



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m. November 1, 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 Minutes: October 25, 2021

Approval of Agenda

- 1) Kid Mayor Finalists
- 2) Active Transportation Program Memorandum of Understanding with MACOG
- 3) FD: Resignation of Private First Class Devan Garcia
- 4) PD: Conditional Offer of Employment to Aaron Harvey Lower
- 5) FD: Conditional Offer of Employment to Joseph F. Cestone
- 6) Agreement with Elkhart FOP Lodge 52, Inc.
- 7) Resolution 2021-29 A Policy for the Issuance of Certificate of Occupancy Prior to Completion of Construction Project
- 8) Resolution 2021-31 Project Coordination Contract with the State of Indiana for the Bidding, Construction and Funding of the Railroad Protection Project at the Beaver Lane and Madison Street Crossings
- 9) Approval of CBDO Agreements for Multi-Unit Housing Rehabilitation for Program Years 2020 & 2021

10) Release of CDBG Lien Agreement-Deferred Payment Loan

11) Baker Tilly Workforce Technology Solutions Agreement

12) Approval & Acceptance of Infrastructure Concrete Payment Reconstruction (PN: 2021-0002)

Privilege of the Floor

Board of Public Works and Safety Order: 724 S. Main Street (Derek Doss)

Approval of Civil City and Utility Claims

Adjournment



MINUTES OF OCT. 25, 2021 REGULAR MEETING

BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD

Convened at 2 p.m. at Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Present: Mayor Jeremy Stutsman and members Mike Landis, Mary Nichols, DeWayne Riouse and Barb Swartley

Absent: None

Call to Order: Mayor Jeremy Stutsman called the meeting to order at 2 p.m.

Review/approval of Minutes: The minutes of the Oct. 18, 2021 meeting of the Board of Works & Safety were presented. Board member Landis moved to approve the minutes as presented and the motion was seconded by Board member Swartley. Motion passed 5-0.

Review/approval of Agenda: Mayor Stutsman presented the Board agenda with added item #7 – approval of a Brownfield Revolving Fund Loan Grant Agreement with Goshen Brewing Co. Landis moved to approve the agenda with added agenda item #7 and the motion was seconded by Swartley. Motion passed 5-0.

1) Goshen Police Department: Promotion of Sgt. Jared A. Ellison to Lieutenant

Goshen Police Chief Jose' Miller asked the Board to approve the promotion of Jared A. Ellison from the rank of sergeant to the rank of lieutenant, retroactive to Oct. 22, 2021. Chief Miller said Ellison has been an officer for four years, has demonstrated his leadership qualities and will continue to be an asset after being promoted to lieutenant. Landis/Swartley moved to approve the promotion of Jared A. Ellison from the rank of sergeant to the rank of lieutenant, retroactive to Oct. 22, 2021. Motion passed 5-0. Mayor Stutsman then swore Lt. Jared A. Ellison into office as a lieutenant for the Goshen Police Department.

2) Model Elementary request to place flags in Art Alley (Principal Tami Hicks)

Tami Hicks, principal of Model Elementary School, asked the Board for permission to hang Tibetan-inspired flags created by her students and staff in the Art Alley in downtown Goshen during spring 2022. Hicks said that as part of its "Why You Matter" campaign, Model has been conveying to students and staff that they matter. Last school year, the campaign involved having all students and staff write statements about why they matter on 11-by-17-inch papers with their photos and posting them in the school. Hicks said this year, students and staff members are creating Tibetan-inspired flags with unique messages. Hicks asked for permission to hang these flags in the Art Alley so that the messages can be "carried by the wind to the hearts of the people of Goshen." Mayor Stutsman said he believes an art installation is already being planned for the spring in the Art Alley and asked if Hicks would be open to displaying the flags around City Hall. Hicks said she would. In response to a question by Mayor Stutsman, City Attorney Bodie Stegelmann said it would be advisable to develop a plan for how best to display the flags. Hicks said she hopes 800 flags will be made by students, staff and community members.



City Attorney Stegelmann concurred with Mayor Stutsman's suggestion that the Board approve displaying the flags on public property subject to an acceptable plan being developed by Hicks and City staff.

Landis/Swartley moved to approve the request from Model Elementary School to hang flags on public property during spring 2022 subject to the school working out a plan with City staff. Motion passed 5-0.

3) Bond issuance advisory services agreement with Baker Tilly (Deputy Clerk-Treasurer Jeffery Weaver)

Goshen Deputy Clerk-Treasurer Jeffery Weaver asked the Board to approve and authorize Mayor Stutsman to execute an agreement with Baker Tilly for advisory services for the 2021 City General Obligation Bond. The scope of work includes preparation and review of bond documents, recommended bond structuring and timing, planning, securities issuance, credit rating, and facilitation of the bond sale. The advisory services will occur primarily between August and December of 2021 and will be billed at the hourly rates presented on page 6 of the agreement. Baker Tilly estimates the services to cost \$40,000. In response to a question from Mayor Stutsman, Weaver said Baker Tilly would be paid from the proceeds of the bond sale.

Landis/Swartley moved to approve and authorize Mayor Stutsman to execute an agreement with Baker Tilly for advisory services for the 2021 City General Obligation Bond. Motion passed 5-0.

4) Goshen Water & Sewer: Unpaid final accounts

Kelly Saenz, Goshen Water & Sewer Office Manager, asked the Board to move the office's uncollected finalized accounts from active to Collection, Sewer Liens and Write offs. Saenz reported that the original amount of unpaid final Water/Sewer accounts for this period was \$5,450.44. Collection letters were sent out and payments of \$435.53 had been collected. The uncollected amount equals \$5,014.91.

Landis/Swartley moved to move the office's uncollected finalized accounts from active to Collection, Sewer Liens and Write offs. Motion passed 5-0.

5) Concrete Paving Project – Balancing Change Order No. 1 (JN: 2021-0002)

City of Goshen Director of Public Works and Utilities Dustin Sailor asked the Board to approve the balancing Change Order No. 1 for (JN: 2021-0002) increasing the contract \$63,431.80 for a final contract amount of \$657,021.80. The Engineering Department found additional areas of concrete pavement in need of repair that was not anticipated. City staff directed Premium Concrete Services to add these repairs to the project while they were working in the area. Sailor said Change Order No. 1 will increase the current contract price \$63,431.80, making the final contract amount \$657,021.80 – a 10.69% increase over the original contract of \$593,590.00.

Landis/Swartley moved to approve the balancing Change Order No. 1 for (JN: 2021-0002) increasing the contract \$63,431.80 for a final contract amount of \$657,021.80. Motion passed 5-0.

6) Change Order No. 3 for Douglas, Reynolds, and 16th Streets Project (JN: 2020-0017)

City of Goshen Director of Public Works and Utilities Dustin Sailor asked the Board to approve Change Order No. 3 for the Douglas, Reynolds, and 16th Streets Project for a decrease of \$75,904.51 and an additional three (3) days for completion. Sailor said Change Order No. 3 covers additional costs for improving drainage at the edges of driveways, structure chimney reconstruction, and backfill for City potholing. Sailor said Change Order No. 3 also serves as a balancing Change Order to close the project.



Sailor said the original contract amount, plus additions from Change Order No. 1 through Change Order No. 2, was \$1,048,884.35. The quantities from Change Order No. 3 decrease the contract amount by \$75,904.51, for a revised contract amount of \$972,979.84, an increase of 10.65% over the original contract price. Sailor said the contract completion date will be extended by three days to cover time spent to complete the additional work.

Landis/Swartley moved to approve Change Order No. 3 for the Douglas, Reynolds, and 16th Streets Project for a decrease of (\$75,904.51) and an additional three (3) days for completion. Motion passed 5-0.

7) Approval of Brownfield Revolving Fund Loan Grant Agreement with Goshen Brewing Co.

