during the sanctuary's establishment phase.

Kingsley also wrote that plans for the site also include a public walking path where nearby communities can enjoy the wildflowers and butterflies. This will be the largest restoration project the City has participated in.

The agreements were with:

- The **Bee and Butterfly Habitat Fund** (Seed a Legacy Program), to provide habitat seed mixtures.
- The **U.S. Fish and Wildlife Service** (Partners for Wildlife Program) with a grant of \$9,540 and \$4,770 contributed by the National Wild Turkey Federation, with the City providing \$14,206.
- **Blue Herron Ministries, Inc.** will plant seeds from December 2023 to February 2024 and also provide site inspections and prescribed fire services for a total of \$8,960.

Kingsley also provided a copy of a sales order with **Spence Restoration Nursery** of Muncie, Indiana for prairie and other seeds totaling \$16,556.

Kingsley summarized the proposal and requests to the Board and said this will be a beautiful and unique project for Goshen. **Mayor Leichty** agreed, adding that there will be a need for communication to the public about the necessity for occasional prescribed burns at the site. **Kingsley** said that would be an important part of the process.

Clerk-Treasurer Aguirre asked **City Attorney Bodie Stegelmann** a procedural question – whether the Board could approve the three agreements in one motion or whether the agreements had to be approved in three separate motions. **Stegelmann** said they could be approved in one motion as long as the three agreements were identified.

Board member Landis asked what would happen to the sanctuary if further evaluation showed that the site wasn't suitable for a wellfield. **Superintendent of the City Water Treatment and Sewer Department Kent Holdren** responded that the City would still own the land and establishing a sanctuary would reduce land maintenance costs.

Kingsley added that the City's agreement with the federal government would require the City to maintain a bee and butterfly sanctuary at the property for at least 10 years.

Nichols/Swartley made a motion to approve and authorize the Mayor to sign contracts with the Bee and Butterfly Habitat Fund, the U.S. Fish and Wildlife Service and Blue Herron Ministries, Inc. on behalf of the Board of Works to create the South Wellfield Bee and Butterfly Sanctuary. Motion passed 5-0.

After passage, Kingsley acknowledged the work of AmeriCorps volunteers, including Alexa Kennel, for their work on this project. The audience responded with applause.



5) Engineering Department request: Approve the partial closure of Reliance Road, Dec. 13-15, 2023, for the new building utility connections and roadway restoration

City Director of Public Works & Utilities Dustin Sailor told the Board that Stone Brothers company was requesting permission to complete the water and sewer connections for the new T&T Auto Service building at 1795 Reliance Road. The company requested closure of Reliance Road immediately east of the property from Wednesday, Dec. 13, through the end of the day on Friday, Dec. 15, 2023.

Sailor said the company will be boring the water connection beneath the roadway and open cutting the road to make the sewer connection. It has contracted with State Barricade for the proper traffic control signage and will be responsible for maintaining that while the road is closed. In addition, staff will continue to coordinate with the Reliance Road Fire Station to ensure staff is aware of any impact on their access.

Sailor said in the event that work is postponed pending completion of utility locates, a press release will be distributed, and an updated closure timeline provided.

Mayor Leichty asked if Elkhart County officials had been informed of the closure. **Sailor** said he would check.

Nichols/Swartley made a motion to approve the Reliance Road closure for the utility connections and roadway restoration from Dec. 13, 2023 thru December 15, 2023. Motion passed 5-0.

6) Engineering Department request: Approve Change Order No. 4 for the 2023 Asphalt Project to make valve box adjustments and the thermoplastic pavement markings for an increase of \$16,994.65 and a 6.98% change to the contract price to \$2,650,494.15

City Director of Public Works & Utilities Dustin Sailor informed the Board that several valve boxes need to be adjusted lower to match the new asphalt road properly to avoid plows from hitting them. Rieth Boulevard previously had improper 4-inch width cross hatch markings. According to the latest Manual of Uniform Traffic Control Device (MUTCD), the proper width should be 12 inches.

Sailor said included in the Board's agenda packet was Change Order No.4 for the 2023 Paving Project, which provides the cost of the valve box adjustments and the thermoplastic pavement markings to complete the project. In response to a question from **Board member Landis**, **Sailor** said the City had not listed these specifications, leading to the change order.

Nichols/Swartley made a motion to approve Change Order No. 4 for the valve box adjustments and the thermoplastic pavement markings for an increase of \$16,994.65 and a 6.98% change to the contract price to \$2,650,494.15. Motion passed 5-0.

7) Engineering Department request: Approve the acceptance of infrastructure of roadway, water main, sanitary and storm sewers, and sidewalk for maintenance for the Westoria Subdivision Expansion, Phase 8, for a total of \$399,567.93

City Director of Public Works & Utilities Dustin Sailor told the Board that the installation of infrastructure (water main, sanitary and storm sewer, curb, asphalt, and sidewalk constructed to-date) has been satisfactorily completed for the Westoria Subdivision Expansion, Phase 8 project. The Engineering Department recommends that the infrastructure be accepted for maintenance.

Sailor said the three-year maintenance bonds (10% of the construction costs) for the infrastructure will be submitted to the City of Goshen Engineering Department upon completion and dedication of the decorative streetlights. He asked the Board to accept of the infrastructure for this project.

Nichols/Swartley made a motion to approve the acceptance of infrastructure of roadway, water main, sanitary and storm sewers, and sidewalk for maintenance for the Westoria Subdivision Expansion, Phase 8 for a total of \$399,567.93. Motion passed 5-0.



8) Engineering Department request: Approve the acceptance of maintenance for public ways at the East College Avenue Development Project

City Director of Public Works & Utilities Dustin Sailor told the Board that the installation of infrastructure for the East College Avenue Development Project continues, but the public ways (roadway, curb) are substantially complete and require maintenance. This includes approximately 7,015 linear feet of roadway, and 13,930 linear feet of curb.

Sailor said the Engineering Department recommends that the public ways be accepted for maintenance, but final infrastructure acceptance will not be completed until the project reaches substantial completion. Because final infrastructure is not being accepted, a maintenance bond is not being required at this time.

Nichols/Swartley made a motion to approve the acceptance of maintenance for public ways at the East College Avenue Development Project. Motion passed 5-0.

9) Ancon Construction request: Approve a Wilden Avenue lane restriction, Dec. 12-15, 2023, for access to a water main

Doug VanGunten, President of Ancon Construction, asked the Board to approve an eastbound lane restriction at 2121 and 2119 West Wilden Avenue for the installation of two water taps.

In a memorandum to the Board, **VanGunten** wrote that Ancon will be installing two 2-inch water taps to serve the company's future corporate headquarters at 2121 West Wilden Avenue and serve its current warehouse at 2119 West Wilden. He wrote that the work would require cutting into the eastbound lane of Wilden Avenue to access the water main. Ancon will be working with the City of Goshen Water Department to complete the water tap.

VanGunten requested lane restrictions from Tuesday, Dec. 12 through Friday, Dec. 15, 2023. He indicated that the work is planned to be completed in two working days and re-opened. Due to unknown weather conditions, the company requested a longer timeframe, but does not anticipate needing lane restriction for the entire four days.

VanGunten also wrote that Ancon will provide the necessary traffic control measures to provide a safe working environment and safe for vehicles on Wilden Avenue.

Mayor Leichty asked if Ancon had all of the required conversations with City staff regarding the closure. **VanGunten** said he had done so.

Board member Landis asked if the work could be completed in two days unless there is a weather interruption.

VanGunten said that was correct.

Nichols/Swartley made a motion to approve an eastbound lane restriction at 2121 and 2119 West Wilden Avenue for the installation of two water taps from Dec. 12 through Dec. 15, 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 2:20 p.m. There were no public or City staff comments.

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 2:20 p.m.



EXHIBIT #1: Memorandum, with a map from Doug VanGunten, president of Ancon Construction, requesting that the Board approve a lane restriction on Wilden Avenue, Dec. 12-15, 2023, for access to a water main.

APPROVED:

Mayor Gina Leichy

Mike Landis, Member

Orv Myers, Member

Mary Nichols, Member

Barb Swartley, Member

ATTEST:

Richard R. Aguirre, City of Goshen Clerk-Treasurer



324 S 5th St. Goshen, IN 46528
amanda@eyedart.com
(574) 203-2034 ext. 6

Board of Works Request
Dec 14, 2023

Downtown Goshen Inc. is requesting multiple street closures for the year of 2024 for purposes of First Friday activities. Please see the attached document for maps and individual requests.

1. What parking spaces/streets do you want to close/use? Various
2. Why do you want to close them? What activities will take place? Downtown Goshen First Fridays
3. When do you want to start the closure, and when will the closure end? Various dates and times in 2024
4. Are there any affected businesses, and are they supportive of your request to close the parking spaces? There are businesses on the street affected by the closure. They will be informed of our intent to attend the next Board of Works meeting in case of any concerns. These street closures can also be found online at downtowngoshen.org.
5. Do you require any barricades from the Street Department to accomplish the closure for your event? We will require barricades and orange fencing for various events. These specific details are listed on the attached document.

Thank you for your consideration.

Amanda McMahan
Director of First Fridays
Eyedart Creative Studios

First Fridays 2024 Board of Works Request

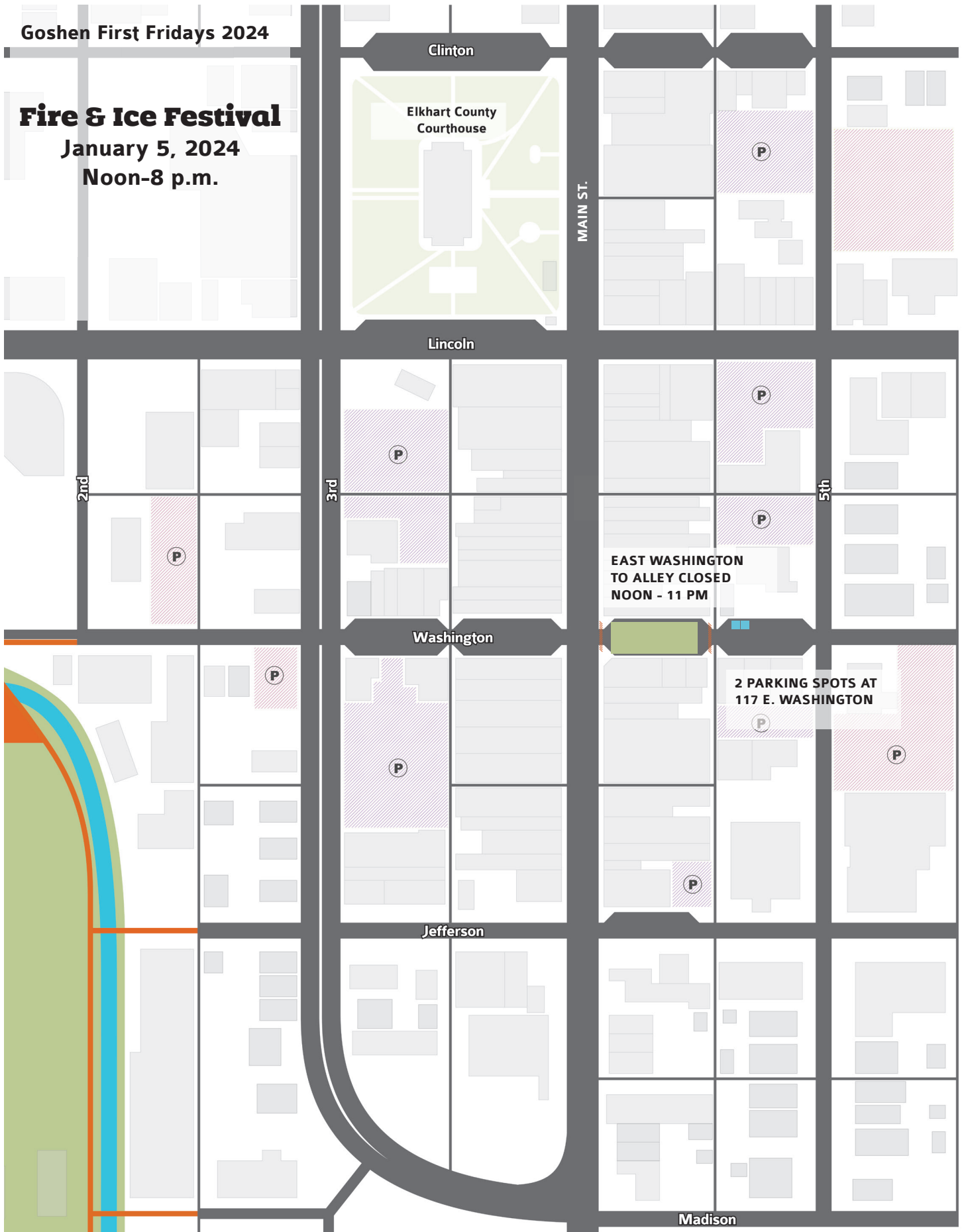
Event Title	Street Closures and City Needs
<p>January Fire & Ice Festival Friday, January 5, 2024 5 - 9 p.m.</p>	<p>East Washington between the alley and Main from noon to 11 pm. 2 parking spots in front 117 East Washington from noon to 11 pm. First 4 parking spots on East Washington (north side of street) from 8 am to noon for unloading of ice blocks. Trash trailer behind Electric Brew. 2 police officers from 5:30 pm to 9:30 pm. 2 sanitation crew from 6 to 9 pm. Access to alley between Constant Spring & Fables.</p>
<p>April Arts Tour Friday, April 5, 2024 5 - 8 p.m.</p>	<p>4 spots in front of Goshen Theater from 1 pm - 8 pm.</p>
<p>May Green Day Celebration Friday, May 3, 2024, 5 - 9 p.m.</p>	<p>Main Street between Clinton and Lincoln and Main Street from Lincoln to Washington from noon to 11 pm. 2 police officers from 6 to 10 pm. 2 sanitation crew from 6 to 9 pm. Access to alley across from the courthouse (and closed with barricades) from noon to 11 pm).. Additional request for parking spaces for trailers to follow. Access to Parks Dept gator.</p>
<p>June Wheels and Deals Friday, June 7, 2024 5 - 9:30 p.m.</p>	<p>Main Street from Jefferson to Lincoln from 1 to 11 pm and East Washington from the alley to Main from 8 am to 11 pm. Orange fencing (pending DORA approval) around Main from Jefferson past the intersection of Washington. Trash trailer behind Electric Brew. 2 police officers from 6:00 to 10:00 pm. 2 sanitation crew from 6 to 9 pm. Additional closure request may follow for specific businesses wishing to utilize parking spaces for their sidewalk sales. Access to alley between Constant Spring & Fables. Access to Parks Dept gator.</p>
<p>July Great Goshen Car Show Friday, July 5, 2024 5 - 9 p.m.</p>	<p>Main Street from Clinton to Lincoln and Main Street from Lincoln to Jefferson and East Washington from 5th to Main from 1 to 11 pm. Orange fencing (pending DORA approval) around the closure on East Washington. Trash trailer behind Electric Brew. 2 police officers from 6 to 10 pm and 2 additional from 4 to 6 pm for traffic control. 2 sanitation crew from 6 to 9 pm. Access to alley between Constant Spring & Fables. Access to Parks Dept gator.</p>
<p>August Picklefest August 2, 2024 5 - 9 p.m.</p>	<p>Main Street from Jefferson to Washington from 8 am to 11 pm. Main Street from Washington to Lincoln and East Washington from the alley to Main from 1 to 11 pm. Orange fencing (pending DORA approval) around the block between Lincoln and Washington. Trash trailer behind Electric Brew. 2 police officers from 6 to 10 pm. 2 sanitation crew from 6 to 9 pm. Access to alley between Constant Spring & Fables. Access to Parks Dept gator.</p>
<p>September Savor Summer Showcase Friday, September 6, 2024 5 - 9 p.m.</p>	<p>Main Street from Jefferson to Lincoln and West Washington the alley to Main from 1 to 11 pm. Orange fencing (pending DORA approval) around the entire area. Trash trailer behind Electric Brew. 2 police officers from 6 pm to 10 pm. 2 sanitation crew from 6 to 9 pm. Access to alley between Constant Spring & Fables. Access to Parks Dept gator.</p>
<p>October Goshen Gives Back Friday, October 4, 2024 5 - 9 p.m.</p>	<p>4 spots in front of Goshen Theater from 1 pm - 8 pm.</p>
<p>November Goshen Light Parade Friday, November 1, 2024 5 - 9 p.m.</p>	<p>East Washington from the alley to Main from 1 to 11 pm. Jefferson from 6th to 5th and 5th from Madison to Jefferson from 1 to 11 pm (please leave Jefferson and 5th intersection OPEN until parade route closure so that cars can turn west on Jefferson). Parade route - 5th and Jefferson west to Main - north on Main to Clinton - east on Clinton to 5th - south on 5th to Jefferson. No parking along parade route from 4 to 9 pm. Parade route closes at 5:45 pm. Will need street department, police, and fire to help with traffic control and street reopening. 4 police from 5:30 - 9:30 pm. 2 sanitation crew from 6 - 9 pm. Trash trailer behind Electric Brew.</p>
<p>December Hometown Holiday Friday, December 6, 2024 5 - 9 p.m.</p>	<p>West Washington from the alley to Main from 1 to 11 pm. Orange fencing (pending DORA approval) around entire area. Trash trailer behind Electric Brew. 2 police officers from 5:30 pm to 9:30 pm. 2 sanitation crew from 6 to 9 pm. Access to alley between Constant Spring & Fables.</p>

Goshen First Fridays 2024

Fire & Ice Festival

January 5, 2024

Noon-8 p.m.

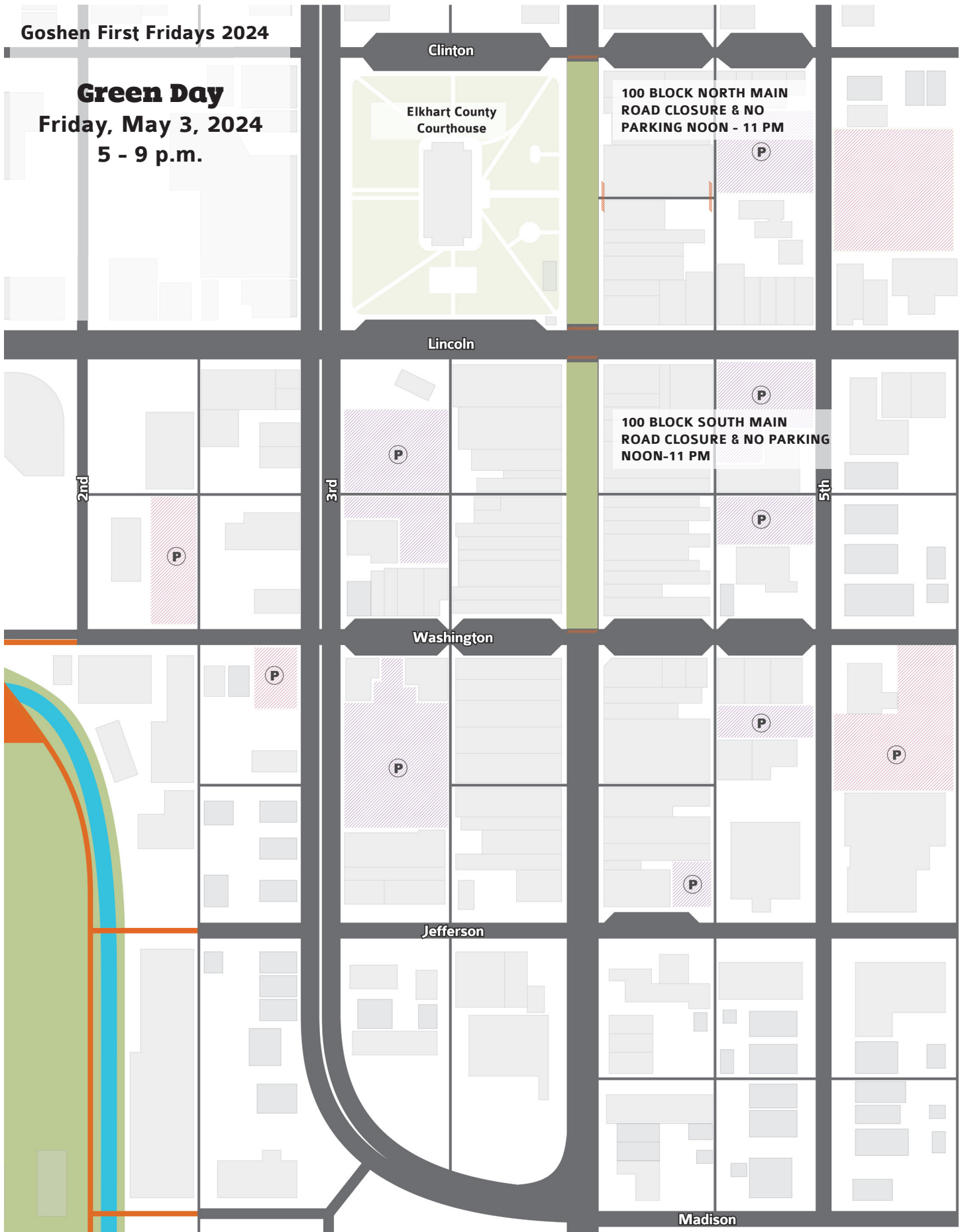


Goshen First Fridays 2024

Green Day

Friday, May 3, 2024

5 - 9 p.m.

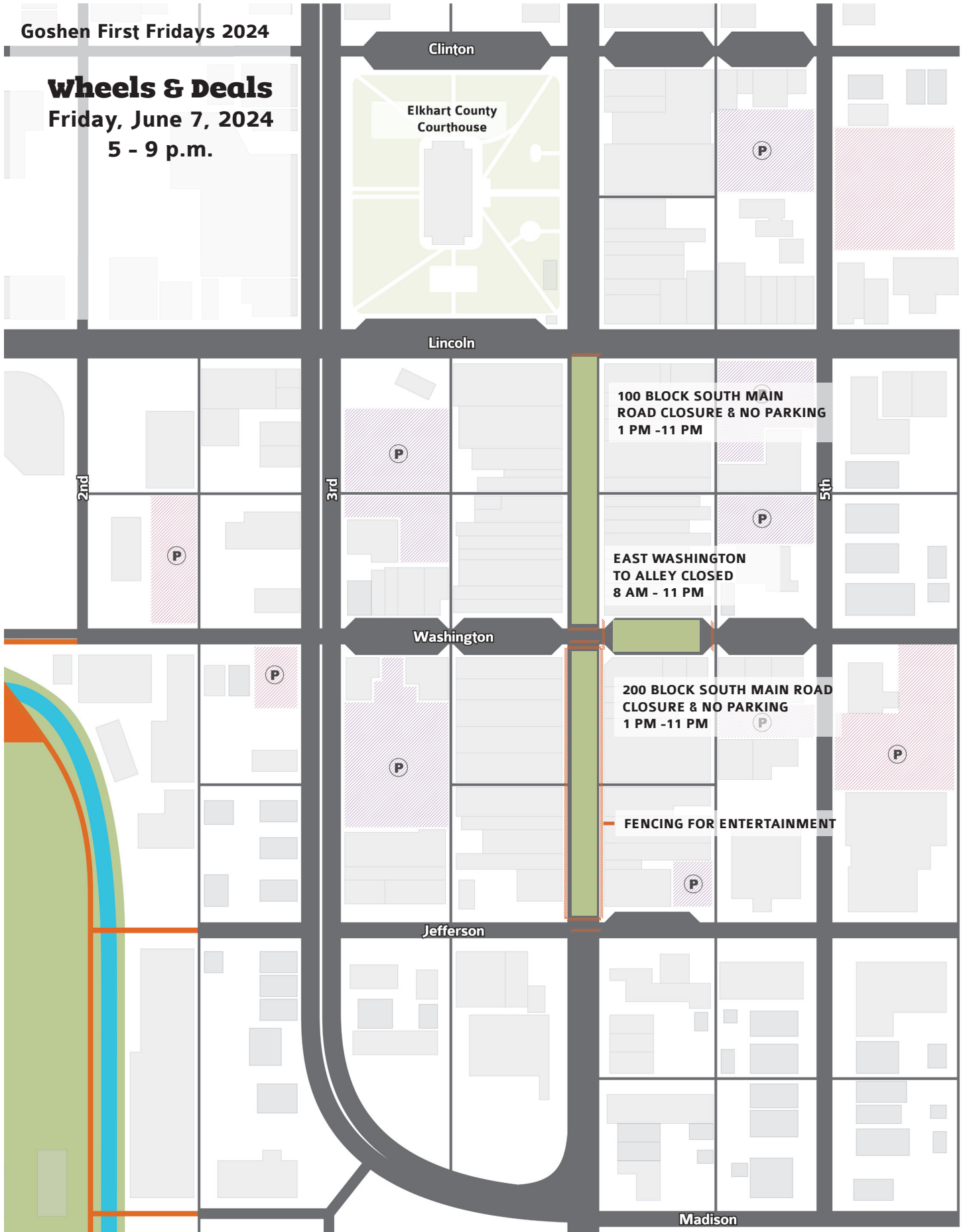


Goshen First Fridays 2024

Wheels & Deals

Friday, June 7, 2024

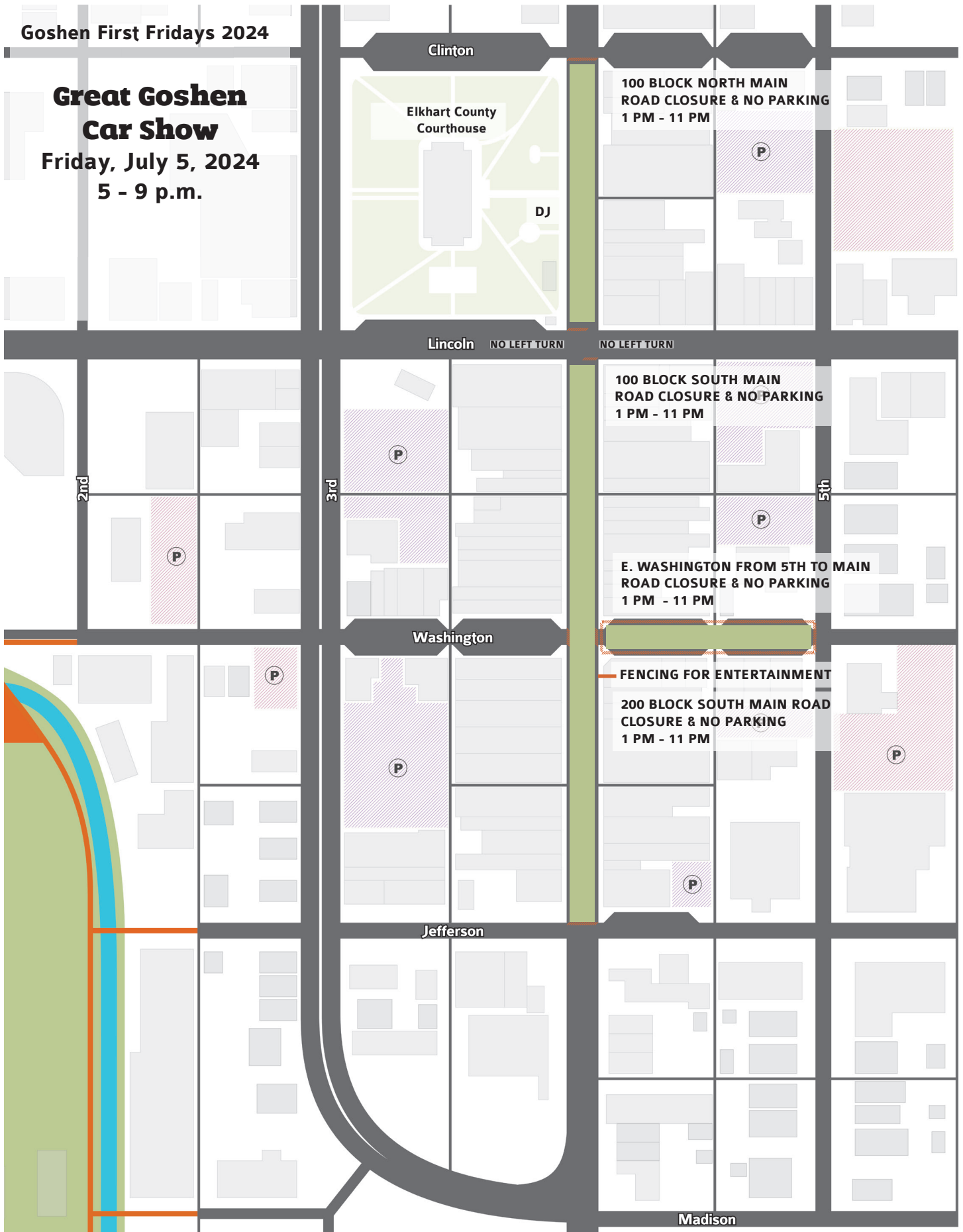
5 - 9 p.m.



Goshen First Fridays 2024

**Great Goshen
Car Show**

Friday, July 5, 2024
5 - 9 p.m.



Clinton

Elkhart County
Courthouse

DJ

100 BLOCK NORTH MAIN
ROAD CLOSURE & NO PARKING
1 PM - 11 PM

P

Lincoln NO LEFT TURN

NO LEFT TURN

100 BLOCK SOUTH MAIN
ROAD CLOSURE & NO PARKING
1 PM - 11 PM

P

P

E. WASHINGTON FROM 5TH TO MAIN
ROAD CLOSURE & NO PARKING
1 PM - 11 PM

Washington

FENCING FOR ENTERTAINMENT

200 BLOCK SOUTH MAIN ROAD
CLOSURE & NO PARKING
1 PM - 11 PM

P

P

Jefferson

Madison

2nd

3rd

5th

P

P

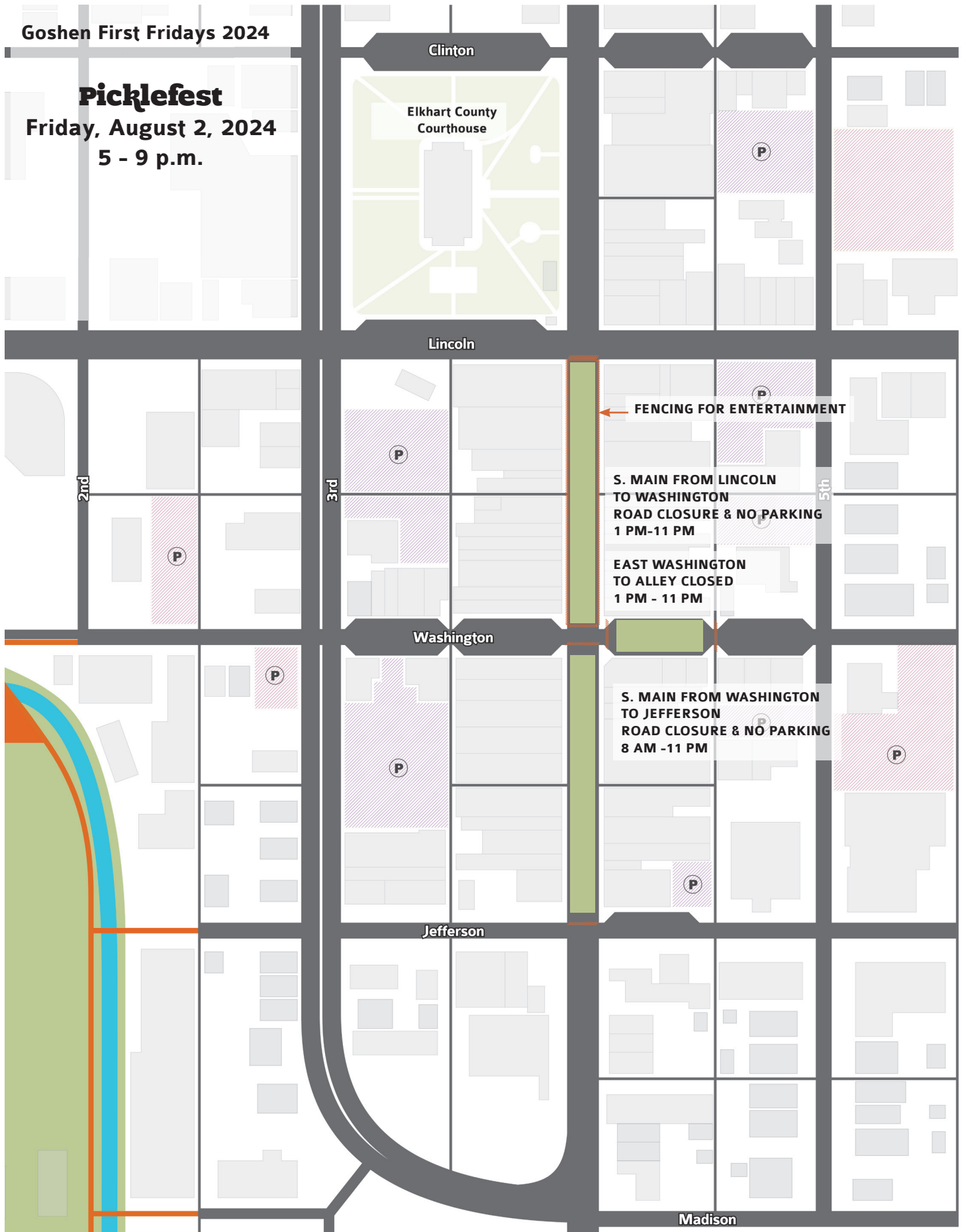
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Goshen First Fridays 2024

Picklefest

Friday, August 2, 2024

5 - 9 p.m.



Clinton

Elkhart County
Courthouse

Lincoln

2nd

3rd

5th

FENCING FOR ENTERTAINMENT

S. MAIN FROM LINCOLN
TO WASHINGTON
ROAD CLOSURE & NO PARKING
1 PM-11 PM

EAST WASHINGTON
TO ALLEY CLOSED
1 PM - 11 PM

Washington

S. MAIN FROM WASHINGTON
TO JEFFERSON
ROAD CLOSURE & NO PARKING
8 AM -11 PM

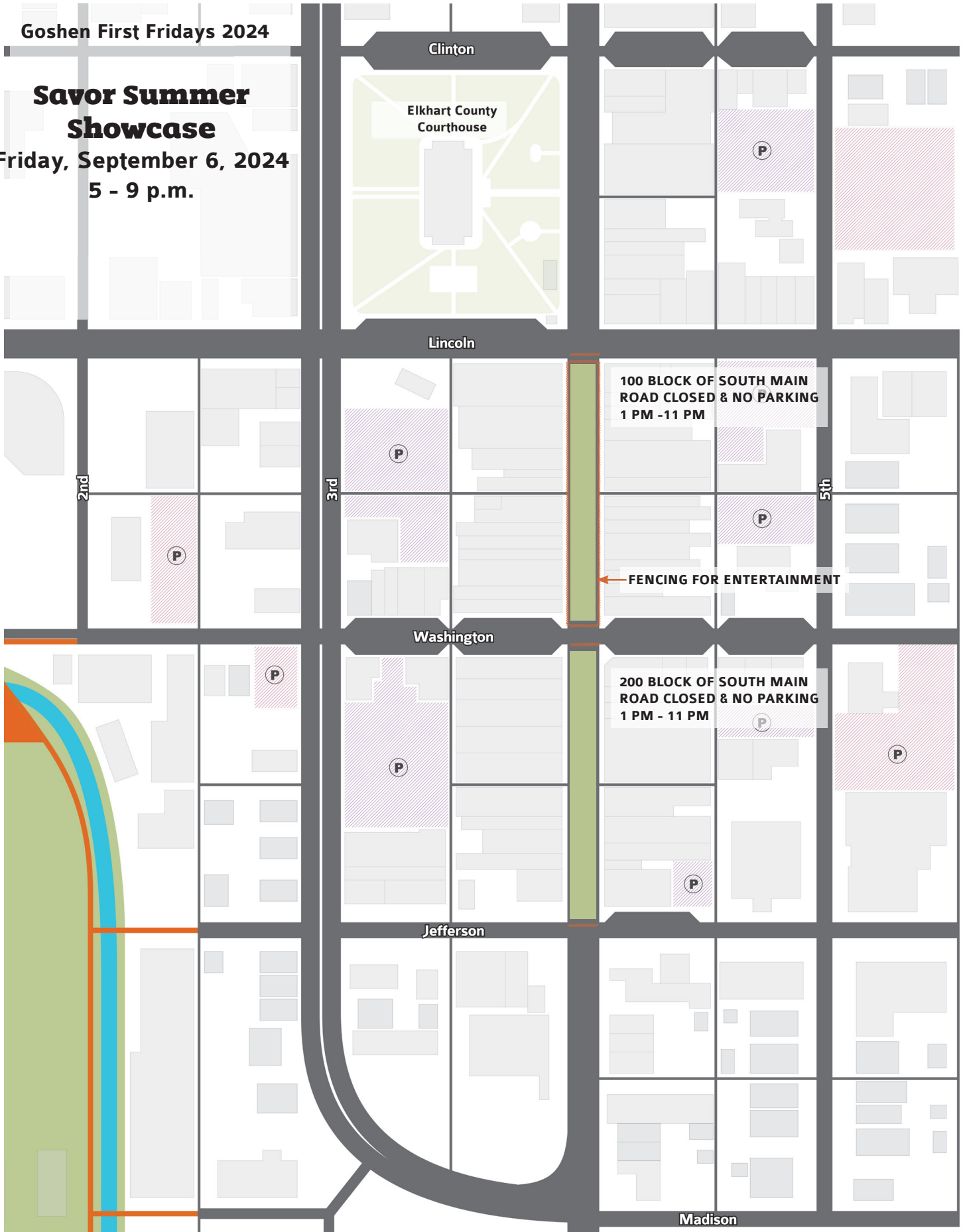
Jefferson

Madison

Goshen First Fridays 2024

Savor Summer Showcase

Friday, September 6, 2024
5 - 9 p.m.



Clinton

Elkhart County
Courthouse

Lincoln

100 BLOCK OF SOUTH MAIN
ROAD CLOSED & NO PARKING
1 PM - 11 PM

2nd

3rd

5th

FENCING FOR ENTERTAINMENT

Washington

200 BLOCK OF SOUTH MAIN
ROAD CLOSED & NO PARKING
1 PM - 11 PM

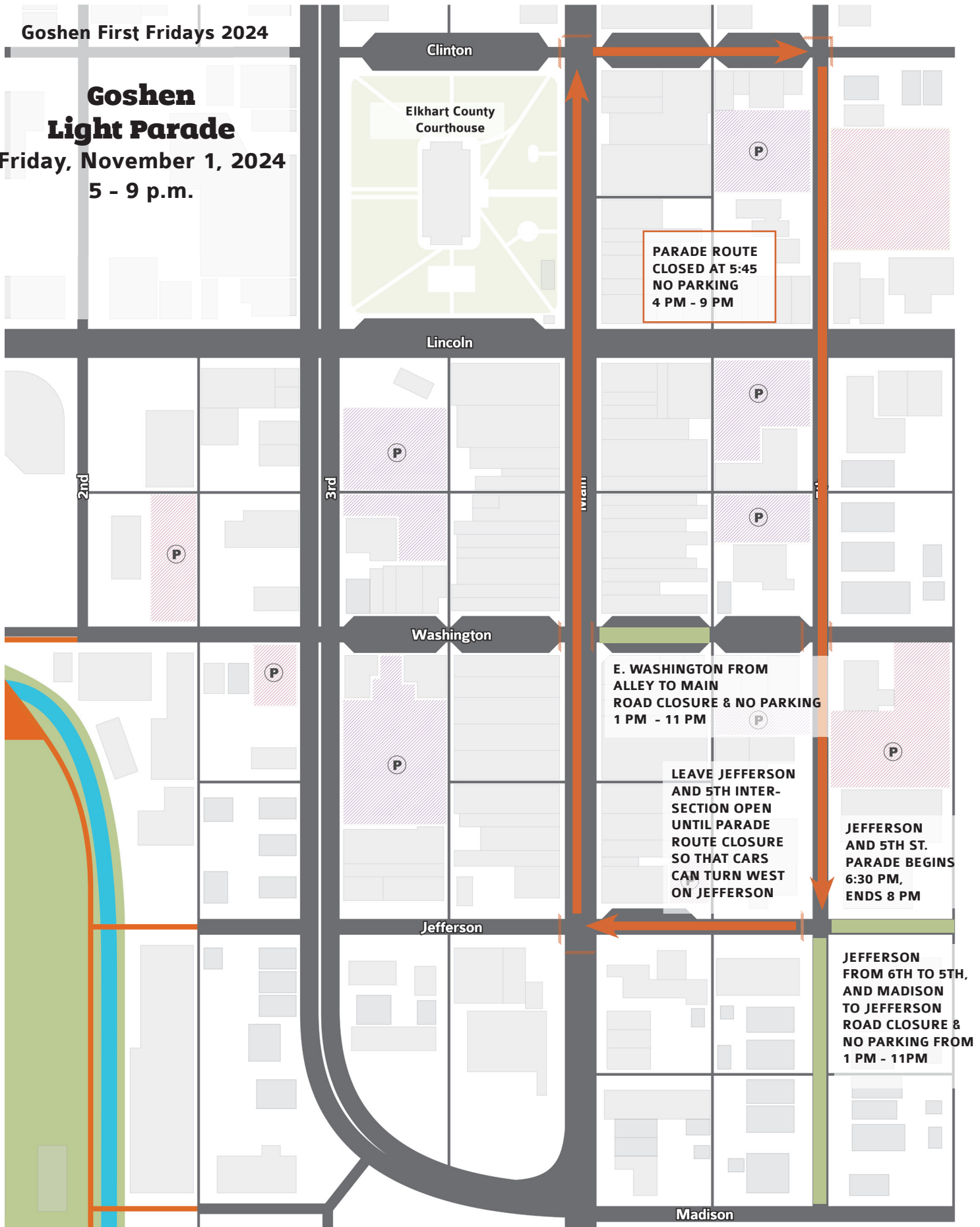
Jefferson

Madison

Goshen First Fridays 2024

Goshen Light Parade

Friday, November 1, 2024
5 - 9 p.m.



