



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m. September 27, 2021

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

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

Call to Order by Mayor Jeremy Stutsman

Approval of Agenda

- 1) Request for temporary placement of dumpster at 409 Queen St.
- 2) Sewer taps for 307 and 224 S. 7th St.
- 3) Agreement allowing controlled release of stormwater runoff into the roadside ditch along the east side of County Road 17
- 4) Agreement with 31 Fire Protection, LLC for maintenance of the City's fire extinguishers
- 5) Memorandum of understanding between City of Goshen and Goshen Community Schools for School Resource Officers
- 6) Agreement with Merrell Bros., Inc.
- 7) Agreement for special cleaning of well #14
- 8) Agreement with US Army for Joint Training at City's Fidler Pond

Privilege of the Floor

Approval of Civil City and Utility Claims

Adjournment

From: [Weaver, Jeffery](#)
To: [Communications Coordinator](#)
Subject: BOW for 9/27/2021
Date: Friday, September 24, 2021 10:49:34 AM
Attachments: [image001.jpg](#)

Cody Bryant is requesting permission for a dumpster to be temporarily placed at 409 Queen Street. He anticipates the dumpster to be on the edge of the street through the first week of October. He does have cones available to mark the space if necessary.

His phone number is 574-584-4702 if there are any questions.

Thanks,

Jeffery Weaver, CPA
City of Goshen
Deputy Clerk-Treasurer
574-534-3303





Marvin Shepherd, Manager
Water Quality
CITY OF GOSHEN

308 North 5th Street • Goshen, IN 46528-2802

Email marvshepherd@goshencity.com

Phone (574) 534-5306 • Cell (574) 349-0485 • TDD (574) 534-3185

MEMORANDUM

TO: Board of Public Works and Safety

FROM: Goshen Water Department

RE: **SEWER TAPS FOR 307 SOUTH 7TH STREET AND 224 SOUTH 7TH STREET**

DATE: September 28 2021

Goshen Water would like to have two sections of south 7th street closed to install sewer taps for Lacasa. We would need 307 South 7th street closed Tuesday September 28th until Thursday September 30th. In addition, for the 224 south 7th address we would need it to be closed on Thursday September 30th until Monday October 4th.

Requested motion: Move to approve road closures of 7th to make sewer taps beginning September 28th, 2021.

ACCEPTED:

City of Goshen
Board of Works & Safety

Jeremy Stutsman, Mayor

Mike Landis, Board Member

Mary Nichols, Board Member

DeWayne Riouse, Board Member

Barb Swartley, Board Member



CITY OF GOSHEN LEGAL DEPARTMENT

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

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

September 27, 2021

To: Board of Public Works and Safety and Stormwater Board

From: Brandy L. Henderson

Subject: Agreement Allowing controlled release of stormwater runoff into the roadside ditch along the east side of County Road 17.

Attached for the Board's approval and execution is an agreement to allow for controlled releases of stormwater runoff into the roadside ditch along the east side of County Road 17 for property owned by Next Modular, LLC generally located at 3151 Peddlers Village Road, Goshen, Indiana.

Suggestion motion: to approve this agreement to allow for controlled releases of stormwater runoff into the roadside ditch along the east side of County Road 17 for property owned by Next Modular, LLC generally located at 3151 Peddlers Village Road, Goshen, Indiana

**AGREEMENT ALLOWING
CONNECTION TO STORM SEWER**

THIS AGREEMENT is entered into this _____ day of _____, 2021, by and between the **City of Goshen, Indiana** by and through the Goshen Board of Public Works and Safety and Stormwater Board, hereinafter referred to as "City," and **Next Modular, LLC** hereinafter collectively referred to as "Owner."

RECITALS

WHEREAS Next Modular, LLC owns a tract of undeveloped real property generally located at 3151 Peddlers Village Road, Goshen, Indiana (Parcel Nos. 20-06-36-477-011.000-009, 20-06-36-477-005.000-009, 20-06-36-477-004.000-009, 20-06-36-477-003.000-009, 20-06-36-477-002.000-009, and 20-06-36-477-001.000-009.), hereinafter referred to as the "Subject Real Property."

WHEREAS City standards require stormwater to be contained and infiltrated on any given commercial development; however, the soil conditions on the Subject Real Property do not allow for sufficient infiltration within the required 36-hour testing parameters as indicated in the City's Stormwater Drainage Policy, (see attached Exhibit A).

WHEREAS the Owner of the Subject Real Property is requesting to have a controlled release of stormwater from a proposed stormwater detention basin on the Subject Real Property to the roadside ditch along the east side of County Road 17, which is maintained by the City of Goshen.

WHEREAS the stormwater runoff from the undeveloped Subject Real Property currently flows to the roadside ditch along the east side of County Road 17 and the proposed release is less than the current release rate

WHEREAS the City is inclined to allow for the proposed controlled release of stormwater runoff into the roadside ditch along the east side of County Road 17, as the roadside ditch will not be negatively impacted, as compared to the volume of stormwater runoff that existed prior to the proposed development.

NOW THEREFORE, in consideration of the foregoing and of the promises and commitments herein contained, the parties hereby agree as follows:

1. SUBJECT REAL ESTATE

The Owner warrants that it is the owner of the Subject Real Property, which is more particularly described as follows:

A PART OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS NUMBERED FIFTEEN (15), SIXTEEN (16), SEVENTEEN (17), EIGHTEEN (18), AND NINETEEN (19) AS THE SAID LOTS ARE KNOWN AND DESIGNATED ON THE PLAT OF DEERFIELD SECOND, A SUBDIVISION IN CONCORD TOWNSHIP, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK 10, PAGE 16 AND A PART OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 36; THENCE NORTH 89 DEGREES 46 MINUTES 20 SECONDS WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 904.82 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND CONVEYED TO THE BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA AS DESCRIBED AND RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY INSTRUMENT NUMBER 2003-48643; THENCE NORTH 00 DEGREES 26 MINUTES 35 SECONDS WEST ALONG THE EAST LINE OF SAID THE BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA PARCEL, A DISTANCE OF 46.57 FEET TO THE NORTHEAST CORNER OF SAID THE BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA PARCEL, POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 89 DEGREES 36 MINUTES 26 SECONDS WEST ALONG THE NORTH LINE OF SAID THE BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA PARCEL, A DISTANCE OF 303.40 FEET TO THE NORTHERLY CORNER OF SAID THE BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA PARCEL; THENCE NORTH 67 DEGREES 57 MINUTES 32 SECONDS WEST ALONG THE NORTHERLY LINE OF SAID THE BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA PARCEL, A DISTANCE OF 126.17 FEET TO THE NORTHWEST CORNER OF SAID BOARD OF COMMISSIONERS OF THE COUNTY OF ELKHART, INDIANA PARCEL; THENCE NORTH 00 DEGREES 28 MINUTES 04 SECONDS WEST ALONG THE EASTERLY LINE OF THE RIGHT OF WAY OF COUNTY ROAD NUMBER 17, A DISTANCE OF 376.71 FEET TO A POINT ON THE SOUTH LINE OF THE RIGHT OF WAY OF MOHAWK DRIVE, A FIFTY (50) FOOT WIDE RIGHT OF WAY; THENCE SOUTH 89 DEGREES 41 MINUTES 22 SECONDS EAST ALONG THE SOUTH LINE OF THE RIGHT OF WAY OF SAID MOHAWK DRIVE, A DISTANCE OF 169.85 FEET TO A POINT ON THE WESTERLY LINE OF THE RIGHT OF WAY OF MIAMI PLACE, A DISTANCE OF 87.61 FEET TO THE POINT OF CURVATURE OF A 50.00 FOOT RADIUS CURVE TO THE LEFT, CONCAVE TO THE NORTHEAST, AND BEING THE WESTERLY, SOUTHERLY, AND EASTERLY LINE OF THE RIGHT OF WAY OF SAID MIAMI PLACE; THENCE SOUTHERLY, EASTERLY, AND NORTHERLY ALONG THE ARC OF SAID 50.0 FOOT RADIUS CURVE AND ALONG THE RIGHT OF WAY OF SAID MIAMI PLACE, A DISTANCE OF 229.35 FEET (CHORD BEARING 71 DEGREES 56 MINUTES 02 SECONDS EAST, CHORD DISTANCE 75.00 FEET) TO THE SOUTHWEST CORNER OF LOT NUMBERED FOURTEEN (14) AS SAID LOT IS KNOWN AND DESIGNATED ON THE PLAT OF SAID DEERFIELD SECOND; THENCE SOUTH 89 DEGREES 46 MINUTES 20 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT NUMBERED (14), A DISTANCE OF 148.88 FEET TO THE SOUTHEAST CORNER OF SAID LOT NUMBERED FOURTEEN (1) ALSO BEING A POINT ON THE WEST LINE OF LOT NUMBERED SIX (6) AS SAID LOT IS KNOWN AND DESIGNATED ON THE PLAT OF DEERFIELD, A SUBDIVISION IN CONCORD TOWNSHIP, SAID PLAT BEING RECORDED IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY IN PLAT BOOK