Becky Hutsell, the City of Goshen's Redevelopment Director, asked the Board to approve a grant to Goshen Brewing Co. for \$27,750, from the Brownfield Revolving Loan Fund, to pay for further site investigation by Roberts Environmental of vacant land at 409 West Lincoln Ave. Hutsell said the City has received an application for a grant from the Brownfield Revolving Loan Fund Program from Goshen Brewing Company to cover the costs associated with additional sampling activities required to further delineate the contamination issues noted for the vacant property at 409 West Lincoln Avenue. She said Goshen Brewing has a purchase agreement in place to expand their operations at this site, but the unknown extent of the remediation activities required could have the potential to prohibit redevelopment of this site. Hutsell said Roberts Environmental, LLC has developed a sampling plan based upon the proposed development site plan for \$27,750. By way of background, as detailed in the Policy & Procedure Manual approved by the Board of Works in March 2019, all Brownfield RLF applications must meet the guidelines and are reviewed by the members of an appointed advisory committee. The city's Brownfield Revolving Loan Fund Advisory Committee has reviewed this request and is recommending approval of a grant to Goshen Brewing Company for \$27,750 to fund the further site investigation scope of work. A copy of a grant agreement was attached to the Board packet along with a copy of the proposal from Roberts Environmental (**EXHIBIT 1**). In response to questions from Mayor Stutsman, Hutsell said the agreement would be for phase two of work and that if contamination is found, Goshen Brewing could ask for a loan for cleanup of the site. In response to a question from Landis, Hutsell said there would be different clean up criteria depending on the proposed use of the property.

Landis/Swartley moved to approve a grant agreement with Goshen Brewing Co. for \$27,750, from the Brownfield Revolving Loan Fund. Motion passed 5-0.

Privilege of the Floor:

Lori Arnold of Goshen asked if the Board was responsible for approving parking and street closures for First Fridays. Mayor Stutsman confirmed that was the case. Arnold voiced concern about the issue, adding that she recently wanted to visit a business on a First Friday, but parking was not available. Arnold said other residents have had the same concern as did some downtown businesses. Arnold said some business owners said First Friday closures hurt sales and they felt they had not been heard.

Mayor Stutsman responded that Downtown Goshen, Inc. and the Goshen Chamber of Commerce inform downtown businesses about closures. He said some businesses don't like the closures, but some like the closures and say they have their best sales during First Fridays. Still, and out of respect for all businesses, Mayor Stutsman said the mixed views of business owners is why there are not always street and parking closures on First Fridays.



Arnold said that she just wanted to raise the issue. She said downtown Goshen is “gorgeous” and she likes First Fridays, but it’s important not to hurt businesses. Arnold said she also was unaware that downtown businesses are charged fees to support First Fridays. Mayor Stutsman responded that it’s a voluntary fee of about \$150 a year. In response to another question from Arnold, Mayor Stutsman said not all downtown businesses are members of the Goshen Chamber of Commerce.

At 2:22 p.m., Mayor Stutsman closed the Privilege of the Floor.

Mayor Stutsman/Landis moved to approve Civil City and Utility claims. Passed 5-0.

Hearing for Goshen City employee Scott McCrindle

At 2:22 p.m., Mayor Stutsman opened the hearing for Goshen City employee Scott McCrindle.

The Mayor called forward McCrindle and attorney Don Shuler, representing the City Fire Department. Also present was a quorum of the Board of Safety and City Attorney Bodie J. Stegelmann.

Providing background on the matter, City Attorney Stegelmann said the Goshen Fire Department took disciplinary action against Fire Capt. Scott McCrindle, and he was served with a notice of termination on Sept. 14, 2021.

Stegelmann said that on that same date, McCrindle filed a notice of appeal and a statutory hearing on the appeal was scheduled before the Board of Safety today – Oct. 25, 2021.

Stegelmann said the Board’s responsibility would be to act as fact finders, hear evidence from both sides and decide if there were grounds for the action taken and, if so, whether the action was justified. In response to a question from Stegelmann, McCrindle and Shuler both affirmed that was their understanding of the purpose of today’s hearing.

City Attorney Stegelmann said that if both parties agreed, he would ask that those named documents be made part of the record, noting that doing so could speed the proceedings and help get to the actual testimony more quickly.

McCrindle responded, “I don’t know the protocol. Can I talk to him a second” he said, referring to attorney Don Shuler, and added, “and see if I can make this go a lot faster?”

Mayor Stutsman declared a break so McCrindle and Shuler could speak outside the hearing room.

At 2:29 p.m., McCrindle and Shuler returned to the hearing. City Attorney Stegelmann asked if the parties were ready to proceed. McCrindle responded, “We’re trying to figure out, maybe you can shed some light on it. I’m going to withdraw my appeal in front of the Board and take what stands. Can we do that?”

City Attorney Stegelmann told McCrindle that would be possible and requested a break so he could confer with McCrindle. Mayor Stutsman declared a break at 2:30 p.m.

At 2:40 p.m., City Attorney Stegelmann returned to the hearing, but without McCrindle. Stegelmann said, “Just to let the Board know, Mr. McCrindle waived his right to a hearing, so there will be no hearing today. And so the issue is resolved at this point.”

In response to questions from Mayor Stutsman, City Attorney Stegelmann said McCrindle did not return to the hearing because that wasn’t necessary and that the hearing could now be closed.

Mayor Stutsman closed the hearing at 2:41 p.m., noting that McCrindle had withdrawn his appeal.



With no further matters before the Board, Mayor Stutsman/Landis moved to adjourn the meeting. Motion passed 5-0 and the meeting was adjourned at 2:41 p.m.

EXHIBIT 1: Memorandum supporting the request for approval of a Brownfield Revolving Loan Fund Agreement with Goshen Brewing Co., the proposed agreement and Further Site Investigation Proposal for 409 West Lincoln Avenue by Roberts Environmental Services, LLC.

APPROVED

Jeremy Stutsman, Chair

Michael Landis, Member

Mary Nichols, Member

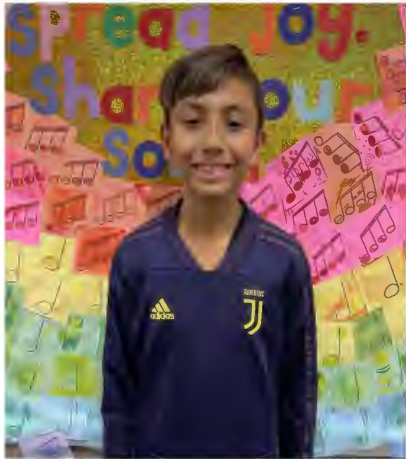
Barb Swartley, Member

DeWayne Riouse, Member

ATTEST

Richard R. Aguirre, Clerk-Treasurer

2021-2022 Goshen Kid Mayor Candidates!



Jayden Espinosa Lopez



Carly Sensenig



Gemma Stickel



Madeline Harkenrider



Abigail (Abby) Nichols



Kellen Snapp

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT is made and entered into by and between the City of Goshen and the Michiana Area Council of Governments, hereinafter referred to as “MACOG”.

WITNESSETH:

WHEREAS, MACOG has developed a long-range Active Transportation Plan that provides a comprehensive strategy for the region, ensuring all users of the transportation network are able to move around in a safe, connected, and accessible environment.

WHEREAS, the Active Transportation Plan states goals and objectives intended to enhance bicycle and pedestrian mobility and safety in the region; and

WHEREAS, MACOG has identified a need for a liaison and partnerships to focus on all five E’s (Education, Encouragement, Enforcement, Engineering, and Evaluation) to work toward improving enhance bicycle and pedestrian mobility and safety in the region; and

WHEREAS, MACOG currently maintains a traffic data program for the purpose of traffic related statistics, planning, and other project selection that will be expanded to include data collection for active transportation; and,

WHEREAS, the Active Transportation Plan is based on and consistent with local planning efforts and was developed with the input of various stakeholders including local government staff and elected officials; and

WHEREAS, the City of Goshen desires to engage the services of MACOG to furnish technical and professional assistance in enhancing bicycle and pedestrian mobility and safety; and

WHEREAS, MACOG has indicated a willingness to provide such technical and professional services to the region;

IT IS THEREFORE AGREED by and between the City of Goshen and MACOG as follows:

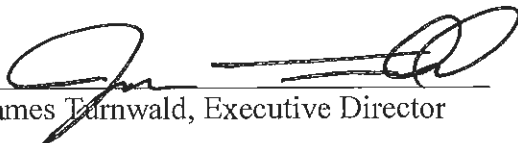
1. MACOG will employ an Active Transportation Planner to serve as a liaison for bicyclists and pedestrians in the region, and works toward improving infrastructure, programs, and services that are available to cyclists and pedestrians.
2. MACOG, in partnership with other communities and organizations in the region, will develop educational and promotional resources, programs, campaigns and events.
3. MACOG will work with the City of Goshen, and other participating communities, to identify locations to conduct bicycle and/or pedestrian counts.