Clinton

Elkhart County Courthouse

Lincoln

Washington

Jefferson

Madison

2nd

3rd

Main

PARADE ROUTE
CLOSED AT 5:45
NO PARKING
4 PM - 9 PM

E. WASHINGTON FROM
ALLEY TO MAIN
ROAD CLOSURE & NO PARKING
1 PM - 11 PM

LEAVE JEFFERSON
AND 5TH INTER-
SECTION OPEN
UNTIL PARADE
ROUTE CLOSURE
SO THAT CARS
CAN TURN WEST
ON JEFFERSON

JEFFERSON
AND 5TH ST.
PARADE BEGINS
6:30 PM,
ENDS 8 PM

JEFFERSON
FROM 6TH TO 5TH,
AND MADISON
TO JEFFERSON
ROAD CLOSURE &
NO PARKING FROM
1 PM - 11PM

P

P

P

P

P

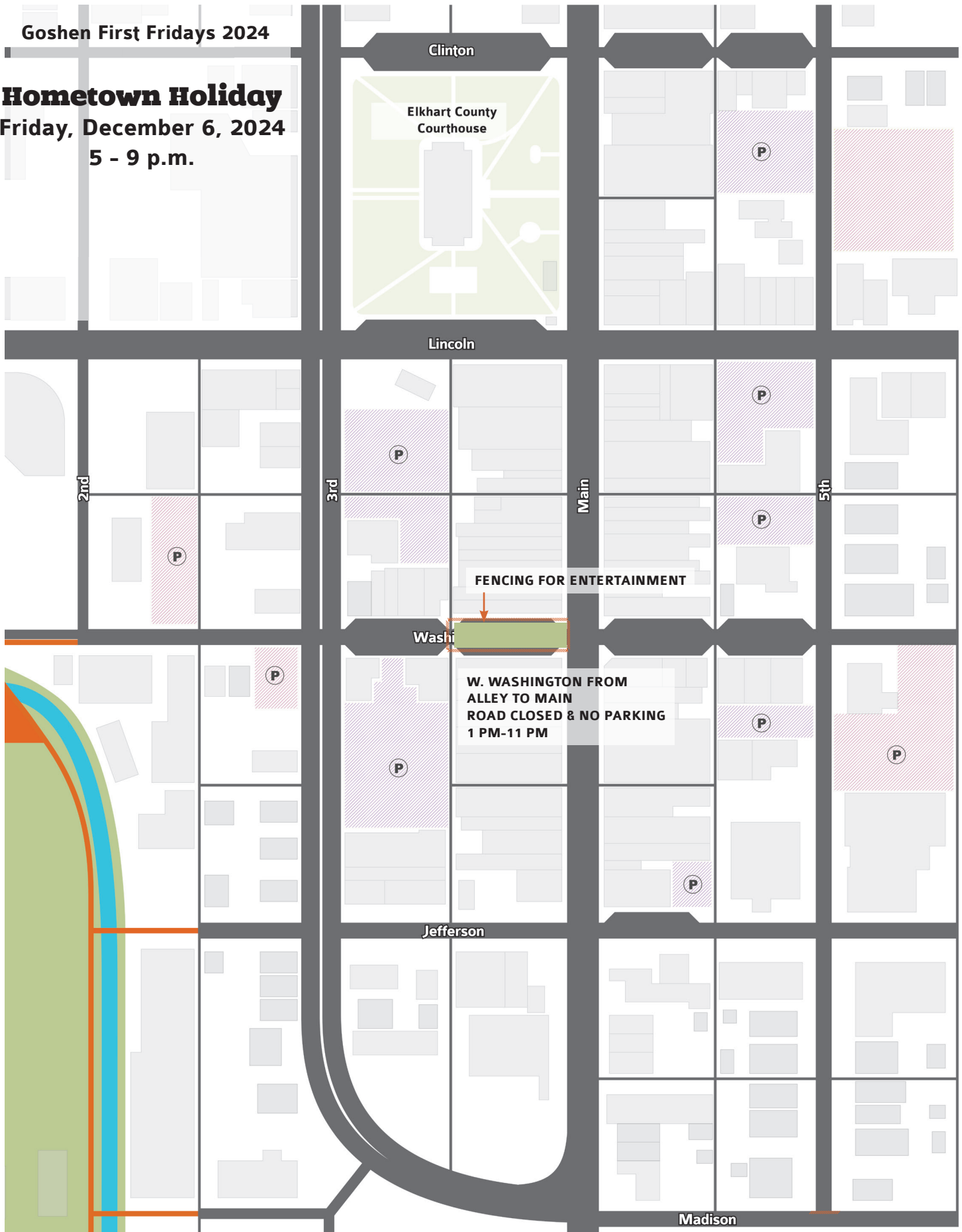
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Goshen First Fridays 2024

Hometown Holiday
Friday, December 6, 2024
5 - 9 p.m.





Legal Department
CITY OF GOSHEN
204 East Jefferson Street, Suite 2 • Goshen, IN 46528-3405
Phone (574) 537-3820 • Fax (574) 537-3817 • TDD (574) 534-3185
www.goshenindiana.org

December 18, 2023

To: Board of Public Works and Safety
From: Brandy L. Toms, Paralegal
Subject: Sprinkler System Inspection Agreement with VFP Fire Systems, Inc.

An annual and a five (5) year fire sprinkler system inspection is required by the National Fire Protection Act (NFPA) at the City’s Police and Courts building, the Wastewater Treatment Plant and CSO.

In the past, the City contracted with VFP Fire Systems to conduct these inspections and desires to continue to do so. The following table notes the costs for each facility by year with a total cost for all inspections performed in all three facilities over the course of five years:

	Goshen CSO	Police & Courts	Wastewater Treatment	
Year 1	\$480	\$345	\$345	
Year 2	\$480	\$345	\$345	
Year 3	\$499	\$358	\$358	
Year 4	\$518	\$372	\$372	
Year 5	\$538	\$386	\$386	
Total	\$2515	\$1806	\$1806	\$6,127

It is recommended that the Board approve and authorize Mayor Leichty to execute the agreements with VFP Fire Systems, Inc. for the fire sprinkler system inspections required at the Police and Courts Building, Wastewater Treatment and CSO.

Suggested motion: Move to approve and authorize Mayor Leichty to execute the agreements with VFP Fire Systems, Inc. for the fire sprinkler system inspections required at the Police and Courts building, Wastewater Treatment and CSO for a total contract amount of \$6,127.

ADDENDUM

THIS ADDENDUM is made and entered into the ____ day of _____, 2023, by and between VFP Fire Systems (hereinafter referred to as "Contractor") and the City of Goshen, Indiana (hereinafter referred to as "City").

WITNESSETH:

WHEREAS Contractor and City are parties to a certain agreement for annual inspection and testing of wet sprinkler system for Goshen CSO ("Agreement"); and

WHEREAS this Addendum shall be attached to and made a part of the Agreement and shall control in the event of any conflict with the terms and provisions of the Agreement.

NOW, THEREFORE, in consideration of the premises and the terms and conditions contained herein, the parties hereby mutually and further agree as follows:

State Law Provisions.

1) Non-Discrimination - Pursuant to Indiana Code § 22-9-1-10, Contractor and its subcontractors, if any, shall not to discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his race, religion, color, sex, disability, national origin, ancestry or veteran status. Breach of this covenant may be regarded as a material breach of the Agreement.

2) 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.

3) E-Verify Program - Pursuant to Indiana Code § 22-5-1.7-11, Contractor agrees to and shall enroll in and verify the work eligibility status of all newly hired employees of Contractor after the date of the Agreement through the E-Verify Program as defined in Indiana Code § 22-5-1.7-3; provided, however, Contractor is not required to verify the work eligibility status of all newly hired employees after the date of the Agreement through the E-Verify Program if the E-Verify Program no longer exists. Contractor further represents and certifies subject to the pains and penalties of perjury that Contractor does not knowingly employ an unauthorized alien.

4) General Requirements - Contractor further agrees to comply with the applicable requirements of Indiana state law with respect to contracting with local governmental entities.

This Addendum is dated effective with the effective date of the Agreement.

CITY: CITY OF GOSHEN, INDIANA

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR: VFP FIRE SYSTEMS

By: _____

Name: _____

Title: _____

Date: _____



INSPECTION/TESTING AGREEMENT

THIS AGREEMENT, made between **VFP FIRE SYSTEMS**, hereinafter called "**COMPANY**", and **CITY OF GOSHEN, 204 E JEFFERSON ST. STE 1, GOSHEN, IN 46528**, hereinafter called "**CLIENT**".

Client owns or occupies the building(s) located on the premises known as **GOSHEN WASTEWATER TREATMENT PLANT, 1000 W WILDEN AVE. GOSHEN, IN 46528**, wherein there is now installed certain fire equipment. to wit:

Annual inspection/testing of (1) wet sprinkler system.

Annual breakdown is below:

Yr 1- \$345.00

***CLIENT HAS OPTION OF CONTINUING SERVICES FOR ADDITIONAL (4) YEARS- SEE PRICING BELOW**

Yr 2- \$345.00

Yr 3- \$358.00 (4% increase to cover rising costs)

Yr 4- \$372.00 (4% increase to cover rising costs)

Yr 5- \$386.00 (4% increase to cover rising costs)

****Please see "Inspection Agreement Breakdown (separate)" for itemized breakdown of charges.**

*****Company recommends the client follows ALL NFPA Guidelines, in accordance with local authority having jurisdiction requirements, for each of their fire protections systems, including all components of said fire protection systems.**

Prices above only valid for 60 days from date of proposal (see below).

Term hereof shall be for the period of **one (1) year with additional four (4) years option** (Client must notify Company, via written notice, within sixty (60) days of the end of year 1 if they **DO NOT** want to continue services. If Client does not notify Company via written notice within sixty (60) days of the end of year 1, this agreement automatically continues with additional four (4) year option). Please refer to "Terms and Conditions, paragraph 2- Terms and Renewal of Agreement" below.

TERMS AND CONDITIONS

1. SERVICE OF THE FIRE PROTECTION EQUIPMENT: The Client agrees to purchase, and Company agrees to provide in accordance with these terms and conditions services for the purpose of inspecting and testing Client's fire protection systems & components in accordance with the terms and condition of this agreement. The Company will be permitted, at all reasonable times, to enter the Property indicated above to conduct the inspection and testing as outlined in this Agreement. The Company will be permitted to gather information, data on the Subscriber's systems (outlined in this agreement) and retain that information, data for use as the Company deems necessary. The Company may or may not use software to collect, view and or store collected information, data in any format necessary to use as needed.

2. TERMS AND RENEWAL OF AGREEMENT: Client agrees and acknowledges that this Agreement shall commence on the Effective Date or from the date of acceptance by Company whichever occurs later unless terminated as provided herein and continue for the term indicated above (the initial term). At the conclusion of the Initial Term, this Agreement shall

automatically extend for successive terms equal to the Initial Term unless either party gives written notice to the other party at least thirty (30) days prior to the end of the then current term.

3. PRICE AND PAYMENT: The charge for the work agreed to be performed herein shall include all labor, as described in paragraph 4.A, per diem and travel. Client agrees to pay company for the Term(s) of this Agreement, Company's applicable charges for testing and inspection services and for service calls as set forth under this Agreement. With approved credit, all invoices are due and payable in full according to the stated terms, net 45 days and interest at a rate of (1 ½%) on all unpaid invoices (30) days past due. If payment for work provided in this agreement is not paid when due, Client agrees to pay all costs of collection including attorneys' fees. Charges for inspection services or rates for basic or emergency service in any subsequent year of this agreement shall not exceed 115% of the prior year.

4. INSPECTIONS AND SERVICE: For the agreed-on amount, as shown on the attached Proposal, during the term(s) of this Agreement, Company agrees to provide inspection, certification, service and parts as follows:

A. Periodic inspections of the fire protection systems described herein means to inspect, test, and adjust the systems to assure components thereof are operating within the manufacturer's acceptable standards. Client will be notified, in writing, of any components found not to be within accepted operating standards. Inspections are not intended to and will not address the adequacy of the system design or installation of systems not installed by Company. Company performs inspections of the listed systems/components within the scope of work detailed herein that are accessible and not in concealed spaces visually and from the floor of the facility, and only for the conditions listed in this report or as otherwise required by NFPA. Components will be repaired or replaced only upon written authorization of the Client and invoiced at the service rates (s) set forth under the Clarifications of the Proposal. The frequency of each inspection shall be identified within the Proposal, beginning with the first inspection.

B. Any additional work, material or services outside the scope of this Agreement, which is requested by the Client and furnished by the Company, may be provided by the Company at its sole discretion. Further, such additional work, material or services shall be delivered under the terms of this Agreement, and by execution hereof. Client acknowledges that this Section V shall be incorporated into and become a part of any order for such additional work, equipment or services.

C. If in the sole determination of the Company, and at any time prior to or during the term of this Agreement, the equipment or any portion of it cannot be adequately inspected, repaired or adjusted on-site to bring it to an acceptable condition, Company shall have the right, at its discretion, to cancel this Agreement. If, alternatively and in the sole determination of the Company, portions of the system cannot be brought up to acceptable level of operation through service and maintenance, in lieu of canceling the Agreement, Company may reduce the scope of the work and the inspection and maintenance charge shall be adjusted accordingly.

D. Repair(s), diagnosis, addition(s), change(s), relocation(s), or emergency services are not included within the inspection amount quoted. These services will not be provided without the authorization of the Client and will be invoiced at the company's then current hourly rate for services, including travel charges and per-diem. Service calls during normal working hours will be invoiced based upon cost portal to portal and a (2) hour minimum. After hours service calls will be based upon portal to portal and a (3) hour minimum. Client also agreed to pay Company an overtime rate of (1 ½) times the hourly rate for service(s) required at other than normal working hours for the Company except for Sundays and Holidays which will be at an overtime rate of (2) times the hourly rate of service. Normal working hours for the Company are, 8:00 AM – 5:00 PM, Monday through Friday, excluding holidays. Service parts and applicable material will be charged out in accordance with Company's current established pricing, not to exceed the Manufacturer's current published list price.

5. LIMITATION OF LIABILITY: CLIENT ACKNOWLEDGES THAT COMPANY IS NOT AN INSURER, THAT CLIENT SHALL OBTAIN THE TYPE AND AMOUNT OF INSURANCE COVERAGE WHICH IT DETERMINES NECESSARY, AND THAT THE PAYMENTS MADE TO COMPANY BY CLIENT ON THIS PROJECT ARE BASED UPON THE VALUE OF THE SYSTEM AND/OR SERVICES PROVIDED AND ARE UNRELATED TO THE VALUE OF CLIENT'S PROPERTY OR BUSINESS OR ANY POTENTIAL LIABILITY OF DAMAGE TO CLIENT ARISING OUT OF THE WORK PERFORMED BY COMPANY. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS TO THE CLIENT AND TO COMPANY RESULTING FROM THE WORK PERFORMED BY COMPANY, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT, AS WELL AS THE CLIENT'S ASSIGNS, AGENTS, AND REPRESENTATIVES, AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF COMPANY, ITS OFFICERS, DIRECTORS, EMPLOYEES AND COMPANY'S PARENT, SUBSIDIARIES, AFFILIATES, CONSULTANTS,

SUBCONTRACTORS, VENDORS, TO A MAXIMUM OF \$10,000 OR THE AMOUNT OF THE CONTRACT/PRICE OF WORK BEING PERFORMED, WHICHEVER IS LESS, AND CLIENT DOES HEREBY RELEASE COMPANY FROM ANY CLAIMS IN EXCESS OF SAID LIMIT. THIS LIMITATION OF LIABILITY SHALL APPLY TO ALL JUDGMENTS, CLAIMS, LIABILITY, COSTS, CLAIM EXPENSES, AND ALL OTHER DAMAGES OR LOSSES OF ANY NATURE, INCLUDING ATTORNEYS' FEES (COLLECTIVELY "DAMAGES") SUSTAINED BY CLIENT OR ANY OTHER PARTY CLAIMING BY OR THROUGH CLIENT. THIS LIMITATION OF LIABILITY SHALL APPLY, 1.) REGARDLESS OF THE AMOUNT OF ANY DAMAGES SUSTAINED, IF ANY, AS A RESULT OF THIS WORK; AND, 2.) EVEN IF THE DAMAGES ARE ACTUALLY CAUSED OR ALLEGED TO BE CAUSED BY THE

NEGLIGENCE, BREACH OF WARRANTY, VIOLATION OF A STATUTE, ORDINANCE, REGULATION, STANDARD OR RULE, DEFECTIVE PRODUCTS, , OR OTHER FAULT OF COMPANY OR COMPANY'S PARENT, SUBSIDIARIES, AFFILIATES, CONSULTANTS, SUBCONTRACTORS, VENDORS, OR THEIR RESPECTIVE EMPLOYEES, AGENTS OR REPRESENTATIVES, SHOULD CLIENT DESIRE A DIFFERENT LIMITATION OF LIABILITY, SUCH IS AVAILABLE AS AN ADDITIONAL SERVICE AT AN ADDITIONAL COST. CLIENT AGREES TO REQUIRE IT INSURANCE POLICIES TO BE ENDORSED SO AS TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST COMPANY.

6. WARRANTIES:

A. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATEVER, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THERE ARE NO WARRANTIES OR REPRESENTATIONS WHICH EXTEND BEYOND THE FACE OF THIS AGREEMENT.

B. COMPANY DOES WARRANT THAT SERVICE UNDER THIS AGREEMENT WILL BE COMPETENT AND THAT PARTS INSTALLED ON THE SYSTEM IN CONNECTION WITH SERVICE PROVIDED UNDER THIS AGREEMENT WILL MEET MANUFACTURER'S SPECIFICATIONS AT THE TIME THEY ARE INSTALLED. FAILURES TO PERFORM CONSISTENTLY WITH THIS WARRANTY WILL BE REMEDIED SOLELY BY THE COMPANY DURING THE TERM OF THIS AGREEMENT, BY CORRECTLY RE-PERFORMING NONCOMPLYING SERVICE(S) OR REPAIRING OR REPLACING DEFECTIVE MATERIALS PROVIDED BY THE COMPANY, UPON WRITTEN NOTICE TO THE COMPANY BY THE CLIENT DURING THE TERM(S) OF THIS AGREEMENT.

C. THE COMPANY DOES NOT KNOW AND DOES NOT REPRESENT THAT THE CURRENT FIRE PROTECTION SYSTEM ON THE PROPERTY OF CLIENT WAS ORIGINALLY DESIGNED AND INSTALLED IN SUCH A WAY THAT THE SYSTEM WILL PERFORM AS ORIGINALLY INTENDED OR IS SUITABLE AND SUFFICIENT FOR ITS INTENDED PURPOSE GIVEN THE WAY IN WHICH THE PROPERTY HAS BEEN OR WILL BE USED, RECONFIGURED OR MAINTAINED. THIS AGREEMENT IS NOT A GUARANTEE OR WARRANTY THAT THE SYSTEM WILL IN ALL CASES (i) PROVIDE THE LEVEL OF PROTECTION FOR WHICH IT WAS ORIGINALLY INTENDED, (ii) IS FREE OF ALL DEFECTS AND DEFICIENCIES, AND (iii) IS IN COMPLIANCE WITH ALL APPLICABLE CODES. CLIENT AGREES THAT IT HAS NOT RETAINED COMPANY TO MAKE THESE ASSESSMENTS AS PART OF THIS AGREEMENT. ANY SUCH ASSESSMENT MUST BE BY A SEPARATE AGREEMENT SUBJECT TO THESE TERMS AND CONDITIONS. COMPANY FURTHER DOES NOT REPRESENT, GUARANTEE OR WARRANT THAT ANY EQUIPMENT REFERRED TO IN THIS AGREEMENT OR ANY SERVICE OR INSPECTION PROVIDED BY IT UNDER THIS AGREEMENT WILL RESULT IN A SYSTEM WHICH WILL OPERATE AS DESIGNED, OR IS SUITABLE FOR ANY PARTICULAR PURPOSE, OR WILL PREVENT ANY LOSS BY BURGLARY, FIRE OR OTHERWISE, OR WILL IN ALL CASES OR ANY PARTICULAR CASE AVERT OR PREVENT RISKS, LOSSES, OR OTHER OCCURENCES, OR THE CONSEQUENCES THEREFROM, WHICH THE EQUIPMENT OR SERVICES WERE OR ARE DESIGNED TO PERFORM, DETECT OR AVERT.

7. REDUCED PRESSURE BACKFLOW PREVENTER: BY SIGNING BELOW, CLIENT ACKNOWLEDGES THAT REDUCED PRESSURE BACKFLOW PREVENTERS (RPBP), ARE DESIGNED TO DISCHARGE WHEN CHECK VALVES ARE FOULED OR DUE TO WATER PRESSURE FLUCTUATIONS FROM CITY WATER SUPPLIES. ANY MAINTENANCE, REPAIR OR INSPECTION ON A FIRE SPRINKLER SYSTEM COULD RESULT IN WATER FLOW THROUGH THE RPBP AND POSSIBLE DISCHARGE. BY SIGNING BELOW, CLIENT AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS COMPANY FROM ANY CLAIM OR LIABILITY FOR ANY DAMAGES INCURRED BY THIS DISCHARGE OR LACK OF PROPER RPBP DRAIN PIPING AND OR RPBP DRAIN EQUIPMENT OR FAILURE OF THIS PIPING OR EQUIPMENT UNLESS COMPANY WAS SPECIFICALLY CONTRACTED TO DESIGN AND/OR INSTALL THIS EQUIPMENT.

8. RESPONSIBILITIES OF CLIENT: The Client agrees to:

A. Promptly notify Company of any known or suspected trouble or malfunction in the equipment, request a hazard evaluation if there are changes in occupancy, use, processes, or materials, and promptly approve correction of impairments and critical deficiencies found during any inspection. All replaced parts become the property of the Company.

B. Maintain the system per original installers instructions and manufacturer' specifications.

C. Authorize Company, its agents, and employees, for purposes of this Agreement, to enter upon the premises of Client, to repair or inspect the equipment and to make any changes or alteration to the equipment, as authorized by Client. Client also agrees to provide Company with ready accessibility to all components of systems requiring inspection and testing and appropriate working space, including adequate light, electricity, cellular signal or telephone access, adequate space and access for ladders or lifts as required for Company's use in providing service(s) under this Agreement. In addition, Client agrees to provide one individual to monitor the control panel during testing and certification.

D. Designate suitable representative(s) satisfactory to the Company as exclusive contact(s) between Company and the Client, who shall have authority to make decisions on behalf of Client concerning service of the equipment by Company.

E. Neither authorize nor permit maintenance, repairs, or modifications of any kind to be made to the equipment, except by the Company or as specified and approved in advance by the Company.

F. Assume complete responsibility for the maintenance and repair of the system except as is set forth in this agreement.

9. INDEMNIFICATION. COMPANY AND CLIENT SHALL DEFEND, INDEMNIFY AND HOLD ONE ANOTHER HARMLESS FROM ANY EXPENSE, LIABILITY, LOSS, CLAIM OR DAMAGE, FOR PERSONAL INJURIES AND DEATH OR PROPERTY DAMAGE ASSERTED BY ANY THIRD PARTY, CAUSED BY THE ALLEGED NEGLIGENCE OF ITSELF, ITS AGENTS, EMPLOYEES, OR ANY OTHER INDIVIDUAL OR ENTITY AFFILIATED WITH IT, AND RESULTING FROM THE SERVICES PROVIDED HEREIN, OR OVERALL FUNCTIONALITY OF THE SYSTEM IDENTIFIED IN THIS AGREEMENT.

10. ADDITIONAL COMPANY RESPONSIBILITY.

A. Company will provide service calls and emergency service, upon request of the Client, subject to any delay which may be occasioned by strike, riot, acts of God or any other circumstances beyond the control of the Company as soon as it is reasonably practical to do so. Company will make reasonable efforts to attend promptly to the emergency needs of the Client, but it can make no guaranty of response time by the company or what may be required to properly service the equipment.

B. In the event a malfunction of a type covered by this Agreement has not been remedied before this Agreement has terminated for whatever reason, any service requested by the Client thereafter may be provided by the Company in its sole discretion and at the Company's then-current rates for services, including travel charges, per diem and materials.

C. Company will provide necessary test equipment required to perform service(s) under this Agreement.

D. If replacement parts are necessary under this Agreement, Company may provide new and /or used replacements.

11. NO CONFLICT WITH OTHER CLIENT AGREEMENTS. Client warrants that the negotiation, execution, and implementation of this Agreement will not conflict with any other agreement of which the Client is aware with any other person or firm. Client agrees to defend, indemnify, and hold harmless the Company from claims of any sort by any person or firm alleging that this Agreement violates, interferes with or infringes upon any other Agreement in any way.

12. LICENSES, TAXES, PERMITS AND FALSE ALARMS. Client shall identify any rules, regulations, standards, or codes with which the equipment must comply, and shall obtain and pay for any necessary licenses or other certificates of compliance for same. Client is solely responsible for any fees, taxes (including sales taxes), false alarm fines, and any other governmental assessments related to the equipment or system operation and shall reimburse and indemnify the Company for any such expenses incurred by the Company. Client and Company are each responsible for obtaining any necessary licenses or permits needed to perform their respective obligations under this Agreement.

13. ASSIGNMENTS AND DELEGATIONS. Neither the Company nor the Client may assign this Agreement to any other person, firm or corporation without notice to or approval by the other, but Company may subcontract any activities that it may perform under this Agreement.

14. ENGINEERING CHANGES. Occasionally, manufacturers may issue non-warranty engineering changes to equipment necessary to assure proper operation of system components. If, in the opinion of the Company and Client, installation of such engineering changes requires service(s) or material(s) in excess of those incidental to a normal preventive maintenance inspection, such excess shall be paid for by the Client at Company's applicable charges for on-call and emergency services as set forth under this Agreement provided that company will remain responsible for performance of its obligations under this agreement. Failure by the Client to have factory recommended engineering changes installed on the system will relieve the Company from further performance under this Agreement, but will not relieve the Client of its obligations hereunder. No other engineering changes or system modification are covered by this Agreement except as may be otherwise specifically provided herein.

15. INVALID PROVISIONS. If any of the parts of this Agreement shall be determined by a court of competent jurisdiction to be invalid or inoperative, all of the remaining parts shall remain in full force and effect.

16. ENTIRE AGREEMENT. This writing is intended by the parties as the final expression of their Agreement and as a complete and exclusive statement of the terms thereof. This Agreement supersedes all prior representations, understandings or agreements between the parties; there are no prior writings, verbal negotiations, understandings, representations or agreements not expressed in this Agreement, and the parties rely only upon the contents of this Agreement in executing it, and have not relied on any other representations, oral or otherwise, made by the parties, their agents or employees. Only a writing signed by each of the parties or their duly authorized agents may modify this Agreement. No waiver of breach of any term or condition of this Agreement shall be construed to be a waiver of any succeeding breach. This agreement shall bind



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3725 Cleveland Road, Suite 200
South Bend, IN 46628

T: 574 277 0027
F: 574 277 7275

and benefit the heirs, successors and assigns for the respective parties. A written Service Agreement Proposal is provided for clarification purposes and is hereby made a part of this contract.

17. RECEIPT AND REVIEW OF AGREEMENT. The Client specifically acknowledges that it has received a copy of these Terms and Conditions in its entirety, represents that it has authority to enter into this Agreement, and has read the same, understood it and agreed to its contents before signing it. Further the person executing these Terms and Conditions has the full authority of the Client to bind the Client, to the fullest extent provided by law, to these Terms and Conditions.

Other inclusions, exclusions or attachments:

***General Exclusions:** Painting, patching, underground and/or trenching, after hour, weekend and holiday labor rates, fire watch, prevailing wage/certified payroll, abatement including but not limited to asbestos and lead, water containment/disposal, conduit and wire, permit fees, scissor lifts, dampers, ground faults.

***Monitoring:** One time reprogram fee as specified on Scope of Work (not included in annual pricing above -- a separate one-time invoice) to reprogram Fire Alarm Control Panel (FACP) to our central station for monitoring and to ensure all zones are reporting correctly. Prior to reprogramming FACP requires two (2) dedicated active phone lines dropped at the panel at time of reprogram. **If applicable, lock out codes will need to be provided by previous provider or panel reset to factory standard conditions in order to program FACP. If for any reason we are unable to program due to these conditions, all time including travel time will be billable at Company current Time & Material Rates.**

MONITORING ACKNOWLEDGEMENT CUSTOMER INITIAL _____

*** Pricing:** The pricing set forth in this Agreement is based on the number of devices set forth in Section II: Scope of Work. If for any reason the actual number of devices is higher than the number set forth in Section II: Scope of Work, the price will be adjusted accordingly.

***Coverage:** Proposal above is for Test & Inspect only of above systems. All repairs, parts and services outside of above testing & inspecting scope of work is billable at Company current Time & Material Rates.

***Access:** During inspection, inspectors must have access to control valves, and alarm information, buried and/or non-accessible FDC check valves will be listed on the report and a recommendation for relocation under a separate contract. Inspectors must have access to all suites, apartments, units, etc. Customer responsible for notifying tenants of inspection and for gaining access in to each and every unit/apartment on scheduled inspection date(s). **If multiple inspections are required due to "no access" customer will be responsible for hourly rates of inspectors at Company current Time & Material Rates.**

ACCESS ACKNOWLEDGEMENT CUSTOMER INITIAL _____

***On Site Inspection Repairs:** Client authorizes Company to perform repairs or component replacements, found to be necessary during the course of inspection, the amount of \$500.00 or less, **ONLY IF TECHNICIAN HAS THOSE PARTS READILY AVAILABLE ON HIS TRUCK.** Any necessary repairs for an amount exceeding \$500.00 will be first submitted in writing for written approval. Any repairs performed while on site during inspection will be billed on a "Time & Material" basis and subject to the terms of this Agreement. Hourly rates are provided in 1/2 hour increments. All labor rates are subject to change with a thirty (30) day written notice to the client.

ON SITE REPAIRS ACKNOWLEDGEMENT CUSTOMER INITIAL _____

***Cancellation/Reschedule Notice:** Should the customer cancel or reschedule all or any portion of the inspection/scope without giving 3 business days' notice to the Company, we will assess a scheduling impact fee. The fee shall be equal to 4 hours of our current set Time and Material rate.


***COVID-19:** "Due to the existing pandemic involving COVID-19 and the constantly evolving situation, which includes shut downs of definite and indefinite durations by the federal, state, and local governments, quarantines, business shut downs, transportation interruptions, disruptions in the supply chain of certain materials, supplies, or equipment, disruptions to public services, temporary suspensions of work on site, or the unavailability or reduced availability of manpower, the parties agree that if Subcontractor is hindered, prevented or delayed at any time in the commencement or progress of the work for a cause arising from or related to COVID-19, including but not limited to any of the examples above, Subcontractor shall be entitled to an extension of the Contract time. Furthermore, Subcontractor shall be entitled to additional compensation for increased costs associated with the high demand for specified materials, for increased costs associated with any proposed substitute approved by Contractor or Owner, or any other similar cost increase outside the control of Subcontractor."



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3725 Cleveland Road, Suite 200
South Bend, IN 46628

T: 574 277 0027
F: 574 277 7275

Name : Jason Quimby
Title: Inspection Sales Leader
Address: 3725 Cleveland Rd Ste 200
South Bend, IN 46628
Phone : 574-208-6314
Signed: 
Date of proposal: 11/30/2023

Name : _____
Title: _____
Address: _____
Phone : _____
Signed: _____
Date accepted: _____

ADDENDUM

THIS ADDENDUM is made and entered into the ____ day of _____, 2023, by and between VFP Fire Systems (hereinafter referred to as "Contractor") and the City of Goshen, Indiana (hereinafter referred to as "City").

WITNESSETH:

WHEREAS Contractor and City are parties to a certain agreement for annual inspection and testing of wet sprinkler system for Goshen Police and Court Building ("Agreement"); and

WHEREAS this Addendum shall be attached to and made a part of the Agreement and shall control in the event of any conflict with the terms and provisions of the Agreement.

NOW, THEREFORE, in consideration of the premises and the terms and conditions contained herein, the parties hereby mutually and further agree as follows:

State Law Provisions.

1) Non-Discrimination - Pursuant to Indiana Code § 22-9-1-10, Contractor and its subcontractors, if any, shall not to discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his race, religion, color, sex, disability, national origin, ancestry or veteran status. Breach of this covenant may be regarded as a material breach of the Agreement.

2) 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.

3) E-Verify Program - Pursuant to Indiana Code § 22-5-1.7-11, Contractor agrees to and shall enroll in and verify the work eligibility status of all newly hired employees of Contractor after the date of the Agreement through the E-Verify Program as defined in Indiana Code § 22-5-1.7-3; provided, however, Contractor is not required to verify the work eligibility status of all newly hired employees after the date of the Agreement through the E-Verify Program if the E-Verify Program no longer exists. Contractor further represents and certifies subject to the pains and penalties of perjury that Contractor does not knowingly employ an unauthorized alien.

4) General Requirements - Contractor further agrees to comply with the applicable requirements of Indiana state law with respect to contracting with local governmental entities.

This Addendum is dated effective with the effective date of the Agreement.

CITY: CITY OF GOSHEN, INDIANA

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR: VFP FIRE SYSTEMS

By: _____

Name: _____

Title: _____

Date: _____



INSPECTION/TESTING AGREEMENT

THIS AGREEMENT, made between **VFP FIRE SYSTEMS**, hereinafter called "**COMPANY**", and **CITY OF GOSHEN, 204 E JEFFERSON ST. STE 1, GOSHEN, IN 46528**, hereinafter called "**CLIENT**".

Client owns or occupies the building(s) located on the premises known as **GOSHEN POLICE AND COURT BUILDING, 111 E JEFFERSON ST. GOSHEN, IN 46528**, wherein there is now installed certain fire equipment, to wit:

Annual inspection/testing of (1) wet sprinkler system.

Annual breakdown is below:

Yr 1- \$345.00

***CLIENT HAS OPTION OF CONTINUING SERVICES FOR ADDITIONAL (4) YEARS- SEE PRICING BELOW**

Yr 2- \$345.00

Yr 3- \$358.00 (4% increase to cover rising costs)

Yr 4- \$372.00 (4% increase to cover rising costs)

Yr 5- \$386.00 (4% increase to cover rising costs)

****Please see "Inspection Agreement Breakdown (separate)" for itemized breakdown of charges.**

*****Company recommends the client follows ALL NFPA Guidelines, in accordance with local authority having jurisdiction requirements, for each of their fire protections systems, including all components of said fire protection systems.**

Prices above only valid for 60 days from date of proposal (see below).

Term hereof shall be for the period of **one (1) year with additional four (4) years option** (Client must notify Company, via written notice, within sixty (60) days of the end of year 1 if they DO NOT want to continue services. If Client does not notify Company via written notice within sixty (60) days of the end of year 1, this agreement automatically continues with additional four (4) year option). Please refer to "Terms and Conditions, paragraph 2- Terms and Renewal of Agreement" below.

TERMS AND CONDITIONS

1. SERVICE OF THE FIRE PROTECTION EQUIPMENT: The Client agrees to purchase, and Company agrees to provide in accordance with these terms and conditions services for the purpose of inspecting and testing Client's fire protection systems & components in accordance with the terms and condition of this agreement. The Company will be permitted, at all reasonable times, to enter the Property indicated above to conduct the inspection and testing as outlined in this Agreement. The Company will be permitted to gather information, data on the Subscriber's systems (outlined in this agreement) and retain that information, data for use as the Company deems necessary. The Company may or may not use software to collect, view and or store collected information, data in any format necessary to use as needed.

2. TERMS AND RENEWAL OF AGREEMENT: Client agrees and acknowledges that this Agreement shall commence on the Effective Date or from the date of acceptance by Company whichever occurs later unless terminated as provided herein and continue for the term indicated above (the initial term). At the conclusion of the Initial Term, this Agreement shall

automatically extend for successive terms equal to the Initial Term unless either party gives written notice to the other party at least thirty (30) days prior to the end of the then current term.

3. PRICE AND PAYMENT: The charge for the work agreed to be performed herein shall include all labor, as described in paragraph 4.A, per diem and travel. Client agrees to pay company for the Term(s) of this Agreement, Company's applicable charges for testing and inspection services and for service calls as set forth under this Agreement. With approved credit, all invoices are due and payable in full according to the stated terms, net 45 days and interest at a rate of (1 ½%) on all unpaid invoices (30) days past due. If payment for work provided in this agreement is not paid when due, Client agrees to pay all costs of collection including attorneys' fees. Charges for inspection services or rates for basic or emergency service in any subsequent year of this agreement shall not exceed 115% of the prior year.

4. INSPECTIONS AND SERVICE: For the agreed-on amount, as shown on the attached Proposal, during the term(s) of this Agreement, Company agrees to provide inspection, certification, service and parts as follows:

A. Periodic inspections of the fire protection systems described herein means to inspect, test, and adjust the systems to assure components thereof are operating within the manufacturer's acceptable standards. Client will be notified, in writing, of any components found not to be within accepted operating standards. Inspections are not intended to and will not address the adequacy of the system design or installation of systems not installed by Company. Company performs inspections of the listed systems/components within the scope of work detailed herein that are accessible and not in concealed spaces visually and from the floor of the facility, and only for the conditions listed in this report or as otherwise required by NFPA. Components will be repaired or replaced only upon written authorization of the Client and invoiced at the service rates (s) set forth under the Clarifications of the Proposal. The frequency of each inspection shall be identified within the Proposal, beginning with the first inspection.

B. Any additional work, material or services outside the scope of this Agreement, which is requested by the Client and furnished by the Company, may be provided by the Company at its sole discretion. Further, such additional work, material or services shall be delivered under the terms of this Agreement, and by execution hereof. Client acknowledges that this Section V shall be incorporated into and become a part of any order for such additional work, equipment or services.

C. If in the sole determination of the Company, and at any time prior to or during the term of this Agreement, the equipment or any portion of it cannot be adequately inspected, repaired or adjusted on-site to bring it to an acceptable condition, Company shall have the right, at its discretion, to cancel this Agreement. If, alternatively and in the sole determination of the Company, portions of the system cannot be brought up to acceptable level of operation through service and maintenance, in lieu of canceling the Agreement, Company may reduce the scope of the work and the inspection and maintenance charge shall be adjusted accordingly.

D. Repair(s), diagnosis, addition(s), change(s), relocation(s), or emergency services are not included within the inspection amount quoted. These services will not be provided without the authorization of the Client and will be invoiced at the company's then current hourly rate for services, including travel charges and per-diem. Service calls during normal working hours will be invoiced based upon cost portal to portal and a (2) hour minimum. After hours service calls will be based upon portal to portal and a (3) hour minimum. Client also agreed to pay Company an overtime rate of (1 ½) times the hourly rate for service(s) required at other than normal working hours for the Company except for Sundays and Holidays which will be at an overtime rate of (2) times the hourly rate of service. Normal working hours for the Company are, 8:00 AM - 5:00 PM, Monday through Friday, excluding holidays. Service parts and applicable material will be charged out in accordance with Company's current established pricing, not to exceed the Manufacturer's current published list price.

5. LIMITATION OF LIABILITY: CLIENT ACKNOWLEDGES THAT COMPANY IS NOT AN INSURER, THAT CLIENT SHALL OBTAIN THE TYPE AND AMOUNT OF INSURANCE COVERAGE WHICH IT DETERMINES NECESSARY, AND THAT THE PAYMENTS MADE TO COMPANY BY CLIENT ON THIS PROJECT ARE BASED UPON THE VALUE OF THE SYSTEM AND/OR SERVICES PROVIDED AND ARE UNRELATED TO THE VALUE OF CLIENT'S PROPERTY OR BUSINESS OR ANY POTENTIAL LIABILITY OF DAMAGE TO CLIENT ARISING OUT OF THE WORK PERFORMED BY COMPANY. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS TO THE CLIENT AND TO COMPANY RESULTING FROM THE WORK PERFORMED BY COMPANY, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT, AS WELL AS THE CLIENT'S ASSIGNS, AGENTS, AND REPRESENTATIVES, AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF COMPANY, ITS OFFICERS, DIRECTORS, EMPLOYEES AND COMPANY'S PARENT, SUBSIDIARIES, AFFILIATES, CONSULTANTS,

SUBCONTRACTORS, VENDORS, TO A MAXIMUM OF \$10,000 OR THE AMOUNT OF THE CONTRACT/PRICE OF WORK BEING PERFORMED, WHICHEVER IS LESS, AND CLIENT DOES HEREBY RELEASE COMPANY FROM ANY CLAIMS IN EXCESS OF SAID LIMIT. THIS LIMITATION OF LIABILITY SHALL APPLY TO ALL JUDGMENTS, CLAIMS, LIABILITY, COSTS, CLAIM EXPENSES, AND ALL OTHER DAMAGES OR LOSSES OF ANY NATURE, INCLUDING ATTORNEYS' FEES (COLLECTIVELY "DAMAGES") SUSTAINED BY CLIENT OR ANY OTHER PARTY CLAIMING BY OR THROUGH CLIENT. THIS LIMITATION OF LIABILITY SHALL APPLY, 1.) REGARDLESS OF THE AMOUNT OF ANY DAMAGES SUSTAINED, IF ANY, AS A RESULT OF THIS WORK; AND, 2.) EVEN IF THE DAMAGES ARE ACTUALLY CAUSED OR ALLEGED TO BE CAUSED BY THE

NEGLIGENCE, BREACH OF WARRANTY, VIOLATION OF A STATUTE, ORDINANCE, REGULATION, STANDARD OR RULE, DEFECTIVE PRODUCTS, , OR OTHER FAULT OF COMPANY OR COMPANY'S PARENT, SUBSIDIARIES, AFFILIATES, CONSULTANTS, SUBCONTRACTORS, VENDORS, OR THEIR RESPECTIVE EMPLOYEES, AGENTS OR REPRESENTATIVES, SHOULD CLIENT DESIRE A DIFFERENT LIMITATION OF LIABILITY, SUCH IS AVAILABLE AS AN ADDITIONAL SERVICE AT AN ADDITIONAL COST. CLIENT AGREES TO REQUIRE IT INSURANCE POLICIES TO BE ENDORSED SO AS TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST COMPANY.