9, PAGE 14; THENCE SOUTH 00 DEGREES 29 MINUTES 47 SECONDS ALONG THE SOUTHWEST LINE OF SAID LOT NUMBERED FIVE (5), A DISTANCE OF 36.26 FEET TO THE NORTHWEST CORNER OF LOT NUMBERED FOUR (4) AS SAID LOT IS KNOWN AND DESIGNATED ON THE PLAT OF SAID DEERFIELD; THENCE SOUTH 00 DEGREES 26 MINUTES 35 SECONDS EAST ALONG THE WEST LINE OF SAID LOT NUMBERED FOUR (4), A DISTANCE OF 113.67 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION, CONTAINING 3.114 ACRES, MORE OR LESS, BEING SUBJECT TO ALL EASEMENTS, RESTRICTIONS, AND PUBLIC RIGHTS OF WAY OF RECORD.

A map of the Subject Real Property is attached to this Agreement as Exhibit B for illustrative purposes.

2. TERM OF AGREEMENT

The term of this agreement shall be effective upon the date of execution and approval by both parties and continue until December 31, 2026. This agreement may continue on a year-to-year basis thereafter under the same terms and conditions, unless otherwise terminated with a ninety-day written notification from either party.

3. CONNECTION TO CITY'S STORM SEWER SYSTEM

a. Owner must provide stormwater storage volume on the Subject Real Property as required by the City of Goshen Engineering requirements and stormwater drainage policy (attached as referenced above). Maintaining adequate stormwater storage volume on the Subject Real Property is a condition of this Agreement and will be required for any possible annexation of the Subject Real Property.

b. City will allow for alternate surface water drainage from the Subject Real Property by permitting Owner to connect to and discharge a permitted amount of stormwater to City's existing drainage system, namely the roadside ditch along the east side of County Road 17, that is adjacent to Subject Real Property. As a result of the poor soil conditions on site, a release will be permitted to allow the basin to fully drain within the 36-hour period per the drainage policy. This low-flow release shall not exceed 0.6 cfs at any time, unless the onsite stormwater storage is inundated due to rainfall amounts greater than the 3 inches in the previous 36-hour period required per the City's stormwater policy. Stormwater in excess of the volume required to be stored per the City's stormwater policy will be permitted to discharge by way of a 12-inch pipe and riser overflow control structure.

c. Owner shall maintain all stormwater facilities and all release structures pursuant to approvals granted by the City to ensure all requirements of this agreement and the City of Goshen of stormwater policy are met, including the full release of all stormwater runoff within 36 hours of any rainfall event.

d. The plans and specifications developed by or on behalf of the Owner to connect and discharge to City's storm sewer system must be approved in writing by City's Engineering Department prior to connecting and discharging to the storm sewer system.

e. Owner shall maintain the private storm sewer line and connection to City's storm sewer system at Owner's expense.

f. Owner or occupants of the Subject Real Property shall not discharge any liquid or substance other than clear and clean stormwater into the City's storm sewer system. In the event that Owner or Owner's occupant does discharge any liquid or substance other than clear and clean stormwater into the City's storm sewer system, then Owner shall be responsible for any damages caused to the City's storm sewer system and any clean-up required.

g. Owner shall not modify the Owner's drainage system in any material way other than as provided for by this agreement, or by written approval by the City Engineering Department.

h. This agreement does not preclude the owner from obtaining a right-of-way cut permit from the City of Goshen Engineering Department prior to commencing any work within the public right-of-way.

4. **TERMINATION OF CONNECTION**

a. City may terminate this agreement if any of the following events occur:

i. State or federal statutes, rules or regulations are changed or interpreted to require City to treat stormwater that enters the storm sewer system.

ii. Owner or an occupant of the Subject Real Property discharges any liquid or substance other than clear and clean stormwater into the City's storm sewer system.

iii. City's existing storm sewer system is for any reason unable to handle the stormwater generated from the Subject Real Property.

iv. City changes or replaces its existing drainage system in a way that makes it impractical for City to continue to accept the stormwater generated from the Subject Real Property.

v. Owner modifies the Owner's drainage system in any material way.

b. If any of the events listed in paragraph a. occur and City's Department of Stormwater Management notifies Owner of the need to disconnect from the storm sewer system, Owner shall disconnect from the system within six (6) months of City's notice at Owner's expense unless a shorter period of time is required by the Indiana Department of Environmental Management or other governmental entity.

c. If Owner disconnects from City's storm sewer system for any reason, Owner shall retain its stormwater on the Subject Real Property or discharge its stormwater in a manner approved by the City of Goshen's Department of Stormwater Management and in compliance with statutes, ordinances, rules and regulations in effect at the time Owner disconnects from City's storm sewer system at Owner's expense.

d. City retains the right to immediately suspend Owner's right to connect to City's storm sewer system if in the opinion of City the suspension is necessary in order to stop an actual or threatened discharge that presents or may reasonably present an imminent or substantial endangerment to the health or welfare of persons, to the environment, or causes City to violate any condition of City's National Pollutant Discharge Elimination System (NPDES) Permit.

5. NOTICES

Whenever any notice, statement or other communication is required under this agreement, it 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 the parties may designate in writing from time to time.