4. Data collected by MACOG as part of a Regional Active Transportation Count Program will be made available to the City of Goshen within 30 days of the date collected. Additionally, this data will be posted to MACOG's website to make it available for public use.
5. MACOG will provide technical assistance to the City of Goshen, and other participating communities, seeking help on active transportation issues and concerns.
6. MACOG will coordinate efforts of public and private groups that support active transportation, and encourage continued and increase support throughout the region.
7. Under this Memorandum of Understanding, the City of Goshen agrees to provide the MACOG \$5,000 each year for three years (total of \$15,000). These funds will be paid to the MACOG no later than June 30, 2022 in the first year and annually the following two years by June 30, 2023 and June 30, 2024.
8. This Memorandum of Understanding may be declared null and void if:
 - A. Either party fails to abide by the intent of this Memorandum of Understanding or;
 - B. Both parties mutually agree to end this partnership.
9. The effective dates for this Memorandum of Understanding will by July 1, 2021 through June 30, 2024 with provision for renewal.

IN WITNESS WHEREOF, the City of Goshen and MACOG, through the undersigned officials, have hereunto affixed their signatures.

Michiana Area Council of Governments

City of Goshen

By: 
James Tarnwald, Executive Director

By: _____
Mayor Jeremy Stutsman

Date: 10/1/21

Date: _____



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

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

October 28, 2021

To: Board of Works and Public safety

RE: Private First Class Devan Garcia Resignation

From: Fire Chief Danny Sink

After 4 years of service at GFD; Private First Class Devan Garcia has submitted his resignation, effective November 14, 2021. We have enjoyed working with Devan and appreciate his service to our community. Our GFD family would like to wish Devan and his family the best in their new endeavors.



CITY OF GOSHEN LEGAL DEPARTMENT

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

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www.goshenindiana.org

November 1, 2021

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Police Department Conditional Offer of Employment to Aaron Harvey Lower

On behalf of the Police Department, it is recommended that the Board extend a conditional offer of employment to Aaron Harvey Lower, as well as approve and authorize the Mayor to execute the attached Conditional Offer of Employment Agreement.

The agreement sets forth the conditions that Aaron Harvey Lower must meet prior to beginning employment with the Police Department as a probationary patrol officer. The agreement also provides for payment of a hiring bonus as Aaron has completed the Tier I basic training requirements and has active certification with the Indiana Law Enforcement Training Board.

The Police Department will request the Board to confirm the offer of employment when a position opening becomes available in the Department.

Suggested motions:

- (1) Move to extend a conditional offer of employment to Aaron Harvey Lower as a probationary patrol officer.
- (2) Move to approve and authorize the Mayor to execute the Conditional Offer of Employment Agreement with Aaron Harvey Lower which includes the payment of a hiring bonus.

CONDITIONAL OFFER OF EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into on November ____, 2021, between the **City of Goshen, Indiana**, by and through the Goshen Board of Public Works and Safety (City), and **Aaron Harvey Lower** (Lower).

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

PREREQUISITES TO BEGINNING EMPLOYMENT

City conditionally offers Lower employment as a probationary patrol officer of the Goshen City Police Department. Lower accepts City's conditional offer of employment. City does not have a current position available in the Goshen City Police Department. City and Lower understand and agree that the offer of employment is contingent upon the following:

- (1) A personnel vacancy in the Goshen City Police Department rank and file must exist. Lower understands that currently no vacancy exists in the rank and file of the Police Department.
- (2) Lower certifies that Lower is currently an member of the Indiana Public Retirement System and the 1977 Police Officers' and Firefighters' Pension and Disability Fund.
- (3) City will confirm its offer of employment to Lower when a position opening becomes available in the Goshen City Police Department.

HIRING BONUS

- (1) City agrees to pay a hiring bonus upon Lower's commencement of employment provided that Lower meets the following prerequisites:
 - (a) Lower has successfully completed the minimum Tier I basic training requirements established by the Indiana Law Enforcement Training Board;
 - (b) Lower has an active certification with the Indiana Law Enforcement Training Board;
 - (c) Lower has separated from another Indiana law enforcement agency as an active reserve officer or a paid police officer within twelve (12) months of accepting the employment offer with the City (within twelve (12) months of the date of this agreement);
 - (d) Lower has served with the other Indiana law enforcement agency as an active reserve officer or paid police officer for a minimum of one (1) year; and
 - (e) Lower will be a first time employee of the Goshen Police Department as a police officer.
- (2) By execution of this agreement, Lower certifies that Lower meets the prerequisites set forth in paragraph (1).

- (3) Upon commencement of employment, City agrees to pay Lower a hiring bonus payment of Eight Thousand Dollars (\$8,000) over Lower's first five (5) years of employment with the City as follows:
 - (a) Two Thousand Dollars (\$2,000) shall be paid upon Lower's date of hire;
 - (b) Two Thousand Dollars (\$2,000) shall be paid upon Lower's second employment anniversary date with City; and
 - (c) Four Thousand Dollars (\$4,000) shall be paid upon Lower's fifth employment anniversary date with City.
- (4) Upon commencement of employment, City agrees to pay Lower a base wage equal to the base wage paid to a patrol officer as set forth in the current salary ordinance. In addition, Lower shall be credited with forty-five (45) hours of paid sick leave.
- (5) Lower's appointment shall be probationary for a period not to exceed one (1) year. The Police Chief may recommend to the Goshen Board of Public Works and Safety that Lower receive permanent appointment at any time within the probationary period.
- (6) In the event that Lower voluntarily leaves city employment or is terminated for cause prior to Lower's second employment anniversary date, Lower agrees to repay City the hiring bonus payment of Two Thousand Dollars (\$2,000) paid under paragraph (3)(a). No repayment will be due City if Lower leaves city employment due to disability or illness which make it impractical to continue to serve as a police officer in the foreseeable future, or death.
- (7) Lower's repayment to City under paragraph (6) is due within thirty (30) days of Lower's last day of employment with City. Interest will accrue on the unpaid balance of the repayment at the rate of eight percent (8%) per annum beginning thirty (30) days after Lower's last day of employment with City.
- (8) Lower shall forfeit any future hiring bonus payments under paragraphs (3)(b) or (3)(c) if:
 - (a) Any disciplinary action in excess of a written warning is taken against Lower at any time during the first five (5) years of employment; and
 - (b) Lower receives a performance evaluation with a score less than thirty-two (32) after Lower's first year of employment.

AMENDMENT

This agreement may be amended only by the mutual written consent of the parties and approved by the Goshen Board of Public Works and Safety.

SEVERABILITY

If any provision, covenant, or portion of this agreement or its application to any person, entity or property is held to be invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this agreement.

INTEGRATION

This agreement supercedes all prior agreements and negotiations that relate to the subject matter and is a full integration of the agreement of the parties.

INDIANA LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Proper venue to enforce the terms and conditions of this agreement shall be in Elkhart County, Indiana.

BINDING EFFECT

This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns, provided that this agreement may not be assigned without the written consent of the parties.

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

Aaron Harvey Lower

Jeremy P. Stutsman, Mayor

Date: _____

Date: November 1, 2021



CITY OF GOSHEN LEGAL DEPARTMENT

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November 1, 2021

To: Board of Public Works and Safety
From: Shannon Marks
Subject: Fire Department Conditional Offer of Employment to Joseph F. Cestone

On behalf of the Fire Department, it is recommended that the Board extend a conditional offer of employment to Joseph F. Cestone, as well as approve and authorize the Mayor to execute the attached Conditional Offer of Employment Agreement.

The agreement sets forth the conditions that Joseph F. Cestone must meet prior to beginning employment with the Fire Department as a probationary firefighter, and requires Joseph to successfully complete all training requirements once employed and serve as an active paramedic.

The Fire Department will request the Board to confirm the offer of employment when a position opening becomes available in the Department.

Suggested motions:

- (1) Move to extend a conditional offer of employment to Joseph F. Cestone as a probationary firefighter.
- (2) Move to approve and authorize the Mayor to execute the Conditional Offer of Employment Agreement with Joseph F. Cestone.

CONDITIONAL OFFER OF EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into on November _____, 2021, between the **City of Goshen, Indiana**, by and through the Goshen Board of Public Works and Safety (City), and **Joseph F. Cestone** (Cestone).