6. WARRANTIES:

A. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATEVER, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THERE ARE NO WARRANTIES OR REPRESENTATIONS WHICH EXTEND BEYOND THE FACE OF THIS AGREEMENT.

B. COMPANY DOES WARRANT THAT SERVICE UNDER THIS AGREEMENT WILL BE COMPETENT AND THAT PARTS INSTALLED ON THE SYSTEM IN CONNECTION WITH SERVICE PROVIDED UNDER THIS AGREEMENT WILL MEET MANUFACTURER'S SPECIFICATIONS AT THE TIME THEY ARE INSTALLED. FAILURES TO PERFORM CONSISTENTLY WITH THIS WARRANTY WILL BE REMEDIED SOLELY BY THE COMPANY DURING THE TERM OF THIS AGREEMENT, BY CORRECTLY RE-PERFORMING NONCOMPLYING SERVICE(S) OR REPAIRING OR REPLACING DEFECTIVE MATERIALS PROVIDED BY THE COMPANY, UPON WRITTEN NOTICE TO THE COMPANY BY THE CLIENT DURING THE TERM(S) OF THIS AGREEMENT.

C. THE COMPANY DOES NOT KNOW AND DOES NOT REPRESENT THAT THE CURRENT FIRE PROTECTION SYSTEM ON THE PROPERTY OF CLIENT WAS ORIGINALLY DESIGNED AND INSTALLED IN SUCH A WAY THAT THE SYSTEM WILL PERFORM AS ORIGINALLY INTENDED OR IS SUITABLE AND SUFFICIENT FOR ITS INTENDED PURPOSE GIVEN THE WAY IN WHICH THE PROPERTY HAS BEEN OR WILL BE USED, RECONFIGURED OR MAINTAINED. THIS AGREEMENT IS NOT A GUARANTEE OR WARRANTY THAT THE SYSTEM WILL IN ALL CASES (i) PROVIDE THE LEVEL OF PROTECTION FOR WHICH IT WAS ORIGINALLY INTENDED, (ii) IS FREE OF ALL DEFECTS AND DEFICIENCIES, AND (iii) IS IN COMPLIANCE WITH ALL APPLICABLE CODES. CLIENT AGREES THAT IT HAS NOT RETAINED COMPANY TO MAKE THESE ASSESSMENTS AS PART OF THIS AGREEMENT. ANY SUCH ASSESSMENT MUST BE BY A SEPARATE AGREEMENT SUBJECT TO THESE TERMS AND CONDITIONS. COMPANY FURTHER DOES NOT REPRESENT, GUARANTEE OR WARRANT THAT ANY EQUIPMENT REFERRED TO IN THIS AGREEMENT OR ANY SERVICE OR INSPECTION PROVIDED BY IT UNDER THIS AGREEMENT WILL RESULT IN A SYSTEM WHICH WILL OPERATE AS DESIGNED, OR IS SUITABLE FOR ANY PARTICULAR PURPOSE, OR WILL PREVENT ANY LOSS BY BURGLARY, FIRE OR OTHERWISE, OR WILL IN ALL CASES OR ANY PARTICULAR CASE AVERT OR PREVENT RISKS, LOSSES, OR OTHER OCCURENCES, OR THE CONSEQUENCES THEREFROM, WHICH THE EQUIPMENT OR SERVICES WERE OR ARE DESIGNED TO PERFORM, DETECT OR AVERT.

7. REDUCED PRESSURE BACKFLOW PREVENTER: BY SIGNING BELOW, CLIENT ACKNOWLEDGES THAT REDUCED PRESSURE BACKFLOW PREVENTERS (RPBP), ARE DESIGNED TO DISCHARGE WHEN CHECK VALVES ARE FOULED OR DUE TO WATER PRESSURE FLUCTUATIONS FROM CITY WATER SUPPLIES. ANY MAINTENANCE, REPAIR OR INSPECTION ON A FIRE SPRINKLER SYSTEM COULD RESULT IN WATER FLOW THROUGH THE RPBP AND POSSIBLE DISCHARGE. BY SIGNING BELOW, CLIENT AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS COMPANY FROM ANY CLAIM OR LIABILITY FOR ANY DAMAGES INCURRED BY THIS DISCHARGE OR LACK OF PROPER RPBP DRAIN PIPING AND OR RPBP DRAIN EQUIPMENT OR FAILURE OF THIS PIPING OR EQUIPMENT UNLESS COMPANY WAS SPECIFICALLY CONTRACTED TO DESIGN AND/OR INSTALL THIS EQUIPMENT.

8. RESPONSIBILITIES OF CLIENT: The Client agrees to:

A. Promptly notify Company of any known or suspected trouble or malfunction in the equipment, request a hazard evaluation if there are changes in occupancy, use, processes, or materials, and promptly approve correction of impairments and critical deficiencies found during any inspection. All replaced parts become the property of the Company.

B. Maintain the system per original installers instructions and manufacturer' specifications.

C. Authorize Company, its agents, and employees, for purposes of this Agreement, to enter upon the premises of Client, to repair or inspect the equipment and to make any changes or alteration to the equipment, as authorized by Client. Client also agrees to provide Company with ready accessibility to all components of systems requiring inspection and testing and appropriate working space, including adequate light, electricity, cellular signal or telephone access, adequate space and access for ladders or lifts as required for Company's use in providing service(s) under this Agreement. In addition, Client agrees to provide one individual to monitor the control panel during testing and certification.

D. Designate suitable representative(s) satisfactory to the Company as exclusive contact(s) between Company and the Client, who shall have authority to make decisions on behalf of Client concerning service of the equipment by Company.

E. Neither authorize nor permit maintenance, repairs, or modifications of any kind to be made to the equipment, except by the Company or as specified and approved in advance by the Company.

F. Assume complete responsibility for the maintenance and repair of the system except as is set forth in this agreement.

9. INDEMNIFICATION. COMPANY AND CLIENT SHALL DEFEND, INDEMNIFY AND HOLD ONE ANOTHER HARMLESS FROM ANY EXPENSE, LIABILITY, LOSS, CLAIM OR DAMAGE, FOR PERSONAL INJURIES AND DEATH OR PROPERTY DAMAGE ASSERTED BY ANY THIRD PARTY, CAUSED BY THE ALLEGED NEGLIGENCE OF ITSELF, ITS AGENTS, EMPLOYEES, OR ANY OTHER INDIVIDUAL OR ENTITY AFFILIATED WITH IT, AND RESULTING FROM THE SERVICES PROVIDED HEREIN, OR OVERALL FUNCTIONALITY OF THE SYSTEM IDENTIFIED IN THIS AGREEMENT.

10. ADDITIONAL COMPANY RESPONSIBILITY.

A. Company will provide service calls and emergency service, upon request of the Client, subject to any delay which may be occasioned by strike, riot, acts of God or any other circumstances beyond the control of the Company as soon as it is reasonably practical to do so. Company will make reasonable efforts to attend promptly to the emergency needs of the Client, but it can make no guaranty of response time by the company or what may be required to properly service the equipment.

B. In the event a malfunction of a type covered by this Agreement has not been remedied before this Agreement has terminated for whatever reason, any service requested by the Client thereafter may be provided by the Company in its sole discretion and at the Company's then-current rates for services, including travel charges, per diem and materials.

C. Company will provide necessary test equipment required to perform service(s) under this Agreement.

D. If replacement parts are necessary under this Agreement, Company may provide new and /or used replacements.

11. NO CONFLICT WITH OTHER CLIENT AGREEMENTS. Client warrants that the negotiation, execution, and implementation of this Agreement will not conflict with any other agreement of which the Client is aware with any other person or firm. Client agrees to defend, indemnify, and hold harmless the Company from claims of any sort by any person or firm alleging that this Agreement violates, interferes with or infringes upon any other Agreement in any way.

12. LICENSES, TAXES, PERMITS AND FALSE ALARMS. Client shall identify any rules, regulations, standards, or codes with which the equipment must comply, and shall obtain and pay for any necessary licenses or other certificates of compliance for same. Client is solely responsible for any fees, taxes (including sales taxes), false alarm fines, and any other governmental assessments related to the equipment or system operation and shall reimburse and indemnify the Company for any such expenses incurred by the Company. Client and Company are each responsible for obtaining any necessary licenses or permits needed to perform their respective obligations under this Agreement.

13. ASSIGNMENTS AND DELEGATIONS. Neither the Company nor the Client may assign this Agreement to any other person, firm or corporation without notice to or approval by the other, but Company may subcontract any activities that it may perform under this Agreement.

14. ENGINEERING CHANGES. Occasionally, manufacturers may issue non-warranty engineering changes to equipment necessary to assure proper operation of system components. If, in the opinion of the Company and Client, installation of such engineering changes requires service(s) or material(s) in excess of those incidental to a normal preventive maintenance inspection, such excess shall be paid for by the Client at Company's applicable charges for on-call and emergency services as set forth under this Agreement provided that company will remain responsible for performance of its obligations under this agreement. Failure by the Client to have factory recommended engineering changes installed on the system will relieve the Company from further performance under this Agreement, but will not relieve the Client of its obligations hereunder. No other engineering changes or system modification are covered by this Agreement except as may be otherwise specifically provided herein.

15. INVALID PROVISIONS. If any of the parts of this Agreement shall be determined by a court of competent jurisdiction to be invalid or inoperative, all of the remaining parts shall remain in full force and effect.

16. ENTIRE AGREEMENT. This writing is intended by the parties as the final expression of their Agreement and as a complete and exclusive statement of the terms thereof. This Agreement supersedes all prior representations, understandings or agreements between the parties; there are no prior writings, verbal negotiations, understandings, representations or agreements not expressed in this Agreement, and the parties rely only upon the contents of this Agreement in executing it, and have not relied on any other representations, oral or otherwise, made by the parties, their agents or employees. Only a writing signed by each of the parties or their duly authorized agents may modify this Agreement. No waiver of breach of any term or condition of this Agreement shall be construed to be a waiver of any succeeding breach. This agreement shall bind

and benefit the heirs, successors and assigns for the respective parties. A written Service Agreement Proposal is provided for clarification purposes and is hereby made a part of this contract.

17. RECEIPT AND REVIEW OF AGREEMENT. The Client specifically acknowledges that it has received a copy of these Terms and Conditions in its entirety, represents that it has authority to enter into this Agreement, and has read the same, understood it and agreed to its contents before signing it. Further the person executing these Terms and Conditions has the full authority of the Client to bind the Client, to the fullest extent provided by law, to these Terms and Conditions.

Other inclusions, exclusions or attachments:

***General Exclusions:** Painting, patching, underground and/or trenching, after hour, weekend and holiday labor rates, fire watch, prevailing wage/certified payroll, abatement including but not limited to asbestos and lead, water containment/disposal, conduit and wire, permit fees, scissor lifts, dampers, ground faults.

***Monitoring:** One time reprogram fee as specified on Scope of Work (not included in annual pricing above -- a separate one-time invoice) to reprogram Fire Alarm Control Panel (FACP) to our central station for monitoring and to ensure all zones are reporting correctly. Prior to reprogramming FACP requires two (2) dedicated active phone lines dropped at the panel at time of reprogram. **If applicable, lock out codes will need to be provided by previous provider or panel reset to factory standard conditions in order to program FACP. If for any reason we are unable to program due to these conditions, all time including travel time will be billable at Company current Time & Material Rates.**

MONITORING ACKNOWLEDGEMENT CUSTOMER INITIAL _____

*** Pricing:** The pricing set forth in this Agreement is based on the number of devices set forth in Section II: Scope of Work. If for any reason the actual number of devices is higher than the number set forth in Section II: Scope of Work, the price will be adjusted accordingly.

***Coverage:** Proposal above is for Test & Inspect only of above systems. All repairs, parts and services outside of above testing & inspecting scope of work is billable at Company current Time & Material Rates.

***Access:** During inspection, inspectors must have access to control valves, and alarm information, buried and/or non-accessible FDC check valves will be listed on the report and a recommendation for relocation under a separate contract. Inspectors must have access to all suites, apartments, units, etc. Customer responsible for notifying tenants of inspection and for gaining access in to each and every unit/apartment on scheduled inspection date(s). **If multiple inspections are required due to "no access" customer will be responsible for hourly rates of inspectors at Company current Time & Material Rates.**

ACCESS ACKNOWLEDGEMENT CUSTOMER INITIAL _____

***On Site Inspection Repairs:** Client authorizes Company to perform repairs or component replacements, found to be necessary during the course of inspection, the amount of \$500.00 or less, **ONLY IF TECHNICIAN HAS THOSE PARTS READILY AVAILABLE ON HIS TRUCK.** Any necessary repairs for an amount exceeding \$500.00 will be first submitted in writing for written approval. Any repairs performed while on site during inspection will be billed on a "Time & Material" basis and subject to the terms of this Agreement. Hourly rates are provided in 1/2 hour increments. All labor rates are subject to change with a thirty (30) day written notice to the client.

ON SITE REPAIRS ACKNOWLEDGEMENT CUSTOMER INITIAL _____

***Cancellation/Reschedule Notice:** Should the customer cancel or reschedule all or any portion of the inspection/scope without giving 3 business days' notice to the Company, we will assess a scheduling impact fee. The fee shall be equal to 4 hours of our current set Time and Material rate.

***COVID-19:** "Due to the existing pandemic involving COVID-19 and the constantly evolving situation, which includes shut downs of definite and indefinite durations by the federal, state, and local governments, quarantines, business shut downs, transportation interruptions, disruptions in the supply chain of certain materials, supplies, or equipment, disruptions to public services, temporary suspensions of work on site, or the unavailability or reduced availability of manpower, the parties agree that if Subcontractor is hindered, prevented or delayed at any time in the commencement or progress of the work for a cause arising from or related to COVID-19, including but not limited to any of the examples above, Subcontractor shall be entitled to an extension of the Contract time. Furthermore, Subcontractor shall be entitled to additional compensation for increased costs associated with the high demand for specified materials, for increased costs associated with any proposed substitute approved by Contractor or Owner, or any other similar cost increase outside the control of Subcontractor."

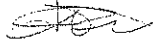


People. Integrity. Professionalism. Excellence.

3725 Cleveland Road, Suite 200
South Bend, IN 46628

T: 574 277 0027
F: 574 277 7275



Name : Jason Quimby
Title: Inspection Sales Leader
Address: 3725 Cleveland Rd Ste 200
South Bend, IN 46628
Phone : 574-208-6314
Signed: 
Date of proposal: 11/30/2023

Name : _____
Title: _____
Address: _____
Phone : _____
Signed: _____
Date accepted: _____

ADDENDUM

THIS ADDENDUM is made and entered into the ____ day of _____, 2023, by and between VFP Fire Systems (hereinafter referred to as "Contractor") and the City of Goshen, Indiana (hereinafter referred to as "City").

WITNESSETH:

WHEREAS Contractor and City are parties to a certain agreement for annual inspection and testing of wet sprinkler system for Goshen Wastewater Treatment Plant ("Agreement"); and

WHEREAS this Addendum shall be attached to and made a part of the Agreement and shall control in the event of any conflict with the terms and provisions of the Agreement.

NOW, THEREFORE, in consideration of the premises and the terms and conditions contained herein, the parties hereby mutually and further agree as follows:

State Law Provisions.

1) Non-Discrimination - Pursuant to Indiana Code § 22-9-1-10, Contractor and its subcontractors, if any, shall not to discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his race, religion, color, sex, disability, national origin, ancestry or veteran status. Breach of this covenant may be regarded as a material breach of the Agreement.

2) 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.

3) E-Verify Program - Pursuant to Indiana Code § 22-5-1.7-11, Contractor agrees to and shall enroll in and verify the work eligibility status of all newly hired employees of Contractor after the date of the Agreement through the E-Verify Program as defined in Indiana Code § 22-5-1.7-3; provided, however, Contractor is not required to verify the work eligibility status of all newly hired employees after the date of the Agreement through the E-Verify Program if the E-Verify Program no longer exists. Contractor further represents and certifies subject to the pains and penalties of perjury that Contractor does not knowingly employ an unauthorized alien.

4) General Requirements - Contractor further agrees to comply with the applicable requirements of Indiana state law with respect to contracting with local governmental entities.

This Addendum is dated effective with the effective date of the Agreement.

CITY:

CITY OF GOSHEN, INDIANA

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR:

VFP FIRE SYSTEMS

By: _____

Name: _____

Title: _____

Date: _____



INSPECTION/TESTING AGREEMENT

THIS AGREEMENT, made between **VFP FIRE SYSTEMS**, hereinafter called "**COMPANY**", and **CITY OF GOSHEN, 204 E JEFFERSON ST. STE 1, GOSHEN, IN 46528**, hereinafter called "**CLIENT**".

Client owns or occupies the building(s) located on the premises known as **GOSHEN CSO, 705 N INDIANA AVE. GOSHEN, IN 46528**, wherein there is now installed certain fire equipment, to wit:

Annual inspection/testing of (2) wet sprinkler systems.

Annual breakdown is below:

Yr 1- \$480.00

***CLIENT HAS OPTION OF CONTINUING SERVICES FOR ADDITIONAL (4) YEARS- SEE PRICING BELOW**

Yr 2- \$480.00

Yr 3- \$499.00 (4% increase to cover rising costs)

Yr 4- \$518.00 (4% increase to cover rising costs)

Yr 5- \$538.00 (4% increase to cover rising costs)

****Please see "Inspection Agreement Breakdown (separate)" for itemized breakdown of charges.**

*****Company recommends the client follows ALL NFPA Guidelines, in accordance with local authority having jurisdiction requirements, for each of their fire protections systems, including all components of said fire protection systems.**

Prices above only valid for 60 days from date of proposal (see below).

Term hereof shall be for the period of **one (1) year with additional four (4) years option** (Client must notify Company, via written notice, within sixty (60) days of the end of year 1 if they **DO NOT** want to continue services. If Client does not notify Company via written notice within sixty (60) days of the end of year 1, this agreement automatically continues with additional four (4) year option). Please refer to "Terms and Conditions, paragraph 2- Terms and Renewal of Agreement" below.

TERMS AND CONDITIONS

1. SERVICE OF THE FIRE PROTECTION EQUIPMENT: The Client agrees to purchase, and Company agrees to provide in accordance with these terms and conditions services for the purpose of inspecting and testing Client's fire protection systems & components in accordance with the terms and condition of this agreement. The Company will be permitted, at all reasonable times, to enter the Property indicated above to conduct the inspection and testing as outlined in this Agreement. The Company will be permitted to gather information, data on the Subscriber's systems (outlined in this agreement) and retain that information, data for use as the Company deems necessary. The Company may or may not use software to collect, view and or store collected information, data in any format necessary to use as needed.

2. TERMS AND RENEWAL OF AGREEMENT: Client agrees and acknowledges that this Agreement shall commence on the Effective Date or from the date of acceptance by Company whichever occurs later unless terminated as provided herein and continue for the term indicated above (the initial term). At the conclusion of the Initial Term, this Agreement shall

automatically extend for successive terms equal to the Initial Term unless either party gives written notice to the other party at least thirty (30) days prior to the end of the then current term.

3. PRICE AND PAYMENT: The charge for the work agreed to be performed herein shall include all labor, as described in paragraph 4.A, per diem and travel. Client agrees to pay company for the Term(s) of this Agreement, Company's applicable charges for testing and inspection services and for service calls as set forth under this Agreement. With approved credit, all invoices are due and payable in full according to the stated terms, net 45 days and interest at a rate of (1 ½%) on all unpaid invoices (30) days past due. If payment for work provided in this agreement is not paid when due, Client agrees to pay all costs of collection including attorneys' fees. Charges for inspection services or rates for basic or emergency service in any subsequent year of this agreement shall not exceed 115% of the prior year.

4. INSPECTIONS AND SERVICE: For the agreed-on amount, as shown on the attached Proposal, during the term(s) of this Agreement, Company agrees to provide inspection, certification, service and parts as follows:

A. Periodic inspections of the fire protection systems described herein means to inspect, test, and adjust the systems to assure components thereof are operating within the manufacturer's acceptable standards. Client will be notified, in writing, of any components found not to be within accepted operating standards. Inspections are not intended to and will not address the adequacy of the system design or installation of systems not installed by Company. Company performs inspections of the listed systems/components within the scope of work detailed herein that are accessible and not in concealed spaces visually and from the floor of the facility, and only for the conditions listed in this report or as otherwise required by NFPA. Components will be repaired or replaced only upon written authorization of the Client and invoiced at the service rates (s) set forth under the Clarifications of the Proposal. The frequency of each inspection shall be identified within the Proposal, beginning with the first inspection.

B. Any additional work, material or services outside the scope of this Agreement, which is requested by the Client and furnished by the Company, may be provided by the Company at its sole discretion. Further, such additional work, material or services shall be delivered under the terms of this Agreement, and by execution hereof. Client acknowledges that this Section V shall be incorporated into and become a part of any order for such additional work, equipment or services.

C. If in the sole determination of the Company, and at any time prior to or during the term of this Agreement, the equipment or any portion of it cannot be adequately inspected, repaired or adjusted on-site to bring it to an acceptable condition, Company shall have the right, at its discretion, to cancel this Agreement. If, alternatively and in the sole determination of the Company, portions of the system cannot be brought up to acceptable level of operation through service and maintenance, in lieu of canceling the Agreement, Company may reduce the scope of the work and the inspection and maintenance charge shall be adjusted accordingly.

D. Repair(s), diagnosis, addition(s), change(s), relocation(s), or emergency services are not included within the inspection amount quoted. These services will not be provided without the authorization of the Client and will be invoiced at the company's then current hourly rate for services, including travel charges and per-diem. Service calls during normal working hours will be invoiced based upon cost portal to portal and a (2) hour minimum. After hours service calls will be based upon portal to portal and a (3) hour minimum. Client also agreed to pay Company an overtime rate of (1 ½) times the hourly rate for service(s) required at other than normal working hours for the Company except for Sundays and Holidays which will be at an overtime rate of (2) times the hourly rate of service. Normal working hours for the Company are, 8:00 AM – 5:00 PM, Monday through Friday, excluding holidays. Service parts and applicable material will be charged out in accordance with Company's current established pricing, not to exceed the Manufacturer's current published list price.

5. LIMITATION OF LIABILITY: CLIENT ACKNOWLEDGES THAT COMPANY IS NOT AN INSURER, THAT CLIENT SHALL OBTAIN THE TYPE AND AMOUNT OF INSURANCE COVERAGE WHICH IT DETERMINES NECESSARY, AND THAT THE PAYMENTS MADE TO COMPANY BY CLIENT ON THIS PROJECT ARE BASED UPON THE VALUE OF THE SYSTEM AND/OR SERVICES PROVIDED AND ARE UNRELATED TO THE VALUE OF CLIENT'S PROPERTY OR BUSINESS OR ANY POTENTIAL LIABILITY OF DAMAGE TO CLIENT ARISING OUT OF THE WORK PERFORMED BY COMPANY. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS TO THE CLIENT AND TO COMPANY RESULTING FROM THE WORK PERFORMED BY COMPANY, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT, AS WELL AS THE CLIENT'S ASSIGNS, AGENTS, AND REPRESENTATIVES, AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF COMPANY, ITS OFFICERS, DIRECTORS, EMPLOYEES AND COMPANY'S PARENT, SUBSIDIARIES, AFFILIATES, CONSULTANTS,

SUBCONTRACTORS, VENDORS, TO A MAXIMUM OF \$10,000 OR THE AMOUNT OF THE CONTRACT/PRICE OF WORK BEING PERFORMED, WHICHEVER IS LESS, AND CLIENT DOES HEREBY RELEASE COMPANY FROM ANY CLAIMS IN EXCESS OF SAID LIMIT. THIS LIMITATION OF LIABILITY SHALL APPLY TO ALL JUDGMENTS, CLAIMS, LIABILITY, COSTS, CLAIM EXPENSES, AND ALL OTHER DAMAGES OR LOSSES OF ANY NATURE, INCLUDING ATTORNEYS' FEES (COLLECTIVELY "DAMAGES") SUSTAINED BY CLIENT OR ANY OTHER PARTY CLAIMING BY OR THROUGH CLIENT. THIS LIMITATION OF LIABILITY SHALL APPLY, 1.) REGARDLESS OF THE AMOUNT OF ANY DAMAGES SUSTAINED, IF ANY, AS A RESULT OF THIS WORK; AND, 2.) EVEN IF THE DAMAGES ARE ACTUALLY CAUSED OR ALLEGED TO BE CAUSED BY THE

NEGLIGENCE, BREACH OF WARRANTY, VIOLATION OF A STATUTE, ORDINANCE, REGULATION, STANDARD OR RULE, DEFECTIVE PRODUCTS, . OR OTHER FAULT OF COMPANY OR COMPANY'S PARENT, SUBSIDIARIES, AFFILIATES, CONSULTANTS, SUBCONTRACTORS, VENDORS, OR THEIR RESPECTIVE EMPLOYEES, AGENTS OR REPRESENTATIVES. SHOULD CLIENT DESIRE A DIFFERENT LIMITATION OF LIABILITY, SUCH IS AVAILABLE AS AN ADDITIONAL SERVICE AT AN ADDITIONAL COST. CLIENT AGREES TO REQUIRE IT INSURANCE POLICIES TO BE ENDORSED SO AS TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST COMPANY.

6. WARRANTIES:

A. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THERE ARE NO WARRANTIES OR REPRESENTATIONS WHICH EXTEND BEYOND THE FACE OF THIS AGREEMENT.

B. COMPANY DOES WARRANT THAT SERVICE UNDER THIS AGREEMENT WILL BE COMPETENT AND THAT PARTS INSTALLED ON THE SYSTEM IN CONNECTION WITH SERVICE PROVIDED UNDER THIS AGREEMENT WILL MEET MANUFACTURER'S SPECIFICATIONS AT THE TIME THEY ARE INSTALLED. FAILURES TO PERFORM CONSISTENTLY WITH THIS WARRANTY WILL BE REMEDIED SOLELY BY THE COMPANY DURING THE TERM OF THIS AGREEMENT, BY CORRECTLY RE-PERFORMING NONCOMPLYING SERVICE(S) OR REPAIRING OR REPLACING DEFECTIVE MATERIALS PROVIDED BY THE COMPANY, UPON WRITTEN NOTICE TO THE COMPANY BY THE CLIENT DURING THE TERM(S) OF THIS AGREEMENT.

C. THE COMPANY DOES NOT KNOW AND DOES NOT REPRESENT THAT THE CURRENT FIRE PROTECTION SYSTEM ON THE PROPERTY OF CLIENT WAS ORIGINALLY DESIGNED AND INSTALLED IN SUCH A WAY THAT THE SYSTEM WILL PERFORM AS ORIGINALLY INTENDED OR IS SUITABLE AND SUFFICIENT FOR ITS INTENDED PURPOSE GIVEN THE WAY IN WHICH THE PROPERTY HAS BEEN OR WILL BE USED, RECONFIGURED OR MAINTAINED. THIS AGREEMENT IS NOT A GUARANTEE OR WARRANTY THAT THE SYSTEM WILL IN ALL CASES (i) PROVIDE THE LEVEL OF PROTECTION FOR WHICH IT WAS ORIGINALLY INTENDED, (ii) IS FREE OF ALL DEFECTS AND DEFICIENCIES, AND (iii) IS IN COMPLIANCE WITH ALL APPLICABLE CODES. CLIENT AGREES THAT IT HAS NOT RETAINED COMPANY TO MAKE THESE ASSESSMENTS AS PART OF THIS AGREEMENT. ANY SUCH ASSESSMENT MUST BE BY A SEPARATE AGREEMENT SUBJECT TO THESE TERMS AND CONDITIONS. COMPANY FURTHER DOES NOT REPRESENT, GUARANTEE OR WARRANT THAT ANY EQUIPMENT REFERRED TO IN THIS AGREEMENT OR ANY SERVICE OR INSPECTION PROVIDED BY IT UNDER THIS AGREEMENT WILL RESULT IN A SYSTEM WHICH WILL OPERATE AS DESIGNED, OR IS SUITABLE FOR ANY PARTICULAR PURPOSE, OR WILL PREVENT ANY LOSS BY BURGLARY, FIRE OR OTHERWISE, OR WILL IN ALL CASES OR ANY PARTICULAR CASE AVERT OR PREVENT RISKS, LOSSES, OR OTHER OCCURENCES, OR THE CONSEQUENCES THEREFROM, WHICH THE EQUIPMENT OR SERVICES WERE OR ARE DESIGNED TO PERFORM, DETECT OR AVERT.

7. **REDUCED PRESSURE BACKFLOW PREVENTER:** BY SIGNING BELOW, CLIENT ACKNOWLEDGES THAT REDUCED PRESSURE BACKFLOW PREVENTERS (RPBP), ARE DESIGNED TO DISCHARGE WHEN CHECK VALVES ARE FOULED OR DUE TO WATER PRESSURE FLUCTUATIONS FROM CITY WATER SUPPLIES. ANY MAINTENANCE, REPAIR OR INSPECTION ON A FIRE SPRINKLER SYSTEM COULD RESULT IN WATER FLOW THROUGH THE RPBP AND POSSIBLE DISCHARGE. BY SIGNING BELOW, CLIENT AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS COMPANY FROM ANY CLAIM OR LIABILITY FOR ANY DAMAGES INCURRED BY THIS DISCHARGE OR LACK OF PROPER RPBP DRAIN PIPING AND OR RPBP DRAIN EQUIPMENT OR FAILURE OF THIS PIPING OR EQUIPMENT UNLESS COMPANY WAS SPECIFICALLY CONTRACTED TO DESIGN AND/OR INSTALL THIS EQUIPMENT.

8. RESPONSIBILITIES OF CLIENT: The Client agrees to:

A. Promptly notify Company of any known or suspected trouble or malfunction in the equipment, request a hazard evaluation if there are changes in occupancy, use, processes, or materials, and promptly approve correction of impairments and critical deficiencies found during any inspection. All replaced parts become the property of the Company.

B. Maintain the system per original installers instructions and manufacturer' specifications.

C. Authorize Company, its agents, and employees, for purposes of this Agreement, to enter upon the premises of Client, to repair or inspect the equipment and to make any changes or alteration to the equipment, as authorized by Client. Client also agrees to provide Company with ready accessibility to all components of systems requiring inspection and testing and appropriate working space, including adequate light, electricity, cellular signal or telephone access, adequate space and access for ladders or lifts as required for Company's use in providing service(s) under this Agreement. In addition, Client agrees to provide one individual to monitor the control panel during testing and certification.

D. Designate suitable representative(s) satisfactory to the Company as exclusive contact(s) between Company and the Client, who shall have authority to make decisions on behalf of Client concerning service of the equipment by Company.

E. Neither authorize nor permit maintenance, repairs, or modifications of any kind to be made to the equipment, except by the Company or as specified and approved in advance by the Company.

F. Assume complete responsibility for the maintenance and repair of the system except as is set forth in this agreement.

9. INDEMNIFICATION. COMPANY AND CLIENT SHALL DEFEND, INDEMNIFY AND HOLD ONE ANOTHER HARMLESS FROM ANY EXPENSE, LIABILITY, LOSS, CLAIM OR DAMAGE, FOR PERSONAL INJURIES AND DEATH OR PROPERTY DAMAGE ASSERTED BY ANY THIRD PARTY, CAUSED BY THE ALLEGED NEGLIGENCE OF ITSELF, ITS AGENTS, EMPLOYEES, OR ANY OTHER INDIVIDUAL OR ENTITY AFFILIATED WITH IT, AND RESULTING FROM THE SERVICES PROVIDED HEREIN, OR OVERALL FUNCTIONALITY OF THE SYSTEM IDENTIFIED IN THIS AGREEMENT.

10. ADDITIONAL COMPANY RESPONSIBILITY.

A. Company will provide service calls and emergency service, upon request of the Client, subject to any delay which may be occasioned by strike, riot, acts of God or any other circumstances beyond the control of the Company as soon as it is reasonably practical to do so. Company will make reasonable efforts to attend promptly to the emergency needs of the Client, but it can make no guaranty of response time by the company or what may be required to properly service the equipment.

B. In the event a malfunction of a type covered by this Agreement has not been remedied before this Agreement has terminated for whatever reason, any service requested by the Client thereafter may be provided by the Company in its sole discretion and at the Company's then-current rates for services, including travel charges, per diem and materials.

C. Company will provide necessary test equipment required to perform service(s) under this Agreement.

D. If replacement parts are necessary under this Agreement, Company may provide new and /or used replacements.

11. NO CONFLICT WITH OTHER CLIENT AGREEMENTS. Client warrants that the negotiation, execution, and implementation of this Agreement will not conflict with any other agreement of which the Client is aware with any other person or firm. Client agrees to defend, indemnify, and hold harmless the Company from claims of any sort by any person or firm alleging that this Agreement violates, interferes with or infringes upon any other Agreement in any way.

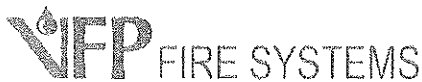
12. LICENSES, TAXES, PERMITS AND FALSE ALARMS. Client shall identify any rules, regulations, standards, or codes with which the equipment must comply, and shall obtain and pay for any necessary licenses or other certificates of compliance for same. Client is solely responsible for any fees, taxes (including sales taxes), false alarm fines, and any other governmental assessments related to the equipment or system operation and shall reimburse and indemnify the Company for any such expenses incurred by the Company. Client and Company are each responsible for obtaining any necessary licenses or permits needed to perform their respective obligations under this Agreement.

13. ASSIGNMENTS AND DELEGATIONS. Neither the Company nor the Client may assign this Agreement to any other person, firm or corporation without notice to or approval by the other, but Company may subcontract any activities that it may perform under this Agreement.

14. ENGINEERING CHANGES. Occasionally, manufacturers may issue non-warranty engineering changes to equipment necessary to assure proper operation of system components. If, in the opinion of the Company and Client, installation of such engineering changes requires service(s) or material(s) in excess of those incidental to a normal preventive maintenance inspection, such excess shall be paid for by the Client at Company's applicable charges for on-call and emergency services as set forth under this Agreement provided that company will remain responsible for performance of its obligations under this agreement. Failure by the Client to have factory recommended engineering changes installed on the system will relieve the Company from further performance under this Agreement, but will not relieve the Client of its obligations hereunder. No other engineering changes or system modification are covered by this Agreement except as may be otherwise specifically provided herein.

15. INVALID PROVISIONS. If any of the parts of this Agreement shall be determined by a court of competent jurisdiction to be invalid or inoperative, all of the remaining parts shall remain in full force and effect.

16. ENTIRE AGREEMENT. This writing is intended by the parties as the final expression of their Agreement and as a complete and exclusive statement of the terms thereof. This Agreement supersedes all prior representations, understandings or agreements between the parties; there are no prior writings, verbal negotiations, understandings, representations or agreements not expressed in this Agreement, and the parties rely only upon the contents of this Agreement in executing it, and have not relied on any other representations, oral or otherwise, made by the parties, their agents or employees. Only a writing signed by each of the parties or their duly authorized agents may modify this Agreement. No waiver of breach of any term or condition of this Agreement shall be construed to be a waiver of any succeeding breach. This agreement shall bind



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and benefit the heirs, successors and assigns for the respective parties. A written Service Agreement Proposal is provided for clarification purposes and is hereby made a part of this contract.

17. RECEIPT AND REVIEW OF AGREEMENT. The Client specifically acknowledges that it has received a copy of these Terms and Conditions in its entirety, represents that it has authority to enter into this Agreement, and has read the same, understood it and agreed to its contents before signing it. Further the person executing these Terms and Conditions has the full authority of the Client to bind the Client, to the fullest extent provided by law, to these Terms and Conditions.

Other inclusions, exclusions or attachments:

***General Exclusions:** Painting, patching, underground and/or trenching, after hour, weekend and holiday labor rates, fire watch, prevailing wage/certified payroll, abatement including but not limited to asbestos and lead, water containment/disposal, conduit and wire, permit fees, scissor lifts, dampers, ground faults.

***Monitoring:** One time reprogram fee as specified on Scope of Work (not included in annual pricing above – a separate one-time invoice) to reprogram Fire Alarm Control Panel (FACP) to our central station for monitoring and to ensure all zones are reporting correctly. Prior to reprogramming FACP requires two (2) dedicated active phone lines dropped at the panel at time of reprogram. **If applicable, lock out codes will need to be provided by previous provider or panel reset to factory standard conditions in order to program FACP. If for any reason we are unable to program due to these conditions, all time including travel time will be billable at Company current Time & Material Rates.**

SIGNATURE OF AUTHORIZED REPRESENTATIVE CUSTOMER INITIAL

*** Pricing:** The pricing set forth in this Agreement is based on the number of devices set forth in Section II: Scope of Work. If for any reason the actual number of devices is higher than the number set forth in Section II: Scope of Work, the price will be adjusted accordingly.

***Coverage:** Proposal above is for Test & Inspect only of above systems. All repairs, parts and services outside of above testing & inspecting scope of work is billable at Company current Time & Material Rates.

***Access:** During inspection, inspectors must have access to control valves, and alarm information, buried and/or non-accessible FDC check valves will be listed on the report and a recommendation for relocation under a separate contract. Inspectors must have access to all suites, apartments, units, etc. Customer responsible for notifying tenants of inspection and for gaining access in to each and every unit/apartment on scheduled inspection date(s). **If multiple inspections are required due to "no access" customer will be responsible for hourly rates of inspectors at Company current Time & Material Rates.**

SIGNATURE OF AUTHORIZED REPRESENTATIVE CUSTOMER INITIAL

***On Site Inspection Repairs:** Client authorizes Company to perform repairs or component replacements, found to be necessary during the course of inspection, the amount of \$500.00 or less, **ONLY IF TECHNICIAN HAS THOSE PARTS READILY AVAILABLE ON HIS TRUCK.** Any necessary repairs for an amount exceeding \$500.00 will be first submitted in writing for written approval. Any repairs performed while on site during inspection will be billed on a "Time & Material" basis and subject to the terms of this Agreement. Hourly rates are provided in ½ hour increments. All labor rates are subject to change with a thirty (30) day written notice to the client.

SIGNATURE OF AUTHORIZED REPRESENTATIVE CUSTOMER INITIAL

***Cancellation/Reschedule Notice:** Should the customer cancel or reschedule all or any portion of the inspection/scope without giving 3 business days' notice to the Company, we will assess a scheduling impact fee. The fee shall be equal to 4 hours of our current set Time and Material rate.

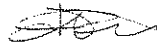
***COVID-19:** "Due to the existing pandemic involving COVID-19 and the constantly evolving situation, which includes shut downs of definite and indefinite durations by the federal, state, and local governments, quarantines, business shut downs, transportation interruptions, disruptions in the supply chain of certain materials, supplies, or equipment, disruptions to public services, temporary suspensions of work on site, or the unavailability or reduced availability of manpower, the parties agree that if Subcontractor is hindered, prevented or delayed at any time in the commencement or progress of the work for a cause arising from or related to COVID-19, including but not limited to any of the examples above, Subcontractor shall be entitled to an extension of the Contract time. Furthermore, Subcontractor shall be entitled to additional compensation for increased costs associated with the high demand for specified materials, for increased costs associated with any proposed substitute approved by Contractor or Owner, or any other similar cost increase outside the control of Subcontractor."



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T: 574 277 0027
F: 574 277 7275

Name : Jason Quimby
Title: Inspection Sales Leader
Address: 3725 Cleveland Rd Ste 200
South Bend, IN 46628
Phone : 574-208-6314
Signed: 
Date of proposal: 11/30/2023

Name : _____
Title: _____
Address: _____
Phone : _____
Signed: _____
Date accepted: _____



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
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December 18, 2023

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Contract with New Avenues Inc. – 2024 Employee Assistance Program
A la Carte Service Contract for City Employees

Attached for the Board’s approval is a Contract with New Avenues Inc., in substantially final form, to provide the City an employee assistance program (EAP) in 2024 based on an “EAP A la Carte Service.” This EAP covers all active, full-time employees and their immediate family members, but excludes Police Department employees. (An EAP for the Police Department is provided under a separate contract.) The City will pay New Avenues based on the “EAP A la Carte Service” fees set forth in Exhibit A of the Contract which includes an administrative fee of \$168 per month (same fee as 2023), plus the additional fees for the specific services utilized. It is also requested that authorization be given to the Mayor to execute the finalized Contract with New Avenues Inc.

Suggested Motion:

Move to approve and authorize the Mayor to execute the Contract with New Avenues Inc. to provide the 2024 Employee Assistance Program based on the “EAP A la Carte Service.”



Contract for:

City of Goshen

Employee Assistance Program (EAP)

A la Carte Contract

Length of Contract:

January 1, 2024-December 31, 2024

I. Overview

New Avenues will arrange for the delivery of Employee Assistance Program (EAP) services to all eligible employees and their immediate family members as indicated in the Definition of Eligibility in EAP Addendum 1, during the term of this Agreement with City of Goshen, hereinafter to be referred as “the Company” or “the employer.” New Avenues will provide employee assistance services as agreed to in Exhibit A and hereinafter described. New Avenues will arrange for such services to be provided by duly trained and qualified professionals in accordance with generally recognized treatment standards.

II. Location and Service Access Information

Our corporate office address is P.O. Box 360, South Bend, Indiana 46624. Our corporate office location is 300 South St. Louis Boulevard, Suite 200, South Bend, Indiana 46617. New Avenues manages a network of EAP Providers across the state of Indiana and nationwide to provide service to your employees.

- A. Any eligible employee and/or immediate family member may be seen in any of our network offices near their home or workplace. Telephonic counseling, secure face-to-face video counseling and a chat function on the iConnectYou app are also available when appropriate.
- B. Hours of Operation for corporate office and member services include: 8:30 a.m. to 5:00 p.m., Monday through Thursday; 8:30 a.m. to 4:30 p.m., Friday (Eastern Standard Time or Eastern Daylight Savings Time during the appropriate times of the year). Our on-call clinical staff is available for immediate or emergency situations 24 hours per day including weekends and holidays.
- C. A toll-free telephone number will be provided to all eligible employees for easy EAP access.