Notices to City shall be sent to: City of Goshen, Indiana
Attention: Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528

Notices to Owner shall be sent to: Next Modular, LLC
2000 Elkhart Road
Goshen, IN 46526

6. MISCELLANEOUS

a. Owner agrees that upon the sale of any portion of the Subject Real Property described in this agreement, Owner will advise the purchaser of this agreement in writing prior to the sale.

b. This agreement shall be construed and enforced in accordance with the laws of the State of Indiana. The venue for any action brought by either party relating to or arising out of this agreement shall be in Elkhart County, State of Indiana.

c. If it becomes necessary for any party to this agreement to institute litigation in order to enforce or construe the terms and provisions of this agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in such litigation from the non-prevailing party.

d. No remedy conferred upon any party in this agreement is intended to be exclusive of any other remedy provided or permitted by law, but each remedy shall be cumulative and shall be in addition to any other remedy given under the terms of this agreement or existing at law or equity. Every power or remedy provided in this agreement may be exercised concurrently or independently and as often as deemed appropriate.

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

f. This agreement contains the entire agreement between the parties respecting the matters set forth.

7. AUTHORITY TO EXECUTE

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

IN WITNESS WHEREOF, the parties have set their hands to this Agreement on the dates set forth below.

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

Next Modular, LLC

Jeremy P. Stutsman, Mayor

Michael A. Landis, Member

Printed: _____

Mary Nichols, Member

Title: _____

Barb Swartley

Date Signed: _____

DeWayne Riouse

Date Signed: _____

FINAL SITE PLANS FOR:

NEXT MODULAR DPUD B-3 DETAILED PLANNED UNIT DEVELOPMENT

NORTHEAST CORNER OF CR 17 AND CR 28

A PART OF THE W 1/2 AND SE QUARTER OF SECTION 36, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA



PROJECT SITE VICINITY MAP
(NOT TO SCALE)

UTILITY CONTACTS

<p>GAS/ELECTRIC NIPSCO 300 EAST KERCHER ROAD COSHEN, IN 46526 CONTACT: (574) 535-0284</p>
<p>TELECOMMUNICATIONS FRONTIER COMMUNICATIONS 24373 COUNTY ROAD 45 ELKHART, IN 46516 CONTACT: (574) 875-3785</p>
<p>TELECOMMUNICATIONS NEW PARS TELEPHONE 19066 COUNTY ROAD 46 NEW PARS, IN 46553 CONTACT: (574) 831-2176</p>
<p>WATER AND SEWER CITY OF GOSHEN UTILITIES 308 NORTH 5TH STREET COSHEN, IN 46526 CONTACT: (574) 534-5306 EMERGENCY AFTER HOURS: (574) 238-0723</p>
<p>FIRE DEPARTMENT COSHEN RELIANCE ROAD STATION 1728 RELIANCE ROAD COSHEN, IN 46526 CONTACT: (574) 875-3586</p>
<p>CABLE TV COMCAST CABLE 4045 EDISON LAKES PARKWAY MISHAWAKA, IN 46545 CONTACT: (574) 252-2582</p>



LOCATION MAP - AERIAL IMAGE
(NOT TO SCALE)



FEMA FLOOD INSURANCE RATE MAP (FIRM)
(NOT TO SCALE)

UTILITY INFORMATION

UTILITY LOCATIONS ARE TAKEN FROM SUBSTANTIAL ABOVE GROUND EVIDENCE AND APPROXIMATED FROM RECORD AS-BUILTS MADE AVAILABLE (INCLUDING, BUT NOT LIMITED TO, MANHOLES, HYDRANTS, VALVES, UTILITY PEDESTALS AND BOXES, AND MARKERS/FLAHS SET ON THE GROUND SURFACE BY OTHERS). PIPE INVERTS HAVE BEEN MEASURED WITH AS MUCH ACCURACY AS CAN BE ACHIEVED MENHOUT CONFINE SPACE ENTRY. CAUTION: THERE MAY BE OTHER UTILITIES EXISTING BELOW GROUND THAT WERE NOT MARKED BY OTHERS NOR HAVE VISIBLE ABOVE GROUND EVIDENCE. CONTRACTOR IS RESPONSIBLE FOR FIELD VERIFYING LOCATIONS AND DEPTHS OF ALL UTILITIES AND PIPING AS NECESSARY PRIOR TO ANY AND ALL CONSTRUCTION. CONTACT ENGINEER IF ANY DISCREPANCIES DISCOVERED.



CALL 811 OR (800) 282-5844
24 HOURS A DAY. SEVEN DAYS A WEEK

Further revisions are not needed for Planning until property is ready to be approved.

SHEET INDEX

- C0.0 COVER SHEET
- C0.1 RULE 12 BOUNDARY & TOPOGRAPHIC SURVEY
- C1.0 SITE DEVELOPMENT PLAN
- C2.0 DRAINAGE, GRADING, AND UTILITY PLAN
- C3.0-C3.4 STORMWATER POLLUTION PREVENTION PLAN (SWPPP)
- C4.0 CONSTRUCTION DETAILS

OWNER / DEVELOPER

NEXT MODULAR
2000 ELKHART ROAD
COSHEN, IN 46526
(574) 202-5161

CIVIL ENGINEER / SURVEYOR

ABONMACHE CONSULTANTS, INC.
1009 SOUTH 9TH STREET
COSHEN, IN 46526
(574) 533-9913

CITY OF GOSHEN REVIEW

Planning
REVIEWED BY: [Signature]
REVISIONS: 01/10/21
REVISIONS: 01/10/21

CITY OF GOSHEN REVIEW

ENGINEERING
REVIEWED BY: [Signature]
REVISIONS: 01/10/21
REVISIONS: 01/10/21

CITY OF GOSHEN REVIEW

ADJUDICATED
REVIEWED BY: [Signature]
REVISIONS: 01/10/21
REVISIONS: 01/10/21

1	REVISED PER CITY EDC COMMENTS	REV	06-25-2021
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NEXT MODULAR DPUD-B3
DETAILED PLANNED UNIT DEVELOPMENT
NORTHEAST CORNER OF CR 17 AND CR 28

COVER SHEET

PREPARED BY	FWW
CHECKED BY	RAW
DESIGNED BY	CWW
DATE	06-19-2021



06-25-2021

NO. 20-2124

C0.0
S-0933



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

Stormwater Drainage Policy

Applicable City Ordinances

- Ordinance 4295 – Establishment of a Department of Stormwater Management
- Ordinance 4327 – Requirements for Stormwater Management Associated with Illicit Discharge
- Ordinance 4328 – Construction Site Stormwater Run-Off Control
- Ordinance 4329 – Uniform Requirements for Post-construction Stormwater Management
- Resolution 2006-1 – Establishment of a Stormwater User Fee
- Ordinance 4333, Sec. 2 – Sewer Utility Regulations

Stormwater Clearance Fee

Per Ordinance 4328, a stormwater clearance fee must be obtained prior to issuance of a building permit, construction permit, driveway permit, right-of-way permit, or other license authorization for construction activities that result in a land disturbing activity to take place in the Greater Elkhart County MS4. The stormwater clearance fee is \$50.00, payable to the City of Goshen at the City of Goshen Engineering Department.

Certification

Plans submitted to the Goshen Engineering Department shall be signed and sealed by a licensed professional engineer, surveyor or architect.

Storm Event

Property that is being developed or redeveloped shall retain at least a 3-inch rainfall that occurs over a 24 hour period. This storm event closely represents a 100 year - 1 hour storm event for the Goshen, Indiana area. If soils do not permit onsite retention and percolation, detention can be proposed. Detention calculations shall be prepared by a licensed professional with a background in hydrology.