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

PREREQUISITES TO BEGINNING EMPLOYMENT

City conditionally offers Cestone employment as a probationary firefighter of the Goshen City Fire Department. Cestone accepts City's conditional offer of employment. City does not have a current position available in the Goshen City Fire Department. City and Cestone understand and agree that the offer of employment is contingent upon the following:

- (1) A personnel vacancy in the Goshen City Fire Department rank and file must exist. Cestone understands that currently no vacancy exists in the rank and file of the Fire Department. Although the Fire Department is initiating the pension physical and psychological testing, Cestone understands that no permanent employment will be offered until such time that a personnel vacancy is available and/or additional staffing is hired to increase the number of firefighters.
- (2) Cestone must submit a complete application for membership to the Indiana Public Retirement System (InPRS) and the 1977 Police Officers' and Firefighters' Pension and Disability Fund (1977 Fund). Cestone understands that the application for membership requires the completion of a comprehensive medical history and the administration and successful passage of the baseline statewide physical examination and baseline statewide mental examination.
- (3) City agrees to pay the initial cost for Cestone to complete the baseline statewide physical examination and baseline statewide mental examination as required by Indiana Code §§ 36-8-8-7(a) and 36-8-8-19. In the event that InPRS requires any additional reports and/or testing to establish physical and mental fitness beyond the baseline statewide physical examination and baseline statewide mental examination requirements, such costs for the additional reports and/or testing shall be at Cestone's expense.
- (4) InPRS will determine whether Cestone has any Class 3 excludable conditions. Cestone understands that if InPRS finds that Cestone has any Class 3 excludable conditions,

Cestone will be prevented from receiving certain Class 3 impairment benefits for a certain period of time and will be disqualified from receiving disability benefits from the 1977 Fund throughout Cestone's employment if the disability is related to the Class 3 excludable condition. In addition, City will review the InPRS findings to determine whether the City's conditional offer of employment will be withdrawn.

- (5) City and Cestone understand that the board of trustees of the InPRS must approve the application for membership to the 1977 Fund.

City will confirm its offer of employment to Cestone if the board of trustees of the InPRS approves the application for membership to the 1977 Fund. City's confirmation will occur when a position opening becomes available in the Goshen City Fire Department. In the event that approval is not given by the board of trustees of the InPRS, City withdraws this conditional offer of employment, and Cestone accepts City's withdrawal and this agreement shall be terminated.

**AGREE TO ENROLL AND COMPLETE PARAMEDIC TRAINING,
BECOME CERTIFIED/LICENSED, AND SERVE AS A PARAMEDIC**

- (1) As a condition of employment, City shall require and Cestone agrees to attend and successfully complete a paramedic training course and obtain an Indiana paramedic certification/license.
- (2) After consultation, the Fire Chief will instruct Cestone when to enroll in the paramedic training course. Cestone shall schedule all training sessions when Cestone is scheduled to work to the extent possible.
- (3) City will pay the cost of the paramedic training and Cestone will be paid for the time Cestone spends in class and required clinical sessions. City will pay for Cestone to attend the paramedic training course one (1) time. City will not pay for a refresher course or time for Cestone to attend a refresher course.
- (4) Cestone shall have twenty-four (24) months from the first day of paramedic class to complete the paramedic training course. Cestone agrees to obtain an Indiana paramedic certification/license within one (1) year after completion of the paramedic training course.
- (5) If Cestone refuses to attend the paramedic training course when instructed to do so, fails to successfully complete the paramedic training course within twenty-four (24) months from the first day of paramedic class, or fails to obtain an Indiana paramedic certification/license within one (1) year after completion of the paramedic training course, Cestone's employment with City and the Goshen City Fire Department will be terminated for cause.
- (6) If Cestone leaves employment with City and the Goshen City Fire Department before receiving an Indiana paramedic certification/license, including termination, Cestone agrees

to repay City the City's actual cost for Cestone to attend the paramedic training course, including the cost of the course and time City paid Cestone to attend class and required clinical sessions. In no event shall the reimbursement amount exceed the sum of Fifteen Thousand Dollars (\$15,000).

- (7) Upon receiving an Indiana paramedic certification/license, Cestone agrees to serve City as an active paramedic in accordance with the requirements set forth in the contract between the City of Goshen and the Goshen Firefighters Association, Local No. 1443, as amended from time to time, and to maintain Cestone's paramedic certification/license as long as Cestone is required to serve City as a paramedic.
- (8) Cestone agrees to serve City as an active paramedic for a minimum of three (3) full years. If Cestone fails to serve City as an active paramedic for three (3) full years, Cestone agrees to repay City a prorated portion of Fifteen Thousand Dollars (\$15,000) for the paramedic training. The Fifteen Thousand Dollars (\$15,000) will be credited at the rate of Five Thousand Dollars (\$5,000) for each full year Cestone serves City as an active paramedic. (Credit will not be given for partial years of service.)

No repayment will be due City if Cestone fails to serve as an active paramedic for three (3) full years because of disability or illness which make it impractical to continue to serve as a paramedic in the foreseeable future, or death.

- (9) Cestone's repayment to City is due (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Cestone's last day of employment with City. Interest will accrue on the unpaid balance of the repayment at the rate of eight percent (8%) per annum beginning thirty (30) days after withdrawing from service as an active paramedic or within thirty (30) days of Cestone's last day of employment with City.

AMENDMENT

This agreement may be amended only by the mutual written consent of the parties and approved by the Goshen Board of Public Work and Safety.

SEVERABILITY

If any provision, covenant, or portion of this agreement or its application to any person, entity or property is held to be invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this agreement.

INTEGRATION

This agreement supercedes all prior agreements and negotiations that relate to the subject matter and is a full integration of the agreement of the parties.

INDIANA LAW

This agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Proper venue to enforce the terms and conditions of this agreement shall be in Elkhart County, Indiana.

BINDING EFFECT

This agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns, provided that this agreement may not be assigned without the written consent of the parties.

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

By: _____
Jeremy P. Stutsman, Mayor

Joseph F. Cestone

Date: November 1, 2021

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

November 1, 2021

To: Board of Public Works and Safety
From: Shannon Marks
Subject: Agreement with Elkhart FOP Lodge 52, Inc.

The City and the Elkhart FOP Lodge 52, Inc. have concluded negotiations of a new agreement for 2022 and 2023. Following is a summary of the changes:

- Increment pay and longevity bonus pay have been combined to what is now called “Longevity Increase.” Similar to what was previously known as increment pay, after the completion of one continuous year of employment with the department, an officer will receive an annual longevity increase of \$200. This amount shall increase \$200 each subsequent year through 17 years of employment. The longevity increase shall increase \$660 at 18 years, \$670 at 19 years, and \$670 at 20 years. The employee will continue to receive \$5,400 each subsequent year after the 20th year of employment.
- The City will now pay 2% of the employee’s contribution to the pension plan.
- A new Article for “On-Call Pay” has been added. The officer assigned to be on-call as a detective and the officer assigned to be on-call as an evidence technician will be paid \$11.43 per day as on-call pay.
- Language was added to provide notice to members of the department when an internal investigation is commenced and concluded.
- New legislation required revisions to be made to the agreement regarding the maintenance of and the disclosure of information in personnel files.
- Wages for the covered positions have been increased in 2022 and 2023 as follows:

	<u>2022</u>	<u>2023</u>
Captain	\$70,032	\$72,483
Lieutenant	\$64,876	\$67,147
School Resource Officer	\$64,876	\$67,147
Detective	\$64,876	\$67,147
Sergeant	\$61,479	\$63,631
Patrol Officer	\$58,181	\$60,217
Probationary Patrol Officer	\$53,527	\$55,400

Suggested Motion:

Move to approve and execute the agreement with the Elkhart FOP Lodge 52, Inc. for 2022 and 2023.

**AGREEMENT BETWEEN
CITY OF GOSHEN, INDIANA
AND
ELKHART FOP LODGE 52, INC.**

EFFECTIVE DATES

JANUARY 1, 2022 THROUGH DECEMBER 31, 2023

**AGREEMENT BETWEEN
CITY OF GOSHEN, INDIANA
AND
ELKHART FOP LODGE 52, INC.**

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AGREEMENT BETWEEN
CITY OF GOSHEN, INDIANA
AND
ELKHART FOP LODGE 52, INC.