III. Access Procedure and Orientation Service

- A. The Eligible Participant can access their EAP services by calling New Avenues and speaking to a Member Services Specialist who will obtain necessary account information and information of the Eligible Participant’s counseling needs. A Care Manager (Master’s level mental health counselor) is available for the Eligible Participant to consult when dealing with higher risk and emergency needs. The Eligible Participant will then be informed how counseling services will proceed. New Avenues will make a reasonable attempt to select an EAP provider that can provide continuity of care with the Eligible Participant’s health plan if needed.
- B. Members of our professional staff are willing to meet with your staff on-site, through a secure platform and/or provide you with a Microsoft PowerPoint Orientation. The orientation will orient them to the program, including how to self-refer, stress confidentiality, and normalize issues they may be experiencing so that persons will feel comfortable making appointments. We suggest group sizes of approximately 35-40 employees at a time for on-site presentations.
- C. We will provide you with a draft introductory letter announcing the EAP, to be mailed by you to the home of each eligible employee introducing the Employee Assistance Program or sent through email.

IV. Scope of EAP Services

- A. Short Term Counseling Program. We will provide annually a number of EAP visits per Eligible Participant as determined by the Company (refer to EAP Addendum 1: Definition of Eligibility). The Eligible Participant will have access to Structured Telephonic Counseling via the New Avenues website NewAvenuesOnline.com. We will provide these services as agreed upon in Exhibit A.

The scope of the Employee Assistance Program covers the following Individual, Family and Marital counseling needs, but is not limited to:

- ❖ Stress
- ❖ Anger management
- ❖ Parenting concerns
- ❖ Emotional problems (i.e. depression, anxiety, obsessive-compulsive disorders, etc.)
- ❖ Alcohol/drug use or abuse
- ❖ Child/adolescent needs
- ❖ Communication problems
- ❖ Grief or trauma issues
- ❖ Conflict Resolutions Service
- ❖ Marital and partner concerns
- ❖ Aging parent issues
- ❖ Adjustment problems related to health conditions
- ❖ Occupational or career concerns
- ❖ Problems at work
- ❖ Employee or managerial coaching

The EAP counseling can also provide assessment of needs, and referral assistance for additional behavioral health needs such as psychological testing, referral for physician evaluation, more intense level of care or extended counseling. The EAP is utilized for short term interventions and is solution focused.

Financial Assistance – Referral

New Avenues utilizes GreenPath Financial Wellness and may refer the Eligible Participant to GreenPath for their Credit Counseling and Debt Counseling services. GreenPath is a premier credit counseling agency and is accredited by COA, Council on Accreditation and is a member with the following organization: National Foundation for Credit Counseling, NFCC, U.S. Department of Housing and Urban Development-Approved housing counseling agency, Consumer Affairs and The Better Business Bureau.

GreenPath Services beyond the free consultation sessions may have fees associated with them. The Eligible Participant would be responsible for any services that would require a payment such as Debt Management Program, Student Loan Counseling, Bankruptcy Counseling, Homebuyer Counseling Program.

The EAP counseling services do not include:

- ❖ Reports for courts for any court ordered counseling or treatment
- ❖ Visitation or custody studies
- ❖ Inpatient, Intensive outpatient services or partial hospitalization
- ❖ Physician services
- ❖ Psychological testing for clinical, educational, occupational, medical reasons
- ❖ Extended counseling
- ❖ Drug/alcohol classes, educational or wellness programs
- ❖ Drug testing or other lab/pharmacy benefits
- ❖ Fitness for Duty Evaluations
- ❖ Risk Assessments
- ❖ Services under COBRA
- ❖ Long Term Counseling for chronic conditions

When/if the Provider recommends extended treatment, the Eligible Participant may continue with the EAP counselor or another Provider if they wish, at their own expense or through their insurance benefits. The EAP counselor also may recommend additional services such as physician evaluation or psychological testing that will be subject to the individual's personal expense or health plan. The Eligible Participant is under no obligation to use the EAP program prior to accessing their health plan or as a condition of accessing their health plan benefits.

- B. Supervisory Orientation Training. In addition to employee orientation sessions (see Sec. III B), EAP supervisory orientation training is available for your designated supervisors. The focus of the training will be how to make “disciplinary referrals” and “concerned supervisory referrals.” It will include information on “knowing when to refer” and “how to refer” and how to keep New Avenues informed of when a referral has been made. We will provide these services as agreed upon in Exhibit A.
- C. Trainings/ Workshops/ Seminars. New Avenues provides a variety of additional services that can improve departmental and organizational performance. Trainings, workshops and seminars may be purchased on an as needed basis. Staff is available for consultation with the Company's human resources representatives or supervisors who may call us and request assistance in choosing and/or designing special trainings. Trainings include, but are not limited to, Stress Management, Respect in the Workplace, Harassment, and Reasonable Suspicion Programs. For a list of offerings, see the current Training Catalog. We will provide these services as agreed upon in Exhibit A.
- D. Telephonic & Onsite Consultation/ Mediation/ Conflict Resolution. Staff are available for telephonic consultation with the Company's human resources representatives or supervisors who may call us and request assistance in how to talk with a particular employee, when a referral is needed, or for any other consultation about an employee that the Company and New Avenues deems appropriate. Onsite consultations, mediation, and conflict resolution may be purchased on an as needed basis. We will provide these services as agreed upon in Exhibit A.
- E. Focus On Success Management Referral Program. The New Avenues Focus On Success Management Referral Program is designed to address the employee who has demonstrated

significant or chronic performance problems, violation of work rules, violence or threatened violence, anger management problems, or troubled behavior. It can also be utilized to assist employees dealing with day to day stressors, depression and/or mental health issues. We will provide these services as agreed upon in Exhibit A.

Services provided may include:

- ❖ Consultation with the employer
- ❖ All necessary forms and consents
- ❖ Referral, case management, provider communication, and oversight of the counseling by a New Avenues Senior Care Manager
- ❖ Monthly compliance reports from New Avenues to the Company for up to three months

The monthly reports provide the employer with information as to the employee's attendance, compliance with recommendations, and overall motivation/cooperation. No personal or medical information is released without the employee's written consent. (Medical information includes, but is not limited to diagnosis, results of tests, and counseling notes.)

Referral to the EAP Focus On Success Management Referral Program may be a part of the employer's policies. However, the employee must voluntarily accept terms of participation. The terms of participation include signing an Authorization for Release of Information, attending sessions, cooperating with recommendations for treatment, acceptance of financial responsibility for treatment beyond sessions allowed in this agreement (including but not limited to counseling, group sessions, intensive outpatient programs, further psychiatric evaluation or psychological testing, drug/alcohol tests, classes). These services may be covered by the individual's health insurance benefit, but coverage is not guaranteed.

New Avenues acts solely in the role of facilitating referrals and communication regarding management referrals. New Avenues acts as a neutral, objective third party to arrange professional services appropriate to the referral, and shall serve as an intermediary between the Provider and the Company by communicating reports subject to the scope of the Authorization for Release of Information. New Avenues does not assume responsibility and the Company agrees it will not hold New Avenues responsible for the findings, assessment, treatment recommendation(s), treatment, outcomes, determinations, or any other actions or inactions taken by the Provider of the EAP services. The Company further agrees that New Avenues is not responsible and the Company will not hold it responsible for any action(s) taken by the Company as a result of the EAP referral and Provider reports.

When requested by the Company and consented to by the employee, New Avenues will monitor the employee's progress at least monthly (if applicable) by obtaining progress reports from the Provider(s) who are involved in the recommended behavioral health treatment. New Avenues will also communicate with the Company regarding the employee's compliance with treatment, subject to the scope of the authorization on record.

Drug/Alcohol tests are not provided by New Avenues, but they may be indicated during assessment or treatment at the recommendation or requirement of the Provider, and become the financial responsibility of the employee. Drug/alcohol tests as part of random testing, return to work policies, or post-incident monitoring are at the discretion of the employer, subject to the employer's policies and expense, and shall occur at the employer's

designated labs or designated occupational health physician sites. Drug/alcohol testing that occurs as part of treatment is considered part of the medical record; results are not revealed without the employee's written consent. Testing that takes place at the Provider's site or Provider's designated sites, as part of assessment or treatment shall be the employee's financial responsibility. An employee's failure to participate in the Provider's requirements for interval testing or repeated positive results may be considered by the Provider as non-compliance and reported by New Avenues as such.

- F. Critical Incident Response. Critical Incident Response professional services usually involve 1-3 hours of a counselor coming to the worksite to facilitate a discussion or connecting through video chat for virtual assistance. The debriefing is a structured approach to assisting employees who have just experienced a serious traumatic or loss event that has occurred at the workplace or to a valuable fellow employee. New Avenues has responded to a wide range of events. Traumatic events include serious industrial/work related accidents, sudden death of an employee, robberies, violent episodes, or experiencing a catastrophic event such as a fire. Our response will be timely and at your site. We will provide these services as agreed upon in Exhibit A.
- G. Fitness-for-Duty. A fitness-for-duty evaluation is a medical evaluation, requested by an employer, to determine if a current employee is or is not able to perform essential job functions at the work setting because of psychological or psychiatric problems. Upon request, New Avenues acts as a neutral, objective third party to arrange professional services appropriate to the referral, and shall serve as an intermediary between the Professional Evaluator and the Company by communicating reports subject to the scope of the Authorization for Release of Information. Professionals conducting fitness-for-duty evaluations and risk assessments are required to maintain a position of neutrality, objectivity, and advocate for neither the employer nor the employee. At the Company's request, New Avenues will arrange an assessment with a psychologist or psychiatrist to make an evaluation as to the employee's ability to perform his/her work duties, the existence of psychological difficulties that may interfere with an employee's ability to perform his/her essential job duties, or for assessment of risk for harm to self or others, dangerousness, and/or the probability of recurrence of incidents related to work performance. In order to maximize the impartiality and objectivity, New Avenues has adopted a standard not to arrange evaluations with a practitioner who has acted as a treating provider to the employee (if applicable), and secondly, employees generally will not be referred to the Evaluator for follow-up treatment.

In order to conduct our role and meet confidentiality standards, the Company will need to obtain from the employee at the time of the referral an Authorization for Release of Information for the exchange of information between the Professional Evaluator and New Avenues and an Authorization for Release of Information for the exchange of information between the Provider and the Company.

New Avenues acts solely in the role of facilitating referrals and communication regarding a fitness-for-duty referral(s). The Company is solely responsible for any actions taken or decisions made regarding the employee's status for returning to work, accommodation, and conditions of employment or employment actions. New Avenues does not assume responsibility and the Company agrees it will not hold New Avenues responsible for the findings, assessment, treatment recommendation(s), treatment, outcomes, determinations, or any other actions or inactions taken by the Provider performing the fitness-for-duty

assessment. The Company further agrees that New Avenues is not responsible and will not hold it responsible for any action(s) taken by the Company as a result of the Evaluator's report.

The professional fees for the fitness-for-duty assessments vary in price depending on the professional and the need for psychological testing, etc. Such evaluations are typically the financial responsibility of the employer unless the employer expects the employee to accept financial responsibility for such testing. Many of these evaluations may be covered through the employee's insurance program. We will provide these services as agreed upon in Exhibit A.

- H. Work-Life Services. New Avenues will provide access to the New Avenues Work-Life Resource Center web based program via our website at www.NewAvenuesOnline.com. We will provide these services as agreed upon in Exhibit A. The fee for The Work-Life Program is addressed in Section XI and consists of the following services.

Fundamental Web

- ❖ Web based online program for information, interactive assessments, articles on variety of health, wellness, family life and work related areas.
- ❖ News for You is a resource that provides topical information for monthly national themes as well as Social Justice, natural events such as Katrina, Colorado Wild Fires and more.
- ❖ Savings Center is a place where individuals can sign up for savings of up to 25% on thousands of types merchandise
- ❖ TaxSlayer is a web based tool for free federal tax preparation
- ❖ Searchable databases for schools, pet sitters, and volunteer opportunities.

Complete Web

Includes the Fundamental Web plus the following:

- ❖ Child/eldercare and educational resources listed on web
- ❖ Searchable databases for camps, older adult and adoption
- ❖ Legal/Financial Center provides access to legal and financial resources including NOLO WillMaker and links to CreditKarma and Mint.com.
- ❖ Relocation Center provides information on a community such as lists of schools, hospitals, and place of worship. It provides statistics on housing costs, types of housing, average age, income and more
- ❖ Online Seminars are monthly training seminars on a variety of topics from teens to financial planning

Full Work-Life Resource & Referral Program

Includes Complete Web, Telephonic Resource & Referral services for Work-Life (child/elder/daily living resource & referrals) plus the following:

- ❖ Live Connect Assistance is available on the web to connect immediately with a care consultant so they can assist the caller in identifying child and elder care, information on parenting, prenatal care, daily living assistance, wellness services, and more.

- ❖ Assisted Search is an online form on the website where an employee requests a child or adult/elder care or daily living search be completed by a care consultant
- ❖ Telephonic Access to consultants who will assist in finding resources for child or elder care services, daily living services such as entertainment, travel, pet services, home repair, moving and legal/financial/id recovery.
- ❖ Financial Assist Online information and telephonic consultation on budgeting, debt management, day-to-day financial planning, retirement planning, bankruptcy, first time home buyers, prevention of home foreclosure
- ❖ Legal Assist: Online information and in person or telephonic consultation for 30 minutes with network attorney, at no charge, and 25% discounts on fees for future visits
- ❖ Integrated ID Recovery consultation provides members with a toll-free, telephonic, unlimited consultations with an Accredited Financial Counselor (AFC) to objectively assess the member's situation, help the member create an action plan and provide knowledge and tools to implement that plan

I. Consultation of Department of Transportation (DOT) Substance Abuse Regulation. New Avenues can help the employer with several components of complying with the U.S. Department of Transportation requirements. The New Avenues staff can arrange training online or at the site with professionals who are experienced in training supervisors for DOT purposes including training on reasonable suspicion. We also can provide the human resource officer or other Company representative with a list of Substance Abuse Professionals (known as "SAP's") who have a recognized certification of qualification to conduct assessments under DOT regulations. This list may be given to human resource representatives or other Company representatives to assist employees who have tested positive for DOT drug/alcohol testing and who then are responsible to pursue assessment and/or treatment under the DOT regulations prior to returning to work. Costs of treatment, educational programs, Intensive Outpatient Treatment Programs, and self-help community groups are typically at the employee's expense. DOT regulations stipulate that the assessment and monitoring of compliance, as well as advisement of readiness to return to work must come directly from the SAP to the employer. DOT consultation to the employer (as described above) is at no charge. DOT training for supervisors will be billed at the workshop level dependent on the speaker's fees.

V. **Communications Program**

In order to promote and further educate your employees about EAP services, New Avenues has the following available:

- ❖ We will provide three wellness articles to promote the program through our monthly electronic newsletters: NewsYouCanUse, Wellness Poster and Completely Well.
- ❖ We have an extensive list of possible workshops for employees and managers that we can provide for an additional fee.
- ❖ New Avenues wallet cards and introductory EAP brochures customized with your logo upon request.
- ❖ EAP Introductory letter to be sent by mail or electronically.

VI. Reports

- A. A Utilization Report summarizing program usage will be provided as described in Exhibit A and includes the following information:
- ❖ Number of Eligible Participants calling for EAP services
 - ❖ Number of EAP visits authorized by New Avenues
 - ❖ Number of new Eligible Participants using the EAP as verified by claim
 - ❖ Number of EAP visits used as verified by claims
 - ❖ Annual Projected Utilization
 - ❖ Current Utilization, YTD
- B. The Client Satisfaction Report will provide you with survey results annually. These anonymous results are gathered from the Eligible Participant following their counseling services.

VII. Audit

You have the right to retain an independent audit firm (to ensure compliance with employee confidentiality) to audit your utilization results.

VIII. Professional Liability Insurance

New Avenues' staff is covered by a \$1,000,000/\$3,000,000 professional liability policy. New Avenues shall maintain such malpractice liability insurance for New Avenues and its employees that covers all services to be provided by New Avenues under this contract. New Avenues will use its best efforts to require any subcontractors, including all professionals providing services under this Agreement, to maintain such professional liability insurance for themselves.

IX. Confidentiality

New Avenues shall keep confidential all information or data regarding the Company's operations including, but not limited to, operating results and methods of operation that may be made known to New Avenues in the course of its performance of services under this contract.

New Avenues' Privacy Policy for services to an Eligible Participant is that the EAP will not provide information about an Eligible Participant using the service to anyone outside of the EAP without the Eligible Participant's written authorization unless we are required to by law including without limitation:

- ❖ When the Eligible Participant has made a serious threat of harm to themselves (i.e. suicide),
- ❖ When the Eligible Participant has made a serious threat of harm against another person,
- ❖ When there is suspicion of abuse or neglect of a child, elderly or disabled person.

New Avenues has policies and procedures that, to the greatest extent possible, conform to the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). In addition, treating providers are subject to the privacy and security requirements of HIPAA. As a result, your access to information about an Eligible Participant is substantially limited.

An Eligible Participant's participation in the EAP is confidential; the employer will not receive the Eligible Participant's name or any information that would identify the Eligible Participant unless the Eligible Participant gives written consent. Each Eligible Participant will be asked to sign a New Avenues' EAP "Statement of Understanding" which will explain our privacy policy.

Since maintaining confidentiality, a professional responsibility of New Avenues, is the basis for employees' trust and future use of our services, and since utilization of this program is in the Company's best interest, we will only supply you with Eligible Participant names when we have a signed

“Authorization and Consent to Release Information” form. Without such a release our policy states there will be no disclosures, except as required by law.

X. Limitation of Liability

New Avenues shall defend, indemnify, and hold harmless the Company, its officers, agents and employees against all damages, claims or liabilities, and expenses (including attorney’s fees) arising out of or resulting in any way from New Avenues’ performance of services under this contract (subject to the limitations set forth in the various sections of this contract) or from any act or omission of New Avenues or its employees. This indemnification shall not apply to any damages, claims, liabilities or expenses resulting from any negligent, reckless or intentional act or omission of the Company to the extent such act or omission is responsible for damages, claims, liabilities or expenses incurred.

XI. Program Cost

- A. The charge for the EAP A La Carte program is based on an Administrative Fee. The Administrative Fee is based on projected Eligible Participant utilization per year. Professional fees for services are charged when utilized as described in Exhibit A.
- B. New Avenues Work-Life Resource Center services:
 - 1. Fundamental Web Work-Life Program: We will provide services as described in Section IV.H. as agreed upon in Exhibit A.
 - 2. Complete Web Work-Life Program: We will provide services as described in Section IV.H. as agreed upon in Exhibit A. (Optional enhancement that may be added).
 - 3. Full Work-Life Resource & Referral Work-Life Program: We will provide services as described in Section IV.H. as agreed upon in Exhibit A. (Optional enhancement that may be added).

XII. Payment

- A. All monthly payments, including the first month of service delivery, must be received in advance prior to the first day of each month. Additional fees will be billed as services are utilized.
- B. It is necessary for New Avenues to receive, no later than the 15th of each month, a current file of the Company’s employee roster to provide accurate eligibility information to employees who call for services.

XIII. Renewal and Termination

This Agreement will become effective when signed by the Company and accepted by New Avenues (the “Effective Date”). Unless terminated for cause (as provided below), this Agreement will continue for an initial term (the “Initial Term”) of one year beginning January 1, 2024, and thereafter shall automatically renew for successive one year terms (each such period, a “Renewal Term”), unless terminated by any party giving written notice of non-renewal at least ninety days prior to the last day of the then current term to the other party hereto.

If the Company or New Avenues chooses not to renew this contract at the end of the contract year, or if either wishes to renegotiate any of its provisions, that party will provide to the other party at its corporate address, 90 days in advance of contract expiration, written notice of such intentions. If this contract is not terminated as provided above and has not been renegotiated prior to contract end, it will automatically renew on an annual basis.

Notwithstanding the foregoing, if either party breaches a material obligation of this Agreement and fails to correct such breach within thirty (30) days after receiving written notice of the breach, then the other party shall have the immediate right to terminate this Agreement upon written notice. The Company's obligation to pay all charges that have accrued prior to termination will survive any termination of this Agreement.

In addition, upon termination of this Agreement, New Avenues will not be responsible for maintaining copies of records relating to the provision of services under this Agreement. New Avenues may dispose of the Company's records and data unless previously directed in writing by the Company. The Company will reimburse New Avenues for the cost of producing any information in New Avenue's possession or control relating to services provided under this Agreement.

XIV. Amendment

The parties may amend this Agreement at any time upon mutual agreement; provided, however, that any amendment to this Agreement must be in writing and signed by authorized representatives of both parties. In the event of a change in Federal or state laws or regulations affecting the services provided under this Agreement, New Avenues may amend this Agreement upon thirty (30) days prior written notice to the Company. In addition, after the Initial Term, New Avenues may increase its fees upon thirty (30) days written notice to the Company. Upon notification of a proposed amendment to this Agreement or a change in fees, the Company may terminate this Agreement upon thirty (30) days prior written notice to New Avenues.

XV. Intellectual Property

All materials, including but not limited to forms, brochures, posters and on-line content ("Materials") furnished by New Avenues to the Company are granted pursuant to a personal, non-transferable and non-exclusive license to use to promote and further educate employees about EAP services or to facilitate New Avenue's performance of its obligations under this Agreement. The Company shall not have the right to copy, distribute, reproduce, alter, display, or use the Materials or any New Avenues trademarks for any other purpose except as authorized by this Agreement. ~~The Company agrees that it will keep the Materials confidential and will use commercially reasonable efforts to protect the contents of Materials from unauthorized use.~~ The license to use the Materials shall end upon termination of this Agreement. Upon termination of this Agreement, the Company shall destroy the Materials or, if requested by New Avenues, return them to New Avenues.

XVI. Notices

All notices, requests and communications to either party, related to this Agreement or significant changes effecting the implementation of this Agreement, or scope and service, shall be in writing (including faxes or similar writing) and shall be given to the party at its respective address identified on the signature page of this Agreement or to such other address or fax number as either party may hereafter specify by notice to the other party. Each notice, request or communication shall be effective upon receipt, provided that if the day of receipt is not a business day, then the notice shall be deemed to have been received on the next succeeding business day.

XVII. General Provisions

- A. This Agreement and the parties’ rights and obligations shall be governed and construed pursuant to the laws of the State of Indiana. The Company consents to be subject to the jurisdiction of the state or federal courts located in Indiana.
New Avenues, Inc. utilizes the U.S. Department of Homeland Security’s E-Verify program for the purposes of determining the employment eligibility status of all new employees.
- B. The Company may not assign this Agreement without New Avenues’ prior written consent, which consent shall not be unreasonably withheld.
- C. No action under this Agreement may be brought by the Company more than two years after the cause of action has accrued.
- D. This Agreement constitutes the entire Agreement with respect to the subject matter hereof and supersedes all prior or contemporaneous Agreements and understandings regarding the subject matter hereof, whether written or verbal.

XVIII. Rules of Construction

For ease of reference, in this Agreement:

- A. The word “will” may be used as a substitute for the word “shall” but nonetheless is intended to be mandatory.
- B. “We,” “us” or “our” may be used to refer to New Avenues.
- C. “You” or “Your” may be used to refer to the Company.

The following parties agree to the above terms of this contract and the contract is to be in full force and in effect on **January 1, 2024**.

ACCEPTED:

ACCEPTED:

Jennifer Pickering _____
Jennifer Pickering
Chief Executive Officer

Signature

November 1, 2023 _____
Date

Print Name

New Avenues, Inc.
300 South St. Louis Boulevard
Suite 200
South Bend, IN 46617

Title

Date

Mailing Address:
P.O. Box 360

South Bend, IN 46624

City of Goshen
Attention: Human Resources
204 E Jefferson St Ste 3
Goshen, IN 46528

Exhibit A: EAP A la Carte Service

City of Goshen’s employees have the following employee assistance services available.

EAP A la Carte Service based upon 198 employees	Program Cost based upon a One year contract
Administrative Services	Administrative Fee of \$168.00/month plus Professional Fees for services as incurred.
Self-referred Short Term Counseling We will provide annually 6 EAP visits per eligible employee and their immediate family members, (6 sessions per family) (refer to EAP Addendum 1: Definition of Eligibility). Eligible employees and immediate family members will have access to Structured Telephonic Counseling via the New Avenues website NewAvenuesOnline.com.	\$90 per clinical hour billed to employer upon utilization. (See Section IV. A. of contract for explanation.)
EAP Employee Orientation Training	Included. (See Section III. B. of contract for explanation.)
EAP Supervisory Orientation Training	Included. (See Section IV. B. of contract for explanation.)
Trainings, Workshops and Seminars	Hours may be purchased as needed. Fees are determined by the type and extent of the service requested, plus mileage. (See Section IV. C. of contract for explanation.)
Telephonic Consultation	Included. (See Section IV. D. of contract for explanation.)
Onsite Consultation, Mediation, and Conflict Resolution	Hours may be purchased as needed. Fees are determined by the type and extent of the service requested, plus mileage. (See Section IV. D. of contract for explanation.)
Focus On Success Management Referral Program	\$100/session. 3 months of case management. \$200/month for case management beyond 3 month period. (See Section IV. E. of contract for explanation.)
Critical Incident Response	Hours may be purchased as needed for \$200/hour plus mileage per professional upon utilization. (See Section IV. F. of contract for explanation.)

EAP A la Carte Service based upon 198 employees	Program Cost based upon a One year contract
Fitness-for-Duty Evaluations	\$1,500-\$2,000/visit for psychological or psychiatric evaluations. – Professional fees vary with practitioner, number of visits, amount and type of testing, and setup fee. Any specialized testing or evaluation fees over \$2,000 will be discussed with the employer. \$200/month for ongoing case management. (See Section IV. G. of contract for explanation.)
New Avenues Work-Life Resource Center	Fundamental Web Work-Life Program: Included. Complete Web Work-Life Program Optional: \$.35 PEPM –Not selected Legal/Financial/ID Work-Life Program Optional: \$.40 PEPM –Not selected Full Work-Life Program Optional: \$.45 PEPM –Not selected (See Section IV. H. of contract for explanation.)
Communication Program: monthly posters, website, electronic newsletter	Included, posters monthly to all locations (See Section V. of contract for explanation).
EAP brochures	Included.
Utilization Reports	Included annually. (See Section VI. A. of contract for explanation.)
Client Satisfaction Reports	Included annually. (See Section VI. B. of contract for explanation.)
Mileage	Current Federal Standard Business Mileage Rate (Refer to www.irs.gov for the current rate.)

NOTE: This document shall be defined by the Company during implementation. The EAP contract will be administered based on this document as written unless the Company makes changes. Please forward any desired changes to New Avenues; a revised document will be returned.

DEFINITION OF ELIGIBILITY

For The New Avenues Employee Assistance Program

City of Goshen (hereinafter, referred to as "Company") retains the authority to define the parameters of eligibility for utilization of the EAP.

Please note that it is the Company's responsibility to notify New Avenues of any changes of these assumptions of eligibility and to submit a monthly employee eligibility list (in our suggested electronic format) no later than the 15th of each month. This is necessary so that New Avenues can administer the EAP service according to the Company's needs.

The Company has determined specific employee groups who are eligible for the EAP to include all active, full-time employees, excluding all active, full-time employees of the Goshen Police Department. Part-time employees, per diems, temporary employees, volunteers, and student/interns are not eligible for the EAP. The Company will submit to New Avenues on a monthly basis the list of eligible employees.

Basic assumptions of eligibility are suggested but not limited to the following:

Definition of Eligibility

All eligible employees, as identified by the employee group above, and their immediate family members, hereinafter individually or collectively referred to as "Eligible Participant," may initiate and/or participate in the Employee Assistance Program (EAP) counseling process. **Immediate Family Member** is defined as one's spouse or domestic partner, and children (natural), adopted children, step-children, and children over whom the employee or spouse is a legal guardian, and are either living or not living in the home up to the age of 26.

Dependent Children of Employees who are not residing in the Home of the Employee

Dependent children who are not residing in the home of the employee are eligible up to the age of 26.

Retirees

Retirees and their dependents are not eligible for EAP services.

EAP Eligibility Period

The beginning date of eligibility for the employee and their immediate family members is effective the first day of active employment. EAP services will be continued through the last day of employment.

Employee Assistance Program Requirement

Services will only be covered if the employee calls New Avenues for authorization prior to their first session.

Acceptance of Definition of Eligibility

Signature _____

Printed Name _____

Title _____

Date _____



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

December 18, 2023

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Contract with New Avenues Inc. – 2024 Employee Assistance Program
Full Service Contract for the Police Department

Attached for the Board’s approval is a Contract with New Avenues Inc., in substantially final form, to provide the City an employee assistance program (EAP) in 2024 for the Police Department based on an “EAP Full Service.” This EAP covers all active, full-time Police Department employees and their immediate family members. The City will pay New Avenues in 2024 based on the “EAP Full Service” fees set forth in Exhibit A of the Contract which includes a per employee fee of \$4.05 per month (2022-2023 per employee fee was \$3.87 per month), plus the additional fees for the specific services utilized. (The “Full Service” EAP includes additional services that are not included under the “A la Carte Service Contract” EAP for the other City employees.) It is also requested that authorization be given to the Mayor to execute the finalized Contract with New Avenues Inc.

Suggested Motion:

Move to approve and authorize the Mayor to execute the Contract with New Avenues Inc. to provide the 2024 Employee Assistance Program for the Police Department based on the “EAP Full Service.”



City of Goshen – Police Department
Employee Assistance Program (EAP)

Length of Contract:
January 1, 2024-December 31, 2024

I. Overview

New Avenues will arrange for the delivery of Employee Assistance Program (EAP) services to all eligible employees and their immediate family members as indicated in the Definition of Eligibility in EAP Addendum 1, during the term of this Agreement with City of Goshen, hereinafter to be referred as “the Company” or “the employer.” New Avenues will arrange for such services to be provided by duly trained and qualified professionals in accordance with generally recognized treatment standards.

II. Location and Service Access Information

Our corporate office address is P.O. Box 360, South Bend, Indiana 46624. Our corporate office location is 300 South St. Louis Boulevard, Suite 200, South Bend, Indiana 46617. New Avenues manages a network of EAP Providers across the state of Indiana and nationwide to provide service to your employees.

- A. Any eligible employee and/or immediate family member may be seen in any of our provider network offices near their home or workplace. Telephonic counseling, secure face-to-face video counseling and a chat function on the iConnectYou app are also available when appropriate.
- B. Hours of Operation for corporate office and member services include: 8:30 a.m. to 5:00 p.m., Monday through Thursday; 8:30 a.m. to 4:30 p.m., Friday (Eastern Standard Time). Our on-call clinical staff is available for immediate or emergency situations 24 hours per day including weekends and holidays.
- C. A toll-free telephone number will be provided to all eligible employees for easy EAP access.

III. Access Procedure and Orientation Service

- A. The Eligible Participant can access their EAP services by calling New Avenues and speaking to an Intake Specialist who will obtain necessary account information and information of the Eligible Participant’s counseling needs. A Care Manager (Master’s level mental health counselor) is available for Eligible Participants to consult when dealing with higher risk and emergency needs. The Eligible Participant will then be informed how counseling services will proceed. New Avenues will make a reasonable attempt to select an EAP Provider that can provide continuity of care with the Eligible Participant’s health plan if needed.
- B. Members of our professional staff are willing to meet with your staff on-site, through a secure platform and/or provide you with a Microsoft PowerPoint Orientation. The orientation will orient them to the program, including how to self-refer, stress confidentiality, and normalize issues they may be experiencing so that persons will feel comfortable making appointments. We suggest group sizes of approximately 35-40 employees at a time for on-site presentations.
- C. We will provide you with a draft introductory letter announcing the EAP, to be mailed by you to the home of each eligible employee introducing the Employee Assistance Program or sent through email.

IV. Scope of EAP Services

- A. Employee Assistance Program New Avenues will provide a work-based intervention program designed to assist Eligible Participants, as determined by the Company, (refer to EAP Addendum 1: Definition of Eligibility) experiencing a broad range of personal problems that may be adversely affecting the eligible employee’s attendance and performance. Services may be delivered by New Avenues staff and/or a network provider for face-to-face, telephonic, secure video, or chat. See Exhibit A for agreed upon services.

The scope of the Employee Assistance Program covers the following Individual, Family and Marital counseling needs, but is not limited to:

- ❖ Stress
- ❖ Anger management
- ❖ Parenting concerns
- ❖ Emotional problems (i.e. depression, anxiety, obsessive-compulsive disorders, etc.)
- ❖ Alcohol/drug use
- ❖ Child/adolescent needs
- ❖ Communication problems
- ❖ Grief or trauma issues
- ❖ Conflict Resolutions Service
- ❖ Marital and partner concerns
- ❖ Aging parent issues
- ❖ Adjustment problems related to health conditions
- ❖ Occupational or career concerns
- ❖ Problems at work
- ❖ Employee or managerial coaching

The EAP counseling can also provide assessment of needs, and referral assistance for additional behavioral health needs such as: psychological testing, referral for physician evaluation, more intense level of care or extended counseling. The EAP is utilized for short term interventions and is solution focused.

Financial Assistance – Referral

New Avenues utilizes GreenPath Financial Wellness and may refer the Eligible Participant to GreenPath for their Credit Counseling and Debt Counseling services. GreenPath is a premier credit counseling agency and is accredited by COA, Council on Accreditation and is a member with the following organization: National Foundation for Credit Counseling, NFCC, U.S. Department of Housing and Urban Development-Approved housing counseling agency, Consumer Affairs and The Better Business Bureau.

GreenPath Services beyond the free consultation session may have fees associated with them. The Eligible Participant would be responsible for any services that would require a payment, such as Debt Management Program, Student Loan Counseling, Bankruptcy Counseling, Homebuyer Counseling Program.

The EAP counseling services do not include:

- ❖ Reports for courts for any court ordered counseling or treatment
- ❖ Visitation or custody studies
- ❖ Inpatient, intensive outpatient services or partial hospitalization
- ❖ Physician services
- ❖ Psychological testing for clinical, educational, occupational, medical reasons
- ❖ Extended counseling
- ❖ Drug/alcohol classes, educational or wellness programs
- ❖ Drug/alcohol testing or other lab/pharmacy benefits
- ❖ Fitness-for-Duty Evaluations
- ❖ Risk Assessments
- ❖ Services under COBRA
- ❖ Long Term Counseling for chronic conditions

When/if the Provider recommends extended treatment, the Eligible Participant may continue with the EAP counselor or another Provider if they wish, at their own expense or through their insurance benefits. The EAP counselor also may recommend additional services such as physician evaluation or psychological testing that will be subject to the individual's personal expense or health plan. The Eligible Participant is under no obligation to use the EAP program prior to accessing their health plan or as a condition of accessing their health plan benefits.

- B. Supervisory Orientation Training. In addition to employee orientation sessions (see Sec. III B), EAP supervisory orientation training is available for your designated supervisors. The focus of the training will be how to make “disciplinary referrals” and “concerned supervisory referrals.” It will include information on “knowing when to refer” and “how to refer” and how to keep New Avenues informed of when a referral has been made. We will provide these services as agreed upon in Exhibit A.
- C. Trainings/ Workshops/ Seminars. New Avenues provides a variety of additional services that can improve departmental and organizational performance. Trainings, workshops and seminars may be purchased on an as needed basis. Staff is available for consultation with the Company's human resources representatives or supervisors who may call us and request assistance in choosing and/or designing special trainings. Trainings include, but are not limited to, Stress Management, Respect in the Workplace, Harassment, and Reasonable Suspicion Programs. For a list of offerings, see the current Training Catalog. We will provide these services as agreed upon in Exhibit A.
- D. Telephonic & Onsite Consultation/ Mediation/ Conflict Resolution. Staff are available for telephonic consultation with the Company's human resources representatives or supervisors who may call us and request assistance in how to talk with a particular employee, when a referral is needed, or for any other consultation about an employee that the Company and New Avenues deems appropriate. Onsite consultations, mediation, and conflict resolution may be purchased on an as needed basis. We will provide these services as agreed upon in Exhibit A.
- E. Focus on Success Management Referral Program. The New Avenues' Focus On Success Management Referral Program is designed to address the employee who has demonstrated significant or chronic performance problems, violation of work rules, violence or threatened violence, anger management problems, or troubled behavior. It can also be utilized to assist employees dealing with day to day stressors, depression and/or mental health issues. We will provide these services as agreed upon in Exhibit A.

Services provided may include:

- ❖ Consultation with the employer
- ❖ All necessary forms and consents
- ❖ Referral, case management Provider communication, and oversight of the counseling by a New Avenues Care Manager
- ❖ Monthly compliance reports from New Avenues to the Company

The monthly reports provide the employer with information as to the employee's attendance, compliance with recommendations, and overall motivation/cooperation. No personal or medical information is released without the employee's written consent. (Medical information includes, but is not limited to, diagnosis, results of tests, and counseling notes.)

Referral to the EAP Focus on Success Management Referral Program may be a part of the employer's policies. However, the employee must voluntarily accept terms of participation. The terms of participation include signing an Authorization for Release of Information, attending sessions, cooperating with recommendations for treatment, acceptance of financial responsibility for treatment beyond sessions allowed in this agreement (including but not limited to counseling, group sessions, intensive outpatient programs, further psychiatric evaluation or psychological testing, drug/alcohol tests, classes). These services may be covered by the individual's health insurance benefit, but coverage is not guaranteed.

New Avenues acts solely in the role of facilitating referrals and communication regarding management referrals. New Avenues acts as a neutral, objective third party to arrange professional services appropriate to the referral and shall serve as an intermediary between the Provider and the Company by communicating reports subject to the scope of the Authorization for Release of Information. New Avenues does not assume responsibility and the Company agrees it will not hold New Avenues responsible for the findings, assessment, treatment recommendation(s), treatment, outcomes, determinations, or any other actions or inactions taken by the Provider of the EAP services. The Company further agrees that New Avenues is not responsible, and the Company will not hold it responsible for any action(s) taken by the Company as a result of the EAP referral and Provider reports.

When requested by the Company and consented to by the employee, New Avenues will monitor the employee's progress at least monthly (if applicable) by obtaining progress reports from the Provider(s) who are involved in the recommended behavioral health treatment. New Avenues will also communicate with the Company regarding the employee's compliance with treatment, subject to the scope of the authorization on record.

Drug/Alcohol tests are not provided by New Avenues, but they may be indicated during assessment or treatment at the recommendation or requirement of the Provider and become the financial responsibility of the employee. Drug/alcohol tests as part of random testing, return to work policies, or post-incident monitoring are at the discretion of the employer, subject to the employer's policies and expense, and shall occur at the employer's designated labs or designated occupational health physician sites. Drug/alcohol testing that occurs as part of treatment is considered part of the medical record; results are not revealed without the employee's written consent. Testing that takes place at the Provider's site or Provider's designated sites, as part of assessment or treatment shall be the employee's financial responsibility. An employee's failure to participate in the Provider's requirements for interval testing or repeated positive results may be considered by the Provider as non-compliance and reported by New Avenues as such.

- F. Critical Incident Response. Critical Incident Response professional services usually involve 1-3 hours of a counselor coming to the worksite to facilitate a discussion or connecting through video chat for virtual assistance. The debriefing is a structured approach to assisting employees who have just experienced a serious traumatic or loss event that has occurred at the workplace or to a fellow employee. New Avenues has responded to a wide range of events. Traumatic events include serious industrial/work related accidents, sudden death of an employee, robberies, violent episodes, or experiencing a catastrophic event such as a fire. Our response will be timely at your site. We will provide these services as agreed upon in Exhibit A.
- G. Fitness-for-Duty. A fitness-for-duty evaluation is a medical evaluation, requested by an employer, to determine if a current employee is or is not able to perform essential job functions at the work setting because of psychological or psychiatric problems. Upon request, New Avenues acts as a neutral, objective third party to arrange professional services appropriate to the referral and shall serve as an intermediary between the Professional Evaluator and the Company by communicating reports subject to the scope of the Authorization for Release of Information. Professionals conducting fitness-for-duty evaluations and risk assessments are required to maintain a position of neutrality, objectivity, and advocate for neither the employer nor the employee. At the Company's request, New Avenues will arrange an assessment with a psychologist or psychiatrist to make an evaluation as to the employee's ability to perform his/her work duties, the existence of psychological difficulties that may interfere with an employee's ability to perform his/her essential job duties, or for assessment of risk for harm to self or others, dangerousness, and/or the probability of recurrence of incidents related to work performance. In order to maximize the impartiality and objectivity, New Avenues generally does not arrange evaluations with a practitioner who has acted as a treating Provider to the employee (if applicable), and secondly, employees generally will not be referred to the Evaluator for follow-up treatment.

In order to conduct our role and meet confidentiality standards, the Company will need to obtain from the employee at the time of the referral an Authorization for Release of Information for the exchange of information between the Professional Evaluator and New Avenues and an Authorization for Release of Information for the exchange of information between the Provider and the Company.

New Avenues acts solely in the role of facilitating referrals and communication regarding a fitness-for-duty referral(s). The Company is solely responsible for any actions taken or decisions made regarding the employee's status for returning to work, accommodation, and conditions of employment or employment actions. New Avenues does not assume responsibility and the Company agrees it will not hold New Avenues responsible for the findings, assessment, treatment recommendation(s), treatment, outcomes, determinations, or any other actions or inactions taken by the Provider performing the fitness-for-duty assessment. The Company further agrees that New Avenues is not responsible and will not hold it responsible for any action(s) taken by the Company as a result of the Evaluator's report.

The professional fees for the fitness-for-duty assessments vary in price depending on the professional and the need for psychological testing, etc. Such evaluations are typically the financial responsibility of the employer unless the employer expects the employee to accept financial responsibility for such testing. Many of these evaluations may be covered through

the employee’s insurance program. We will provide these services as agreed upon in Exhibit A.

- H. Work-Life Services. New Avenues will provide access to the New Avenues Work-Life Resource Center web-based program via our website at www.NewAvenuesOnline.com. We will provide these services as agreed upon in Exhibit A. The fee for the selected Work-Life Program is addressed in Section XII and consists of the following services.