Stormwater Retention Calculation

The City accepts a modification of the rational method for calculation of stormwater retention.

$Q=CIA$, where

- Q Is the runoff (cubic feet)
- C Is the ratio of peak runoff to average rainfall
Typically: Building Structure (C=1.00), Pavement (C=0.95), Gravel (C=0.65), Lawn (C=0.30)
- I Is the rainfall intensity (use 0.25' for 3" rain event)
- A Is the area of the watershed (sq. ft.)

Stormwater Retention Volume Calculation

For calculation of volume within a stormwater impoundment, the area of frustum formula shall be used.

$$V = \frac{h}{3}(A_1 + A_2 + \sqrt{A_1 + A_2}), \text{ where}$$

- V Is the volume in cubic feet
- h Is depth of the retention area in feet
- A₁ Area of the base of the retention area
- A₂ Area of the top of the retention area at the 0.5' to 1.0' freeboard

Dry Bottom Impoundment

Retention and detention impounds are to be dry within 36 hours after a rain event to minimize water stagnation, breeding of vectors, and posing a prolonged hazard to the public.

Plans submitted to the Goshen Engineering Department shall certify the impoundment will be dry bottom. Impoundments that either have standing water in excess of 36 hours after a rain event as a result of groundwater or a perched water table will be required to reconstruct the impoundment until the dry bottom standard is met.

Class V Injection Wells

The City requires new development and redevelopment to comply with the Environmental Protection Agency's (EPA) Class V injection well requirements when a drywell and other subsurface impoundment is proposed. A Class V Injection Well Inventory form is to be sent to the EPA Region 5, Underground Injection Control Branch, 77 W. Jackson Blvd., Chicago, IL 60604. A copy of the signed certified mailing receipt is to be provided to the Goshen Engineering Department.



CITY OF GOSHEN LEGAL DEPARTMENT

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

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

September 27, 2021

To: Board of Public Works and Safety

From: Brandy L. Henderson

Subject: Agreement with 31 Fire Protection, LLC for the maintenance of the City's fire extinguishers.

Attached for the Board's approval and execution is an agreement with 31 Fire Protection, LLC to perform annual inspections, routine maintenance and repair of the City's 325 fire extinguishers throughout 23 locations. 31 Fire Protection, LLC will be paid \$40.00 each trip and \$4.95 per extinguisher for annual inspections. Additions charges will be incurred per the chart marked Exhibit A included with the agreement.

Suggested Motion:

Approve and execute the agreement with 31 Fire Protection, LLC to perform annual inspections, routine maintenance and repair of the City's 325 fire extinguishers at a cost of \$40.00 per trip and \$4.95 per extinguisher with addition charges memorialized in the chart marked Exhibit A included with the agreement.

AGREEMENT

Fire Extinguisher Maintenance

THIS AGREEMENT is entered into on _____, 2021, which is the last signature date set forth below, by and between **31 Fire Protection, LLC** (“Contractor”), whose mailing address is 54180 County Road 8, Apt B, Middlebury, Indiana 46540, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Contractor shall provide City the following services which shall include the provision of all labor, supplies, materials, tools, equipment, supervision, insurance and all other items necessary to service and maintenance of fire extinguishers (hereinafter referred to as “Duties”). Contractor’s Duties under this agreement include:

- (A) Contractor shall provide all labor, equipment, materials, tools, supplies, insurance, supervision, work and all other items necessary to perform an annual inspection on and complete in a workmanlike manner any maintenance required for the City to meet NFPA 10, 17 and 17-A and manufacture’s specifications for each of the City’s hand portable fire extinguishers estimated at three hundred twenty-five (325) extinguishers in approximately twenty-three (23) locations.
- (B) Contractor shall perform the inspections according to the Last Inspection Date identified in the City’s list of extinguishers that shall be provided by the City’s Maintenance Department and shall retag each extinguisher with the new information.
- (C) Contractor shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety and environmental statutes, rules or regulations in the performance of the work for the City.

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) The initial term of the contract shall be from January 1, 2022 through December 31, 2022. Upon written approval of the contracting parties, the contract may be renewed for four (4) additional one (1) year terms under the same terms and conditions.

Section 3. Compensation

The City agrees to compensate Contractor for the above work based on the rate of Four Dollars and 95/100 Cents (\$4.95) per extinguisher inspection and tag and Forty Dollars (\$40.00) per site service call plus any maintenance that may be required at the rates listed in the table attached marked as Exhibit A.

Section 4. Payment

- (A) Payment(s) to Contractor for work rendered under this agreement shall be made by the City upon receipt of a detailed invoice from Contractor for work completed provided satisfactory performance of Contractor has been attained.
- (B) Contractor may bill no more frequently than monthly.
- (C) Contractor shall bill specific City Departments as specified in the table attached marked as Exhibit B.
- (D) Payment will be made within forty-five (45) days following City's receipt of the invoice. If any dispute arises, the undisputed amount will be paid. Payment is deemed to be made on the date of mailing the check.
- (E) Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

Section 5. 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 6. Independent Contractor

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen for purposes of this agreement. 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 7. 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 8. 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 9. 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 10. 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 11. 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 12. 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 13. Force Majeure

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

Section 14. Default

- (A) If Contractor fails to perform the services or comply with the provisions of this agreement, then Contractor may be considered in default.
- (B) It shall be mutually agreed that if Contractor fails to perform the services or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred

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

Section 15. Termination

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

Section 16. Notice

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

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

Contractor: 31 Fire Protection, LLC
Attention: Mike Bontrager
54180 CR 8, Apt B
Middlebury, IN 46540

Section 17. Subcontracting or Assignment

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

Section 18. Amendments

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

Section 19. Waiver of Rights

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

Section 20. Applicable Laws

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

Section 21. Miscellaneous

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

Section 22. Severability

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

Section 23. Binding Effect

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

Section 24. Entire Agreement

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

Section 25. Authority to Bind Contractor

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

[Signature page to follow]

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

31 Fire Protection, LLC

Jeremy P. Stutsman, Mayor

Mike Bontrager

Michael A. Landis, Member

Title: _____

Mary Nichols, Member

Date Signed: _____

Barb Swartley, Member

DeWayne Riouse, Member

Date Signed: _____

Exhibit A.
Maintenance Expenses Rates Table

2.5 – 5lb Dry Chemical Fire Extinguisher Recharge/ Exam	2.5 – 5lb Hydrostatic Fire Extinguisher Recharge/ Exam
6-year performance \$ 7.50	12-year performance \$15.00
O-ring (if needed) \$ 2.50	O-ring \$ 2.50
Recharge <u>\$15.75</u>	Valve stem \$10.00
Charge per unit \$25.75	Recharge <u>\$15.75</u>
	Charge per unit \$43.25
10lb Dry Chemical Fire Extinguisher Recharge/ Exam	10lb Hydrostatic Fire Extinguisher Recharge/ Exam
6-year performance \$10.00	12-year performance \$22.00
O-ring (\$2.50-\$6.44, if needed) \$ 2.50	O-ring \$ 2.50
Recharge <u>\$19.95</u>	Valve stem (9.95-\$18.95) \$ 9.95
Charge per unit (minimum) \$32.45	Recharge <u>\$19.95</u>
	Charge per unit (minimum) \$54.40

Exhibit B
City Departments Billing Table.