This agreement is entered into on _____, 2021, effective on January 1, 2022 and continuing until December 31, 2023, between the City of Goshen, Indiana, hereafter called “City,” and Elkhart FOP Lodge 52, Inc., hereafter called “Lodge,” representing all full-time sworn police officers of the Goshen Police Department, hereafter called “Police Department.”

The City and the Lodge recognize and declare that they have bargained collectively with respect to terms and conditions of employment for employees of the Police Department, and it is their desire, in the best interest of the City, to promote harmonious relations between the City and the Lodge and to improve police protection for the citizens of the City. It is agreed that the understanding reached should be incorporated into a written contract which will set forth the respective rights and obligations of both the City and the Lodge and will provide an orderly and equitable means of resolving any future differences between the parties.

It is therefore agreed as follows:

ARTICLE I Recognition

Section 1.

The City recognizes the Lodge as its sole and exclusive bargaining representative for all full-time sworn police officers of the Police Department excepting the Chief of Police, the Assistant Chief of Police, and the Division Chiefs. The Lodge does not represent any full-time civilian employees, including Special Police Officers, part-time or seasonal employees of the Police Department.

Section 2.

The City agrees it shall not enter into any oral or written agreements with any employee represented by the Lodge either individually or collectively, or with any other organization acting on behalf of said employees for the duration of this agreement except as allowed in Article XLII of this agreement.

Section 3.

The Lodge membership acknowledges that their duly authorized and elected representatives can enter into an agreement with the City. Such agreement must then receive a simple majority of the total ballots cast of all personnel under the contract to make the agreement binding.

ARTICLE II Term

Section 1.

This agreement shall be in effect on January 1, 2022 and continue until December 31, 2023.

Section 2.

The parties agree that commencing not later than one hundred twenty (120) days prior to August 1, 2023, they will commence negotiations to modify or amend this entire contract.

Section 3.

In the event the parties are unable to reach a new agreement, the terms and provisions of this agreement shall remain in full force and effect for a period of two (2) years after the date of expiration of this agreement or until a new agreement is reached, whichever shall occur first.

Section 4.

With the mutual consent of both parties, any Article or Articles of this agreement may be opened for negotiation at any time.

ARTICLE III Lodge Activities

Section 1.

Employees, individually and through their Lodge representatives, shall have the right to engage in lawful concerted activities for the purpose of negotiation or bargaining with the City, or other mutual aid and protection to express or communicate any views, grievances, complaints, or opinions related to the conditions or compensation of public employment, or their betterment, free from any and all restraint, interference, discrimination, or reprisal.

Section 2.

When any designated representative of the Lodge intends to spend time on Lodge activities during a time that he/she is scheduled to work, he/she shall inform the Chief of Police through the chain of command at least one (1) week in advance unless the nature of the activity does not allow one (1) weeks' notice. In such circumstances, the Chief of Police shall be notified as soon as practicable.

Section 3.

The Lodge shall be afforded the right to utilize bulletin boards at the police station and any sub-police stations for the posting of Lodge notices and other Lodge materials. Such board shall be identified with the name of the Lodge, and the Lodge may designate persons responsible for utilizing the boards.

Section 4.

The Lodge may schedule meetings on City Police Department property so long as such meetings will not be unduly disruptive to the efficient operation of the Police Department.

Section 5.

The Lodge representatives and any other members who are elected to a State or National Lodge Office shall be allowed time off with pay to attend State and National conventions, seminars, and meetings as long as the minimum strength requirements on their respective watches are met. If a representative's watch is below minimum strength, then the representative shall nonetheless be allowed time off as long as minimum strength requirements can be met with qualified personnel.

Section 6.

The Pension Fund Trustees from time to time shall be permitted time off with pay to attend formal police pension seminars.

ARTICLE IV Rights of Management

Except as otherwise provided in this agreement or applicable federal, state, or local laws or ordinances, the City, in the exercise of its functions of management, shall have the right to decide the policies, methods, safety rules, direction of employees, assignment of work, contracting of work equipment to be used in the operation of the Police Department; to determine the hours of work, the right to hire, discharge, suspend, discipline, promote, demote, and transfer employees covered under this contract; and it is agreed that the enumeration of the above management prerogatives shall not be deemed to exclude other prerogatives not enumerated. Nothing in this Article shall abdicate the employee's rights to grievance procedure.

ARTICLE V **Dues Deduction**

The City shall deduct from the pay of each employee, who has authorized deductions to the Treasurer of the Lodge, all amounts established by the Lodge as dues, fees, and assessments. The Treasurer of the Lodge shall provide a list of employees and amounts as authorized to the Clerk-Treasurer. Each month the City shall remit the total amount of deductions from those who have authorized such deductions to the Treasurer of the Lodge.

ARTICLE VI **Wages**

The salary schedule containing base salary and fringe benefits as established by action of the Common Council of the City of Goshen, Indiana is made a part of this agreement by reference. The base salary to be included in the annual salary ordinance is included in Exhibit A attached to this agreement.

ARTICLE VII Overtime

Section 1. Overtime Pay

- (A) With the exception of employees attending the basic Indiana Law Enforcement Training Academy, any employee who works in excess of nine (9) hours in one (1) workday shall receive overtime pay or compensatory time, at the choice of the employee, in addition to any other benefits to which he/she may be entitled. Such overtime pay shall be paid at the rate of time and one-half (1½) of the employee's prevailing hourly rate. An employee's prevailing hourly rate shall be defined as the total of his/her annual base salary, technical skills pay, and longevity increase divided by two thousand one hundred six (2,106) hours. Compensatory time shall be awarded at the rate of one and one-half (1½) times the actual hours worked.
- (B) Overtime duty shall be assigned to employees as uniformly as possible.
- (C) When an employee is called in to work overtime, he/she shall be guaranteed a minimum of two (2) hours work with the choice of two (2) hours pay at the overtime rate or three (3) hours of compensatory time.
- (D) An employee attending the basic Indiana Law Enforcement Training Academy shall receive compensatory time off in lieu of overtime pay for each hour worked in excess of eighty-one (81) hours in the fourteen (14) day work period. Compensatory time shall be at the rate of one and one-half (1½) hours for each hour worked in excess of eighty-one (81) hours in a work period. Hours worked shall include the time the employee spends in training and time required to drive to and from the Academy. Any hours to be worked in excess of eighty-one (81) hours in a fourteen (14) day work period must be approved in advance in writing by the Chief of Police or the Chief's designee.

Section 2. Call In Authorization

Only the officers listed below shall have the authority to call in personnel for extra duty pay:

- (A) Chief of Police.
- (B) Assistant Chief.
- (C) Division Chiefs.
- (D) In the absence of the Chief of Police, the Assistant Chief, or the Division Chiefs, then the officer in charge of the watch.

ARTICLE VIII Holiday Compensation

Section 1.

Each employee of the Police Department shall receive eleven (11) days as in lieu of holiday pay, which days are not specifically named.

Section 2.

Each employee shall receive his/her regular daily wage (nine (9) hours x regular hourly rate of base pay per level), per eleven (11) days for the calendar year.

Section 3.

In the event an employee leaves the department, his/her holiday compensation will be prorated on an annual calendar year basis. If an employee works three (3) months, he/she shall be entitled to twenty-five percent (25%) of the holiday pay.

ARTICLE IX Court Time Pay

Section 1.

In addition to any other item of compensation, employees shall receive court time pay when appearing during off duty hours before any court or administrative body on behalf of the City, or at the County Prosecutor's Office pertaining to incidents investigated by said employee while in the line of duty whether such incidents are civil or criminal in nature.

Section 2.

Such court time pay shall be paid at the current overtime rate of pay. A guaranteed minimum of two (2) hours will be paid to those employees for any appearance as set out in Section 1 of this Article.

Section 3.

Any employee who retires or leaves the department due to a medical disability or leaves the department without disciplinary proceedings and is required to testify on behalf of the City or State of Indiana in any criminal proceeding, in any court trial, arbitration hearing, or administrative proceeding shall be paid by the City at the rate of pay for the rank he/she last held. City agrees to a minimum of two (2) hours for each date a former employee is required to appear. This Section applies only for a period of five (5) years from said date of termination of employment.

ARTICLE X**Funeral Leave**

Section 1.