Complete Web Program

- ❖ Web based online program for information, interactive assessments, articles on variety of health, wellness, family life and work-related areas,
- ❖ News for You is a resource that provides topical information for monthly national themes as well as Social Justice, natural events and more
- ❖ Savings Center is a place where individuals can sign up for savings of up to 25% on thousands of types merchandise
- ❖ A Web-Based Free Federal Tax Preparation App
- ❖ Searchable databases for schools, pet sitters, and volunteer opportunities.
- ❖ Child/eldercare and educational resources listed on web
- ❖ Searchable databases for camps, older adult and adoption
- ❖ Legal/Financial Center provides access to legal and financial resources including NOLO WillMaker, and links to CreditKarma and Mint.com
- ❖ Relocation Center provides information on a community such as lists of schools, hospitals, and places of worship. It provides statistics on housing costs, types of housing, average age, income and more
- ❖ Online Seminars are monthly training seminars on a variety of topics from teens to financial planning

Full Work-Life Resource & Referral Program

Includes Complete Web, Telephonic Resource & Referral services for Work-Life (child/elder/daily living resource & referrals) plus the following:

- ❖ Live Connect Assistance is available on the web to connect immediately with a care consultant, so they can assist the caller in identifying child and elder care, information on parenting, prenatal care, daily living assistance, wellness services, and more.
- ❖ Assisted Search is an online form on the website where an employee requests a child or adult/elder care, or daily living search be completed by a care consultant
- ❖ Telephonic Access to consultants who will assist in finding resources for child or elder care services, daily living services such as entertainment, travel, pet services, home repair, moving and legal/financial/id recovery.
- ❖ Financial Assist Online information and telephonic consultation on budgeting, debt management, day-to-day financial planning, retirement planning, bankruptcy, first time home buyers, prevention of home foreclosure
- ❖ Legal Assist: Online information and in person or telephonic consultation for 30 minutes with network attorney, at no charge, and 25% discounts on fees for future visits
- ❖ Integrated ID Recovery consultation provides members with a toll-free, telephonic, unlimited consultations with an Accredited Financial Counselor

(AFC) to objectively assess the member’s situation, help the member create an action plan and provide knowledge and tools to implement that plan

- I. Consultation of Department of Transportation (DOT) Substance Abuse Regulation. New Avenues can help the employer with several components of complying with the U.S. Department of Transportation requirements. The New Avenues staff can arrange training online or at the site with professionals who are experienced in training supervisors for DOT purposes including training on reasonable suspicion. We also can provide the human resource officer or other Company representative with a list of Substance Abuse Professionals (known as “SAP’s”) who have a recognized certification of qualification to conduct assessments under DOT regulations. This list may be given to human resource representatives or other Company representatives to assist employees who have tested positive for DOT drug/alcohol testing and who then are responsible to pursue assessment and/or treatment under the DOT regulations prior to returning to work. Costs of treatment, educational programs, Intensive Outpatient Treatment Programs, and self-help community groups are typically at the employee’s expense. DOT regulations stipulate that the assessment and monitoring of compliance, as well as advisement of readiness to return to work must come directly from the SAP to the employer. DOT consultation to the employer (as described above) is at no charge. DOT training for supervisors will be billed at the workshop level dependent on the speaker’s fees.

V. Communications Program

In order to promote and further educate your employees about EAP services, New Avenues provides the following:

- ❖ We will provide three wellness articles to promote the program through our monthly electronic newsletters: NewsYouCanUse, Wellness Poster and Completely Well.
- ❖ We have an extensive list of possible workshops for employees and managers that we can provide for an additional fee.
- ❖ New Avenues wallet cards and introductory EAP brochures customized with your logo upon request.
- ❖ EAP Introductory letter to be sent by mail or electronically.

VI. Reports

A. A Quarterly Utilization Report summarizes program usage and includes the following information:

- ❖ Number of Eligible Participants calling for EAP services
- ❖ Number of EAP visits authorized by New Avenues
- ❖ Number of new Eligible Participants using the EAP as verified by claims
- ❖ Number of EAP visits used as verified by claims
- ❖ Annual Projected Utilization
- ❖ Current Utilization, YTD

B. The Client Satisfaction Report will provide you with survey results annually. These anonymous results are gathered from the Eligible Participant following their counseling services.

VII. Audit

You have the right to retain an independent audit firm (to ensure compliance with employee confidentiality) to audit your utilization results.

VIII. Professional Liability Insurance

New Avenues’ staff is covered by a \$1,000,000/\$3,000,000 professional liability policy. New Avenues shall maintain such malpractice liability insurance for New Avenues and its employees that covers services to be provided by employees of New Avenues under this contract. New Avenues will use its best efforts to require any subcontractors, including all professionals providing services under this Agreement, to maintain such professional liability insurance for themselves.

IX. Confidentiality

New Avenues shall keep confidential all information or data regarding the Company’s operations including, but not limited to, operating results and methods of operation that may be made known to New Avenues in the course of its performance of services under this contract.

New Avenues’ Privacy Policy for services to and Eligible Participant is that the EAP will not provide information about and Eligible Participant using the service to anyone outside of the EAP without the Eligible Participant’s written authorization, unless we are required by law to do so. Such situations, in which we are required to disclose, include without limitation:

- ❖ When the Eligible Participant has made a serious threat of harm to themselves (i.e. suicide);
- ❖ When the Eligible Participant has made a serious threat of harm against another person;
- ❖ When there is suspicion of abuse or neglect of a child, elderly or disabled person.

New Avenues has policies and procedures that, to the greatest extent possible, conform to the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”). In addition, treating Providers are subject to the privacy and security requirements of HIPAA. As a result, your access to information about and Eligible Participant is substantially limited.

An Eligible Participant’s participation in the EAP is confidential; the employer will not receive the Eligible Participant’s name or any information that would identify the Eligible Participant unless the Eligible Participant gives written consent. Each Eligible Participant will be asked to sign a New Avenues’ EAP “Statement of Understanding” which will explain our privacy policy.

Since maintaining confidentiality, a professional responsibility of New Avenues, is the basis for employees’ trust and future use of our services, and since utilization of this program is in the Company’s best interest, we will only supply you with Eligible Participant names when we have a signed “Authorization and Consent to Release Information” form. Without such a release our policy states there will be no disclosures, except as required by law.

X. Limitation of Liability

New Avenues shall defend, indemnify, and hold harmless the Company, its officers, agents and employees against all damages, claims or liabilities, and expenses (including attorney’s fees) arising out of or resulting in any way from New Avenues’ performance of services under this contract (subject to the limitations set forth in the various sections of this contract) or from any act or omission of New Avenues or its employees. This indemnification shall not apply to any damages, claims, liabilities or expenses resulting from any negligent, reckless or intentional act or omission of the Company, to the extent such act or omission is responsible for damages, claims, liabilities or expenses incurred.

XI. Utilization Rate

We are basing the payment of this contract on the anticipated annual utilization rate of Eligible Participants using the Employee Assistance Program agreed upon in Exhibit A. (Refer to the EAP Addendum 1: Definition of Eligibility).

For purposes of computing the utilization rate:

1. An Eligible Participant who uses the service will only be counted once in a contracted 12-month period.
2. At least one intervention, will have occurred for the Eligible Participant’s contact to count towards utilization.

XII. Program Cost

- A. We will provide services for the above described EAP program at a charge as agreed upon in Exhibit A. Fees are based upon actual eligible employee numbers in any given month and upon an anticipated utilization rate by Eligible Participants.

- B. New Avenues Work-Life Resource Center services:
 1. Complete Web Work-Life Program: We will provide services as described in Section IV.H. as agreed upon in Exhibit A.

 2. Full Work-Life Resource & Referral Work-Life Program: We will provide services as described in Section IV.H. as agreed upon in Exhibit A. (Optional enhancement that may be added).

XIII. Payment

- A. All monthly payments, including the first month of service delivery, must be received in advance prior to the first day of each month, based on the Company’s actual number of eligible employees.

- B. It is necessary for New Avenues to receive, no later than the 15th of each month, a current file of the Company’s employee roster so that appropriate billings may be prepared and mailed to you. If no count is received, we will use the latest available employee count for billing.

XIV. Renewal and Termination

This Agreement will become effective when signed by the Company and accepted by New Avenues (the “Effective Date”). Unless terminated for cause (as provided below), this Agreement will continue for an initial term (the “Initial Term”) of one year beginning January 1, 2024, and thereafter shall automatically renew for successive one year terms (each such period, a “Renewal Term”), unless terminated by any party giving written notice of non-renewal at least ninety days prior to the last day of the then current term to the other party hereto.

If the Company or New Avenues chooses not to renew this contract at the end of the contract year, or if either wishes to renegotiate any of its provisions, that party will provide to the other party at its corporate address, 90 days in advance of contract expiration, written notice of such intentions. If this contract is not terminated as provided above and has not been renegotiated prior to contract end, it will automatically renew on an annual basis.

Notwithstanding the foregoing, if either party breaches a material obligation of this Agreement and fails to correct such breach within thirty (30) days after receiving written notice of the breach, then the other party shall have the immediate right to terminate this Agreement upon written notice.

The Company’s obligation to pay all charges that have accrued prior to termination will survive any termination of this Agreement.

In addition, upon termination of this Agreement, New Avenues will not be responsible for maintaining copies of records relating to the provision of services under this Agreement. New Avenues may dispose of the Company’s records and data unless previously directed in writing by the Company. The Company will reimburse New Avenues for the cost of producing any information in New Avenue’s possession or control relating to services provided under this Agreement.

XV. Amendment

The parties may amend this Agreement at any time upon mutual agreement; provided, however, that any amendment to this Agreement must be in writing and signed by authorized representatives of both parties. In the event of a change in Federal or state laws or regulations affecting the services provided under this Agreement, New Avenues may amend this Agreement upon thirty (30) days prior written notice to the Company. In addition, after the Initial Term, New Avenues may increase its fees upon thirty (30) days written notice to the Company. Upon notification of a proposed amendment to this Agreement or a change in fees, the Company may terminate this Agreement upon thirty (30) days prior written notice to New Avenues.

XVI. Intellectual Property

All materials, including but not limited to forms, brochures, posters and on-line content (“Materials”) furnished by New Avenues to the Company are granted pursuant to a personal, non-transferable and non-exclusive license to use to promote and further educate employees about EAP services or to facilitate New Avenues’ performance of its obligations under this Agreement. The Company shall not have the right to copy, distribute, reproduce, alter, display, or use the Materials or any New Avenues trademarks for any other purpose except as authorized by this Agreement. ~~The Company agrees that it will keep the Materials confidential and will use commercially reasonable efforts to protect the contents of Materials from unauthorized use.~~ The license to use the Materials shall end upon termination of this Agreement. Upon termination of this Agreement, the Company shall destroy the Materials or, if requested by New Avenues, return them to New Avenues.

XVII. Notices

All notices, requests, and communications to either party regarding the terms of this Agreement, including, but not limited to, significant changes effecting the implementation of this Agreement, or scope and service, shall be in writing (including faxes or similar writing) and shall be given to the party at its respective address identified on the signature page of this Agreement or to such other address or fax number as either party may hereafter specify by notice to the other party. Each notice, request or communication shall be effective upon receipt, provided that if the day of receipt is not a business day, then the notice shall be deemed to have been received on the next succeeding business day.

XVIII. General Provisions

A. This Agreement and the parties’ rights and obligations shall be governed and construed pursuant to the laws of the State of Indiana. The Company consents to be subject to the jurisdiction of the state or federal courts located in Indiana.

New Avenues, Inc. utilizes the U.S. Department of Homeland Security’s E-Verify program for the purposes of determining the employment eligibility status of all new employees.

- B. The Company may not assign this Agreement without New Avenues’ prior written consent, which consent shall not be unreasonably withheld.
- C. No action under this Agreement may be brought by the Company more than two years after the cause of action has accrued.
- D. This Agreement constitutes the entire Agreement with respect to the subject matter hereof and supersedes all prior or contemporaneous Agreements and understandings regarding the subject matter hereof, whether written or verbal.

XIX. Rules of Construction

For ease of reference, in this Agreement:

- A. The word “will” may be used as a substitute for the word “shall” but nonetheless is intended to be mandatory.
- B. “We,” “us” or “our” may be used to refer to New Avenues.
- C. “You” or “Your” may be used to refer to the Company.

The following parties agree to the above terms of this contract and the contract is to be in full force and effect on January 1, 2024.

ACCEPTED:

Jennifer Pickering
Jennifer Pickering
Chief Executive Officer

October 17, 2023
Date

New Avenues, Inc.
300 South St. Louis Boulevard
Suite 200
South Bend, IN 46617

Mailing Address:
P.O. Box 360

South Bend, IN 46624

ACCEPTED:

Signature

Print Name

Title

Date

City of Goshen
Attention: Human Resources
204 E Jefferson St., Ste 3
Goshen, IN 46528

Exhibit A: EAP Full Service

City of Goshen – eligible Police Department employees at the following locations

1. 111 E Jefferson St Goshen, IN 46528

have the following employee assistance services available.

EAP Full Service based upon 75 employees.	Program Cost based upon a one year contract
Self-referred Short Term Counseling We will provide annually, 12 EAP visits per eligible Police Department employee and 12 visits per eligible Police Department immediate family member, (refer to EAP Addendum 1: Definition of Eligibility). Eligible employees and immediate family members will have access to Structured Telephonic Counseling via the New Avenues website NewAvenuesOnLine.com.	\$4.05 PEPM (See Section IV. A. of contract for explanation.)
EAP brochures	Upon Request.
Utilization Reports	Included quarterly. (See Section VI. of contract for explanation.)
Client Satisfaction Reports	Included annually. (See Section VI. of contract for explanation.)
EAP Employee Orientation Training	Included. (See Section III. B. of contract for explanation.)
EAP Supervisory Orientation Training	Included. (See Section IV. B. of contract for explanation.)
Telephonic Consultation	Included. (See Section IV.D of contract for explanation).
Communication Program: monthly posters, website, electronic newsletter	Included, posters monthly to all locations (See Section V. of contract for explanation).
Trainings, Workshops and Seminars	4 hours included. Additional hours may be purchased as needed. Fees are determined by the type and extent of the service requested. (See Section IV. C. of contract for explanation.)
Onsite Consultation, Mediation, and Conflict Resolution	Hours may be purchased as needed. Fees are determined by the type and extent of the service requested. (See Section IV. D. of contract for explanation.)
Focus on Success Management Referral Program	Included. Provides 3 months case management. \$200/month for case management beyond 3-month period. (See Section IV. E. of contract for explanation.)

EAP Full Service based upon 75 employees.	Program Cost based upon a one year contract
Critical Incident Response	8 professional hours included (includes mileage). Additional hours may be purchased as needed for \$200/hour plus mileage per professional upon utilization. (See Section IV. F. of contract for explanation.)
Fitness-for-Duty Evaluations	\$1,500-2,000/visit for psychological or psychiatric evaluations. – Professional fees vary with practitioner, number of visits, amount and type of testing, and setup fee. Any specialized testing or evaluation fees over \$2,000 will be discussed with the employer. \$200/month for ongoing case management. (See Section IV. G. of contract for explanation.)
New Avenues Work-Life Resource Center	Complete Web Program: Included Full Work-Life Program Optional: \$.45 PEPM –Not selected (See Section IV. H. of contract for explanation.)

NOTE: This document shall be defined by the Company during implementation. The EAP contract will be administered based on this document as written unless the Company makes changes. Please forward any desired changes to New Avenues; a revised document will be returned.

DEFINITION OF ELIGIBILITY

For The New Avenues Employee Assistance Program

City of Goshen (hereinafter, referred to as "Company retains the authority to define the parameters of eligibility for utilization of the EAP.

Please note that it is the Company's responsibility to notify New Avenues of any changes of these assumptions of eligibility and to submit a monthly employee eligibility list (in our suggested electronic format) no later than the 15th of each month. This is necessary so that New Avenues can administer the EAP service according to the Company's needs.

The Company has determined specific employee groups who are eligible for the EAP to include all active, full-time employees of the Goshen Police Department. Part-time employees, per diems, temporary employees, volunteers, and student/interns are not eligible for the EAP. The Company will submit to New Avenues on a monthly basis the list of eligible employees.

Basic assumptions of eligibility are suggested but not limited to the following:

Definition of Eligibility

All eligible employees, as identified by the employee group above, and their immediate family members, hereinafter individually or collectively referred to as "Eligible Participant," may initiate and/or participate in the Employee Assistance Program (EAP) counseling process. **Immediate Family Member** is defined as one's spouse or domestic partner, and children (natural), adopted children, step-children, and children over whom the employee or spouse is a legal guardian, and are either living or not living in the home up to the age of 26.

Dependent Children of Employees who are not residing in the Home of the Employee

Dependent children who are not residing in the home of the employee are eligible up to the age of 26.

Retirees

Retirees and their dependents are not eligible for EAP services.

EAP Eligibility Period

The beginning date of eligibility for the employee and their immediate family members is effective the first day of active employment. EAP services will be continued through the last day of employment.

Employee Assistance Program Requirement

Services will only be covered if the employee calls New Avenues for authorization prior to their first session.

Acceptance of Definition of Eligibility

Signature _____

Printed Name _____

Title _____

Date _____



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

December 14, 2023

To: Board of Public Works and Safety

From: Don Shuler, Assistant City Attorney

Subject: Letter Agreement with Sun Brookside Manor for Purchase of Right-of-Way

Attached for the Board's approval and execution by the Mayor is a Letter Agreement with Sun Brookside Manor LLC for the City's acquisition of property near the intersection of Peddlers Village Road and Reliance Road. The property is being acquired in lieu of eminent domain as part of the County Courts Roadway Improvement Project. The Letter Agreement provides the terms and conditions of the City's acquisition, including the sum payment to Sun Brookside Manor LLC for the land to be acquired and for fencing to be constructed as a barrier for their remaining property, as well as restrictive covenants limiting the City's use of the acquired property for roadway, drainage, and utility purposes. The terms and conditions of the Letter Agreement have been reviewed and approved by the City's Engineering and Redevelopment departments.

Suggested Motion:

Move to approve the Letter Agreement with Sun Brookside Manor LLC as presented, with the Mayor given authority to execute said Agreement.

SUN BROOKSIDE MANOR LLC
27777 Franklin Road, Suite 300
Southfield, Michigan 48034

December ____, 2023

City of Goshen, Indiana
Attn: Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528
Email: legal@goshencity.com

Re: Sale by Sun Brookside Manor LLC, a Michigan limited liability company (“Seller”), to the City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana (“Purchaser”), of the Property (as defined below)

Ladies and Gentlemen:

I am writing this letter to you to outline the terms of Seller’s conveyance to Purchaser of a deed in connection with the City’s construction of certain roadway, drainage and underground utility improvements as depicted on Exhibit A attached hereto (the “City’s Improvements”).

Seller and Purchaser hereby agree and acknowledge that Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, certain real estate situated in the County of Elkhart, State of Indiana, and being more particularly described in the legal description attached as Exhibit B (the “Property”). No later than five (5) business days after the date of the last signature on the signature page hereto (the “Effective Date”), Seller shall execute and deliver to Purchaser a deed in the form attached hereto as Exhibit C (the “Deed”). The purchase price for the Property is Twenty Thousand and 00/100 Dollars (\$20,000.00) (the “Purchase Price”). No later than five (5) business days after Seller delivers the Deed to Purchaser, Purchaser shall deliver the Purchase Price to Seller by wire of immediately available funds. If and only if Purchaser has paid the Purchase Price to Seller, Purchaser shall record the deed, and all recording fees, filing fees and transfer taxes shall be paid by Purchaser.

Within seven hundred twenty (720) days after the Effective Date, Purchaser shall, at its sole cost and expense, complete construction of the City’s Improvements, subject to any modifications of Purchaser’s plans for the City’s Improvements that are not prohibited by the Deed.

Seller shall have the right to construct a fence on the property line of the Property immediately adjacent and coextensive with the property boundary line of that certain remaining property owned by Seller commonly known as Brookside Manor (the “Fence”). Together with the delivery of the Purchase Price to Seller, Purchaser shall deliver the amount of Twenty Three Thousand One Hundred Eighty and 00/100 Dollars (\$23,180.00) by wire of immediately available funds, which represents additional compensation by Purchaser for the Fence.

Within seven hundred twenty (720) days after the Effective Date, Purchaser shall, at its sole cost and expense, install grass on the Property, which shall be maintained at Purchaser's sole cost and expense.

This letter shall be construed under and governed by the laws of the State of Indiana.

Each agreement made herein by or on behalf of either party, or in any instruments delivered pursuant hereto or in connection herewith, shall survive the consummation of the transactions provided for herein. The agreements of each of the parties hereto are made solely for the benefit of, and may be relied on only by, the other party hereto, its successors and assigns, and are not made for the benefit of, nor may they be relied upon, by any other person whatsoever. The terms hereof shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and permitted assigns.

Any notice from Seller to Purchaser or from Purchaser to Seller shall be in writing and shall be deemed duly served (a) when personally served, (b) three (3) days after deposited in the U.S. certified mail, return receipt requested, (d) when sent if sent by electronic mail, or (e) one (1) day after sent via "overnight" courier service, addressed to such party as follows:

If to Seller: Sun Brookside Manor LLC
27777 Franklin Road, Suite 300
Southfield, Michigan 48034
Attn: Bruce Thelen
Email: bthelen@suncommunities.com

With a copy to: Taft Stettinius & Hollister LLP
27777 Franklin Road, Suite 2500
Southfield, Michigan 48034
Attn: Matthew Chosid; Brian Stone
Email: mchosid@taftlaw.com; bstone@taftlaw.com

If to Purchaser: City of Goshen, Indiana
Attn: Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528
Email: legal@goshencity.com

With a copy to: Barkes, Kolbus, Rife & Shuler, LLP
118 North Main Street
Goshen, Indiana 46526
Attn: Donald R. Shuler
Email: drs@goshenlaw.net

Either party hereto may change the name and address of the designee to which notice shall be sent by giving written notice of such change to the other party hereto as hereinbefore provided.

This letter and the exhibits attached hereto constitute the entire agreement between the

parties hereto with respect to the transactions herein contemplated, and supersedes all prior agreements, written or oral, between the parties relating to the subject matter hereof. Any modification or amendment to this letter shall be effective only if in writing and executed by each of the parties hereto.

This letter may be executed in any number of counterparts, any one of which shall be an original, but all of which together shall be one and the same instrument. The parties hereto agree that the use of facsimile, electronic (including DocuSign) or photocopied signatures for the execution of this letter shall be legal and binding and shall have the same full force and effect as if originally signed.

[Signature page follows]

Please acknowledge your agreement to the foregoing by signing below.

Very truly yours,

SELLER:

SUN BROOKSIDE MANOR LLC,
a Michigan limited liability company

By: _____

Name: Bruce Thelen

Its: Authorized Representative

Acknowledged and Accepted
on December ____, 2023:

PURCHASER:

CITY OF GOSHEN, INDIANA,
a municipal corporation and political
subdivision of the State of Indiana

By: _____

Name: _____

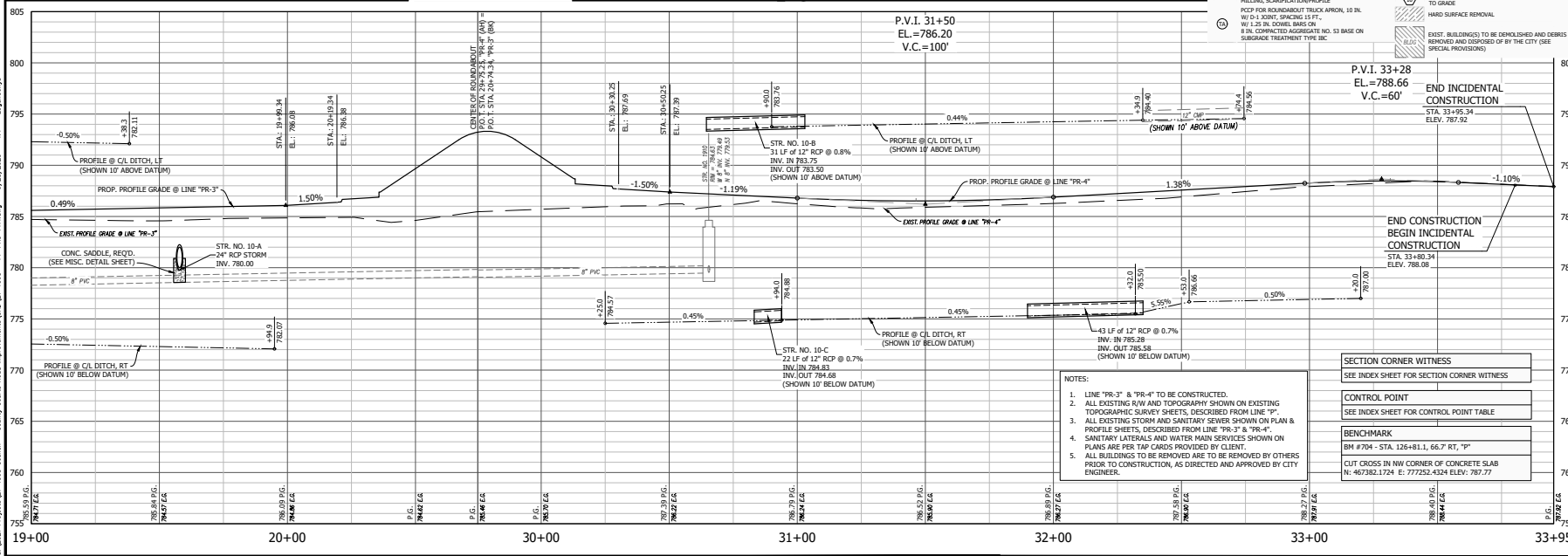
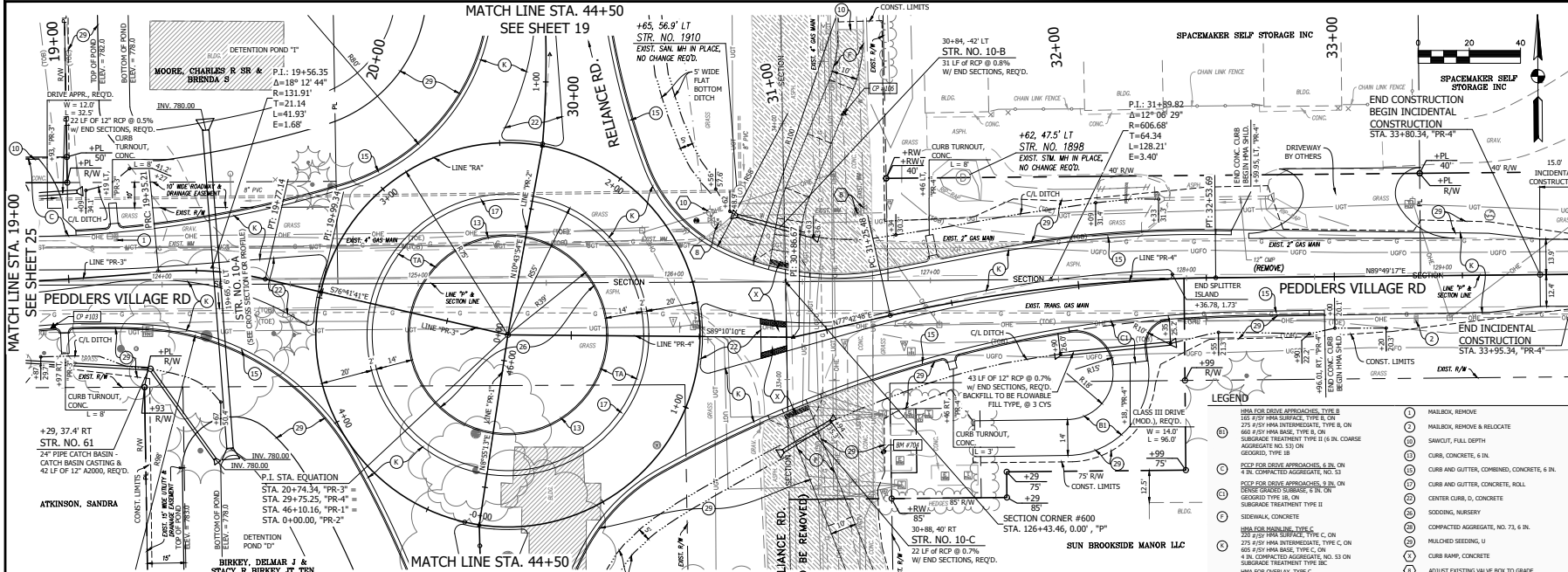
Its: _____

EXHIBIT A

DEPICTION OF CITY'S IMPROVEMENTS

(See Attached)

S:\2021\Projects\21-1065\Station - County Courts Road Improvements\CAAD\31-1065 - 8P\813-PR-3-PR-4.dwg --- 9/28/2023 --- 11:11 --- loggobovps



A+Z ENGINEERING

1320 Burton Park
 Fort Worth, TX 76105
 262-685-7077
 www.a-z-engineering.net

DATE: 9/29/2023

BY: [Signature]

PROJECT: ELKHART COUNTY COURTS ROAD IMPROVEMENTS
 FINAL CONSTRUCTION PLANS

SHEET TITLE: PLAN & PROFILE - LINE 'PR-3' & 'PR-4'

DESIGNED BY:	AZ/ENG
DRAWN BY:	PKR/PE
CHECKED BY:	WWD
APPROVED BY:	NVT

PROJECT NO: 21-1065

DRAWING FILE NAME: 31-PR-3-PR-4.dwg

SCALE: H 1" = 20' V 1" = 5'

SHEET NUMBER: 26 OF 94

EXHIBIT B

PROPERTY – LEGAL DESCRIPTION

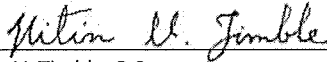
(See Attached)

Project: Goshen-Elkhart County Courts Consolidation Public Infrastructure Improvements
Parcel: 8 – Fee Simple Parcel Plat
Tax ID #: 20-11-06-100-001.000-015
Owner: Sun Brookside Manor LLC
Property Address: 61108 Old County Road 17
Goshen, IN 46526

A part of the Northwest Quarter of Section 6, Township 36 North, Range 6 East of the Second Principal Meridian in Elkhart County, Indiana, (described in Doc. No. 2019-20125) designated as Parcel 8 in the Location Control Route Survey Plat recorded as Document Number 2022-18559, both within the Office of the Recorder of Elkhart County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted in the attached Fee Simple Parcel Plat marked Exhibit "B", more particularly described as follows:

BEGINNING at a Harrison Monument found marking the Northwest Corner of the Northwest Quarter of said section, designated as point "600" in said Location Control Route Survey Plat and said Right-of-Way Parcel Plat; thence along the north line of said section, also being the centerline of Peddlers Village Road, North 89 degrees 49 minutes 22 seconds East (bearings based upon the Indiana Geospatial Coordinate System (InGCS), Elkhart County, NAD1983 (2010)), a distance of 155.55 feet to a point designated as "905" in said Parcel Plat; thence South 00 degrees 10 minutes 38 seconds East a distance of 75.00 feet to a point designated as "906" in said Parcel Plat; thence parallel to grantor's north line, also being the north line of said section, South 89 degrees 49 minutes 22 seconds West, a distance of 69.96 feet to a point designated as "907" in said Parcel plat; thence South 00 degrees 10 minutes 38 seconds East, a distance of 10.02 feet to a point designated as "904" in said Parcel Plat; thence parallel to said north line and said section line, South 89 degrees 49 minutes 22 seconds West, a distance of 85.00 feet to a point on grantor's west line also being the west line of said section designated as "879" in said Parcel Plat; thence along grantor's west line also being the west line of said section, North 00 degrees 34 minutes 45 seconds West, a distance of 85.02 feet to grantor's northwest corner and the POINT OF BEGINNING for the parcel described herein, containing 0.287 acres (12,498 square feet) of land, more or less, with 0.058 acre (2,519 square feet), more or less under pavement and a net taking area of 0.229 acre (9,979 square feet), more or less.

This was certified to the City of Goshen, Indiana and Sun Brookside Manor LLC by Nitin V. Timble, P.S., Indiana Registered Land Surveyor, License Number LS20600013, on the 24th of October 2023.



Nitin V. Timble, P.S.
Indiana Registered Land Surveyor No. LS20600013
A&Z Engineering, LLC
Project #21-1065

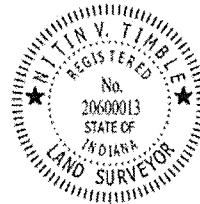


EXHIBIT C
FORM OF DEED
(See attached)

QUIT CLAIM DEED

THIS INDENTURE WITNESSETH that Sun Brookside Manor LLC, a Michigan limited liability company (the "Grantor"), for the sum of \$20,000.00 paid by the City of Goshen, Indiana, a municipal corporation and political subdivision of the State of Indiana (the "Grantee"), the receipt of which is hereby acknowledged, does hereby remise, release and quitclaim unto the Grantee forever, all right, title, interest and claim, which the Grantor has in and to certain real estate situated in the County of Elkhart, State of Indiana, and being more particularly described in the legal description attached as Exhibit "A" and depicted upon the Parcel Plat attached hereto as Exhibit "B" (the "Property"), both of which exhibits are incorporated herein by reference, and improvements and appurtenances thereto.

This conveyance is subject to any and all easements, conditions, and restrictions of record.

The conveyance is further subject to, and by acceptance of this Deed, Grantee covenants and agrees, for and on behalf of itself and its successors in title to the Property or any portion thereof, including all present and future owners, tenants, users and occupants, and their respective heirs, devisees, representatives, successors and assigns (each, a "Grantee Party", and collectively, the "Grantee Parties"), that the Property shall only be used for roadway, drainage, and underground utility purposes and in compliance with all applicable governmental regulations now in existence or hereafter created, subject to any easements or restrictions of record (collectively, the "Restrictive Covenants").

It is expressly understood and agreed that the Restrictive Covenants shall attach to and run with the land and bind Grantee and the Grantee Parties in perpetuity. It shall be lawful for Grantor, its successors and/or assigns, to institute and prosecute any proceedings at law or in equity against any person violating and threatening to violate the Restrictive Covenants. Any conveyance of the Property shall include the Restrictive Covenants and be subject to the terms, conditions, covenants, restrictions and agreements set forth herein. In the event Grantor, its successors and/or assigns institutes legal proceedings against Grantee or any other Grantee Party for breach of or to enforce any of the Restrictive Covenants, or any of its rights under this Deed, and Grantor or its successor or assign obtains a judgment against Grantee or any other Grantee Party, Grantee or such other Grantee Party, as applicable, shall pay all costs and expenses of Grantor or its successor or assign incurred in connection therewith, including without limit court costs, legal expenses and reasonable attorneys' fees. Grantor acknowledges that the Indiana Utility Regulatory Commission (the "IURC") may override Grantee's denial of surface utilities in the future to permit surface utilities on the Property and that in such case Grantee shall not be liable to Grantor under this paragraph; provided, however, that Grantee shall provide written notice to Grantor of any such appeal to the IURC sufficient to permit Grantor reasonable time to intervene in such appeal, and Grantee

shall not object to such intervention by Grantor.

If any clause or provision of this Deed is determined to be illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of the provisions of this Deed shall not be affected thereby, and that in lieu of such illegal, invalid or unenforceable clause or provision there shall be substituted a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

[Signature on following page]

IN WITNESS WHEREOF, Grantor has executed this instrument as of the ____ day of December, 2023.

GRANTOR:

SUN BROOKSIDE MANOR LLC,
a Michigan limited liability company

By: _____
Name: Bruce Thelen
Title: Authorized Representative

STATE OF _____)
) SS:
COUNTY OF _____)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Bruce Thelen, the Authorized Representative for Sun Brookside Manor, LLC, the Grantor in the above conveyance, and acknowledge the execution of the same on the date aforesaid to be his voluntary act and deed and who, being duly sworn, stated that any representations contained therein are true.

Witness my hand and notarial seal this ____ day of December, 2023.

Notary Public

Printed: _____

My Commission Expires: _____

County of Resident: _____

Prepared by: Donald R. Shuler, BARKES, KOLBUS, RIFE & SHULER, LLP, 118 North Main Street,
Goshen, Indiana 46526; Ph; 574.533.3181

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

Grantee Mailing Address: 202 South Fifth Street, Goshen, Indiana 46528

EXHIBIT "A"

LEGAL DESCRIPTION

(See attached)

Exhibit "A"

Project: Goshen-Elkhart County Courts Consolidation Public Infrastructure Improvements

Parcel: 8 – Fee Simple Parcel Plat

Tax ID #: 20-11-06-100-001.000-015

Owner: Sun Brookside Manor LLC

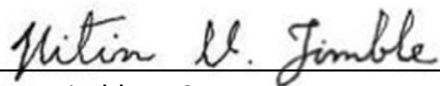
Property Address: 61108 Old County Road 17

Goshen, IN 46526

A part of the Northwest Quarter of Section 6, Township 36 North, Range 6 East of the Second Principal Meridian in Elkhart County, Indiana, (described in Doc. No. 2019-20125) designated as Parcel 8 in the Location Control Route Survey Plat recorded as Document Number 2022-18559, both within the Office of the Recorder of Elkhart County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted in the attached Fee Simple Parcel Plat marked Exhibit "B", more particularly described as follows:

BEGINNING at a Harrison Monument found marking the Northwest Corner of the Northwest Quarter of said section, designated as point "600" in said Location Control Route Survey Plat and said Right-of-Way Parcel Plat; thence along the north line of said section, also being the centerline of Peddlers Village Road, North 89 degrees 49 minutes 22 seconds East (bearings based upon the Indiana Geospatial Coordinate System (InGCS), Elkhart County, NAD1983 (2010)), a distance of 155.55 feet to a point designated as "905" in said Parcel Plat; thence South 00 degrees 10 minutes 38 seconds East a distance of 75.00 feet to a point designated as "906" in said Parcel Plat; thence parallel to grantor's north line, also being the north line of said section, South 89 degrees 49 minutes 22 seconds West, a distance of 69.96 feet to a point designated as "907" in said Parcel plat; thence South 00 degrees 10 minutes 38 seconds East, a distance of 10.02 feet to a point designated as "904" in said Parcel Plat; thence parallel to said north line and said section line, South 89 degrees 49 minutes 22 seconds West, a distance of 85.00 feet to a point on grantor's west line also being the west line of said section designated as "879" in said Parcel Plat; thence along grantor's west line also being the west line of said section, North 00 degrees 34 minutes 45 seconds West, a distance of 85.02 feet to grantor's northwest corner and the POINT OF BEGINNING for the parcel described herein, containing 0.287 acres (12,498 square feet) of land, more or less, with 0.058 acre (2,519 square feet), more or less under pavement and a net taking area of 0.229 acre (9,979 square feet), more or less.

This was certified to the City of Goshen, Indiana and Sun Brookside Manor LLC by Nitin V. Timble, P.S., Indiana Registered Land Surveyor, License Number LS20600013, on the 24th of October 2023.