Goshen Water & Sewer Dept. 308 North 5 th Street Goshen, IN 46528	Wastewater, 1000 W. Wilden Ave CSO, 705 N. Indiana Ave. Utilities, 1513 Eisenhower Drive Utilities, 308 N. 5 th Street Utilities Billing Office, 303 S. 5 th Street Utilities Billing Office, 124 E. Washington
Goshen City Hall 202 S. 5 th Street Goshen, IN 46528	West Goshen Cemetery, 1200 Berky Ave. Violet Cemetery 2818 Violet Road Oakridge Cemetery
Goshen Engineering Department 204 E Jefferson Street, Suite 1 Goshen, IN 46528	Annex Bldg., 204 E. Jefferson St. City Hall, 202 S. 5 th Street Goshen Police and Courts, 111 W. Jefferson St.
Goshen Street Department 475 Steury Ave. Goshen, IN 46528	Street Department, 475 Steury Ave.
Goshen Central Garage 320 Steury Ave. Goshen, IN 46528	Central Garage, 320 Steury Ave.
Goshen Fire Department 209 N. Third Street Goshen, IN 46526	Central Fire Station, 209 N. 3 rd Str. College Ave. Fire Station, 1203 College Ave. Reliance Road Fire Station, 1728 Reliance Rd.
Goshen Parks Department 607 W. Plymouth Ave. Goshen, IN 46526	Parks Dept. Office, 607 W. Plymouth Ave. Parks Abshire Cabin, 1302 E. Lincoln Ave. Parks Rieth Center, 410 W. Plymouth Ave. Parks Shrock Pavilion, 411 W. Plymouth Ave Parks Pool, Maintenance Shop & Vehicles, 411 W. Plymouth Ave. Parks Pringle, 1912 W. Lincoln Ave.



CITY OF GOSHEN LEGAL DEPARTMENT

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

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

September 27, 2021

To: Board of Public Works and Safety

From: Brandy L. Henderson

Subject: Memorandum of Understanding between City of Goshen and Goshen Community Schools for School Resource Officers.

On behalf of the Goshen Police Department, a Memorandum of Understanding (MOU) between the City and Goshen Community Schools (GCS) is presented to the Board of Public Works & Safety regarding the School Resource Officer Program. This MOU memorializes the mutual understanding between the parties regarding the role of School Resources Officers within the schools. The Goshen Police Department is asking that the Board of Public Works & Safety approve the Memorandum of Understanding by executing the same.

Suggested Motion: To approve the memorandum of Understanding between the City of Goshen Police Department and Goshen Community Schools regarding the School Resource Officer Program.

SCHOOL RESOURCE OFFICER
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made, this ____ day of _____, 2021, by and between the Goshen Community Schools (hereinafter “School District”), and the City of Goshen by its Board of Public Works & Safety (hereinafter “City”) as follows:

WITNESSETH:

WHEREAS, the City agrees to provide the School District a School Resource Officer (“SRO”) Program in the School District; and

WHEREAS, the School District and the City desire to set forth in this MOU the specific terms and conditions of the services to be performed and provided by the SRO’s to the School District;

NOW, THEREFORE, THE PARTIES HAVE A MUTUAL UNDERSTANDING AS FOLLOWS:

1. **Cost of the SRO Program.**
 - A. The cost of the SRO Program during normal school days shall be paid by the City.
 - B. The School District will fund after school events, and agrees to pay for additional officers through the Fraternal Order of Police secondary employment program. Furthermore, the School District agrees to fund and staff the school crossing guard program.
2. **Employment of School Resource Officers.**
 - A. The SROs shall be employees of the City and shall be subject to the administration, supervision and control of the City of Goshen Police Department (“Police Department”).
 - B. The SROs shall be subject to all personnel policies and practices of the Police Department except as such policies or practices may be modified by the terms and conditions of this MOU.
 - C. The Police Department, in its sole discretion, shall have the power and authority to hire, discharge, and discipline SROs.
 - D. A joint committee composed of representatives of the Police Department and the School District shall make recommendations for the SRO positions to the Chief of Police who shall assign such officers. If a principal is dissatisfied with an SRO who has been assigned to that principal’s school, then that principal may request that the Chief of Police, or his/her designee assign a different officer as the SRO for that school.

- E. One SRO shall be assigned to each individual high school, middle school and intermediate school. One SRO will provide rotational coverage and assistance to the six (6) elementary schools in the district. If the Police Department experiences a shortage of manpower which hinders the department's ability to properly respond to emergency calls for service, the department reserves the right to temporarily reassign an SRO to patrol duties for the purposes of providing proper staffing for community call response.

3. **Duty Hours.**

- A. It is the intent of the parties that the SRO's duty hours shall conform to the school day during the time school is in session under official school calendar.
- B. It is understood and agreed that time spent by SROs attending court in cases arising from and/or out of their employment as an SRO shall be considered as hours worked under this MOU.
- C. The Police Department reserves the right to order an SRO to leave their assigned school during normal duty hours, as described above, and to perform other services for the Police Department when situations arise requiring additional manpower and support.
- D. In the event an SRO is absent from work, the SRO shall notify his or her supervisor in the Police Department and the principal of the school to which the SRO is assigned. The Police Department will assign another SRO qualified officer, if available, to substitute for the SRO who is absent.

4. **Term of MOU.**

The initial term of this MOU is one (1) school year commencing on the first day that teachers report for the school year (5th day of August, 2021), and ending on the last day that teachers work (31st day of May, 2022); however, should either party encounter budgetary constraints that make the continuation of this MOU impractical, then either party may cancel this MOU upon thirty (30) days' notice to the other. This MOU shall be automatically renewed for successive one (1) school year periods unless either party requests termination or modification of this MOU. This request will be made in writing at least sixty (60) days prior to the expiration of the current MOU term.

5. **Duties of School Resource Officers.**

The SRO's duties will include, but not be limited to, the following:

- A. To be an extension of the principal's office for assignments consistent with this MOU.
- B. To be a visible, active law enforcement figure on campus dealing with law enforcement matters and school code violations originating on the assigned campus.
- C. To act as the principal's designee in maintaining a safe environment as to law enforcement matters and school code violations. This includes building(s), grounds, parking lot(s), lockers and other public-school property.