In case of death in an employee's immediate family, said employee shall be granted, upon request, three (3), nine (9) hour workdays off without loss of pay within fourteen (14) days immediately following the death to make preparation for, attend the funeral and burial, or attend any necessary business or legal matters of the relative or the relative's estate. The immediate family is defined as: spouse, parent, parent-in-law, daughter, son, brother, sister, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, stepparent, stepchild, or any other relative who was a member of the employee's household immediately preceding the death.

Section 2.

In case of death of a member of the employee's family other than the family defined in Section 1 of this Article, an employee may be granted, upon request, one (1), nine (9) hour day of leave without pay.

Section 3.

In case of death of a co-worker, an employee may be granted reasonable time off to attend the funeral of said co-worker, provided that staffing permits. As contained herein, a co-worker shall be identified as an employee at the time of death.

Section 4.

In the event an employee serves as a pall bearer in any funeral, the employee shall be allowed one (1), nine (9) hour day of leave without pay, provided that staffing permits.

Section 5.

The Chief of Police, Assistant Chief, or Division Chiefs, or if they are unable to be reached, the officer in charge of the employee's watch, shall have the right to grant, in appropriate cases at their sole discretion, additional days off work without pay.

Section 6.

If an employee takes funeral leave without pay, the employee may use accrued vacation time, compensatory time, or personal days to avoid a loss of pay.

ARTICLE XI On-Call Pay

Section 1.

- (A) The officer assigned to be on-call as a detective and the officer assigned to be on-call as an evidence technician will be paid Eleven and 43/100 Dollars (\$11.43) per day as on-call pay.

- (B) The assigned officer on-call must remain available to be called back to work if necessary to investigate a crime or collect and log evidence. The assigned officer must be able to be contacted by phone and respond to the Department or crime scene as soon as reasonably possible.

**ARTICLE XII Technical Skills Pay, Patrol Officer In Charge of Shift, and
Specialty Pay**

Section 1. Technical Skills Pay

In addition to any other item of compensation, the City shall also pay annual technical skills pay to those employees certified to have technical skills beneficial to the department. Said technical skills pay is to be included in the regular biweekly check at the rate of:

- First Technical Skill..... Five Hundred Dollars (\$500) Annually.
- Second Technical Skill Three Hundred Dollars (\$300) Annually.
- Third Technical Skill Three Hundred Dollars (\$300) Annually.
- Fourth Technical Skill..... Two Hundred Fifty Dollars (\$250) Annually.
- Fifth Technical Skill Two Hundred Fifty Dollars (\$250) Annually.

Technical skills certification shall be a matter of record and supervised by the Chief of Police.

The maximum amount of technical skills pay the City shall pay an employee is One Thousand Six Hundred Dollars (\$1,600) annually. No additional payment will be made for obtaining any additional technical skills certification after the fifth technical skill.

Section 2. Patrol Officer In Charge of Shift

A Patrol Officer who is the officer in charge of a shift or half shift but who is not a Sergeant, Lieutenant, Captain, Detective, or appointed rank such as a School Resource Officer, shall receive an additional Twenty-five Dollar (\$25.00) bonus for each shift, or Twelve Dollar and Fifty Cent (\$12.50) bonus for each half shift, that the Patrol Officer serves as the officer in charge of. This bonus shall be paid in the next regular biweekly check.

Section 3. Specialty Pay

(A) In addition to any other item of compensation, a police officer acting as a field training officer with a new recruit who is not a Detective or appointed rank such as a School Resource Officer, shall receive specialty pay for each shift or half shift serving in this position. The specialty pay shall be Thirty Dollars (\$30.00) per shift, or Fifteen Dollars (\$15.00) for half shift, with the new recruit, and shall be included in the officer’s next regular biweekly check.

(B) A police officer acting in the following positions shall receive additional compensation as specialty pay:

- Detective Team Leader One Thousand Two Hundred Dollars (\$1,200) Annually.
(Two (2) positions)
- Field Training Officer Supervisor..... One Thousand Two Hundred Dollars (\$1,200) Annually.
- Honor Guard Commander..... One Thousand Two Hundred Dollars (\$1,200) Annually.

S.W.A.T. Commander One Thousand Two Hundred Dollars (\$1,200) Annually.

S.W.A.T. Assistant Commander One Thousand Two Hundred Dollars (\$1,200) Annually.

The specialty pay shall be paid quarterly and shall be prorated based on the actual time the officer spends in a position.

ARTICLE XIII Longevity Increase

Section 1.

In addition to any other item of compensation, the City shall pay after the employee has completed one continuous year of employment with the Department, the employee shall receive an annual longevity increase in accordance with the following schedule up to a maximum of Five Thousand Four Hundred Dollars (\$5,400). The employee shall continue to receive Five Thousand Four Hundred Dollars (\$5,400) each subsequent year after the employee's twentieth year of employment with the Department.

	<u>Annual Longevity Increase</u>	<u>Annual Total</u>
1 Year	\$200	\$200
2 Years	\$200	\$400
3 Years	\$200	\$600
4 Years	\$200	\$800
5 Years	\$200	\$1,000
6 Years	\$200	\$1,200
7 Years	\$200	\$1,400
8 Years	\$200	\$1,600
9 Years	\$200	\$1,800
10 Years	\$200	\$2,000
11 Years	\$200	\$2,200
12 Years	\$200	\$2,400
13 Years	\$200	\$2,600
14 Years	\$200	\$2,800
15 Years	\$200	\$3,000
16 Years	\$200	\$3,200
17 Years	\$200	\$3,400
18 Years	\$660	\$4,060
19 Years	\$670	\$4,730
20 Years	\$670	\$5,400
21+ Years	\$0	\$5,400

Section 2.

The annual longevity increase is to be included in the employee's regular biweekly check on a pro rata basis and adjusted annually as of the employee's anniversary date.

ARTICLE XIV Clothing Allowance

Section 1.

In addition to any other item of compensation, the City shall also pay employees having one (1) or more years' service a clothing allowance of One Thousand Five Hundred Dollars (\$1,500) annually.

Said amount is to be paid biannually to maintain uniforms. The first payment shall be on the first pay period in the month of April. The second payment shall be on the first pay period in the month of October. The City shall furnish: one (1) Class A summer shirt, one (1) Class A winter shirt, one (1) Class A pair of uniform pants, two (2) Class B summer shirts, two (2) Class B winter shirts, and two (2) Class B pair of uniform pants. The City shall also furnish jackets, caps, patches, badges, one (1) pair of shoes, all buttons, duty belt and related items, firearms, and ammunition required to all new employees. All uniforms and the additional items shall be furnished to the new employee during his/her first month of employment. In the event that the Class A uniform becomes the standard uniform, the City shall furnish two (2) Class A summer shirts, two (2) Class A winter shirts, and two (2) Class A pair of uniform pants.

Section 2.

In consideration of this allowance, employees agree to keep their uniforms and/or plain clothes in good repair, to replace all worn out items as necessary, and to submit to a biannual inspection at the pleasure of the Mayor and/or the Board of Public Works and Safety who shall announce their intention to inspect no less than thirty (30) days prior to said inspections.

Section 3.

Nothing contained herein shall be construed to exclude roll-call inspections by watch supervisors.

ARTICLE XV Vacation Leave

Section 1.

Vacation leave shall accrue according to the benefit of department employees based upon the years of service as follows:

One (1) full year through seven (7) full years..... One hundred twenty-six (126) hours

Starting eight (8) years through fourteen (14) full years.....One hundred eighty-nine (189) hours

Starting fifteen (15) years and more Two hundred fifty-two (252) hours

Section 2.

For the purpose of computation, years of service shall be determined from the first date of employment with the City.

- (A) In the event that an employee resigns and is rehired within two (2) years of resignation, computation for vacation leave shall be based upon the original date of employment less the period of time from resignation to rehire date.

Section 3.

Vacation leave shall accrue on the anniversary date of each employee at which time said employee has until the next anniversary date to use the full amount of paid vacation leave. No employee shall carry any vacation leave from one accrual period into another without the written permission of the Chief of Police.

Section 4.

Unless voluntarily surrendered by the employee who is the subject of a disciplinary action, vacation leave shall not be deducted as a disciplinary measure by either the City or the Police Department administration.

Section 5.

Vacation leave shall be selected on the basis of rank and then seniority per shift until April 1st of each year. After that date, any employee may request vacation leave without fear of losing time off to higher rank or seniority. No employee, regardless of seniority, shall schedule vacation leave for every holiday or weekend during the year.

Section 6.