Nitin V. Timble, P.S.
Indiana Registered Land Surveyor No. LS20600013
A&Z Engineering, LLC
Project #21-1065



EXHIBIT "B"

PARCEL PLAT

(See attached)

Property Address:
61108 Old County Road 17
Goshen, IN 46526

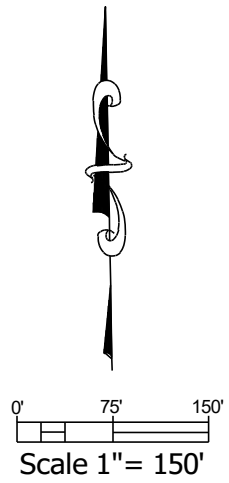
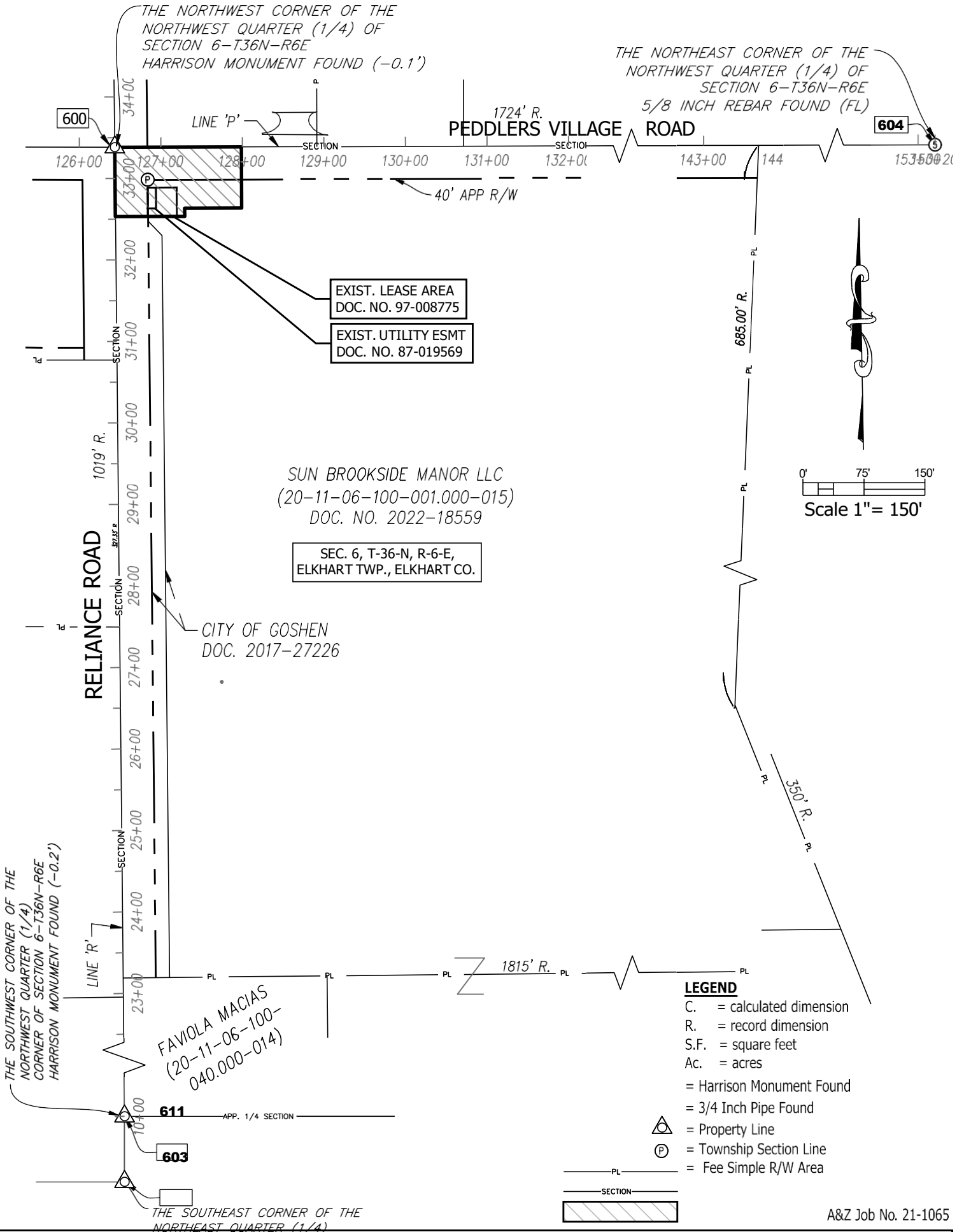
EXHIBIT "B"

FEE SIMPLE PARCEL PLAT

Certified to the City of Goshen, Indiana and Sun Brookside Manor LLC

by A&Z Engineering

Northeast Quarter, Section 6, Township 36 North, Range 6 East
Second Principal Meridian, Elkhart Township, Elkhart County



- LEGEND**
- C. = calculated dimension
 - R. = record dimension
 - S.F. = square feet
 - Ac. = acres
 - = Harrison Monument Found
 - = 3/4 Inch Pipe Found
 - △ = Property Line
 - ⊙ = Township Section Line
 - = Fee Simple R/W Area

A&Z Job No. 21-1065

PARCEL:	8	OWNER:	SUN BROOKSIDE MANOR LLC	DRAWN BY:	DRT	6/8/2023
CODE:	N/A			CHECKED BY:	NT	6/8/2023
DES. NO.:	N/A			REVISED:		
PROJECT NO.:	21-1065					
ROAD:	Peddlers Village Road					
COUNTY:	Elkhart					
SECTION:	6					
TOWNSHIP:	36N	0	0			
RANGE:	6E		0			
STATE ID:	20-11-06-100-001.000-015		0			

Property Address:
61108 Old County Road 17
Goshen, IN 46526

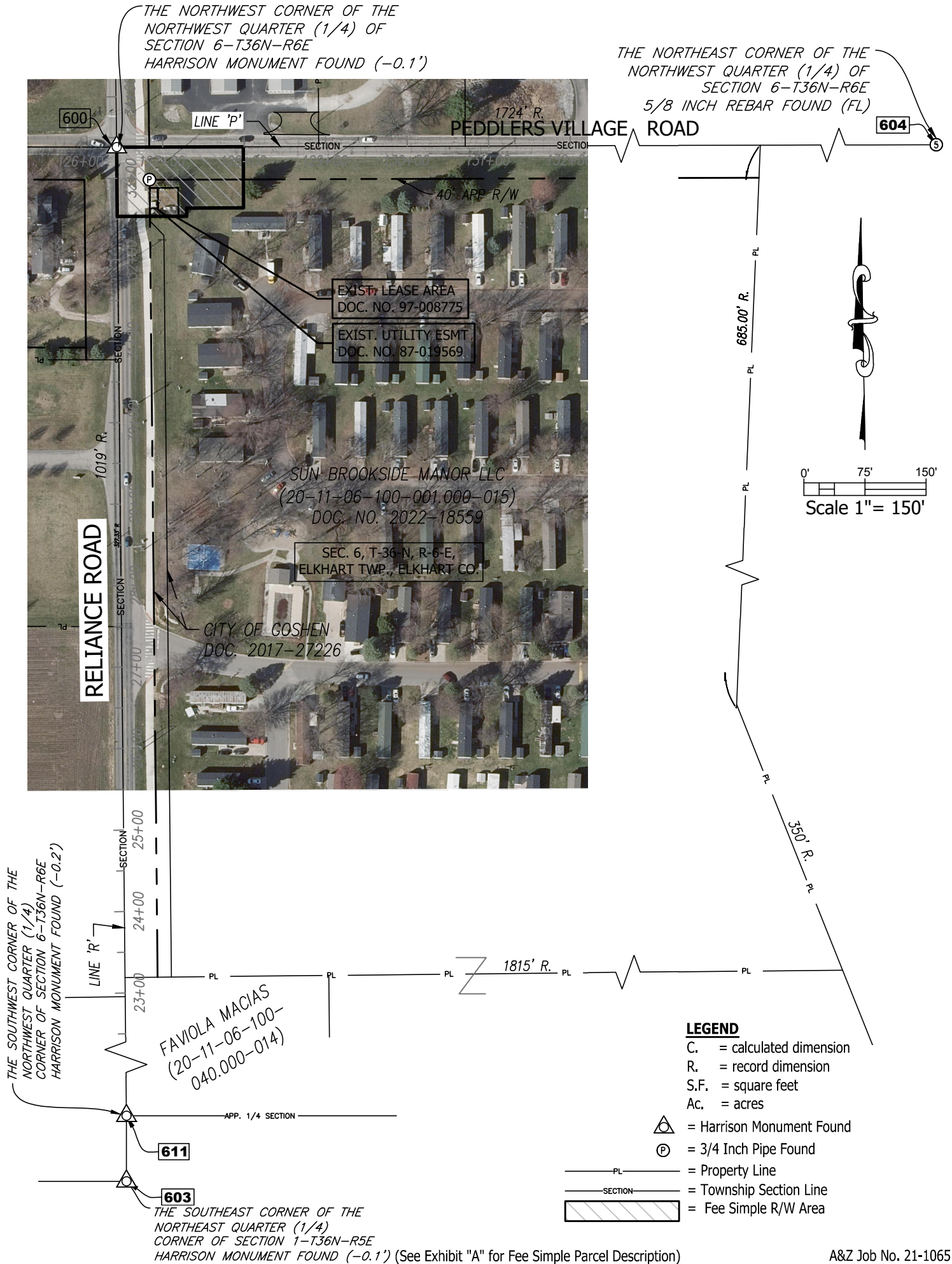
EXHIBIT "B"

FEE SIMPLE PARCEL PLAT

Certified to the City of Goshen, Indiana and Sun Brookside Manor LLC

by A&Z Engineering

Northeast Quarter, Section 6, Township 36 North, Range 6 East
Second Principal Meridian, Elkhart Township, Elkhart County



PARCEL:	8	OWNER:	SUN BROOKSIDE MANOR LLC	DRAWN BY:	DRT	6/8/2023
CODE:	N/A			CHECKED BY:	NT	6/8/2023
DES. NO.:	N/A			REVISED:		
PROJECT NO.:	21-1065					
ROAD:	Peddlers Village Road					
COUNTY:	Elkhart					
SECTION:	6					
TOWNSHIP:	36N	0	0			
RANGE:	6E		0			
STATE ID:	20-11-06-100-001.000-015		0			

A&Z Job No. 21-1065

Property Address:
61108 Old County Road 17
Goshen, IN 46526

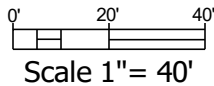
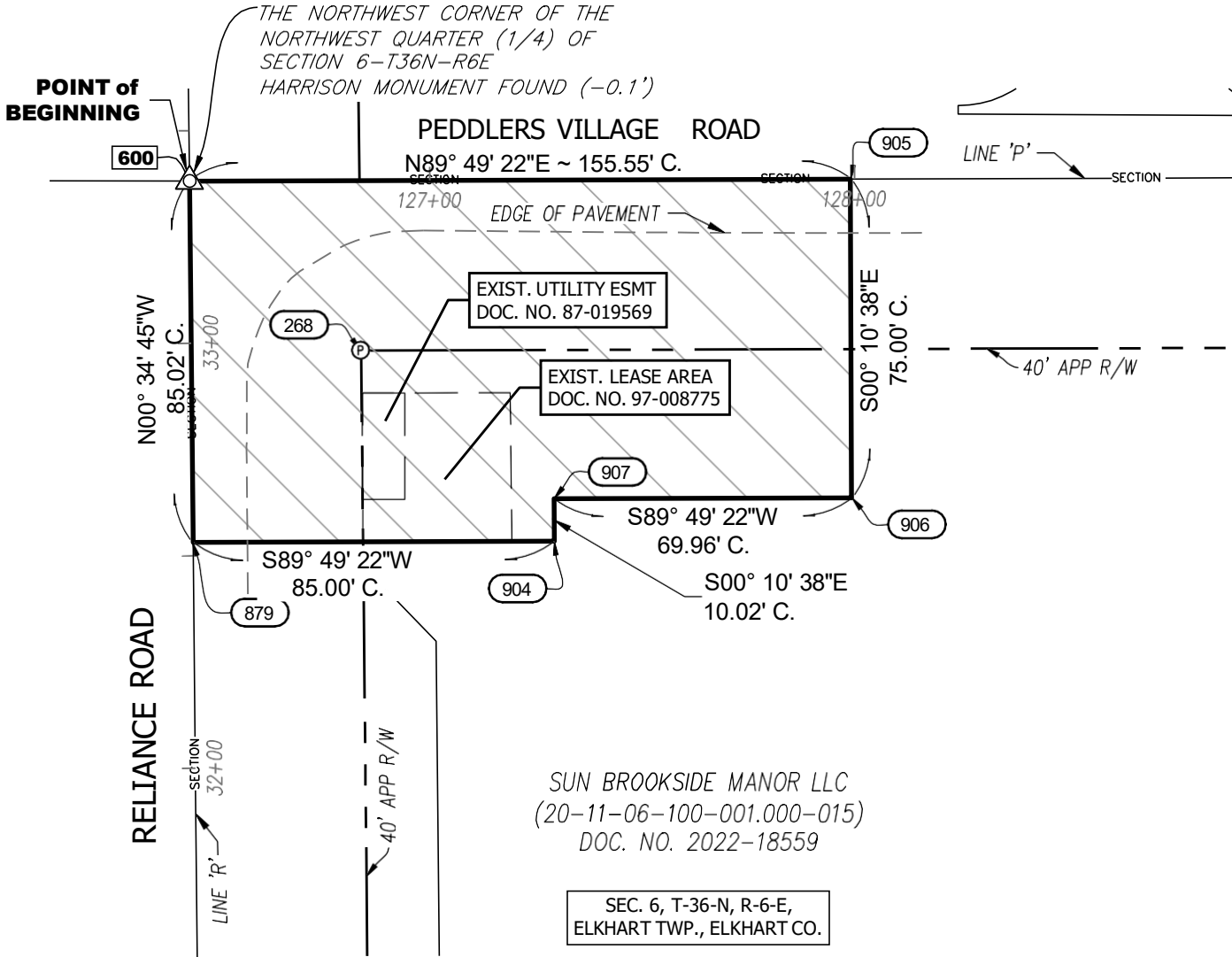
EXHIBIT "B"

FEE SIMPLE PARCEL PLAT

Certified to the City of Goshen, Indiana and Sun Brookside Manor LLC

by A&Z Engineering

Northeast Quarter, Section 6, Township 36 North, Range 6 East
Second Principal Meridian, Elkhart Township, Elkhart County



LEGEND

- C. = calculated dimension
- R. = record dimension
- S.F. = square feet
- Ac. = acres

- = Harrison Monument Found
- = 3/4 Inch Pipe Found

- PL = Property Line
- SECTION = Township Section Line
- = Fee Simple R/W Area

(See Exhibit "A" for Fee Simple Parcel Description)

A&Z Job No. 21-1065

PARCEL:	8	OWNER:	SUN BROOKSIDE MANOR LLC	DRAWN BY:	DRT	6/8/2023
CODE:	N/A		27777 Franklin Road STE 300	CHECKED BY:	NT	6/8/2023
DES. NO.:	N/A		Southfield, MI 48034	REVISED:		
PROJECT NO.:	21-1065					
ROAD:	Peddlers Village Road					
COUNTY:	Elkhart		FEE SIMPLE R/W ACQUISITION AREA:		0.287 Ac. (12,498 S.F.)	
SECTION:	6					
TOWNSHIP:	36N					
RANGE:	6E					
STATE ID:	20-11-06-100-001.000-015					

Property Address:
61108 Old County Road 17
Goshen, IN 46526

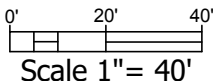
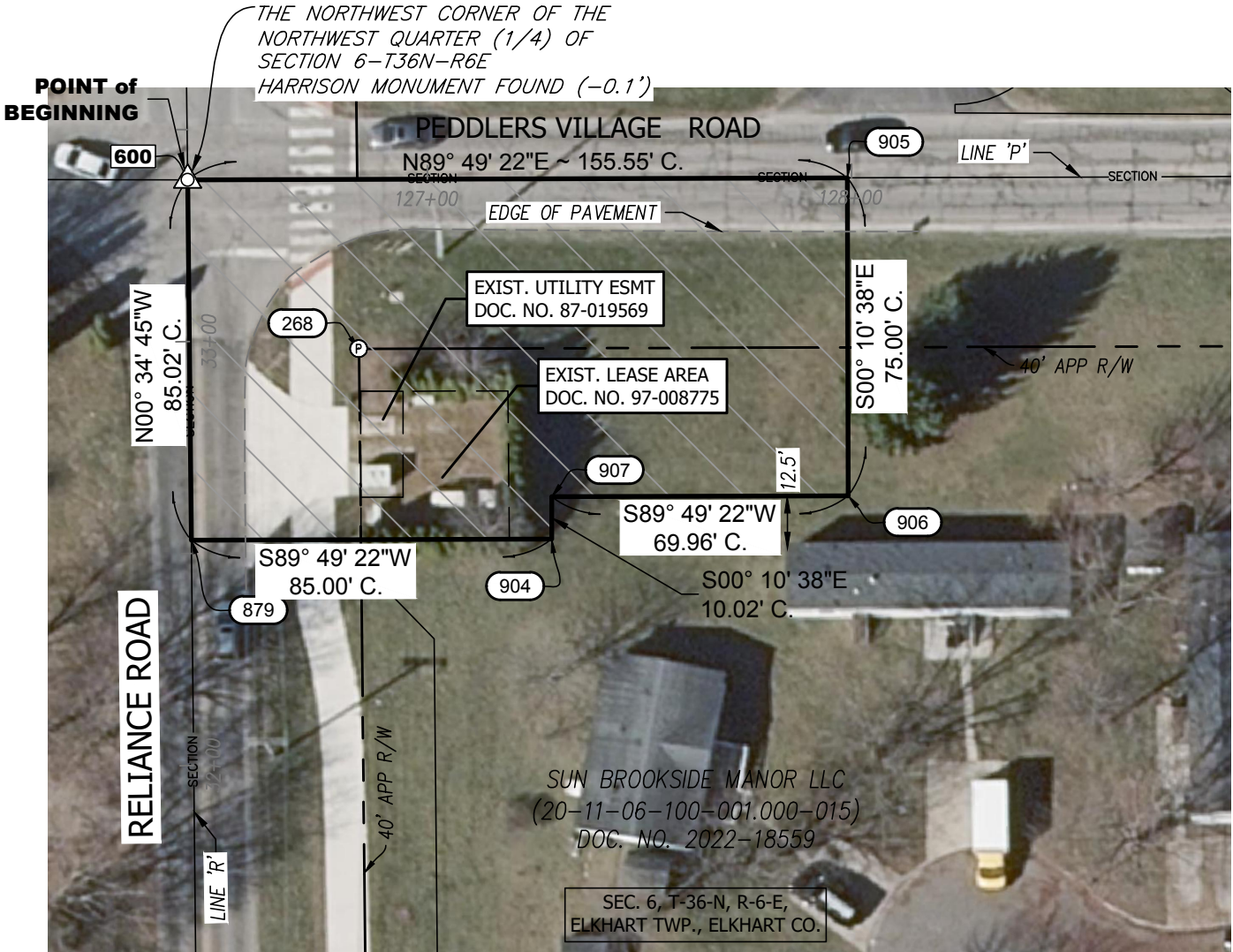
EXHIBIT "B"

FEE SIMPLE PARCEL PLAT

Certified to the City of Goshen, Indiana and Sun Brookside Manor LLC

by A&Z Engineering

Northeast Quarter, Section 6, Township 36 North, Range 6 East
Second Principal Meridian, Elkhart Township, Elkhart County



LEGEND

- C. = calculated dimension
- R. = record dimension
- S.F. = square feet
- Ac. = acres
- = Harrison Monument Found
- = 3/4 Inch Pipe Found
- PL = Property Line
- SECTION = Township Section Line
- = Fee Simple R/W Area

(See Exhibit "A" for Fee Simple Parcel Description)

A&Z Job No. 21-1065

PARCEL:	8	OWNER:	SUN BROOKSIDE MANOR LLC	DRAWN BY:	DRT	6/8/2023
CODE:	N/A		27777 Franklin Road STE 300	CHECKED BY:	NT	6/8/2023
DES. NO.:	N/A		Southfield, MI 48034	REVISED:		
PROJECT NO.:	21-1065					
ROAD:	Peddlers Village Road					
COUNTY:	Elkhart		FEE SIMPLE R/W ACQUISITION AREA:		0.287 Ac. (12,498 S.F.)	
SECTION:	6					
TOWNSHIP:	36N					
RANGE:	6E					
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Property Address:
 61108 Old County Road 17
 Goshen, IN 46526

EXHIBIT "B"
FEE SIMPLE
PARCEL PLAT

Certified to the City of Goshen, Indiana and Sun Brookside Manor LLC
 by A&Z Engineering

Northeast Quarter, Section 6, Township 36 North, Range 6 East
 Second Principal Meridian, Elkhart Township, Elkhart County

PARCEL 8 FEE SIMPLE ACQUISITION COORDINATES						
Point	Centerline	Station	Offset	Side	Northing	Easting
600						
603						
604						
611						
268						
879	R	32+53.13	0.00		467,363.730	777,215.490
904	P	127+29.06	85.02	R	467,364.000	777,300.490
904	R	32+52.53	85.00	R	SEE ABOVE	SEE ABOVE
905	P	127+99.01	0.00		467,449.230	777,370.180
906	P	127+99.01	75.00	R	467,374.230	777,370.410
907	P	127+29.06	75.00	R	467,374.010	777,300.460
907	R	32+62.55	85.07	R	SEE ABOVE	SEE ABOVE

PARCEL 8 FEE ACQUISITION AREA				
Gross Title Area (SF)	Fee Area to Acquire (SF)	Present Existing R/W (SF)	Total Fee R/W Area (SF)	Residue Title Area (SF)
1,631,758	12,498	0	12,498	1,619,260

A&Z Job No. 21-1065
 (See Exhibit "A" for Fee Simple Parcel Description)

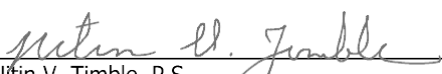
NOTES:

1. The record dimensions shown on this exhibit are based upon the deed for the subject area, Elkhart County GIS data, and by a field survey.
2. Gross Title Area is approximate.
3. The Fee Simple location, configuration, size, and width was determined by A&Z Engineering.

In accordance with 865 IAC 1-12-12-f, this exhibit is not intended to be represented as a retracement or original boundary survey, a route survey and/or a Surveyor Location Report.

I hereby certify that this plat was made under my supervision and is correct to the best of my knowledge and belief. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.




 June 8, 2023
 Nitin V. Timble, P.S.
 Indiana Registered Land Surveyor No. LS20600013



**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 and Safety

FROM: Goshen Engineering Department

RE: **TENTH STREET ROAD CLOSURE AND DOUGLAS STREET PARKING RESTRICTIONS (JN: 2022-0037)**

DATE: December 18, 2023

Niblock Excavating has requested permission to close 10th Street just south of Douglas Street during the day for two consecutive days sometime between January 2 and January 12, 2024. The closures are dependent on weather and work progress between now and the first week of January. Additional notice will be provided to the public before the closure. Appropriate traffic control devices will be utilized, and access for Gleason Industrial Products will be maintained.

Niblock is requesting this closure to install water main across 10th Street as part of the Tenth Street Reconstruction project. Parking will also be restricted along Douglas Street from 10th Street to 11th Street, and on 11th Street within 50 feet of Douglas Street, during the closures.

Requested motion: Move to approve a two-day closure of 10th Street, south of Douglas Street, and approve parking restrictions on Douglas Street and 11th Street starting between January 2 and January 11, 2024.

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

Gina Leichy, Mayor

Barb Swartley, Member

Mary Nichols, Member

Orv Myers, Member

Michael Landis, Member



**Engineering Department
CITY OF GOSHEN**

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engineering@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Goshen Board of Public Works and Safety

FROM: Goshen Engineering Department

RE: **TENTH STREET, REYNOLDS STREET, AND PLYMOUTH AVENUE LANE RESTRICTIONS AND TEMPORARY PARKING RESTRICTIONS (JN: 2022-0037)**

DATE: December 18, 2023

NIPSCO Gas has requested permission to restrict the northbound lane of 10th Street just south of Plymouth Avenue to Reynolds Street, and the westbound lanes of Plymouth Avenue and Reynolds Street near 10th Street. The lanes will be closed during the day only from Monday, January 8 until Friday, February 16, 2024. Flaggers will maintain two-way traffic, including at intersections. Appropriate traffic control devices will be utilized.

NIPSCO is requesting these lane restrictions to complete planned gas main relocation in preparation for the Tenth Street Reconstruction project. Access for Gleason Industrial Products will be maintained. Parking will also be restricted along 10th Street during the lane restrictions.

Requested motion: Move to approve lane restrictions on 10th Street, Plymouth Avenue, and Reynolds Street, and approve daytime parking restrictions along 10th Street from January 8, 2024, until February 16, 2024.

**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



**Engineering Department
CITY OF GOSHEN**

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MEMORANDUM

TO: Board of Works Public and Safety

FROM: Engineering

RE: **NIPSCO – E DOUGLAS ST CLOSURE REQUEST FOR GAS VALVE
REPLACEMENT
(JN: STREETS)**

DATE: December 18, 2023

NIPSCO is requesting permission to close E Douglas Street between S Main Street and S 6th Street starting January 8th, 2024 through January 12th, 2024, to replace a gas valve.

Requested motion: Approve the closure of E Douglas Street between S Main Street (SR 15), and S 6th Street for the gas valve replacement from January 8, 2024, thru January 12, 2024.

**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



Manifest

- 4 x Type III Barricade (Road Closed)
- 4 x W20-2 detour ahead
- 4 x W20-3 road closed ahead
- 3 x M4-9 detour (L)
- 3 x M4-9 detour (R)
- 2 x M4-8a end detour
- 2 x M4-9 Detour Straight
- 2 x R11-2 R11-2
- 2 x R11-4 R11-4

Date: 12/1/2023 Author: Scott Fischer (Indiana Sign and Barricade) Project: Douglas & Alley W/O 6th St, Goshen, IN

Comments:

Plans provided to meet MUTCD standards. Plans are non signed, sealed or stamped and are for illustration to governing agency for approval. Plans are not to scale.





**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: **ARCADIS ENGINEERING SERVICES AGREEMENT
JN: 2024-0010**

DATE: December 18, 2023

Approval is sought for an expenditure of \$93,000 for engineering support from Arcadis U.S., Inc. toward our effort to request a \$300,000 grant for developing our Lead Service Line inventory and a request of \$4-\$6 million in low interest State matching funds for replacement of lead service lines.

Requested Motion: Approve the attached agreement with Arcadis, U.S., Inc. for \$93,000 for Consulting Engineering Services to develop a Lead Service Line Replacement Plan and Indiana Finance State Revolving Fund Application.

**AGREEMENT
WITH ARCADIS U.S. INC. FOR LEAD SERVICE LINE REPLACEMENT PLAN
AND INDIANA FINANCE STATE REVOLVING FUND APPLICATION
SUPPORT**

THIS AGREEMENT is entered into on _____, 2023, which is the last signature date set forth below, by and between **Arcadis U.S., Inc** (“Consultant”), whose mailing address is 55 Monument Circle, Suite 300B, Indianapolis, Indian 46204, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Consultant shall provide the City with services for achieving compliance with the Lead and Copper Rule Revisions (LCRR), which services are more particularly described in Consultant’s November 29, 2023 proposal attached as Exhibit A (hereinafter referred to as “Duties”).

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

Consultant’s Duties under this agreement include:

- (A) Development of Lead Service Line Replacement (LSLR) plan.
- (B) Review of City’s Type III application and development of a State Revolving Fund application, including the Preliminary Engineering Report (PER) and Disadvantaged Community (DAC) Memo.
- (C) Allowance for additional LCRR support services, if requested by City.

Section 2. Effective Date; Term

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

Section 3. Compensation

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

Project Management	Not-to-Exceed \$10,000
LSLR Plan Development	Not-to-Exceed \$28,000
SRF PER & DAC Development	Not-to-Exceed \$25,000
As-Needed Support.....	Not-to-Exceed <u>\$30,000</u>

City will compensate Consultant for the performance of duties in Section 3 (A) based on the standard hourly rates set forth below and the actual hours worked, but in no event will the total compensation exceed Ninety-Three Thousand Dollars (\$93,000). Consultant's standard hourly rates are as follows:

Program Director	\$313/hr.
Principal Engineer/ Consultant II.....	\$286/hr.
Principal Engineer/ Consultant I.....	\$254/hr.
Senior Engineer/ Consultant II.....	\$196/hr.
Senior Engineer/ Consultant I.....	\$180/hr.
Project Engineer/ Consultant	\$170/hr.
Staff Engineer/ Consultant.....	\$159/hr.
Technician II.....	\$117/hr.
Technician I	\$71/hr.

Section 4. Payment

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

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

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

Section 5. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively "Documents") prepared by Contractor or

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

Section 6. Licensing/Certification Standards

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

Section 7. Independent Contractor

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City. City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of Contractor and/or Contractor's employees, agents or subcontractors.
- (B) Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors.
- (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: Arcadis U.S., Inc
Attention: Amy E. Smitley, PE
55 Monument Circle, Suite 300B
Indianapolis, IN 46204

Section 18. Subcontracting or Assignment

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

Section 19. Amendments

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

Section 20. Waiver of Rights

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

Section 21. Applicable Laws

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

Section 22. Miscellaneous

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

Section 23. Severability

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

Section 24. Binding Effect

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

Section 25. Entire Agreement

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

Section 26. Authority to Execute

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

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

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

Arcadis U.S., Inc.

Gina Leichty, Mayor

Amy E. Smitley, PE, Vice President

Date Signed: _____

Date Signed: _____



Jamey Bontrager-Singer
Utilities City Engineer
City of Goshen, IN
transmitted via email

Arcadis U.S., Inc.
55 Monument Circle
Suite 300B
Indianapolis
Indiana 46204
Phone: 317 231 6500
www.arcadis.com

Date: November 29, 2023
Subject: LSLR Planning and IFA-SRF Application Support

Dear Jamey,

Arcadis is pleased to provide this proposal for supporting the City of Goshen in achieving compliance with the Lead and Copper Rule Revisions (LCRR). Based on our previous discussions, this scope includes:

- Development of Lead Service Line Replacement (LSLR) plan.
- Review of your Type III application and development of your SRF application, including the Preliminary Engineering Report (PER) and Disadvantaged Community (DAC) Memo.
- Allowance for additional LCRR support services, if requested.

It is our understanding that you have already built a strong foundation for LCRR compliance – including through development of a project charter, with goals and a path forward. Thus, this scope does not include foundational elements such as development of procedures for service line identification or field work. In addition, elements such as utility data management and communications are not included.

SCOPE OF WORK

We propose the following scope of services to support your LCRR compliance.

Task 1: Arcadis Project Management

Project management best practices will be applied internally to ensure the project is completed successfully and within the defined budget and timeline. Arcadis will:

- Maintain a project SharePoint site for document transfer, storage, and transmittal of deliverables.
- Lead a virtual 1-hour project kick-off with the Goshen project team to review the tasks, schedule, and roles and responsibilities.
- Provide regular project status updates to the Goshen project manager.
- Manage project execution including coordination of resources, implementation of quality control practices, and budget and schedule monitoring.
- Send monthly invoices.

Project Management Deliverables:

- Project SharePoint site
- Monthly invoices

Jamey Bontrager-Singer
City of Goshen, IN
November 29, 2023

Task 3: Application Development

Arcadis will support development of Goshen's SRF and Type III applications. Specifically, Arcadis will:

- For the IFA Type III application
 - Review draft developed by Goshen and provide recommendations for improving the business case.
 - Facilitate one 1-hour virtual meeting to discuss conclusions and recommendations.
- For the SRF application,
 - Facilitate up to three 1.5-hour meetings to identify a project to propose which includes LSLRs and supporting planning and implementation elements, incorporating results from previous tasks.
 - Provide a list of activities Goshen must complete to support the application (e.g., public hearing, signatures from various utility and community leaders).
 - Develop a Preliminary Engineering Report (PER) summarizing the technical, economic, and environmental components of the proposed project. The PER will be in accordance with State Revolving Fund (SRF) Program requirements and include project details, an alternatives assessment, and a cost and effectiveness analysis.
 - Develop a DAC memo, which is required to be considered for forgivable loans / grants. This will include information showing the project falls within disadvantaged census tracts.
 - Develop the core SRF application content.
 - Facilitate up to two discussions with IFA and associated PER edits as needed.

Task 3 Deliverables:

- Recommendations for strengthening the IFA Type III application
- Draft and final PER
- Draft and final DAC
- Draft and final SRF application

Assumptions:

- All meetings/workshops will be held virtually via Microsoft Teams unless otherwise directed by Goshen. In-person costs can be covered under the Task 4 travel allowance budget.
- Goshen will develop and submit the IFA Type III Inspection & Inventory Validation application.
- Goshen will submit the SRF application that will be developed by Arcadis.
- Goshen will provide required utility information – including on rates, management, and finances.
- Goshen will provide information on the modeling approach and results for incorporation into the PER and SRF application.
- Arcadis will not plan or facilitate required public hearings.

Task 4: Allowance for As-Needed Support

Arcadis will provide professional services to support overall LCRR compliance activities as directed in writing by the Goshen project manager within the included allowance. Support services may include but are not limited to:

- Support for predictive modeling and application of its results.
- Guidance on the various LCRR requirements, including reviewing and commenting on draft content developed by Goshen staff.

Jamey Bontrager-Singer
City of Goshen, IN
November 29, 2023

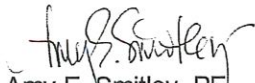
SCHEDULE

It is proposed that Arcadis complete this scope of work based on this schedule. This is dependent on Goshen's availability for meetings and the timeliness of potholing activities.

- Task 1 within an overall 12-month project duration detailed below.
- Task 2 within five months (in parallel with Task 2) – with a draft within four months of the notice to proceed and the final plan delivered within one month of utility comments.
- Task 3 as required to meet IFA SRF's April 1, 2024 deadline.
- Task 4 as directed.

We look forward to supporting you in complying with LCRR requirements.

Sincerely,
Arcadis U.S., Inc.


Amy E. Smitley, PE
Vice President

Email: Amy.Smitley@arcadis.com
Mobile: 317-273-9144

CC. Dustin Sailor, Goshen

This proposal and its contents shall not be duplicated, used or disclosed — in whole or in part — for any purpose other than to evaluate the proposal. This proposal is not intended to be binding or form the terms of a contract. The scope and price of this proposal will be superseded by the contract. If this proposal is accepted and a contract is awarded to Arcadis as a result of — or in connection with — the submission of this proposal, Arcadis and/or the client shall have the right to make appropriate revisions of its terms, including scope and price, for purposes of the contract. Further, client shall have the right to duplicate, use or disclose the data contained in this proposal only to the extent provided in the resulting contract.



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: **2024 ASPHALT PAVING REJUVENATION
(JN: 2024-0002B)**

DATE: December 18, 2023

On December 11, 2023, we received proposals for the above referenced project. Following are the results:

Rejuvtec, Inc. - \$102,176.10

The Engineering Department is requesting the Board of Public Works and Safety to award the contract to Rejuvtec, Inc. as the lowest responsive and responsible bidder.

Requested Motion: Approve the Agreement with Rejuvtec, Inc. for the 2024 Asphalt Paving Rejuvenation project in the amount of \$102,176.10.

CITY OF GOSHEN, INDIANA
CONTRACT FOR PUBLIC WORKS CONSTRUCTION PROJECT
PROJECT TITLE: PAVEMENT REJUVENATION PROJECT
PROJECT NUMBER: 2024-0002

THIS CONTRACT FOR PUBLIC WORKS CONSTRUCTION PROJECT (“Contract”) is entered into on _____, 2023, which is date of the last signature set forth on the signature page, by and between **Rejuvtec, Inc.** (“Contractor”), whose mailing address is 1316 Deloss St., Indianapolis, IN 46203, and **City of Goshen, Indiana** (“City”), a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety.

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

1. Component Parts of this Contract.

- (A) This Contract shall include these terms and conditions, as well as the terms and conditions set forth in the following documents:
 - (1) City of Goshen, Indiana Specifications and Contract Documents for the public works project title and project number set forth in the heading above.
 - (2) Contractor’s Proposal as submitted to City, including all submittals and attachments prepared by Contractor.
 - (3) Notice to Proceed issued by City to Contractor.
 - (4) Amendments and/or change orders that may be subsequently executed by City and Contractor.
 - (5) Contractor’s maintenance bond.
 - (6) Contractor’s certificate of insurance.
- (B) The above documents are specifically incorporated into this Contract by reference.
- (C) Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order:
 - (1) This Contract, and any Amendments and/or change orders;
 - (2) The Specifications and Contract Documents; and
 - (3) Contractor’s Proposal.

2. Duties of Contractor.

- (A) Contractor shall provide all supervision, labor, materials, equipment, services, permits and other components necessary for the successful completion of the Project in accordance with this Contract, including any incidentals whether or not specifically called for in these documents.
- (B) In accordance with Indiana Code § 5-16-13-9, Contractor, as a tier 1 contractor as defined by Indiana Code § 5-16-13-4(1), agrees that not less than fifteen percent (15%) of the total Contract price, as determined at the time the Contract is awarded, will be contributed by work performed by Contractor’s employees, materials supplied directly by Contractor, and/or services supplied directly by Contractor’s employees.
- (C) Contractor is responsible for ensuring that all contractors in any contractor tier that are performing some part of the work on, supplying some of the materials for, or supplying a service for, the Project

are in compliance with all statutory requirements set forth in Indiana Code § 5-16-13 et seq. and all applicable provisions of this Contract.

3. **Effective Date; Term.**

- (A) The Contract shall become effective on the day of execution and approval by the Goshen Board of Public Works and Safety and Contractor.
- (B) Contractor shall begin work on the Project after receiving a written notice to proceed from City and in acceptable weather conditions in Spring 2024.
- (C) Contractor shall carry out all work on the Project expeditiously with adequate work forces and shall substantially complete work on the Project by June 30, 2024. "Substantial completion" or "substantially complete" refers to the date when the construction work is sufficiently complete in accordance with the Specifications and Contract Documents, as may be modified by any written and approved amendments or change orders, and the Project is available for its intended use or purpose.
- (D) If Contractor does not substantially complete the Project within the time period set forth in paragraph (C), City will incur damages. The parties acknowledge that it will be difficult or impossible to quantify, ascertain and prove the actual damages sustained by City in the event of and by reason of such delay. Therefore, the parties agree that, in the event that the Project is not substantially completed within the time period set forth in paragraph (C), in lieu of actual damages, the City of Goshen shall be entitled to deduct from the amounts due to Contractor, or Contractor shall pay to the City of Goshen, the sum of Two Hundred Fifty Dollars (\$250.00) per day as liquidated damages and not as a penalty for each calendar day the substantial completion of the Project is delayed.

4. **Compensation.**

- (A) City shall pay Contractor for the performance of the work under this Contract based on the established unit prices for the work items as set forth in Contractor's itemized proposal, a copy of which is attached to this Contract. Total Contract price/compensation, prior to any amendment(s) or change order(s), is the following:

Total Contract Price/Compensation: \$102,176.10

- (B) Payment to Contractor will be based on the unit prices for the work items and the actual number of units used. Adjustments to the actual number of units for a work item used in the Project and resulting compensation will be done by written change order.

5. **Payment and Retainage.**

- (A) Upon receipt of a detailed invoice, City shall pay Contractor as work progresses on the Project based on the dollar value of work satisfactorily completed in accordance with the Specifications and Contract Documents. Partial payment(s) under this Contract will be made no more frequently than once every thirty (30) days.
- (B) In accordance with Indiana Code § 36-1-12-13, City shall withhold payment of money in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services or five percent (5%) of the dollar value of all work satisfactorily completed, whichever is greater, until the Project is substantially complete. Upon substantial completion, if minor items remain uncompleted, an amount equal to two hundred percent (200%) of the value of each uncomplete item shall be withheld until those items are completed. The retainage shall be held by City.
- (C) Contractor shall submit proof to City that Contractor has paid all subcontractors, material suppliers, laborers, and those furnishing services for the Project before final payment is made.

- (D) If the Project is for the construction, improvement, alteration, repair, or maintenance of a highway, street, road or alley, upon Contractor's completion of the Project in accordance with the Specifications and Contract Documents, the final inspection and acceptance by City, and provided Contractor has submitted proof that Contractor has paid all subcontractors, material suppliers, laborers, or those furnishing services under this Contract, City shall pay Contractor the final payment within one hundred twenty (120) days after such completion, inspection, acceptance, and delivery of acceptable evidence. Final payment will not be made on any amounts that are in dispute.
- (E) Contractor shall submit to City the detailed invoice along with proof of payment for labor and materials furnished for the Project to the following address, or at such other address as City may designate in writing:

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

Email is also acceptable at Engineering@goshencity.com.
- (F) Provided there is no dispute on amounts due, including amounts due all subcontractors, material suppliers, laborers, and those furnishing services for the Project, payment will be made to Contractor within forty-five (45) days following City's receipt of the detailed invoice, except for final payment under paragraph (D). If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (G) Any payment made by City before or after final acceptance of the work shall not affect the obligation of Contractor to repair or replace any defective parts, or otherwise correct any work.
- (H) Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment to Contractor.

6. Construction Schedule.

- (A) After being awarded the Contract, Contractor shall update the proposed construction schedule that was submitted with the Contractor's Proposal for approval by City's authorized representative. Contractor agrees to adhere to the construction schedule so that the Project is completed on or before the substantial completion date.
- (B) The construction schedule may only be modified with prior written consent of City's authorized representative.
- (C) If Contractor fails to adhere to the approved or modified construction schedule, Contractor shall adopt other or additional means and methods of construction and commit additional labor, equipment and other resources as necessary to make up for the time lost and to assure completion of the Project on or before the substantial completion date.

7. Project Safety.

- (A) Contractor shall be responsible for initiating, maintaining, supervising and enforcing all safety precautions and programs in connection with the Project, and shall comply with any protective measures indicated in these Specifications and Contract Documents and as required by local, state and federal rules and regulations.
- (B) Pursuant to Indiana Code § 36-1-12-20, if the performance of work for this Project requires the creation of a trench of at least five (5) feet in depth, Contractor and/or any a contractor in any contractor tier shall perform such work in accordance with IOSHA regulations 29 CFR 1926, Subpart F, for trench safety systems. 29 CFR 1926, Subpart F, are incorporated into these Specifications and Contract Documents by reference.

8. **Materials and Workmanship; Inspection.**

- (A) All products, materials, components, equipment, supplies or workmanship entering into the performance of this Contract shall be as specified in the project specifications of these Specifications and Contract Documents, be of the best grade and free of defects, and subject to the City's observation, inspection and testing.
- (B) In accordance with Indiana Code § 5-16-8-2 et seq., if any steel or foundry products are to be used or supplied in the performance of this Contract, Contractor shall use only steel or foundry products made in the United States unless the City has determined, in writing, that the cost of the steel or foundry products manufactured in the United States is considered unreasonable.
- (C) Upon request of City, Contractor shall furnish to City for approval full information concerning products, materials, components, equipment, or supplies that Contractor contemplates using in the Project.
- (D) City's representative shall be afforded complete and unhindered access to the work for observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.
- (E) City shall have the right to reject materials and/or workmanship and require the correction or replacement of products, materials, components, equipment, supplies or workmanship which are defective or do not conform to the requirements of the project specifications in these Specifications and Contract Documents. Contractor shall correct, at Contractor's expense, any defects, omissions or nonconformance after written notice from City. Such correction shall also include the removal from the work site.
- (F) In the event Contractor fails, refuses or neglects to correct any defects, omission or nonconformance, City may correct the same and Contractor agrees to pay on demand the cost and expense for making the correction.

9. **Warranty.**

- (A) Contractor shall warrant all products, materials, components, equipment, supplies and/or workmanship furnished under this Contract to be new unless otherwise specified, and all work to be of the highest quality, free from faults and defects, and to conform to the requirements of the project specifications in these Specifications and Contract Documents. This warranty period shall be as specified in the project specifications, or if no warranty period is specified, the warranty period shall be a minimum of one (1) year after substantial completion of the Project. This warranty shall survive any inspection, testing, acceptance, or payment by the City.
- (B) Under this guarantee, Contractor agrees to correct or replace without delay and at Contractor's expense, the products, materials, components, equipment, supplies or workmanship which are defective or do not conform to the requirements of the project specifications in these Specifications and Contract Documents.
- (C) Any work required as a result of erroneous site preparation due to the fault or negligence of Contractor shall also be provided by Contractor at no additional charge to City.

10. **Maintenance Bond.**

- (A) Contractor agrees to provide City an approved maintenance bond in an amount equal to ten percent (10%) of the contract price upon completion of the Project and acceptance by the City.
- (B) The maintenance bond shall guarantee that all workmanship and materials used in the Project are in accordance with the Specifications and Contract Documents. Contractor shall be responsible for removing and correcting all defects due to faulty workmanship and/or materials and shall pay for any damages to other work resulting therefrom which shall be discovered within the guarantee period.

- (C) The maintenance bond shall not be released until one (1) year after the acceptance of the work by City.

11. **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. 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.

12. **Non-Discrimination.**

- (A) In accordance with Indiana Code § 22-9-1-10, a contractor in any contractor tier shall not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to the employee or applicant's hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Contract.
- (B) In accordance with Indiana Code § 5-16-6-1, the Contractor agrees:
 - (1) That in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the state of Indiana who is qualified and available to perform the work to which the employment relates;
 - (2) That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract on account of race, religion, color, sex, national origin or ancestry;
 - (3) That there may be deducted from the amount payable to Contractor by City under this Contract, a penalty of Five Dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract; and
 - (4) That this Contract may be cancelled or terminated by City, and all money due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the Contract.
- (C) This section shall also apply to a contractor in any contractor tier.