- D. To provide a classroom resource for law education using approved materials.
- E. To be a resource for students that will enable them to be associated with a law enforcement figure in the students' environment.
- F. To be a resource for teachers, parents and students for conferences on an individual basis dealing with individual problems or questions, particularly in the area of substance control.
- G. To make appearances before site councils, parent groups, and other groups associated with the campus and as a speaker on a variety of requested topics, particularly drug and alcohol abuse.
- H. When necessary, to document activities of all SROs on and off campus and as a compiler of a report to be provided to the Police Department and to the principal of the assigned school.
- I. The SRO will not be involved in ordinary school discipline, UNLESS it pertains to preventing a potential disruption and/or climate that places students at risk of harm. Disciplining students is a School District responsibility, and only when the principal and the SRO agree that the SRO's assistance is needed to maintain a safe and proper school environment would the principal request SRO involvement.
- J. If the principal believes that in a given situation or incident there is a law violation, the principal may request SRO involvement.
- K. It will be the responsibility of the SRO to report all known crimes originating on campus. Information on cases that are worked off-campus by the Police Department or other agencies involving students on a campus served by an SRO will be provided to the SRO, but the SRO will not normally be actively involved in off-campus investigation(s).
- L. The SRO will coordinate his/her actions with the administrator for law enforcement cases.
- M. All local law enforcement and state agencies requesting to conduct formal police interviews, interrogations, and arrests of any student should be referred to the campus SRO.
- N. The SRO will be familiar with helpful community agencies, such as mental health clinics, drug treatment centers, etc., that offer assistance to dependency- and delinquency-prone youths and their families. Referrals will be made when necessary.
- O. The SRO and the principal will develop plans and strategies to prevent and/or minimize dangerous situations which might result in student unrest.
- P. The SRO will coordinate all of his/her activities with the principal and staff members concerned and will seek permission, guidance, and advice prior to enacting any programs within the school.

- Q. The SRO is first and foremost a law enforcement officer. This fact must be constantly reinforced.
- R. The SRO may be asked to provide community wide crime prevention presentations that include, but are not limited to:
 - i. Drugs and the law – Adult and juvenile;
 - ii. Alcohol and the law – Adult and juvenile;
 - iii. Sexual assault prevention;
 - iv. Safety programs – Adult and juvenile;
 - v. Assistance in other crime prevention programs as assigned.
- S. The SROs will wear approved department uniform, formal business attire or business casual with appropriate logos and name badges depending on the time of school year, the type of school activity or program, and the requests of the school and/or Police Department. The Chief of Police, or his/her designee, and the principal shall jointly set expectations and resolve any disputes in this area.
- T. The SROs will wear their department authorized duty weapons in accordance with department policy.
- U. The high school, middle school, and intermediate school will provide a locked and secured safe to be kept in a secured area known to the SRO and the Principal. The safe will only be accessible to the SRO who will be allowed to keep a proper functioning department issued/approved rifle for active shooter response.

6. **Chain of Command.**

- A. As employees of the City in its Police Department, SROs will be subject to the chain of command of the Police Department.
- B. In the performance of their duties, SROs shall coordinate and communicate with the principal or the principals' designee of the school to which they are assigned.

7. **Transporting Students.**

- A. SROs shall not transport students in City vehicles except:
 - i. When the students are victims of a crime, being detained, or some other emergency circumstances exist; and
 - ii. When students are suspended and/or sent home from school pursuant to school disciplinary actions, if the student's parent or guardian has refused or is unable to pick up the child within a reasonable time period and the student is disruptive/disorderly and his/her continued presence on campus is a threat to the safety and welfare of other students and school personnel.

- B. Students shall not be transported to any location unless it is determined that the student's parent, guardian or custodian is at the destination to which the student is being transported. SROs shall not transport students in their personal vehicles.
- C. SROs shall notify school personnel upon removing a student from campus.

8. **Access to Education Records.**

- A. School officials shall allow SROs to inspect and copy any public records maintained by the school to the extent allowed by law.
- B. If some information in a student's record is needed in an emergency to protect the health or safety of the student or other individuals, school officials may disclose to the SRO that information which is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety; the need of the information to meet the emergency situation and the extent to which time is of the essence.
- C. If confidential student records information is needed by an SRO, but no emergency situation exists, the information may be released only as allowed by law.
- D. The SRO agrees to keep and maintain all confidential information accessed by him/her confidential and use only as necessary in the performance of the SRO's duties set out in this MOU.

9. **Business Relationship.**

- A. School and City enter into this MOU for contractual law enforcement services only. All SROs are City employees and are subject to City control and supervision.
- B. SROs must follow the current operating procedures, rules, and regulations of the City Police Department, including attendance at all mandated training and testing in order to maintain Indiana law enforcement office certifications.
- C. SROs are not school employees. Their relationship is neither a partnership nor joint venture, and the parties hereto shall not make representations to third parties that they are in a partnership or joint venture.

10. **Assignment.**

Except as otherwise provided by this MOU, neither party hereto may transfer or assign this MOU without the prior written consent of the other party.

11. **Insurance Coverage.**

Unless a party hereto certifies that it is self-insured and provides reasonable assurances as to its ability to provide such self-insurance, each party shall maintain comprehensive general liability insurance during the term of this MOU. Each party's respective policy is to contain, or be endorsed to contain the following provisions:

- A. a separate endorsement naming the other party to this MOU as an additional insured with respect to liability or damage arising out of the services contracted for herein;
- B. state that the coverage is primary and that any coverage maintained by the other party to this MOU shall be in excess of the policy and shall not contribute with it; and
- C. cross liability or severability of interest clauses.

Each party will provide a copy of its insurance policy, upon request, to the other party.

12. Indemnification.

Each party agrees to indemnify, defend, and hold harmless the other party, as well as its officials, officers, agents, employees, assignees, attorneys and volunteers, from any liability, loss, injury, or damage to person or property (including death) that each may suffer as a result of claims, demands, costs, or judgments, including the payment or reimbursement of legal fees, and litigation expenses, that arise out of the indemnifying party's actions or inactions under or pursuant to this MOU. Each party as an indemnified party, shall have the right to accept or reject any legal representation the indemnifying party proposes to defend the indemnified party.

13. Legal Fees.

In the event a lawsuit or other action is brought by either party hereto to clarify or enforce any of this MOU's terms, each party thereto shall bear its own expenses, including legal fees and costs.

14. No Third-Party Beneficiaries.

By entering into this MOU, the parties do not intend to confer a benefit on a third party, except as expressly set forth herein.

15. Applicable Law.

This MOU shall be interpreted, construed, and enforced pursuant to, and in accordance with, Indiana Law. The parties consent to venue in City of Goshen, Elkhart County, Indiana.

16. Amendments.

This MOU may be amended or modified only through a written document signed by both School and City.

17. Waivers.

The waiver by either party of any breach or other violation of any provision of this MOU shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision of this MOU.

18. Severability.

In the event that any provision of the MOU 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 MOU shall not affect the validity or enforceability of any other provision of the MOU.

19. **Binding Effect.**

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

20. **Entire Understanding.**

This MOU constitutes the entire understanding between the parties and supersedes all other agreements or understandings between City and School District relative to the subject matter of this MOU.

21. **Authority.**

The undersigned affirm that all steps have been taken to authorize execution of this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed the day and year first written above.

City of Goshen
Board of Public Works & Safety

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

Michael A. Landis, Member

Barb Swartley, Member

DeWayne Riouse, Member

Goshen Community Schools, Inc.

By: 

Printed: Dr. Steve Hope

Its: Superintendent

By: 

Printed: Mr. Bradd Weddell

Its: GCS School Board President



**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

September 23, 2021

To: Board of Public Works and Safety
From: Brandy L. Henderson
Subject: Agreement with Merrell Bros. Inc.

The City wishes to contract with Merrell Bros. Inc. to provide the City with certain services necessary to complete various activities related to the two-part process of lagoon cleaning and clean-closure certification. These services are more particularly described in paragraph 2 and 3 of Contractor's September 13, 2021 proposal attached as Exhibit A to the agreement. The cost of this two-part services is not expected exceed a combine cost of \$125,000.