Upon death, retirement, voluntary termination or discharge, the City shall reimburse each employee or his/her estate for earned but unused vacation leave at his/her prevailing hourly rate of pay. All time up to the date of termination shall be credited and a monetary reimbursement shall be made.

Section 7.

Vacation leave shall be a matter of record and shall be supervised by the Chief of Police or his/her designee who shall post those records at monthly intervals. Any employee shall have fourteen (14) days from the posting date to correct discrepancies.

ARTICLE XVI Compensatory Time

Section 1.

- (A) Whenever any employee, excluding an employee in the position of School Resource Officer, submits a unit of compensatory time that causes the employee's accumulated compensatory time to exceed one hundred fifty (150) hours, the employee shall not accumulate any further compensatory time until that total has been reduced to a level under one hundred fifty (150) hours. An employee in the position of School Resource Officer shall not accumulate compensatory time in excess of three hundred sixty (360) hours.
- (B) At the next pay period the employee shall be paid his/her prevailing regular hourly rate for all compensatory time exceeding one hundred fifty (150) hours, or three hundred sixty (360) hours for an employee in the position of School Resource Officer. This rate shall be determined by dividing his/her annual salary, technical skills pay, and longevity increase by two thousand one hundred six (2,106) hours.
- (C) No employee of the Goshen Police Department shall be allowed to have a negative number of compensatory hours at the end of any pay period.

Section 2.

Unless voluntarily surrendered by the employee who is the subject of a disciplinary action, compensatory time shall not be deducted from an employee's records as a disciplinary action by either the City or the Police Department administration.

Section 3.

Any hours worked in excess of nine (9) hours in any one (1) workday may be awarded as compensatory time or be paid as overtime at the choice of the employee. Compensatory time for hours worked shall be awarded at the rate of one and one-half (1½) times the actual hours worked rounded up to the nearest one-quarter (¼) hour increment. When an employee is called in to work overtime, they shall be guaranteed a minimum of two (2) hours of work at the rate of three (3) hours compensatory time or two (2) hours paid overtime.

Section 4.

Compensatory time shall be a matter of record and shall be supervised by the Chief of Police or his/her designee who shall post said records at monthly intervals. Any employee shall have fourteen (14) days from the posting date to correct discrepancies.

Section 5.

Rank then seniority shall have preference in the selection of time off for compensatory time leave. After April 1st, it shall be the right of any employee to request compensatory time leave without fear of losing same to employees of higher rank or seniority. No employee, regardless of rank or seniority, shall request compensatory time leave for each holiday or weekend during the year.

Section 6.

Upon death, retirement, voluntary termination, or discharge, the City shall reimburse each employee or his/her estate for earned but unused compensatory time at the prevailing hourly rate. All time up to the date of termination shall be credited and monetary reimbursement made.

Section 7.

Those employees on compensatory time leave shall be the first recalled should a manpower shortage exist on their shift during their absence, and they shall report to duty within a reasonable amount of time. An employee who has been approved for compensatory time leave shall be called in for a manpower shortage no later than twenty-four (24) hours prior to the start time of their shift approved for compensatory time leave; notwithstanding the foregoing, the twenty-four (24) hour notice shall not apply to an emergency situation as determined by the Chief of Police. Emergency situation is defined as a man-made or natural disaster or event that would most likely require the full resources and manpower of the department.

Section 8.

Compensatory time leave shall not be unreasonably withheld from approval by the Chief of Police or his/her designee.

ARTICLE XVII Personal Leave

Section 1.

In addition to any other benefit as herein fixed, employees of the Goshen Police Department shall receive forty-five (45) hours of personal leave off per year at the employees' respective rate of pay.

Section 2.

Personal leave shall be awarded on January 1st of each year.

Section 3.

Employees shall be able to carry over unused personal leave from one calendar year to another. No employee is allowed to carry over more than sixty-three (63) hours of unused personal leave from previous calendar years.

Section 4.

Unless voluntarily surrendered by the employee who is the subject of a disciplinary action, personal leave shall not be deducted as a disciplinary measure by either the City or the Police Department administration.

Section 5.

Personal leave shall be selected on the basis of rank then seniority per shift until April 1st of each year. After that date, any employee may request personal leave without fear of losing time off to higher rank or seniority. No employee, regardless of seniority, shall schedule personal leave for every holiday or weekend during the year.

Section 6.

Upon death, retirement, voluntary termination, or discharge, the City shall reimburse each employee or his/her estate for earned but unused personal leave up to a total of ninety (90) hours of personal leave at his/her prevailing hourly rate of pay. All time up to the date of termination shall be credited and a monetary reimbursement shall be made.

Section 7.

Any employee hired during a calendar year shall have his/her personal leave awarded, prorated respectively to his/her date of hire. Any employee hired within the month of January during a calendar year shall be awarded forty-five (45) hours of personal leave.

Section 8.

Personal leave shall be a matter of record and shall be supervised by the Chief of Police or his/her designee who shall post those records at monthly intervals. Any employee shall have fourteen (14) days from the posting date to correct discrepancies.

ARTICLE XVIII Sick Leave

City and Lodge commit to further discussions concerning potential modifications to the existing sick leave programs; however, both parties acknowledge and agree that such discussions are not a guarantee that existing sick leave programs will be modified in any manner.

Section 1.

Each employee shall receive eighty-one (81) hours of sick leave per year accruing at the rate of six and three-quarter (6.75) hours of sick leave per month of service.

Section 2.

Sick leave is cumulative up to a maximum of eight hundred ten (810) hours.

Section 3.

Any employee who has accumulated sick leave totaling more than eight hundred ten (810) hours, but less than one thousand six hundred twenty (1,620) hours will not lose the accumulated sick leave, but will not be allowed to add to the total leave accumulated as of December 31, 2001.

Section 4.

Any employee who has two hundred seventy (270) hours of sick leave accumulated on January 1st of any calendar year may sell the first fifty-four (54) hours of sick leave of that calendar year if not used during the calendar year at the rate of One Hundred Fifty Dollars (\$150.00) for each nine (9) hours sold. For example, if at the beginning of 2002 an employee has two hundred seventy (270) hours of sick leave accumulated and during 2002 the employee uses eighteen (18) hours of sick leave, at the end of the year the employee may sell thirty-six (36) hours of sick leave to the City for a total of Six Hundred Dollars (\$600.00) at the employee's option.

Section 5.

Upon retirement the City will pay the retiring employee One Hundred Dollars (\$100.00) for each nine (9) hours of accumulated sick leave over four hundred fifty (450) hours up to a maximum of ninety (90) hours.

Section 6.

Except as provided in Sections 4 and 5, no employee will be paid for any accumulated sick leave, except for time off due to illness, non-duty related injury, or maternity leave.

Section 7.

During illness, an employee's pay and other benefits shall continue subject to the right of the Board of Public Works and Safety to require a physician's statement confirming the employee's illness after forty-five (45) consecutive hours of sick leave.

Section 8.

Sick leave shall be a matter of record supervised by the Chief of Police or his/her designee who shall post said record at monthly intervals. Any employee shall have fourteen (14) days from the posting date to correct discrepancies.

ARTICLE XIX Hours of Employment and Days Off

Section 1.

The regular workday of all employees, except as designated in Section 2, shall be nine (9) hours.

Section 2.

The regular workweek for all employees shall consist of a two (2) week rotation period. The one week will be five (5) consecutive workdays and two (2) consecutive days off, and the other week will be four (4) consecutive workdays and three (3) consecutive days off, and shall include paid days.

Section 3.

The Patrol Division of the department that is structured in such a manner so that there is an option for regular days off, the determining factor for awarding these regular days off shall be by seniority and not by rank or time-in-grade.

Any specialized unit of the department, including but not limited to the CIW (Detective Bureau), that is structured in such a manner so that there is an option for regular days off, the determining factor for awarding these regular days off shall be by cumulative time-in-grade and not by seniority or rank.

Section 4.

The Patrol Division of the department that is structured in such a manner so that there is an option of duty hours on a daily basis, the determining factor for awarding these working hours shall be by seniority and not by rank or time-in-grade.

Any specialized unit of the department, including but not limited to the CIW (Detective Bureau), that is structured in such a manner so that there is an option of duty hours on a daily basis, the determining factor for awarding these working hours shall be cumulative time-in-grade and not by seniority or rank.