13. **Employment Eligibility Verification.**

- (A) In accordance with Indiana Code § 22-5-1.7 et seq., Contractor shall enroll in and verify the work eligibility status of all newly hired employees of the contractor 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 Contractor subsequently learns is

an unauthorized alien. By execution of the Contract, Contractor affirms that Contractor does not knowingly employ an unauthorized alien.

- (C) Contractor shall require their subcontractors, who perform work under this Contract, to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.
- (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.
- (E) In accordance with Indiana Code § 5-16-13-11(1), before an individual who is required to be verified under Indiana Code § 22-5-1.7 begins work on the Project, Contractor shall submit to City the E-Verify case verification number for the individual. An individual who is required to be verified under Indiana Code § 22-5-1.7 whose final case result is final non-confirmation may not be employed on the Project.
- (F) This section shall also apply to a contractor in any contractor tier.

14. **Drug Testing Program.**

- (A) Contractor must implement the employee drug testing program that complies with the requirements of Indiana Code § 4-13-18-1 through Indiana Code § 4-13-18-7 as described in Contractor's written plan submitted with their proposal.
- (B) City may cancel or terminate this Contract in the event Contractor fails to implement the employee drug testing program during the term of the Contract for this Project; fails to provide information regarding the implementation of Contractor's employee drug testing program at the request of City; or provides City false information regarding the employee drug testing program.
- (C) This section also applies to a contractor in any contractor tier.

15. **Contractor Compliance with Other Laws.**

- (A) In accordance with Indiana Code § 5-16-13-11, Contractor agrees:
 - (1) A contractor shall not pay cash to any individual employed by Contractor for work done by the individual on the Project.
 - (2) A contractor is and shall remain in compliance with the federal Fair Labor Standards Act of 1938, as amended (29 USC 201-209) and the state Minimum Wage Law of 1965 (Indiana Code § 22-2-2-1 through Indiana Code § 22-2-2-8).
 - (3) A contractor is and shall remain in compliance with the worker's compensation or occupational diseases requirements under Indiana Code § 22-3-5-1 and Indiana Code § 22-3-7-34.
 - (4) A contractor is and shall remain in compliance with the unemployment insurance under Indiana Code § 22-4-1 through Indiana Code § 22-4-39.5.
 - (5) A contractor is and shall remain in compliance with the training program requirements under Indiana Code § 5-16-13-12 as applicable.
- (B) In accordance with Indiana Code § 5-16-13-13, a contractor shall preserve all payroll and related records of a contractor for a period of three (3) years after completion of the Project; and shall open such records to inspection by the department of workforce development.
- (C) This section shall also apply to a contractor in any contractor tier.

16. **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, injuries, or accidental deaths caused by any intentional, reckless, or negligent act or omission by Contractor or any of Contractor's agents, officers, and employees during the performance of this Contract. Such indemnity shall include reasonable attorney's fees and other expenses incurred by City, and shall not be limited by reason of insurance coverage required by this Contract.

17. **Insurance.**

- (A) Prior to commencing work, Contractor shall furnish City a certificate of insurance in accordance with the following minimum requirements, shall maintain the insurance in full force and effect, and shall keep on deposit at all times during the term of the Contract 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 \$2,000,000 aggregate
 - (3) Automobile Liability - Combined Bodily Injury and Property Damage, \$1,000,000 each occurrence and aggregate
 - (4) Excess Umbrella Coverage - \$1,000,000 each occurrence

18. **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.

19. **Default.**

- (A) If Contractor fails to perform the work or comply with the provisions of this Contract, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the work or comply with the provisions of this Contract, City may issue a written notice of default and provide a period of time that shall not be less than thirty (30) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the Contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar work in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred
- (C) Contractor may also be considered in default by the City if any of the following occur:

- (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this Contract.
- (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
- (3) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the Contract.
- (4) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
- (5) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.
- (6) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the work described under these Specifications and Contractor Documents.
- (7) The Contract or any right, monies or claims are assigned by Contractor without the consent of the City.

20. **Termination.**

- (A) The Contract may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all work performed and expenses reasonably incurred prior to notice of termination.
- (B) City may terminate this Contract, 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 Contract.

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

22. **Change Orders.**

- (A) If in the course of the work it becomes necessary to change or alter the original specifications, City may issue a change order to add, delete or change an item(s) in the original Contract, with the Contract price and/or substantial completion date, being adjusted accordingly. The change order shall be prepared by the licensed architect or engineer assigned to the Project.
- (B) If the change order requires an increase or decrease in units of materials that are included in the original Contract, the cost of these units must be the same as shown in the original Contract.
- (C) Except in the case of an emergency, Contractor shall not commence any additional work or change in scope of the work until the change order is authorized in writing and signed by both parties. Contractor shall make no claim for additional compensation in the absence of a prior written and authorized change order signed by both parties.

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

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

25. **Applicable Laws.**

- (A) Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations and ordinances, and all contractual provisions required to be included in this Contract are incorporated by reference.
- (B) The provisions of Indiana Code § 5-16-13 et seq., Requirement of Contractors on Public Works Projects, are specifically incorporated into this Contract by reference.
- (C) 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 Project. Failure to do so maybe deemed a material breach of Contract.

26. **Miscellaneous.**

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

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

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

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

Contractor: Rejuvtec, Inc.
Attention: Victoria Knowels, Office Mgr.
1316 Deloss St.
Indianapolis, IN 46203
Email: officeadmin@rejuvtec.com

29. **Binding Effect.** All provisions, covenants, terms and conditions of this Contract apply to and bind the parties and their legal heirs, representatives, successors and assigns.

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

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

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

Rejuvtec, Inc.

Gina M. Leichty, Mayor

Curtis Hedges, VP Operations

Mary Nichols, Member

Date: _____

Orv Myers, Member

Michael A. Landis, Member

Barb Swartley, Member

Date: _____

CONTRACTOR'S PROPOSAL
FOR
CITY OF GOSHEN, INDIANA
PROJECT TITLE: PAVEMENT REJUVENATION PROJECT
PROJECT NUMBER: 2024-0002

A Contractor responding to and submitting a bid to the City of Goshen for the above referenced public works project shall complete this proposal form in its entirety. A proposal must be filed with the Goshen Clerk-Treasurer's Office at 202 South Fifth Street, Goshen, IN 46528 by the date and time as indicated in the Notice to Bidders. All proposals received will be publicly opened and read aloud by the Goshen Board of Public Works and Safety.

PART 1 – CONTRACTOR INFORMATION

Contractor Name: Rejuvtec, Inc.

Street Address: 1316 Deloss Str.

City: Indianapolis State: IN Zip Code: 46203

Mailing Address (if different): _____

City: _____ State: _____ Zip Code: _____

Contact Person: Victoria Knowles Title: Office Mgr.

Telephone Number: 317-241-9023

Fax Number: 317-247-6980

Email Address: officeadmin@rejuvtec.com

PART 2 – PROPOSED CONTRACT PRICE

Contractor proposes to furnish all supervision, labor, materials, equipment, services, permits and other components necessary for the successful completion of the Project in accordance with the Specifications and Contract Documents, including any incidentals, based on established unit prices for the work items listed below. The quantities for each work item stated on the proposal form are estimates only.

Item No.	Description	Estimated Quantity	Unit	Unit Price	Extended Price
1	Pavement Rejuvenator – maltene based <i>Reclamite</i>	78,597	SQ YD	\$ 1.30	\$ 102,176.10
Total Bid:					\$ 102,176.10

Contractor acknowledges that the evaluation of proposals shall be based on such sum(s) and further acknowledges that the quantities stated are estimates only and solely for the purpose of comparing proposals and determining the lowest bidder. (City shall verify Contractor's calculations.) Contractor further understands that compensation for all work required to complete the Project will be based on the unit prices for the work items and the actual number of units used in the Project.

PART 3 – ADDENDA

The Contractor will ascertain prior to submitting a proposal that Contractor has received all Addenda issued, and acknowledge the receipt of all Addenda.

The Contractor acknowledges receipt of the following Addenda for the Project:

Addenda Number _____ Dated _____

Addenda Number _____ Dated _____

Addenda Number _____ Dated _____

Addenda Number _____ Dated _____

NONE. There were no Addenda issued for this Project.

PART 4 – EXCEPTIONS

Contractor shall indicate below whether the Contractor's proposal contains any deviation from or exception taken to the stated Specifications and Contract Documents, including the reason for the exception(s).

Any equipment, goods, materials and/or methods 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 equipment, goods, materials and/or methods offered will meet or exceed the minimum requirements of criteria and quality to that named in the Specifications and Contract Documents.

Contractor is cautioned that any exception taken and deemed by City to be a material variance and/or not meet or exceed the minimum requirements of criteria and quality to that named in the Specifications and Contract may result in the Contractor's proposal being rejected as non-responsive. In the absence of any stated exception, the proposal will be accepted as in strict compliance with the requirements, terms and conditions of the Specifications and Contract Documents.

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

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

Completion date change to _____

JUNE 30, 2024 _____

*work is dependent on weather _____

PART 5 – BUSINESS CERTIFICATION

Contractor must complete this page to identify the form of business organization the Contractor is operating under.

A limited partnership, limited liability partnership, limited liability company, and corporation is required to be registered with the Indiana Secretary of State to do business in the state of Indiana and with the City of Goshen in order to be considered responsible. If the business entity is not currently registered with the Indiana Secretary of State, the business entity must agree to become registered as a contingency of being awarded a contract. Failure to register with the Indiana Secretary of State within a reasonable period of time may result in a determination that the business entity is non-responsible and a contract awarded may be cancelled. This requirement DOES NOT apply to a sole proprietorship or general partnership.

The Contractor is operating as a (check one):

SOLE PROPRIETORSHIP

GENERAL PARTNERSHIP

LIMITED PARTNERSHIP

LIMITED LIABILITY PARTNERSHIP

LIMITED LIABILITY COMPANY

CORPORATION

The Contractor, excluding a sole proprietorship or general partnership, is organized under the laws of the (complete one):

State of IN and is currently registered with the Indiana Secretary of State.

The Business ID number for the Contractor is 35-1372528.

State of _____ but IS NOT currently registered with the Indiana Secretary of State. By submitting this proposal, the Contractor agrees to register with the Indiana Secretary of State as a contingency of being awarded a contract.

Information concerning registration with the Indiana Secretary of State may be obtained by contacting the Indiana Secretary of State, Business Services Division, 302 W. Washington Street, Room E018, Indianapolis, IN 46204; (317) 234-9768; or <https://inbiz.in.gov/BOS/Home/Index>.

PART 6 – NEPOTISM DISCLOSURE

For the purpose of complying with Indiana Code § 36-1-21, identify below whether:

Contractor **IS NOT** a relative of a City of Goshen elected official.

Contractor **IS** a relative of a City of Goshen elected official. This includes an individual who 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. Please specify the relative(s) below:

Name of elected official: _____

Relationship to Contractor: _____

PART 7 – INVESTMENT ACTIVITIES IN IRAN

In accordance with Indiana Code § 5-22-16.5, et seq, by submitting this proposal and signing Part 9, Contractor certifies the following:

Contractor **IS NOT** engaged in investment activities in Iran as further defined in Indiana Code § 5-22-16.5-8.

Contractor **IS** engaged in investment activities in Iran as further defined in Indiana Code § 5-22-16.5-8.

[Continued next page.]

PART 8 – OTHER REQUIRED SUBMITTALS

Contractor confirms that the following are attached to this Proposal:

Indiana State Board of Accounts Form No. 96, including financial statement, a statement of experience, a proposed plan for performing the work, and the equipment the Contractor has available for the performance of the public work.

N/A Name(s) of tier 2 contractor, tier 3 contractor or lower tier contractor to be used in the Project, and a description of part of the work to be performed, materials to be supplied, or service to be supplied.

N/A Proof a contractor in any contractor tier possesses any appropriate professional or trade licenses required by law for any trade or specialty area in which the Contractor is seeking a contract award, including plumbing license.

N/A If the estimated cost of the Project is \$300,000 or more, and the Project is for the construction, improvement, alteration, repair, or maintenance of a highway, street, road or alley, proof that a contractor in any contractor tier is qualified with the Indiana Department of Transportation.

Written plan for an employee drug testing program to test a contractor's employees for drugs and that complies with the requirements of Indiana Code § 4-13-18 et seq, or the relevant parts of a collective bargaining agreement establishing such program. This requirement also applies to a contractor in any contractor tier.

Proposed construction schedule.

Bid security.

Bidder Submissions (section (3) of Project Specifications).

PART 9 – SIGNATURE

The undersigned certifies that Contractor has read and understands the instructions, terms, conditions and specifications of this solicitation. Contractor agrees to fulfill the requirements of any awarded contract at the prices proposed based on the terms and conditions of all Specifications and Contract Documents, including all Addenda.

By submitting this proposal, the Contractor agrees that the City may hold the Contractor's Proposal for a period not-to-exceed sixty (60) days from the date of the proposal opening for the purpose of reviewing the proposals received prior to awarding the bid and contract.

The undersigned authorized representative further certifies that he/she is duly authorized to submit this proposal and execute a contract on behalf of Contractor. Signature by the Contractor's authorized representative constitutes execution of each any every Part of this Proposal.

SIGNATURE MUST BE NOTARIZED

Contractor's Authorized Representative:

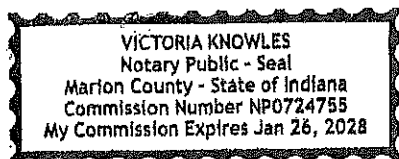
Signature: *Curtis Hedges* Title: V.P. Operations

Printed: Curtis Hedges Date: 11-27-23

STATE OF IN)
) SS:
COUNTY OF Marion)

Before me, the undersigned Notary Public in and for said County and State, personally appeared the above named Curtis Hedges, being known to me or whose identity has been authenticated by me, who affirmed that the statements in the foregoing Contractor's Proposal are true and correct.

Witness my hand and Notarial Seal this 27th day of NOV., 2023.



Victoria Knowles
Printed Name: Victoria Knowles
County of Residence: Marion
My Commission Expires: 1-26-28
Commission Number: NP0724755



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: Board of Works and Public Safety

FROM: Stormwater Department

RE: **AGREEMENT FOR THE COMPLETION OF THE BRINKLEY
LAMINATION PLANT AT 1280 BRINKLEY WAY EAST (JN: 2021-2050)**

DATE: December 18, 2023

The Stormwater Department requests the approval of an Agreement for the Completion of Construction for the Brinkley Lamination Plant located at 1280 Brinkley Way East. The building has passed its final building inspection and the project is substantially completed except for 120,800 square feet of disturbed area that is to be stabilized with seed and covered with erosion control blankets, installation of 401,241 square feet of asphalt topcoat on the parking lot, and installation of all required parking lot striping for parking spaces. These final requirements cannot be completed at this time due to weather conditions.

The property owner Last Dance, LLC, agrees to complete the remaining items of work no later than June 15, 2024. No surety is required due to the city holding a 5% contingency for the overall public infrastructure project from the bond proceeds purchased by the Developer, totaling \$8,000,000.00 which would be available to fund the work if not completed by Brinkley.

Requested Motion: Approve and authorize the Board to execute the Agreement with Last Dance, LLC for the completion of the construction project at 1280 Brinkley Way East.

AGREEMENT FOR THE COMPLETION OF THE CONSTRUCTION PROJECT

THIS AGREEMENT is entered into on _____, 2023, between the City of Goshen, Indiana, by and through the Goshen Board of Public Works and Safety, hereinafter referred to as "Goshen," and

Property Owner: Last Dance, LLC
1655 Brinkley Way East
Goshen, IN 46528

Company: Brinkley RV
1655 Brinkley Way East
Goshen, IN 46528

hereinafter referred to individually or collectively, if applicable, as "Permittee."

Permittee obtained a building permit for the construction of a building on the real estate at

Site: 1280 Brinkley Way East, Goshen, Indiana, hereinafter referred to as "Site."

The construction project is substantially complete except for:

- certain exterior work that cannot be completed due to weather conditions.
- the installation of certain parts or equipment which are not currently available.

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

1. **WORK.** Permittee agrees to complete the following remaining item(s) of work, hereinafter referred to as "Work," as soon as conditions permit, but no later than June 15, 2024, unless an earlier date is specified below:

- Permanently stabilize the Site which shall include grading, adding topsoil where needed, seeding and mulching of the grounds. This shall specifically include stabilization of approximately 120,800 square feet of disturbed area with a 3-way turf type fescue and 10% bluegrass seed and a temporary stabilization measure such as anchored mulch, hydromulch, or erosion control blankets. In addition, all adjacent and/or affected inlets shall be kept covered until the Site has been completely and permanently stabilized. Stabilization shall occur no later than June 15, 2024, for the area around the Lamination plant.
- Stormwater treatment unit to be inspected and cleaned out if material is present in the structure.
- Install 401,241 square feet of asphalt topcoat on the parking lot.
- Install all required parking lot striping for parking spaces at the site.

2. **SURETY.** Permittee is required to provide Goshen a surety to guarantee the timely and proper completion of the Work if the cost of the Work is estimated by Goshen to be at least Two Thousand Dollars (\$2,000), or if the Work includes the installation of a driveway, parking lot, sidewalk, curbing or other hard surface improvement, regardless of cost.

Permittee agrees to provide Goshen a surety in the amount of _____ Dollars (\$_____)

to guarantee the timely and proper completion of the Work under the terms of this agreement. The surety may be in the form of a surety bond, letter of credit, or cash bond, including a cashier's check or corporate check (which City Clerk-Treasurer will cash). The surety is to guarantee the timely and proper completion of the obligations under this agreement and is not intended for the benefit of any third party, including Permittee's contractors or subcontractors. Upon satisfactory completion of the Work, Goshen will release the surety. If the surety is in the form of cash or a check, the Permittee must have a current W-9 on file with the City Clerk-Treasurer so a check may be issued to refund the surety.

Permittee is not required to provide Goshen a surety to guarantee the timely and proper completion of the Work. **City is already holding a 5% contingency for the overall public infrastructure project from the bond proceeds purchased by the Developer, totaling \$8,000,000.00, which would be available to fund the work if not completed by Brinkley.*

3. **CERTIFICATE OF OCCUPANCY.** Except for the Work yet to be completed as set forth in Section 1 above, once the construction project complies with all applicable City ordinances and requirements, Goshen will issue a Certificate of Occupancy for the Site on the condition that Permittee complies with the terms of this agreement. **It is Permittee's obligation to contact the Goshen Building Department to obtain the Certificate of Occupancy prior to occupying the building.**

4. **INDEMINIFICATION.** Brinkley RV and Last Dance, LLC 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 Brinkley RV and/or Last Dance, LLC's occupation of the subject real property and improvements. Such indemnity shall include reasonable attorney's fees and all reasonable litigation costs and other expenses incurred by City.

5. **FORCE MAJEURE.** If Permittee's performance under this agreement is prevented because of an occurrence that is beyond the control of the Permittee which could not have been avoided by exercising reasonable diligence, Permittee's time for performance will be extended. Such extension shall be for no longer than necessary given the nature of the occurrence which causes the delay. Examples of such occurrences are tornadoes, floods, or more than a typical number of days where rainfall prohibits the performance required of the Permittee.

If Permittee is delayed, Permittee shall immediately notify Goshen in writing describing the nature of the event delaying performance. Permittee shall make every effort to resume performance as soon as possible.

6. **DEFAULT.** It is mutually agreed that if Permittee fails to perform or comply with the terms of this agreement, Goshen may declare the agreement to be in default without notice to Permittee.

Upon declaration of default, Goshen may take such action as is necessary to complete Permittee's obligations although Goshen is not obligated to do so. If Surety is provided under this agreement, Goshen may use the Surety to pay for the completion of any of Permittee's obligations. Goshen may seek any other remedy available at law or equity in addition to or instead of any remedy provided for in this agreement.

Goshen shall have the right to correct any defect in the Work, and Goshen shall have the right to stabilize the Site in accordance with the Goshen City Construction Site Stormwater Runoff Control Ordinance. The Surety, if required, and/or Permittee shall pay all of Goshen's costs and expenses incurred in taking such actions including, but not limited to engineering, legal and other costs, together with any damages either direct or consequential which Goshen may sustain on account of Permittee's failure to fulfill Permittee's obligations under this agreement.

7. **SUBCONTRACTING OR ASSIGNMENT OF CONTRACT.** Permittee shall not subcontract or assign any right or interest under the agreement without having prior written approval from the Goshen Board of Public Works and Safety, provided, however, that Permittee shall be permitted to independently engage any contractors, subcontractors, or laborers to perform the Work, and such engagement shall not be considered to be an impermissible subcontracting or assignment by Permittee of any right or interest under this agreement. Except as provided herein, any attempt by Permittee to subcontract or assign any portion of the agreement shall not be construed to relieve Permittee from any responsibility to fulfill Permittee's obligations.
8. **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 and such modification is approved by the Goshen Board of Public Works and Safety. Any verbal representations or modifications concerning the agreement shall be of no force and effect.
9. **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.
10. **NOTICES.** All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in this agreement. Notice will be considered given five (5) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

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

Property Owner: Last Dance, LLC
 1655 Brinkley Way East
 Goshen, IN 46528

Company: Brinkley RV, LLC
 Attn: Ryan Thwaites, Managing Partner
 1655 Brinkley Way East
 Goshen, IN 46528

11. **APPLICABLE LAWS.** Permittee agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances.

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

This agreement shall be construed in accordance with and governed by the laws of the State of Indiana, and suit, if any, must be brought in a court of competent jurisdiction in Elkhart County, Indiana.

12. **ATTORNEY FEES.** In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the non-prevailing party will pay all costs and expenses expended or incurred by the prevailing party, including reasonable attorneys' fees.
13. **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.
14. **BINDING EFFECT.** All provisions, covenants, terms and conditions of the agreement apply to bind the parties and their legal heirs, representatives, successors and assigns.
15. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement between the parties and supersedes all other agreements or understandings between Goshen and Permittee.
16. **AUTHORITY TO EXECUTE.** Each person executing this agreement represents that he or she is duly authorized and has legal authority to execute and deliver this agreement on behalf of the respective party, and upon execution and delivery of this agreement, bind the respective party to the terms and conditions of the agreement.

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

Permittee:

Property Owner:

Signature: _____

Printed: _____

Title (if any): _____

Date: _____

Company:

Signature: _____

Printed: _____

Title (if any): _____

Date: _____

Goshen:

Gina Leichty, Mayor

Date: _____

Michael Landis, Board of Works and Safety

Date: _____

Mary Nichols, Board of Works and Safety

Date: _____

Orv Myers, Board of Works and Safety

Date: _____

Barb Swartley, Board of Works and Safety

Date: _____



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

December 14, 2023

To: Board of Public Works and Safety

From: Don Shuler, Assistant City Attorney

Subject: **Building Commissioner Order – 407 Center Street, Goshen, Indiana**

An unsafe building review hearing is scheduled for the property located at 407 Center Street, Goshen, Indiana. Attached is the Order of the City of Goshen Building Commissioner dated November 8, 2023 concerning the property. The Board of Public Works and Safety needs to conduct the hearing; affirm, rescind, or modify the Building Commissioner Order; and determine what action it will order concerning the property. The form of the Continuous Enforcement Order that may be issued by the BOW following the hearing for this Property is attached.

Section 1 of the Continuous Enforcement Order summarizes the Building Commissioner Order.

Section 2 of the Continuous Enforcement Order addresses the Findings that the Board of Works will need to make following the hearing and any evidence presented. To make these findings, the Board must do so in a motion that is approved; the form of such a motion could utilize the following language:

"I move the Board finds:

- (1) that effective service was made on the property owner;*
- (2) that the code violations identified in the Building Commissioner Order, Numbered 1 through 11, continue to exist;*
- (3) that those violations make the structure an unsafe building because the building is in an impaired structural condition, a fire hazard, is dangerous to person or property due to code violations, and is vacant and not maintained in a manner that would permit human occupancy or use; and*
- (4) that the general condition of the building along with the failure of a demonstrated willingness to make repairs makes demolition appropriate."*

After making those findings, the Board then issues its Order in Section 3, where it will Affirm the Building Commissioner Order (if agrees with demolition), rescind (property violations have been fixed), or Modified (Believes that property can be fixed). A motion for the Board could utilize the following language:

"I move the Board, based on our findings, affirm the Building Commissioner Order and order the unsafe building at the real estate to be demolished by December 31, 2023."

ORDER OF THE CITY OF GOSHEN BUILDING COMMISSIONER

November 8, 2023

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

To: Ron Davidhizar
203 Middlebury Street
Goshen, Indiana 46528

Section 1.

You are hereby notified that you are in violation of the City of Goshen Neighborhood Preservation Ordinance, codified at Goshen City Code § 6.3.1. The violations exist at property owned by you, as evidenced by the tax records of the Elkhart County Auditor, property tax code number 20-11-09-237-007.000-015; commonly known as 407 Center Street, Goshen, Indiana 46528, and more particularly described as follows:

Lot Number Seventy (70) in Chamberlain's Second Addition to the City of Goshen, Indiana, as recorded in Deed Record 21, page 291, Elkhart County Records.

Subject to all easements and restrictions of record.

Section 2.

The Goshen Building Department inspected the subject real estate and the vacant residential structure located thereon on October 24, 2023. Violations of the Neighborhood Preservation Ordinance (Minimum Housing Ordinance) were cited and an opportunity was given to make repairs. There has been no significant improvement to the vacant residential structure at the real estate.

The following violations of Goshen City Code Section 6, Title 3, Chapter 1 were cited by the Goshen Building Department:

1. The foundation of the residential structure has not been kept in good repair, is not capable of supporting all nominal loads, and is likely to fail, violations of Sections 6.3.1.1(b) and (p). Areas of the foundation have cracks, where large gaps and holes have formed; the foundation is beginning to sink; certain areas of the foundation are beginning to fail and are in disrepair.
2. The ceilings inside the residential structure have not been kept in good repair and are likely to fail, a violation of Sections 6.3.1.1(b) and (p). Multiple ceilings have collapsed due to significant water damage. Many ceilings have cracks and holes.
3. The floors inside the residential structure have not been kept in good repair and are likely to fail, a violation of Sections 6.3.1.1(b) and (p). The kitchen floor has become so damaged due to water that it is in danger of collapse. The floor in the main living areas has detached from the wall and begun to sink.

4. The walls inside the residential structure have not been kept in good repair, a violation of Section 6.3.1.1(b). Multiple walls have cracks and holes in them. A wall in the main living room is poorly constructed with brick and in danger of collapse.
5. The roof of the residential structure has not been kept in good repair and has defects permitting rain, violations of Sections 6.3.1.1(b) and (c). There is evidence of the roof leaking due to persistent water damage to floors, walls, and ceilings. The roof in the rear of the structure was poorly installed and has multiple areas where it permits weather to enter, impacting the structural integrity of the structure. There are areas where the soffit and fascia are missing, and places where the shingles are damaged or loose.
6. The heating and mechanical system at the residential structure is not operable, a violation of Section 6.3.1.1(a). The ductwork is not properly connected.
7. The plumbing system at the residential structure is not operable, a violation of Section 6.3.1.1(a).
8. The electrical system at the residential structure is not operable, a violation of Section 6.3.1.1(a). The electrical panel has been tampered with; there are multiple areas with exposed electrical wiring; areas of the residential structure's electrical wiring has been damaged by water and continues to be exposed to weather conditions.
9. The windows and doors have not been kept in good repair, a violation of Section 6.3.1.1(d). There are many broken windows and broken doors throughout the residential structure.
10. The painted surfaces inside the residential structure are not properly coated and weather tight, a violation of Section 6.3.1.1(g). There is chipping and peeling paint throughout the residential structure.
11. The residential structure is not secure from intrusion by unauthorized persons, a violation of Section 6.3.1.1(ff). There are accumulated materials inside the residential structure and other evidence of animals and vagrants. The carpet is saturated with urine and feces.

The residential structure located on the real estate is unsafe within the meaning of Indiana Code § 36-7-9-4(a)(1), (2), (5), and (6). The failing foundation, collapsing ceilings, and floors in danger of collapse and detaching from walls, and the leaking roof renders the residential structure in an impaired structural condition that makes it unsafe to person or property. The evidence of the electrical panel having been tampered with, with multiple areas of exposed wiring, and water damaged electrical wiring, coupled with the unsecured nature of the residential structure, makes it a fire hazard. The residential structure is dangerous to person or property because of violations of the Neighborhood Preservation Ordinance, particularly violations concerning the failing foundation, failing and collapsing ceilings, collapsing and detaching floors, the leaking roof, broken windows and doors, and its unsecured nature. The residential structure is vacant and not maintained in a manner that permits human habitation, occupancy, or use under the Neighborhood Preservation Ordinance.

Due to the failing foundation, collapsing ceilings, leaking roof, persistent water damage, floors detaching from the walls, including one floor sinking and showing a danger of collapsing, and the residential structure's continued deterioration as a result of neglect, the condition of the residential structure warrants removal. In its present condition, the residential structure is unfit

for human habitation, occupancy, or use, and the conditions exist to the extent that life, health, property, and safety of the public is threatened. The residential structure is an unsafe building and the tract of real property on which the unsafe building is located shall be considered the unsafe premises.

Section 3.

You are hereby **ORDERED** to demolish the unsafe buildings identified in Section 2 of this Order at the property identified in Section 1 of this Order and remove all demolition remains, trash, and debris on the unsafe premises and return the site to natural grade, all of said work to be completed on or before December 31, 2023.

Section 4.

You are hereby notified that failure to comply with this Order may result in the City of Goshen taking action make the required demolition and bill you for the costs of such work, including, the actual costs of the work performed and an amount equal to the average processing expense the City will incur in pursuing this matter. Such amounts can become a lien upon the real estate and can ultimately be enforced in the same manner as any other judgment.

Section 5.

You are further notified that a hearing will be held before the Goshen Board of Public Works and Safety on **Monday, December 18, 2023 at 2:00 p.m. (local time)**, or soon thereafter, for the purpose of reviewing the Order of the City of Goshen Building Commissioner. This hearing will be held in the Court Room / Council Chambers at 111 East Jefferson Street, Goshen, Indiana.

You have the right to appear at this hearing with or without counsel, to present evidence, cross-examine opposing witnesses, and present arguments. Should you fail to appear at the time set for the hearing, the hearing will be conducted in your absence. The Goshen Board of Public Works and Safety will have the right to affirm, rescind, or modify this Order.

Section 6.

You are hereby notified that as a result of this Order being issued you may not transfer or agree to transfer any property interest in the parcel described in Section 1 of this Order, unless you have complied with all requirements of Indiana Code § 36-7-9-27, which are as follows:

1. You must supply full information regarding this Order to the person or persons taking or agreeing to take any interest in the parcel described in Section 1 of this Order.
2. You must supply in writing to the City of Goshen Building Department, within five (5) days of any actions to transfer the interest, the following:

- a. The full name, address, and telephone number of the person or persons taking interest in the property described in Section 1 of this Order; and
- b. A copy of the legal instrument under which the transfer of the interest is accomplished.

Section 7.

You are hereby notified that failure to comply with Section 6 of this Order may result in a judgment of liability against you in accordance with Indiana Code § 36-7-9-27.

Section 8.

This Order is issued by the City of Goshen Building Commissioner, Myron Grise, in accordance with the Indiana Unsafe Building Law and the City of Goshen Neighborhood Preservation Ordinance. The address of the Building Commissioner is 204 E. Jefferson Street, Suite 5, Goshen, Indiana 46528, and the telephone number is 574-534-1811.


This Order of the City of Goshen Building Commissioner is issued on November 8, 2023.

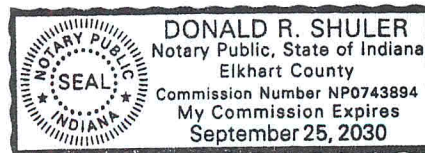
City of Goshen Building Department


 Myron Grise, Building Commissioner

STATE OF INDIANA)
) SS:
 COUNTY OF ELKHART)

Before me, the undersigned, a Notary Public in and for said county and State, this November 8, 2023, personally appeared Myron Grise, Building Commissioner for the City of Goshen, Indiana, who acknowledged execution of the foregoing Order for and on behalf of the City of Goshen, Indiana Building Department, as his voluntary act for the purposes stated therein, and who, having been duly sworn, stated that the representations contained therein are true.


 Notary Public



Certificate of Service

The undersigned hereby certifies that the foregoing Order of the City of Goshen Building Commissioner for the premises at 407 Center Street, Goshen, Indiana was served by sending a copy by certified mail, return receipt requested and by regular first-class mail to the last known address of the following persons to be notified on November 9, 2023:

Ron Davidhizar
203 Middlebury Street
Goshen, Indiana 46528



Donald R. Shuler, #26587-71
Assistant City Attorney
City of Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528

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

This document prepared by Donald R. Shuler, Assistant City Attorney, City of Goshen Legal Department, 204 E. Jefferson Street, Suite 2, Goshen, IN 46526; Ph: 574.537.3855.

**CITY OF GOSHEN BOARD OF PUBLIC WORKS AND SAFETY
UNSAFE BUILDING HEARING AUTHORITY
RECORD OF ACTION AND CONTINUOUS ENFORCEMENT ORDER**

December 18, 2023

To: Ronald E. Davidhizar

IN RE: Violation of Goshen City Code

Property located at: 407 Center Street, Goshen, Indiana

Property Tax Code: 20-11-09-237-007.000-015

Property Legal Description: see Attached Exhibit A

Property owner(s) of record: Ronald E. Davidhizar

Substantial property of interest of record: None

Section 1. Background

The Order of the City of Goshen Building Commissioner dated November 8, 2023 (hereinafter "Order") concerning the real estate located at 407 Center Street, Goshen, Indiana and more particularly described in Exhibit A (hereinafter the "Real Estate") came before the Hearing Authority on December 18, 2023, for a hearing and decision as to whether the Order should be affirmed, rescinded, or modified, said Order requiring:

Demolition of the unsafe buildings at the Real Estate and removal of all demolition remains, trash, and debris on the Real Estate and return the site to natural grade, all of said work to be completed on or before December 31, 2023.

The following specific violations of Goshen City Code were identified in the Order:

1. The foundation of the residential structure has not been kept in good repair, is not capable of supporting all nominal loads, and is likely to fail, violations of Sections 6.3.1.1(b) and (p). Areas of the foundation have cracks, where large gaps and holes have formed; the foundation is beginning to sink; certain areas of the foundation are beginning to fail and are in disrepair.

2. The ceilings inside the residential structure have not been kept in good repair and are likely to fail, a violation of Sections 6.3.1.1(b) and (p). Multiple ceilings have collapsed due to significant water damage. Many ceilings have cracks and holes.
3. The floors inside the residential structure have not been kept in good repair and are likely to fail, a violation of Sections 6.3.1.1(b) and (p). The kitchen floor has become so damaged due to water that it is in danger of collapse. The floor in the main living areas has detached from the wall and begun to sink.
4. The walls inside the residential structure have not been kept in good repair, a violation of Section 6.3.1.1(b). Multiple walls have cracks and holes in them. A wall in the main living room is poorly constructed with brick and in danger of collapse.
5. The roof of the residential structure has not been kept in good repair and has defects permitting rain, violations of Sections 6.3.1.1(b) and (c). There is evidence of the roof leaking due to persistent water damage to floors, walls, and ceilings. The roof in the rear of the structure was poorly installed and has multiple areas where it permits weather to enter, impacting the structural integrity of the structure. There are areas where the soffit and fascia are missing, and places where the shingles are damaged or loose.
6. The heating and mechanical system at the residential structure is not operable, a violation of Section 6.3.1.1(a). The ductwork is not properly connected.
7. The plumbing system at the residential structure is not operable, a violation of Section 6.3.1.1(a).
8. The electrical system at the residential structure is not operable, a violation of Section 6.3.1.1(a). The electrical panel has been tampered with; there are multiple areas with exposed electrical wiring; areas of the residential structure's electrical wiring has been damaged by water and continues to be exposed to weather conditions.
9. The windows and doors have not been kept in good repair, a violation of Section 6.3.1.1(d). There are many broken windows and broken doors throughout the residential structure.
10. The painted surfaces inside the residential structure are not properly coated and weather tight, a violation of Section 6.3.1.1(g). There is chipping and peeling paint throughout the residential structure.
11. The residential structure is not secure from intrusion by unauthorized persons, a violation of Section 6.3.1.1(ff). There are accumulated materials inside the residential structure and other evidence of animals and vagrants. The carpet is saturated with urine and feces.

Section 2. Findings

A hearing was held where evidence was presented and arguments heard. The Board of Public Works and Safety, as the City of Goshen's Unsafe Building Hearing Authority, being duly advised in the premises, now makes the following findings and determinations:

A. Service of Process

- Proper notice of the Order, and this hearing, was given to all persons with a substantial property interest in the Real Estate. Notice was sent Certified Mail, return receipt requested, and regular mail, and proof of service is established by the Certificate of Issuance of Building Commissioner Order, said service effective on Ronald Davidhizar on November 13, 2023

B. Code Violations

Based on the evidence presented, the following conditions and violations of Goshen City Code cited by the Building Commissioner still exist at the residential structure located on the Real Estate:

Building Condition/Violation	Yes	No
1. The foundation of the residential structure has not been kept in good repair, is not capable of supporting all nominal loads, and is likely to fail. Areas of the foundation have cracks, where large gaps and holes have formed; the foundation is beginning to sink; certain areas of the foundation are beginning to fail and are in disrepair.	<input type="checkbox"/>	<input type="checkbox"/>
2. The ceilings inside the residential structure have not been kept in good repair and are likely to fail. Multiple ceilings have collapsed due to significant water damage. Many ceilings have cracks and holes.	<input type="checkbox"/>	<input type="checkbox"/>
3. The floors inside the residential structure have not been kept in good repair and are likely to fail. The kitchen floor has become so damaged due to water that it is in danger of collapse. The floor in the main living areas has detached from the wall and begun to sink.	<input type="checkbox"/>	<input type="checkbox"/>
4. The walls inside the residential structure have not been kept in good repair. Multiple walls have cracks and holes in them. A wall in the main living room is poorly constructed with brick and in danger of collapse.	<input type="checkbox"/>	<input type="checkbox"/>
5. The roof of the residential structure has not been kept in good repair and has defects permitting rain. There is evidence of the roof leaking due to persistent water damage to floors, walls, and ceilings. The roof in the rear of the structure was poorly installed and has multiple areas where it permits weather to enter, impacting the structural integrity of the structure. There are areas where the soffit and fascia are missing, and places where the shingles are damaged or loose.	<input type="checkbox"/>	<input type="checkbox"/>
6. The heating and mechanical system at the residential structure is not operable. The ductwork is not properly connected.	<input type="checkbox"/>	<input type="checkbox"/>
7. The plumbing system at the residential structure is not operable.	<input type="checkbox"/>	<input type="checkbox"/>
8. The electrical system at the residential structure is not operable. The electrical panel has been tampered with; there are multiple areas with exposed electrical wiring; areas of the residential structure's electrical	<input type="checkbox"/>	<input type="checkbox"/>

wiring has been damaged by water and continues to be exposed to weather conditions.		
9. The windows and doors have not been kept in good repair. There are many broken windows and broken doors throughout the residential structure.	<input type="checkbox"/>	<input type="checkbox"/>
10. The painted surfaces inside the residential structure are not properly coated and weather tight. There is chipping and peeling paint throughout the residential structure.	<input type="checkbox"/>	<input type="checkbox"/>
11. The residential structure is not secure from intrusion from unauthorized persons. There are accumulated materials inside the residential structure and other evidence of animals and vagrants. The carpet is saturated with urine and feces.	<input type="checkbox"/>	<input type="checkbox"/>

C. Unsafe Building

These conditions render the residential structure and the garage at the Real Estate unsafe buildings as the structures are:

1. In an impaired structural condition that makes it unsafe to person or property;
2. A fire hazard;
3. A hazard to public health;
4. A public nuisance;
5. Dangerous to person or property because of a violation of a statute or ordinance concerning building condition or maintenance;
6. Vacant or blighted and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance.

D. Remedial Action.

In addition, the general condition of the unsafe buildings at the Real Estate, based on the above findings from the evidence presented to the Hearing Authority:

1. Warrant demolition of the unsafe buildings. In its present condition, the unsafe buildings at the Real Estate is unfit for human habitation, occupancy, or use, and conditions exist to the extent that life, property, and safety of the public is threatened.
2. Cannot be repaired cost effectively and/or the property owner(s) of record and/or substantial property interest(s) of record have failed to demonstrate a willingness or intention to repair the unsafe buildings, therefore the option of repair will not effectively correct the conditions considered to be a danger to the public.
3. Can be repaired cost effectively and the property owner(s) or record and/or the substantial property interest(s) of record have demonstrated a willingness or intention to repair the unsafe buildings, therefore the option of repair may effectively correct the conditions considered to be a danger to the public.

Section 3. Hearing Authority Order.

A. Action on Building Commissioner Order

Based on these findings, the Hearing Authority now ORDERS that the Order is

- Affirmed. The Unsafe Buildings at the Real Estate is ordered to be demolished by December 31, 2023.
- Rescinded
- Modified as follows:
 - The Hearing Authority, finding that the Unsafe Buildings at the Real Estate may be repaired finds it appropriate to permit the opportunity for repairs to the Unsafe Buildings at the Real Estate and therefore gives the property owner, Ronald Davidhizar, _____ days to complete repairs necessary to address all violations listed in the Order, with this matter set for further review by this Board following that period.
 - The Hearing Authority, finding that the Unsafe Buildings at the Real Estate may be repaired, directs the City of Goshen Legal Department to pursue civil action against the property owner pursuant to I.C. § 36-7-9-17 to seek appropriate remedies, specifically including civil penalties (I.C. § 36-7-9-19), the appointment of a receiver (I.C. § 36-7-9-20), and/or court order for performance of repair work (I.C. § 36-7-9-21).

B. Civil Penalty

The City of Goshen Board of Public Works and Safety further ORDERS:

- The Hearing Authority also finds that there has been a willful failure to comply with the Order, based on the following facts:

and therefore now orders a civil penalty against the property owner, Ronald Davidhizar, in the amount of: _____.