Suggested Motion: to enter into a contract with Merrell Bros. Ince to provide the City certain services necessary to complete various activities related to the two-part process of lagoon cleaning and clean-closure certification with a cost not expected to exceed \$125,000.

AGREEMENT
Removal & Land Application of WWTP Biosolids

THIS AGREEMENT is entered into on _____, 2021, which is the last signature date set forth below, by and between **Merrell Bros. Inc.**, (“Contractor”), whose mailing address is 8811 W. 500 N, Kokomo, IN 46901, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Contractor shall provide City the services necessary to complete various activities related to the two-part process lagoon cleaning and clean-closure certification, which services are more particularly described in paragraph 2 and 3 of Contractor’s September 13, 2021 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.

Section 2. Effective Date; Term

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

Contractor shall commence project Duties upon completion of the land application process to remove biosolids which is projected to be completed in Fall 2021.

Section 3. Compensation

City agrees to compensate Contractor for performing all Duties as described in paragraph 2 and 3 of Contractor’s September 13, 2021 proposal attached as Exhibit A.

Section 4. Payment

City shall pay Contractor for each phase of Duties satisfactorily completed under this agreement as Duties progress.

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

City of Goshen
c/o Waste Water Treatment
1000 W. Wilden Street
Goshen, IN 46528

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.

Contractor is required to have a current W-9 form on file with the Goshen Clerk-Treasurer's Office before City will issue payment.

Section 5. Ownership of Documents

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

Section 6. Licensing/Certification Standards

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

Section 7. Independent Contractor

Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City. City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of Contractor and/or Contractor's employees, agents or subcontractors.

Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors.

Contractor is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

Section 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

Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Contractor is not required to

participate in the E-Verify program should the program cease to exist. Contractor is not required to participate in the E-Verify program if Contractor is self-employed and does not employ any employees.

Contractor shall not knowingly employ or contract with an unauthorized alien, and contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.

Contractor shall require their subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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

Section 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

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

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

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

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

Section 14. Force Majeure

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

If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

Section 15. Default

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

It shall be mutually agreed that if Contractor fails to perform the services or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred

Contractor may also be considered in default by the City if any of the following occur:

- (1) There is a substantive breach by Contractor of any obligation or duty owed under the provisions of this contract.
- (2) Contractor is adjudged bankrupt or makes an assignment for the benefit of creditors.
- (3) Contractor becomes insolvent or in an unsound financial condition so as to endanger performance under the contract.

- (4) Contractor becomes the subject of any proceeding under law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors.
- (5) A receiver, trustee, or similar official is appointed for Contractor or any of Contractor's property.
- (6) Contractor is determined to be in violation of federal, state, or local laws or regulations and that such determination renders Contractor unable to perform the services described under these Specification Documents.
- (7) The contract or any right, monies or claims are assigned by Contractor without the consent of the City.

Section 16. Termination

The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all services performed and expenses reasonably incurred prior to notice of termination.

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

The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

Section 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: Merrell Bros., Inc
Attention: Ryan Zack
8811 W. 500 N
Kokomo, IN 46901

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

Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances. All contractual provisions legally required to be included are incorporated by reference.

Contractor agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the services. Failure to do so maybe deemed a material breach of agreement.

Section 22. Miscellaneous

Any provision of this agreement or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the agreement. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.

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

In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

Section 23. Severability

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

Section 24. Binding Effect

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

Section 25. Entire Agreement

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

Section 26. Authority to Bind Contractor

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

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

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

Merrell Bros., Inc

Jeremy P. Stutsman, Mayor

Printed: _____

Michael A. Landis, Member

Title: _____

Mary Nichols, Member

Date Signed: _____

Barb Swartley, Member

DeWayne Riouse, Member

Date Signed: _____

Proposal Submitted To:

City of Goshen
1000 W. Wilden Street
Goshen, IN 46258

Work to be Performed At:

Goshen WWTP

This proposal is for various activities related to sludge removal, lagoon cleaning, clean-closure certification and digester cleaning. All activities would be performed by Merrell Bros. in similar fashion to previous years of work.

1. Land application from the lagoon in similar fashion to all other hauling events. This includes us using our Nuhn mixer to homogenize the lagoon and remove as many solids as possible as a liquid slurry. Once the land app portion is complete, we will supply the Goshen WWTP with a field ledger and maps with which to complete the IDEM report.

\$0.059/gallon hauled (if completed in the fall of 2021)

2. Lagoon scraping/cleaning. This will involve a long-arm excavator and bulldozer, which will push the heavy solids to the loadout area. The heavy solids will be diluted down and tanked out until it becomes too thick to pump. At that point, we will switch to solid sludge removal via dump trucks and take the material to the landfill already permitted with Goshen. Upon completion of the lagoon scraping, we will work with IDEM to obtain visual cleaning. This is 1 of 2 parts required for the clean-closure certification.

Mobilization of Equipment = \$9,789.00

Excavator/dozer work = \$189.00/hour used

Land application of liquid = \$0.059/gallon (*if completed in the fall of 2021*)

Hauling to the landfill = \$31.50/ton

Landfill tipping fee = whatever the landfill charges

- ***This portion has a \$100,000 not-to-exceed value without further approval***

3. Clean closure certification. This is required once the lagoon is scraped clean and consists of soil sampling the lagoon bottom and background samples from various locations in the plant. The soil sample results are submitted to IDEM for their review. IDEM solely makes the determination of pass/no pass based on their analysis of the results. This is part 2 of 2 of the clean-closure certifications.

Soil sampling = \$1,672.00 per sample (6-8 samples required).

Additional IDEM requirements = time and materials (such as mapping or core sampling)

****Depending on the results and IDEM's directive, they may request over-digging of the lagoon floor. This would require a bulldozer, excavator and transport of clay/dirt to the landfill (if required by IDEM). These charges would be similar to the charges in item # 2 above.***

- ***This portion has a \$25,000 not-to-exceed value without further approval***



4. Digester cleaning of both anaerobic digesters. This would require free access to plant water or fire hydrant water with a minimum of 65 psi for dilution and cleaning purposes. Merrell Bros. will take care of all confined space monitoring and permitting along with cleaning of the digesters with the plant water. No high pressure-washing is included in this proposal. This requires the land application of the biosolids at the same time as the lagoon is emptied (or just before). All reporting and testing are the requirement of Goshen as it is with land application.

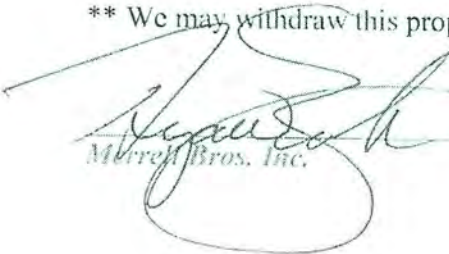
Mobilization of pumps, loadstands, and confined space equipment =	\$6,479.00 (onetime fee)
Digester cleaning (monitoring, permitting and men in the hole) =	\$4,754.00 per digester cleaned
Transfer to the lagoon prior to September 25 th =	\$.035/gallon
Direct land application out of the digester after Sep 25 th =	\$.099/gallon

ALL MATERIAL IS GUARANTEED TO BE AS SPECIFIED, AND THE ABOVE WORK TO BE PERFORMED IN ACCORDANCE WITH THE SPECIFICATIONS SUBMITTED FOR THE ABOVE WORK AND COMPLETED IN A SUBSTANTIAL WORKMANLIKE MANNER FOR THE SUM OF:

See prices above for each portion of this proposal. Please circle which options you wish for us to pursue.