- The payment of said civil penalty is due in full on or before _____;
- The effective date of said civil penalty is postponed until _____, to allow all work necessary to comply with the Order to be completed;
- No findings or order for civil penalty.

You are entitled to appeal these findings of facts and this Order to the Elkhart Circuit or Superior Court by filing a verified complaint within ten (10) days of the date of this action. Should you fail to file a verified complaint within the specified time, then your right to appeal will be forfeited.

I.C. § 36-7-9-27 requires that if you transfer your interest or any portion of your interest in the Building and/or the Real Estate affected by this Continuous Enforcement Order to another person, you must supply the other person with full information regarding this Order prior to transferring that interest or agreeing to transfer that interest. Within five (5) business days after transferring that interest or agreeing to transfer a substantial property interest in the Building and/or the Real Estate, you must supply City of Goshen Building Commissioner Myron Grise with the full name, address, and telephone number of the other person taking a substantial property interest in the Building and/or the Real Estate, along with written copies of the agreement to transfer the interest or copies of the document actually transferring the interest. Mr. Grise's office is located at 204 East Jefferson Street, Suite 5, Goshen, Indiana 46528, or you may contact him at 574-534-1811. Should you fail to comply with these provisions, then you may be liable to the City of Goshen for any damage that the City of Goshen may suffer in the event that judgment is entered against the City by the other person to whom the transfer was made.

This CONTINUOUS ENFORCEMENT ORDER of the City of Goshen Board of Public Works and Safety is issued on December 18, 2023.

City of Goshen Board of Public Work and Safety

By: _____
Gina M. Leichty, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the City of Goshen Board of Public Works and Safety by Gina M. Leichty, Mayor, and acknowledged execution of the foregoing Order on December 18, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

This instrument was prepared by Bodie J. Stegelmann, Attorney No. 18180-20, City of Goshen Legal Department, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, Ph: 574.537.3820.

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

EXHIBIT A

Lot Number Seventy (70) in Chamberlain's Second Addition to the City of Goshen, Indiana, as recorded in Deed Record 21, page 291, Elkhart County Records.

Subject to all easements and restrictions of record.

Certificate of Service

The undersigned hereby certifies that the foregoing Record of Action and Continuous Enforcement Order of the City of Goshen Board of Public Works and Safety dated December 18, 2023, for the premises at 407 Center Street, Goshen, Indiana, was served by sending a copy by certified mail, return receipt requested, and by regular first-class mail to the last known address of the following persons to be notified on December _____, 2023:

Ronald Davidhizar
203 Middlebury Street
Goshen, Indiana 46528

Donald R. Shuler, #26587-71
Assistant City Attorney
City of Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528



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

December 14, 2023

To: Board of Public Works and Safety

From: Don Shuler, Assistant City Attorney

Subject: Building Commissioner Order – 218 North Ninth Street, Goshen, Indiana

An unsafe building review hearing is scheduled for the property located at 218 North Ninth Street, Goshen, Indiana. Attached is the Order of the City of Goshen Building Commissioner dated November 8, 2023 concerning the property. The Board of Public Works and Safety needs to conduct the hearing; affirm, rescind, or modify the Building Commissioner Order; and determine what action it will order concerning the property. The form of the Continuous Enforcement Order that may be issued by the BOW following the hearing for this Property is attached.

Section 1 of the Continuous Enforcement Order summarizes the Building Commissioner Order.

Section 2 of the Continuous Enforcement Order addresses the Findings that the Board of Works will need to make following the hearing and any evidence presented. To make these findings, the Board must do so in a motion that is approved; the form of such a motion could utilize the following language:

"I move the Board finds:

- (1) that effective service was made on the property owner;*
- (2) that the code violations identified in the Building Commissioner Order, Numbered 1 through 7, continue to exist;*
- (3) that those violations make the structure an unsafe building because the building is in an impaired structural condition, is dangerous to person or property due to code violations, and is vacant and not maintained in a manner that would permit human occupancy or use; and*
- (4) that the general condition of the building along with the failure of a demonstrated willingness to make repairs makes demolition appropriate."*

After making those findings, the Board then issues its Order in Section 3, where it will Affirm the Building Commissioner Order (if agrees with demolition), rescind (property violations have been fixed), or Modified (Believes that property can be fixed). A motion for the Board could utilize the following language:

"I move the Board, based on our findings, affirm the Building Commissioner Order and order the unsafe building at the real estate to be demolished by December 31, 2023."

ORDER OF THE CITY OF GOSHEN BUILDING COMMISSIONER

November 8, 2023

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

To: Ron Davidhizar
203 Middlebury Street
Goshen, Indiana 46528

Section 1.

You are hereby notified that you are in violation of the City of Goshen Neighborhood Preservation Ordinance, codified at Goshen City Code § 6.3.1. The violations exist at property owned by you, as evidenced by the tax records of the Elkhart County Auditor, property tax code number 20-11-10-158-004.000-015; commonly known as 218 North 9th Street, Goshen, Indiana 46528, and more particularly described as follows:

Part of the Northwest Quarter of Section Ten (10), Township Thirty-six (36) North, Range Six (6) East, more particularly described as follows:

Beginning at the Southwest corner of Lot Number Eighteen (18) in STEVEN'S ADDITION to the City of Goshen (a recorded plat) as a place of beginning; thence North Eighty-eight (88) degrees and Forty-six (46) minutes East, Three Hundred Ninety-nine (399) feet along the South line of said Steven's Addition to the South corner of Lot Number Twenty-four (24) of said addition; thence Zero (0) degree Fifty-eight (58) minutes East, One Hundred Ten (110) feet; thence South Eighty-eight (88) degrees Forty-six (46) minutes West, Three Hundred Ninety-nine (399) feet on a line parallel to the said South Line of Steven's Addition; thence North Zero (0) degree, Fifty-eight (58) minutes West One Hundred Ten (110) feet to the place of beginning.

Subject to public highways.

Section 2.

The Goshen Building Department inspected the subject real estate and the vacant residential structure located thereon on October 24, 2023. Violations of the Neighborhood Preservation Ordinance (Minimum Housing Ordinance) were cited and you were given an opportunity to make repairs. There has been no significant improvement to the vacant residential structure at the real estate.

The following violations of Goshen City Code Section 6, Title 3, Chapter 1 were cited by the Goshen Building Department:

1. Multiple areas of the residential structure are likely to fail, a violation of Section 6.3.1.1(p). The kitchen floor has become detached from the wall and is sinking. The kitchen floor is spongy from a possible water leak and in danger of collapse. Wood

structural members have been exposed to weather elements causing deterioration and compromising structural strength.

2. The residential structure's floors and walls have not been kept in good repair, a violation of Section 6.3.1.1(b). There are multiple areas where there are holes in walls. The flooring throughout the property is torn or removed; areas of the floor have detached from the walls; the kitchen floor is spongy from a possible water leak and in danger of collapse. Areas of the wall and siding have so deteriorated that the bathroom plumbing lines are accessible from the exterior of the structure and exposed to all weather elements.
3. The residential structure's garage's roof has not been kept in good repair and is not sound, a violation of Sections 6.3.1.1(b) and (c). The soffit and fascia are not properly weather protected and are rotted from being exposed to the weather elements.
4. The residential structure's siding has not been kept in good repair, a violation of 6.3.1.1(bb). There are multiple areas where the siding is damaged and/or missing. Areas of the siding have deteriorated so that the bathroom plumbing lines are accessible from the exterior of the structure and exposed to all weather elements.
5. Windows have not been kept in good repair, a violation of Section 6.3.1.1(d). There are broken windows throughout the residential structure.
6. The heating and mechanical system at the residential structure is inoperable, a violation of Section 6.3.1.1(a).
7. There is no operable plumbing system at the residential structure, a violation of Section 6.3.1.1(a).

The residential structure located on the real estate is unsafe within the meaning of Indiana Code § 36-7-9-4(a)(1), (5), and (6). The floors detaching from the walls, the evidence of a possible water leak, and the compromised structural strength of the wood structural members of the structure due to exposure to weather and deterioration, renders the residential structure in an impaired structural condition that makes it unsafe to person or property. The residential structure is dangerous to person or property because of violations of the Neighborhood Preservation Ordinance, particularly violations concerning the detaching floors, exposed plumbing due to holes in the wall and deterioration of siding, and broken windows. The residential structure is vacant and not maintained in a manner that permits human habitation, occupancy, or use under the Neighborhood Preservation Ordinance.

Due to the floors detaching from the walls, including one floor sinking and showing a danger of collapsing, the rotted and deteriorated siding that exposes plumbing lines to the exterior, and the residential structure's continued deterioration as a result of neglect, the residential structure warrants removal. In its present condition, the residential structure is unfit for human habitation, occupancy, or use, and the conditions exist to the extent that life, health, property, and safety of the public is threatened. The residential structure is an unsafe building and the tract of real property on which the unsafe building is located shall be considered the unsafe premises.

Section 3.

You are hereby **ORDERED** to demolish the unsafe buildings identified in Section 2 of this Order at the property identified in Section 1 of this Order and remove all demolition remains, trash, and

debris on the unsafe premises and return the site to natural grade, all of said work to be completed on or before December 31, 2023.

Section 4.

You are hereby notified that failure to comply with this Order may result in the City of Goshen taking action make the required demolition and bill you for the costs of such work, including, the actual costs of the work performed and an amount equal to the average processing expense the City will incur in pursuing this matter. Such amounts can become a lien upon the real estate and can ultimately be enforced in the same manner as any other judgment.

Section 5.

You are further notified that a hearing will be held before the Goshen Board of Public Works and Safety on **Monday, December 18, 2023 at 2:00 p.m. (local time)**, or soon thereafter, for the purpose of reviewing the Order of the City of Goshen Building Commissioner. This hearing will be held in the Court Room / Council Chambers at 111 East Jefferson Street, Goshen, Indiana.

You have the right to appear at this hearing with or without counsel, to present evidence, cross-examine opposing witnesses, and present arguments. Should you fail to appear at the time set for the hearing, the hearing will be conducted in your absence. The Goshen Board of Public Works and Safety will have the right to affirm, rescind, or modify this Order.

Section 6.

You are hereby notified that as a result of this Order being issued you may not transfer or agree to transfer any property interest in the parcel described in Section 1 of this Order, unless you have complied with all requirements of Indiana Code § 36-7-9-27, which are as follows:

1. You must supply full information regarding this Order to the person or persons taking or agreeing to take any interest in the parcel described in Section 1 of this Order.
2. You must supply in writing to the City of Goshen Building Department, within five (5) days of any actions to transfer the interest, the following:
 - a. The full name, address, and telephone number of the person or persons taking interest in the property described in Section 1 of this Order; and
 - b. A copy of the legal instrument under which the transfer of the interest is accomplished.

Section 7.

You are hereby notified that failure to comply with Section 6 of this Order may result in a judgment of liability against you in accordance with Indiana Code § 36-7-9-27.

Section 8.

This Order is issued by the City of Goshen Building Commissioner, Myron Grise, in accordance with the Indiana Unsafe Building Law and the City of Goshen Neighborhood Preservation Ordinance. The address of the Building Commissioner is 204 E. Jefferson Street, Suite 5, Goshen, Indiana 46528, and the telephone number is 574-534-1811.

This Order of the City of Goshen Building Commissioner is issued on November 8, 2023.

City of Goshen Building Department

Myron Grise

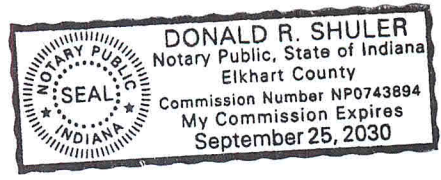
Myron Grise, Building Commissioner

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned, a Notary Public in and for said county and State, this November 8, 2023, personally appeared Myron Grise, Building Commissioner for the City of Goshen, Indiana, who acknowledged execution of the foregoing Order for and on behalf of the City of Goshen, Indiana Building Department, as his voluntary act for the purposes stated therein, and who, having been duly sworn, stated that the representations contained therein are true.

Donald R. Shuler

Notary Public



Certificate of Service

The undersigned hereby certifies that the foregoing Order of the City of Goshen Building Commissioner for the premises at 218 North 9th Street, Goshen, Indiana was served by sending a copy by certified mail, return receipt requested and by regular first-class mail to the last known address of the following persons to be notified on November 9, 2023:

Ron Davidhizar
203 Middlebury Street
Goshen, Indiana 46528



Donald R. Shuler, #26587-71
Assistant City Attorney
City of Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528

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

This document prepared by Donald R. Shuler, Assistant City Attorney, City of Goshen Legal Department, 204 E. Jefferson Street, Suite 2, Goshen, IN 46526; Ph: 574.537.3855.

**CITY OF GOSHEN BOARD OF PUBLIC WORKS AND SAFETY
UNSAFE BUILDING HEARING AUTHORITY
RECORD OF ACTION AND CONTINUOUS ENFORCEMENT ORDER**

December 18, 2023

To: Ronald E. Davidhizar

IN RE: Violation of Goshen City Code

Property located at: 218 North Ninth Street, Goshen, Indiana

Property Tax Code: 20-11-10-158-004.000-015

Property Legal Description: see Attached Exhibit A

Property owner(s) of record: Ronald E. Davidhizar

Substantial property of interest of record: None

Section 1. Background

The Order of the City of Goshen Building Commissioner dated November 8, 2023 (hereinafter "Order") concerning the real estate located at 218 North Ninth Street, Goshen, Indiana and more particularly described in Exhibit A (hereinafter the "Real Estate") came before the Hearing Authority on December 18, 2023, for a hearing and decision as to whether the Order should be affirmed, rescinded, or modified, said Order requiring:

Demolition of the unsafe buildings at the Real Estate and removal of all demolition remains, trash, and debris on the Real Estate and return the site to natural grade, all of said work to be completed on or before December 31, 2023.

The following specific violations of Goshen City Code were identified in the Order:

1. Multiple areas of the residential structure are likely to fail, a violation of Section 6.3.1.1(p). The kitchen floor has become detached from the wall and is sinking. The kitchen floor is spongy from a possible water leak and in danger of collapse. Wood structural members have been exposed to weather elements causing deterioration and compromising structural strength.
2. The residential structure's floors and walls have not been kept in good repair, a violation of Section 6.3.1.1(b). There are multiple areas where there are holes in the

walls. The flooring throughout the property is torn or removed; areas of the floor have detached from the walls; the kitchen floor is spongy from a possible water leak and in danger of collapse. Areas of the wall and siding have so deteriorated that the bathroom plumbing lines are accessible from the exterior of the structure and exposed to all weather elements.

3. The residential structure’s garage’s roof has not been kept in good repair and is not sound, a violation of Sections 6.3.1.1(b) and (c). The soffit and fascia are not properly weather protected and are rotted from being exposed to the weather elements.
4. The residential structure’s siding has not been kept in good repair, a violation of 6.3.1.1(bb). There are multiple areas where the siding is damaged and/or missing. Areas of the siding have deteriorated so that the bathroom plumbing lines are accessible from the exterior of the structure and exposed to all weather elements.
5. Windows have not been kept in good repair, a violation of Section 6.3.1.1(d). There are broken windows throughout the residential structure.
6. The heating and mechanical systems at the residential structure is inoperable, a violation of Section 6.3.1.1(a).
7. There is no operable plumbing system at the residential structure, a violation of Section 6.3.1.1(a).

Section 2. Findings

A hearing was held where evidence was presented and arguments heard. The Board of Public Works and Safety, as the City of Goshen’s Unsafe Building Hearing Authority, being duly advised in the premises, now makes the following findings and determinations:

A. Service of Process

- Proper notice of the Order, and this hearing, was given to all persons with a substantial property interest in the Real Estate. Notice was sent Certified Mail, return receipt requested, and regular mail, and proof of service is established by the Certificate of Issuance of Building Commissioner Order, said service effective on Ronald Davidhizar on November 13, 2023

B. Code Violations

Based on the evidence presented, the following conditions and violations of Goshen City Code cited by the Building Commissioner still exist at the residential structure located on the Real Estate:

Building Condition/Violation	Yes	No
1. Multiple areas of the residential structure are likely to fail, a violation of Section 6.3.1.1(p). The kitchen floor has become detached from the wall and is sinking. The kitchen floor is spongy from a possible water leak and in danger of collapse. Wood structural members have been exposed to weather elements causing deterioration and compromising structural strength.	<input type="checkbox"/>	<input type="checkbox"/>

2. The residential structure's floors and walls have not been kept in good repair. There are multiple areas where there are holes in walls. The flooring throughout the structure is torn or removed; areas of the floor have detached from the walls; the kitchen floor is spongy from a possible water leak and in danger of collapse. Areas of the wall and siding have deteriorated that the bathroom plumbing lines are accessible from the exterior of the structure and exposed to all weather elements.	<input type="checkbox"/>	<input type="checkbox"/>
3. The residential structure's garage's roof has not been kept in good repair and is not sound. The soffit and fascia are not properly weather protected and are rotted from being exposed to the weather elements.	<input type="checkbox"/>	<input type="checkbox"/>
4. The residential structure's siding has not been kept in good repair. There are multiple areas where the siding is damaged and/or missing. Areas of the siding have deteriorated so that the bathroom plumbing lines are accessible from the exterior of the structure and exposed to all weather elements.	<input type="checkbox"/>	<input type="checkbox"/>
5. Windows have not been kept in good repair. There are broken windows throughout the residential structure.	<input type="checkbox"/>	<input type="checkbox"/>
6. The heating and mechanical system at the residential structure is inoperable.	<input type="checkbox"/>	<input type="checkbox"/>
7. There is no operable plumbing system at the residential structure.	<input type="checkbox"/>	<input type="checkbox"/>

C. Unsafe Building

These conditions render the residential structure and the garage at the Real Estate unsafe buildings as the structures are:

1. In an impaired structural condition that makes it unsafe to person or property;
2. A fire hazard;
3. A hazard to public health;
4. A public nuisance;
5. Dangerous to person or property because of a violation of a statute or ordinance concerning building condition or maintenance;
6. Vacant or blighted and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance.

D. Remedial Action.

In addition, the general condition of the unsafe buildings at the Real Estate, based on the above findings from the evidence presented to the Hearing Authority:

1. Warrant demolition of the unsafe buildings. In its present condition, the unsafe buildings at the Real Estate is unfit for human habitation, occupancy, or use, and conditions exist to the extent that life, property, and safety of the public is threatened.
2. Cannot be repaired cost effectively and/or the property owner(s) of record and/or substantial property interest(s) of record have failed to demonstrate a

willingness or intention to repair the unsafe buildings, therefore the option of repair will not effectively correct the conditions considered to be a danger to the public.

3. Can be repaired cost effectively and the property owner(s) or record and/or the substantial property interest(s) of record have demonstrated a willingness or intention to repair the unsafe buildings, therefore the option of repair may effectively correct the conditions considered to be a danger to the public.

Section 3. Hearing Authority Order.

A. Action on Building Commissioner Order

Based on these findings, the Hearing Authority now ORDERS that the Order is

- Affirmed. The Unsafe Buildings at the Real Estate is ordered to be demolished by December 31, 2023.
- Rescinded
- Modified as follows:
 - The Hearing Authority, finding that the Unsafe Buildings at the Real Estate may be repaired finds it appropriate to permit the opportunity for repairs to the Unsafe Buildings at the Real Estate and therefore gives the property owner, Ronald Davidhizar, _____ days to complete repairs necessary to address all violations listed in the Order, with this matter set for further review by this Board following that period.
 - The Hearing Authority, finding that the Unsafe Buildings at the Real Estate may be repaired, directs the City of Goshen Legal Department to pursue civil action against the property owner pursuant to I.C. § 36-7-9-17 to seek appropriate remedies, specifically including civil penalties (I.C. § 36-7-9-19), the appointment of a receiver (I.C. § 36-7-9-20), and/or court order for performance of repair work (I.C. § 36-7-9-21).

B. Civil Penalty

The City of Goshen Board of Public Works and Safety further ORDERS:

- The Hearing Authority also finds that there has been a willful failure to comply with the Order, based on the following facts:

and therefore now orders a civil penalty against the property owner, Ronald Davidhizar, in the amount of: _____.

- The payment of said civil penalty is due in full on or before _____;
- The effective date of said civil penalty is postponed until _____, to allow all work necessary to comply with the Order to be completed;
- No findings or order for civil penalty.

You are entitled to appeal these findings of facts and this Order to the Elkhart Circuit or Superior Court by filing a verified complaint within ten (10) days of the date of this action. Should you fail to file a verified complaint within the specified time, then your right to appeal will be forfeited.

I.C. § 36-7-9-27 requires that if you transfer your interest or any portion of your interest in the Building and/or the Real Estate affected by this Continuous Enforcement Order to another person, you must supply the other person with full information regarding this Order prior to transferring that interest or agreeing to transfer that interest. Within five (5) business days after transferring that interest or agreeing to transfer a substantial property interest in the Building and/or the Real Estate, you must supply City of Goshen Building Commissioner Myron Grise with the full name, address, and telephone number of the other person taking a substantial property interest in the Building and/or the Real Estate, along with written copies of the agreement to transfer the interest or copies of the document actually transferring the interest. Mr. Grise's office is located at 204 East Jefferson Street, Suite 5, Goshen, Indiana 46528, or you may contact him at 574-534-1811. Should you fail to comply with these provisions, then you may be liable to the City of Goshen for any damage that the City of Goshen may suffer in the event that judgment is entered against the City by the other person to whom the transfer was made.

This CONTINUOUS ENFORCEMENT ORDER of the City of Goshen Board of Public Works and Safety is issued on December 18, 2023.

City of Goshen Board of Public Work and Safety

By: _____
Gina M. Leichty, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the City of Goshen Board of Public Works and Safety by Gina M. Leichty, Mayor, and acknowledged execution of the foregoing Order on December 18, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

This instrument was prepared by Bodie J. Stegelmann, Attorney No. 18180-20, City of Goshen Legal Department, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, Ph: 574.537.3820.

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

EXHIBIT A

Part of the Northwest Quarter of Section Ten (10), Township Thirty-Six (36) North, Range Six (6) Easy, more particularly described as follows:

Beginning at the Southwest corner of Lot Number Eighteen (18) in STEVEN'S ADDITION to the City of Goshen (a recorded plat) as a place of beginning; thence North Eighty-eight (88) degrees and Forty-six (46) minutes East, Three Hundred Ninety-nine (399) feet along the South line of said Steven's Addition to the South corner of Lot Number Twenty-four (24) of said addition; thence Zero (0) degree Fifty-eight (58) minutes East, One Hundred Ten (110) feet; thence South Eighty-eight (88) degrees Forty-six (46) minutes West, Three Hundred Ninety-nine (399) feet on a line parallel to the said South line of Steven's Addition; thence North Zero (0) degree, Fifty-eight (58) minutes West One Hundred Ten (110) feet to the place of beginning.

Subject to public highways.

Certificate of Service

The undersigned hereby certifies that the foregoing Record of Action and Continuous Enforcement Order of the City of Goshen Board of Public Works and Safety dated December 18, 2023, for the premises at 218 North Ninth Street, Goshen, Indiana, was served by sending a copy by certified mail, return receipt requested, and by regular first-class mail to the last known address of the following persons to be notified on December _____, 2023:

Ronald Davidhizar
203 Middlebury Street
Goshen, Indiana 46528

Donald R. Shuler, #26587-71
Assistant City Attorney
City of Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528



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

December 14, 2023

To: Board of Public Works and Safety

From: Don Shuler, Assistant City Attorney

Subject: Building Commissioner Order – 602 North Fifth Street, Goshen, Indiana

An unsafe building review hearing is scheduled for the property located at 602 North Fifth Street, Goshen, Indiana. Attached is the Order of the City of Goshen Building Commissioner dated November 21, 2023 concerning the property. The Board of Public Works and Safety needs to conduct the hearing; affirm, rescind, or modify the Building Commissioner Order; and determine what action it will order concerning the property. The form of the Continuous Enforcement Order that may be issued by the BOW following the hearing for this Property is attached.

Section 1 of the Continuous Enforcement Order summarizes the Building Commissioner Order.

Section 2 of the Continuous Enforcement Order addresses the Findings that the Board of Works will need to make following the hearing and any evidence presented. To make these findings, the Board must do so in a motion that is approved; the form of such a motion could utilize the following language:

"I move the Board finds:

- (1) that effective service was made on the property owner;*
- (2) that the code violations identified in the Building Commissioner Order, Numbered 1 through 7, continue to exist;*
- (3) that those violations make the structure an unsafe building because the building is in an impaired structural condition, is dangerous to person or property due to code violations, and is vacant and not maintained in a manner that would permit human occupancy or use; and*
- (4) that the general condition of the building along with the failure of a demonstrated willingness to make repairs makes demolition appropriate."*

After making those findings, the Board then issues its Order in Section 3, where it will Affirm the Building Commissioner Order (if agrees with demolition), rescind (property violations have been fixed), or Modified (Believes that property can be fixed). A motion for the Board could utilize the following language:

"I move the Board, based on our findings, affirm the Building Commissioner Order and order the unsafe building at the real estate to be demolished by January 19, 2024."

ORDER OF THE CITY OF GOSHEN BUILDING COMMISSIONER

November 21, 2023

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

To: Ronald Davidhizar
203 Middlebury Street
Goshen, Indiana 46528

Section 1.

You are hereby notified that you are in violation of the City of Goshen Neighborhood Preservation Ordinance, codified at Goshen City Code § 6.3.1. The violations exist at property owned by you, as evidenced by the tax records of the Elkhart County Auditor, property tax code number 20-11-09-226-007.000-015; commonly known as 602 North Fifth Street, Goshen, Indiana, and more particularly described as follows:

Lot Number Twenty-eight (28) in MEADER & KUHN'S ADDITION to the City of Goshen, Indiana; as recorded in Deed Record 71, page 105 of the records in the Office of the Recorder of Elkhart County, Indiana.

Section 2.

The following violations of Goshen City Code Section 6, Title 3, Chapter 1 exist at the vacant residential structure located at the real estate identified in Section 1:

1. The structure is likely to partially or completely collapse due to deterioration of its foundation and general dilapidation, a violation of Section 6.3.1.1(r). The foundation wall in the rear of the structure has collapsed into the basement. This has permitted animals and weather elements to enter, flooding the basement. The collapsed

2. foundation wall compromises the integrity of the structure to the extent that interior floors have begun to collapse.
3. The structure's foundation has not been kept in good repair and is not capable of supporting all nominal loads, a violation of Section 6.3.1.1(b). Multiple areas of the foundation have significant cracks. The foundation wall in the rear of the structure has collapsed, causing a collapsed sidewalk and flooding the basement. The basement is under water.
4. The structure's floors have not been kept in good repair, a violation of Section 6.3.1.1(b). Flooring throughout the structure is torn, and the floor near the rear door has begun to collapse due to the collapsed foundation wall. Areas of the subfloor have become spongy and soft.
5. The structure's walls have not been kept in good repair, a violation of Section 6.3.1.1(b). Multiple walls inside the structure have cracks and holes, and also show signs of water damage.
6. The structure's ceilings have not been kept in good repair, a violation of Section 6.3.1.1(b). Ceilings show signs of water damage.
7. The structure's roof and flashing is not sound and tight, a violation of Section 6.3.1.1(c). Areas around the structure have collapsed soffit.
8. The structure's painted surfaces are not properly coated and weather tight, a violation of Section 6.3.1.1(g). The interior and exterior of the structure has chipping and peeling paint throughout.

The residential structure located on the real estate is unsafe within the meaning of Indiana Code § 36-7-9-4(a)(1), (5), and (6). The deterioration to the foundation, the already collapsed rear foundation resulting in the flooded basement and collapsing interior floor, renders the structure in an impaired structural condition that makes it unsafe to person or property. The structure is dangerous to person or property because of violations of the Neighborhood Preservation Ordinance, particularly violations concerning damage and deterioration to the foundation. The structure is vacant and not maintained in a manner that permits human habitation, occupancy, or use under the Neighborhood Preservation Ordinance.

Due to compromised structural integrity of the foundation due to the collapsed rear foundation, in addition to significant cracks elsewhere, leading to a flooded basement and evidence of structural failure present in a collapsed floor and a spongy and soft subfloor, along with the structure's continued deterioration due to neglect, the condition of the residential structure warrants removal. In its present condition, the is unfit for human habitation, occupancy, or use, and the conditions exist to the extent that life, health, property, and safety of the public is threatened. The structure is an unsafe building and the tract of real property on which the unsafe building is located shall be considered the unsafe premises.

Section 3.

You are hereby **ORDERED** to demolish the unsafe buildings identified in Section 2 of this Order at the property identified in Section 1 of this Order and remove all demolition remains, trash, and debris on the unsafe premises and return the site to natural grade, all of said work to be completed on or before January 19, 2024.

Section 4.

You are hereby notified that failure to comply with this Order may result in the City of Goshen taking action to complete the required demolition and bill you for the costs of such work, including, the actual costs of the work performed and an amount equal to the average processing expense the City will incur in pursuing this matter. Such amounts can become a lien upon the real estate and can ultimately be enforced in the same manner as any other judgment.

Section 5.

You are further notified that a hearing will be held before the Goshen Board of Public Works and Safety on **Monday, December 18, 2023 at 2:00 p.m. (local time)**, or soon thereafter, for the purpose of reviewing the Order of the City of Goshen Building Commissioner. This hearing will be held in the Court Room / Council Chambers at 111 East Jefferson Street, Goshen, Indiana.

You have the right to appear at this hearing with or without counsel, to present evidence, cross-examine opposing witnesses, and present arguments. Should you fail to appear at the time set for the hearing, the hearing will be conducted in your absence. The Goshen Board of Public Works and Safety will have the right to affirm, rescind, or modify this Order.

Section 6.

You are hereby notified that as a result of this Order being issued you may not transfer or agree to transfer any property interest in the parcel described in Section 1 of this Order, unless you have complied with all requirements of Indiana Code § 36-7-9-27, which are as follows:

1. You must supply full information regarding this Order to the person or persons taking or agreeing to take any interest in the parcel described in Section 1 of this Order.
2. You must supply in writing to the City of Goshen Building Department, within five (5) days of any actions to transfer the interest, the following:
 - a. The full name, address, and telephone number of the person or persons taking interest in the property described in Section 1 of this Order; and
 - b. A copy of the legal instrument under which the transfer of the interest is accomplished.

Section 7.

You are hereby notified that failure to comply with Section 6 of this Order may result in a judgment of liability against you in accordance with Indiana Code § 36-7-9-27.

Section 8.

This Order is issued by the City of Goshen Building Commissioner, Myron Grise, in accordance with the Indiana Unsafe Building Law and the City of Goshen Neighborhood Preservation Ordinance. The address of the Building Commissioner is 204 E. Jefferson Street, Suite 5, Goshen, Indiana 46528, and the telephone number is 574-534-1811.

This Order of the City of Goshen Building Commissioner is issued on November 21, 2023.

City of Goshen Building Department



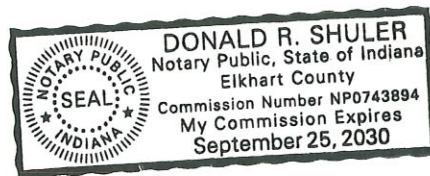
Myron Grise, Building Commissioner

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned, a Notary Public in and for said county and State, this November 21, 2023, personally appeared Myron Grise, Building Commissioner for the City of Goshen, Indiana, who acknowledged execution of the foregoing Order for and on behalf of the City of Goshen, Indiana Building Department, as his voluntary act for the purposes stated therein, and who, having been duly sworn, stated that the representations contained therein are true.



Notary Public



Certificate of Service

The undersigned hereby certifies that the foregoing Order of the City of Goshen Building Commissioner for the premises at 205 Middlebury Street, Goshen, Indiana was served by sending a copy by certified mail, return receipt requested and by regular first-class mail to the last known address of the following persons to be notified on November 21, 2023:

Ronald Davidhizar
203 Middlebury Street
Goshen, Indiana 46528



Donald R. Shuler, #26587-71
Assistant City Attorney
City of Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528

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

This document prepared by Donald R. Shuler, Assistant City Attorney, City of Goshen Legal Department, 204 E. Jefferson Street, Suite 2, Goshen, IN 46526; Ph: 574.537.3855.

**CITY OF GOSHEN BOARD OF PUBLIC WORKS AND SAFETY
UNSAFE BUILDING HEARING AUTHORITY
RECORD OF ACTION AND CONTINUOUS ENFORCEMENT ORDER**

December 18, 2023

To: Ronald E. Davidhizar

IN RE: Violation of Goshen City Code

Property located at: 602 North Fifth Street, Goshen, Indiana

Property Tax Code: 20-11-09-226-007.000-015

Property Legal Description: see Attached Exhibit A

Property owner(s) of record: Ronald E. Davidhizar

Substantial property of interest of record: None

Section 1. Background

The Order of the City of Goshen Building Commissioner dated November 21, 2023 (hereinafter "Order") concerning the real estate located at 602 North Fifth Street, Goshen, Indiana and more particularly described in Exhibit A (hereinafter the "Real Estate") came before the Hearing Authority on December 18, 2023, for a hearing and decision as to whether the Order should be affirmed, rescinded, or modified, said Order requiring:

Demolition of the unsafe buildings at the Real Estate and removal of all demolition remains, trash, and debris on the Real Estate and return the site to natural grade, all of said work to be completed on or before January 19, 2024.

The following specific violations of Goshen City Code were identified in the Order:

1. The structure is likely to partially or completely collapse due to deterioration of its foundation and general dilapidation, a violation of Section 6.3.1.1(r). The foundation wall in the rear of the structure has collapsed into the basement. This has permitted animals and weather elements to enter, flooding the basement. The collapsed foundation wall compromises the integrity of the structure to the extent that interior floors have begun to collapse.

2. The structure's foundation has not been kept in good repair and is not capable of supporting all nominal loads, a violation of Section 6.3.1.1(b). Multiple areas of the foundation have significant cracks. The foundation wall in the rear of the structure has collapsed, causing a collapsed sidewalk and flooding the basement. The basement is under water.
3. The structure's floors have not been kept in good repair, a violation of Section 6.3.1.1(b). Flooring throughout the structure is torn, and the floor near the rear door has begun to collapse due to the collapsed foundation wall. Areas of the subfloor have become spongy and soft.
4. The structure's walls have not been kept in good repair, a violation of Section 6.3.1.1(b). Multiple walls inside the structure have cracks and holes, and also show signs of water damage.
5. The structure's ceilings have not been kept in good repair, a violation of Section 6.3.1.1(b). Ceilings show signs of water damage.
6. The structure's roof and flashing is not sound and tight, a violation of Section 6.3.1.1(c). Areas around the structure have collapsed soffit.
7. The structure's painted surfaces are not properly coated and weather tight, a violation of Section 6.3.1.1(g). The interior and exterior of the structure has chipping and peeling paint throughout.

Section 2. Findings

A hearing was held where evidence was presented and arguments heard. The Board of Public Works and Safety, as the City of Goshen's Unsafe Building Hearing Authority, being duly advised in the premises, now makes the following findings and determinations:

A. Service of Process

- Proper notice of the Order, and this hearing, was given to all persons with a substantial property interest in the Real Estate. Notice was sent Certified Mail, return receipt requested, and regular mail, and proof of service is established by the Certificate of Issuance of Building Commissioner Order, said service effective on Ronald Davidhizar on December 8, 2023.

B. Code Violations

Based on the evidence presented, the following conditions and violations of Goshen City Code cited by the Building Commissioner still exist at the residential structure located on the Real Estate:

Building Condition/Violation	Yes	No
1. The structure is likely to partially or completely collapse due to deterioration of its foundation and general dilapidation. The foundation wall in the rear of the structure has collapsed into the basement, which has permitted weather elements to enter, flooding the basement. The collapsed foundation wall has	<input type="checkbox"/>	<input type="checkbox"/>

compromised the integrity of the structure to the extent that interior floors have begun to collapse.		
2. The structure's foundation has not been kept in good repair and is not capable of supporting all nominal loads. The rear foundation wall has collapsed. Multiple areas of the foundation have significant cracks. The collapse of the rear foundation wall has caused a collapsed sidewalk and flooded the basement, rendering it under water.	<input type="checkbox"/>	<input type="checkbox"/>
3. The structure's floors have not been kept in good repair. Flooring throughout the structure is torn, and the floor near the rear door has begun to collapse due to the collapsed foundation wall. Areas of the subfloor have become spongy and soft.	<input type="checkbox"/>	<input type="checkbox"/>
4. The structure's walls have not been kept in good repair. Multiple walls inside the structure have cracks and holes, and also show signs of water damage.	<input type="checkbox"/>	<input type="checkbox"/>
5. The structure's ceilings have not been kept in good repair. Ceiling show signs of water damage.	<input type="checkbox"/>	<input type="checkbox"/>
6. The structure's roof and flashing are not sound and tight. Areas around the structure have collapsed soffit.	<input type="checkbox"/>	<input type="checkbox"/>
7. The structure's painted surfaces are not properly coated and weather tight. The interior and exterior of the structure has chipping and peeling paint throughout.	<input type="checkbox"/>	<input type="checkbox"/>

C. Unsafe Building

These conditions render the residential structure at the Real Estate an unsafe building as the residential structure is:

1. In an impaired structural condition that makes it unsafe to person or property;
2. A fire hazard;
3. A hazard to public health;
4. A public nuisance;
5. Dangerous to person or property because of a violation of a statute or ordinance concerning building condition or maintenance;
6. Vacant or blighted and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance.

D. Remedial Action.

In addition, the general condition of the unsafe building at the Real Estate, based on the above findings from the evidence presented to the Hearing Authority:

1. Warrant demolition of the unsafe building. In its present condition, the unsafe building at the Real Estate is unfit for human habitation, occupancy, or use, and conditions exist to the extent that life, property, and safety of the public is threatened.

- 2. Cannot be repaired cost effectively and/or the property owner(s) of record and/or substantial property interest(s) of record have failed to demonstrate a willingness or intention to repair the unsafe building, therefore the option of repair will not effectively correct the conditions considered to be a danger to the public.
- 3. Can be repaired cost effectively and the property owner(s) or record and/or the substantial property interest(s) of record have demonstrated a willingness or intention to repair the unsafe building, therefore the option of repair may effectively correct the conditions considered to be a danger to the public.

Section 3. Hearing Authority Order.

A. Action on Building Commissioner Order

Based on these findings, the Hearing Authority now ORDERS that the Order is

- Affirmed. The Unsafe Building at the Real Estate is ordered to be demolished by January 19, 2024.
- Rescinded
- Modified as follows:
 - The Hearing Authority, finding that the Unsafe Building at the Real Estate may be repaired finds it appropriate to permit the opportunity for repairs to the Unsafe Building at the Real Estate and therefore gives the property owner, Ronald Davidhizar, _____ days to complete repairs necessary to address all violations listed in the Order, with this matter set for further review by this Board following that period.
 - The Hearing Authority, finding that the Unsafe Building at the Real Estate may be repaired, directs the City of Goshen Legal Department to pursue civil action against the property owner pursuant to I.C. § 36-7-9-17 to seek appropriate remedies, specifically including civil penalties (I.C. § 36-7-9-19), the appointment of a receiver (I.C. § 36-7-9-20), and/or court order for performance of repair work (I.C. § 36-7-9-21).

B. Civil Penalty

The City of Goshen Board of Public Works and Safety further ORDERS:

- The Hearing Authority also finds that there has been a willful failure to comply with the Order, based on the following facts:

and therefore now orders a civil penalty against the property owner, Ronald Davidhizar, in the amount of: _____.

- The payment of said civil penalty is due in full on or before _____;
- The effective date of said civil penalty is postponed until _____, to allow all work necessary to comply with the Order to be completed;
- No findings or order for civil penalty.

You are entitled to appeal these findings of facts and this Order to the Elkhart Circuit or Superior Court by filing a verified complaint within ten (10) days of the date of this action. Should you fail to file a verified complaint within the specified time, then your right to appeal will be forfeited.

I.C. § 36-7-9-27 requires that if you transfer your interest or any portion of your interest in the Building and/or the Real Estate affected by this Continuous Enforcement Order to another person, you must supply the other person with full information regarding this Order prior to transferring that interest or agreeing to transfer that interest. Within five (5) business days after transferring that interest or agreeing to transfer a substantial property interest in the Building and/or the Real Estate, you must supply City of Goshen Building Commissioner Myron Grise with the full name, address, and telephone number of the other person taking a substantial property interest in the Building and/or the Real Estate, along with written copies of the agreement to transfer the interest or copies of the document actually transferring the interest. Mr. Grise's office is located at 204 East Jefferson Street, Suite 5, Goshen, Indiana 46528, or you may contact him at 574-534-1811. Should you fail to comply with these provisions, then you may be liable to the City of Goshen for any damage that the City of Goshen may suffer in the event that judgment is entered against the City by the other person to whom the transfer was made.

This CONTINUOUS ENFORCEMENT ORDER of the City of Goshen Board of Public Works and Safety is issued on December 18, 2023.

City of Goshen Board of Public Work and Safety

By: _____
Gina M. Leichty, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the City of Goshen Board of Public Works and Safety by Gina M. Leichty, Mayor, and acknowledged execution of the foregoing Order on December 18, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

This instrument was prepared by Bodie J. Stegelmann, Attorney No. 18180-20, City of Goshen Legal Department, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, Ph: 574.537.3820.

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

EXHIBIT A

Lot Number Twenty-eight (28) in MEADER & KUHN'S ADDITION to the City of Goshen, Indiana; as recorded in Deed Record 71, page 105 of the records in the Office of the Recorder of Elkhart County, Indiana.

Certificate of Service

The undersigned hereby certifies that the foregoing Record of Action and Continuous Enforcement Order of the City of Goshen Board of Public Works and Safety dated December 18, 2023, for the premises at 602 North Fifth Street, Goshen, Indiana, was served by sending a copy by certified mail, return receipt requested, and by regular first-class mail to the last known address of the following persons to be notified on December _____, 2023:

Ronald Davidhizar
203 Middlebury Street
Goshen, Indiana 46528

Donald R. Shuler, #26587-71
Assistant City Attorney
City of Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528