WITH PAYMENTS TO BE MADE AS FOLLOWS: **NET 30 DAYS AFTER COMPLETION.** Overdue payments will incur a finance charge of 1.5% per month (18% per year). If your account becomes past due, we will take all steps necessary to collect, including but not limited to the filing, recording, and foreclosure of a mechanic's lien. You agree to pay all costs of collection, including but not limited to collection agency and attorney fees.

** We may withdraw this proposal if not accepted within 30 days.


Merrell Bros., Inc.

9.13.21
Date

City of Goshen

Date





CITY OF GOSHEN LEGAL DEPARTMENT

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

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

September 23, 2021

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

On behalf of the City of Goshen Water and Sewer Department, an agreement with Peerless-Midwest, Inc is presented to the Board for the special cleaning of Well #14 utilizing an innovative and very successful process called the Armour Method. It will require approximately 6 treatments over the course of 3 to 4 weeks at a cost of \$29,960.00. Any additional treatments, should they be required will cost \$4,980.00 per treatment.

Attached for the Board's approval and execution is an agreement with Peerless Midwest, Inc.

Suggested Motion:

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

AGREEMENT

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

THIS AGREEMENT is entered into on _____, 2021, which is the last signature date set forth below, by and between **Peerless-Midwest, Inc.**, (“Contractor”), whose mailing address is 55860 Russell Industrial Parkway, Mishawka, IN 46545, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

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

Section 2. Effective Date; Term

- A. The agreement shall become effective on the day of execution and approval by both parties.
- B. Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- C. Parties acknowledges that work on the project will commence on or around November 1, 2021 and will take approximately six (6) weeks to complete.

Section 3. Compensation

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

If the City requests treatments beyond the six (6) treatments contemplated by this Agreement, the cost of each such additional treatment shall be \$4,980.00 per treatment.

Section 4. Payment

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

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

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

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

Section 5. Ownership of Documents

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

Section 6. Licensing/Certification Standards

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

Section 7. Warranty

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

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

Section 8. Independent Contractor

Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City. City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of Contractor and/or Contractor's employees, agents or subcontractors.

Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors.

Contractor is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

Section 9. Non-Discrimination

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

Section 10. Employment Eligibility Verification

Contractor shall enroll in and verify the work eligibility status of all Contractor's newly hired employees through the E-Verify program as defined in Indiana Code § 22-5-1.7-3. Contractor is not required to participate in the E-Verify program should the program cease to exist. Contractor is not required to participate in the E-Verify program if Contractor is self-employed and does not employ any employees.

Contractor shall not knowingly employ or contract with an unauthorized alien, and contractor shall not retain an employee or continue to contract with a person that the Contractor subsequently learns is an unauthorized alien.

Contractor shall require their subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

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

Section 11. Contracting with Relatives

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

Section 12. No Investment Activities in Iran

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

Section 13. Indemnification

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

Section 14. Insurance

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

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

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

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

Section 15. Force Majeure

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

If either party is delayed by force majeure, the party affected shall provide written notice to the other party immediately. The notice shall provide evidence of the force majeure event to the satisfaction of the other party. The party shall do everything possible to resume performance. If the period of non-performance exceeds thirty (30) calendar days, the party whose ability to perform has not been affected may, by giving written notice, terminate the contract and the other party shall have no recourse.

Section 16. Default

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

It shall be mutually agreed that if Contractor fails to perform the services or comply with the provisions of this contract, City may issue a written notice of default and provide a period of time that shall not be less than fifteen (15) days in which Contractor shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may otherwise secure

similar services in any manner deemed proper by the City, and Contractor shall be liable to the City for any excess costs incurred

Contractor may also be considered in default by the City if any of the following occur:

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

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The agreement may be terminated in whole or in part, at any time, by mutual written consent of both parties. Contractor shall be paid for all services performed and expenses reasonably incurred prior to notice of termination.

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

The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

Section 18. Notice

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

City: City of Goshen, Indiana
Attention: Water & Sewer Department
308 N. 5th Street
Goshen, IN 46528

Contractor: Peerless- Midwest, Inc
Attention: Adam L. Gerstbauer
55860 Russell Industrial Parkway
Mishawaka, IN 46545

Section 19. Subcontracting or Assignment

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

Section 20. Amendments

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

Section 21. Waiver of Rights

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

Section 22. Applicable Laws

Contractor agrees to comply with all applicable federal, state, and local laws, rules, regulations, or ordinances. All contractual provisions legally required to be included are incorporated by reference.

Contractor agrees to obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental rules or regulations in the performance of the services. Failure to do so may be deemed a material breach of agreement.

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Any provision of this agreement or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the agreement. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.

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

In the event legal action is brought to enforce or interpret the terms and conditions of this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.

Section 24. Severability

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

Section 25. Binding Effect

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

Section 26. Entire Agreement

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

Section 27. Authority to Bind Contractor

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

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

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

Peerless-Midwest, Inc.

Jeremy P. Stutsman, Mayor

Printed: _____

Michael A. Landis, Member

Title: _____

Mary Nichols, Member

Date Signed: _____

Barb Swartley, Member

DeWayne Riouse, Member

Date Signed: _____



CITY OF GOSHEN LEGAL DEPARTMENT

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

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

To: The Board of Public Works & Safety
From: Bodie J. Stegelmann
Date: September 27, 2021
Subject: Agreement with US Army for Joint Training at City's Fidler Pond

The City seeks to enter into an agreement with the United States Army to allow its C Co 2-238th GSAB/Indiana HART unit perform training exercises at the City's Fidler Pond Park. The training will be on October 6, 2021, during the approximate hours of 9:00 am through 5:00 pm, and would include Goshen Fire Department personnel.

Suggested Motion: To approve the Private Property Utilization Agreement with the United State Army, C Co 2-238th GSAB/Indiana HART unit to conduct training exercises at the City's Fidler Pond Park, on October 6, 2021, during the approximate hours of 9:00 am through 5:00 pm, and authorize Mayor Stutsman to sign on behalf of the Board of Public Works & Safety.

Appendix B

PRIVATE PROPERTY UTILIZATION AGREEMENT

I, City Of Goshen Indiana, party of the first part, have agreed upon
(Name of Property Owner)
this date 16 SEP 21, to allow C Co 2-238th GSAB/Indiana HART
(DD MON YY) (Military Unit/Organization)

Gary, Indiana, Party of the second part, the indefinite usage of
(City, State)

that portion of property indicated at enclosure #1, for the purpose of conducting infrequent military helicopter landings. We, both parties, as indicated above, now jointly agree to the usage of the property described at enclosure #1 to this agreement, and will be without charge, or legal responsibility to either party.

(Signature)

(Signature)

CW3 Brett Milton

(Printed Name of Property Owner)

(Rank. Name of Officer/Representative)

317-247-3300 ext 85332

(Telephone Number with Area Code)

(Telephone Number with Area Code)

C Co 2-238th GSAB/Indiana HART

(Organization/Unit)

(Date)

(Date)

Enclosure
Property Diagram