The foregoing requirements of this Section shall not apply to military reservists and K-9 officers. The Chief of Police or his/her designee has the full right and authority to assign these types of employees daily duty hours/shifts in the Patrol Division in his/her discretion without regard to seniority, rank, or time-in-grade.

Section 5.

- (A) There should regularly be a command officer (Sergeant or above) in charge of each patrol watch every work day.
- (B) All three (3) command officers shall not be permitted to share a common regular day off.
 - (1) Two (2) command officers may be permitted to share a common regular day off.
 - (2) If two (2) command officers are on a commonly shared day off and the third command officer wants to take any form of leave for that day, the third command officer may take leave so long as a Patrol Officer who has been approved by the Chief of Police or his/her designee will be in charge; or if at minimum manpower, the third command officer may

take leave provided the command officer has arranged trade time with another command officer or a Patrol Officer who has been approved by the Chief of Police or his/her designee.

- (3) At no time shall all three (3) command officers on any patrol watch schedule any form of leave for the same period.
- (C) For the purposes of this Article, the clause “any form of leave” shall be construed to include only vacation leave, compensatory time leave, and personal leave.

ARTICLE XX Trading of Time

Section 1.

Employees shall be permitted to voluntarily trade work time subject to the approval of the Chief of Police or his/her designee whose approval shall not be unreasonably withheld.

Section 2.

Employees shall be permitted to voluntarily trade work time in the form of personal leave from one employee to another subject to the approval of the Chief of Police or his/her designee. Trading of personal leave shall be done in whole or half day increments. Trading of personal leave/work time shall not be unreasonably withheld from approval by the Chief of Police or his/her designee.

ARTICLE XXI Health Insurance

Section 1.

The City shall provide at City's expense medical and hospitalization insurance for each member and the member's spouse and eligible dependents.

Section 2.

City will pay eighty percent (80%) of each employee's health insurance cost each week. The employee's contribution will not be more than twenty percent (20%) of the cost of health insurance per employee per week. Each employee will pay the following amount per week for health insurance:

- (A) An amount not to exceed Eighty-six and 77/100 Dollars (\$86.77) per week in 2021.
- (B) An amount not to exceed Ninety and 77/100 Dollars (\$90.77) per week in 2022.
- (C) An amount not to exceed Ninety-four and 77/100 Dollars (\$94.77) per week in 2023.

Section 3.

City agrees to contract with Central States, Southeast and Southwest Areas Health and Welfare Fund to purchase Central States' C6 Benefit Plan if Central States offers the Plan to the City at the following rates:

- (A) An amount not to exceed Four Hundred Thirty-three and 86/100 Dollars (\$433.86) per week (including the employee's contribution) for each employee effective January 3, 2021.
- (B) An amount not to exceed Four Hundred Fifty-three and 86/100 Dollars (\$453.86) per week (including the employee's contribution) for each employee effective January 2, 2022.
- (C) An amount not to exceed Four Hundred Seventy-three and 86/100 Dollars (\$473.86) per week (including the employee's contribution) for each employee effective January 1, 2023.

City's obligation to provide Central States, Southeast and Southwest Areas Health and Welfare Fund C6 Benefit Plan is subject to Central States continuing to offer coverage to the City's other employees at the same rate that Central States offers the Plan to the City's Lodge employees.

Section 4.

- (A) If City provides Central States C6 Plan, City fulfills its obligations for health insurance regardless if there are changes made in the C6 Plan by Central States, provided the changes do not substantially alter the current Central States C6 Plan benefit structure, including but not necessarily limited to, deductibles, out of pocket expenses and prescription drug coverage.
- (B) If there is a substantial change in the benefit structure of the current Central States C6 Plan, City and an insurance committee which includes FOP Labor Council representatives and representatives from the other City unions will discuss the modification and whether the City should look elsewhere for health insurance coverage. After such discussions, the FOP Labor Council can agree to accept the changes in Central States C6 Plan or accept the City's proposal for alternate health insurance

coverage. If no agreement is reached, the FOP Labor Council and the City agree to re-open the contract for negotiation of health insurance coverage and costs only.

- (C) If the per employee per week costs of providing Central States C6 Plan coverage exceeds the maximum established by this agreement in Section 3 of Article XXI, City agrees to discuss alternate health insurance coverage options with an insurance committee which includes FOP Labor Council representatives and representatives from the other City unions prior to making any change in health insurance coverage. Failure of the insurance committee to agree to changes in health insurance coverage does not re-open the health insurance coverage issue for negotiation during the term of the contract provided the substituted health insurance coverage meets the minimum requirements of Central States' C6 Plan.

ARTICLE XXII Duty Related Illness or Injuries

Section 1.

City shall pay for the care of a police officer who suffers an injury while performing his/her duty or contracts an illness caused by the performance of his/her duty. This care includes medical and surgical care; medicines and laboratory, curative and palliative agents and means; x-ray, diagnostic, and therapeutic service, including during the recovery period; and hospital and special nursing care if the physician or surgeon in charge considers it necessary for proper recovery. This provision is intended to meet the City's obligation established by Indiana Code 36-8-4-5. If the City's obligations under this state statute are modified the City's obligations under this subsection are modified accordingly.

Section 2.

Any and all expenditures required herein shall be paid from the General Fund of the City. The employee agrees to submit any claim to the City medical insurance plan.

Section 3.

Any employee so afflicted with an illness or injury shall not be required to use sick leave while absent from work.

Section 4.

When a police officer is unable to perform the essential functions of the officer's duties considering reasonable accommodations due to an illness or injury arising out of or in the course of the officer's employment by the City and such injury is not of the nature, degree and/or duration necessary to qualify the officer for the benefits under the applicable police pension and disability fund, the City will pay the police officer's pay and benefits for a period not to exceed an aggregate of fifty-two (52) weeks for any injury or illness.

Section 5.

If a police officer is unable to perform the essential functions of the officer's duties considering reasonable accommodations due to an illness or injury arising out of the officer's employment with the City and such injury is of a nature, degree and duration necessary to qualify the officer for benefits under the applicable police pension or disability fund, the City will pay the officer his/her pay and benefits until benefits from the applicable fund are received by the officer. In no event shall the City's obligation for full pay and benefits be less than an aggregate of twenty-six (26) weeks for each injury or illness nor more than an aggregate of fifty-two (52) weeks for each injury or illness.

Section 6.

If City believes that a police officer has suffered a duty related injury or illness of the degree, nature and duration necessary to qualify the officer for the benefits under the applicable police pension or disability fund, the City, through the Goshen Board of Public Works and Safety, may request that the local Police Pension Board conduct a hearing to determine whether the officer has a covered impairment under the applicable police pension or disability fund.

Section 7.

For the purposes of this Section, a covered injury or illness is an injury or illness which permanently or temporarily makes an officer unable to perform the essential functions of the officer's duties considering reasonable accommodations.

This provision is intended to be identical to Indiana Code 36-8-8-12.3 definition of a covered impairment. If the Indiana Code's definition of covered impairment is modified, this contract definition shall be modified accordingly.

Section 8.

City is entitled to be reimbursed for amounts paid under this Section if the police officer collects amounts for lost wages or for care of a police officer from any collateral source which shall include insurance or third party against whom the police officer has a cause of action for the injury or illness. To the extent that payment for such care or lost wages is from a disability insurance policy paid for by the officer, the City shall have no right to reimbursement.

ARTICLE XXIII Department Strength

- (A) It is agreed that a minimum number of sworn police officers shall be on duty for each shift, said minimum to be set semi-annually by the department administrators. When, in the event of sickness, vacation leave, schooling, or any reason whatsoever, the workforce is reduced below the minimum shift strength, the watch supervisor shall secure off duty police officers to maintain the required strength.

- (B) A Special Police Officer may be assigned duties to function as a Patrol Officer on the road by a watch supervisor with the consent of the Special Police Officer's supervisor; provided that such an assignment shall not count towards minimum shift strength unless the watch supervisor has made a reasonable effort to secure a sufficient number of off duty police officers for the shift but has been unable to do so.

ARTICLE XXIV Seniority, Lay Off and Recall

Except when in conflict with state statute, the following Sections shall apply in regards to seniority, lay offs, and recalls.

Section 1.

For the purpose of this contract, seniority for a sworn employee shall be defined as the status attained by continuous length of service as a sworn employee in matters regarding sworn employees.

Section 2.

An employee shall lose their seniority if he/she resigns or quits, is discharged, or retires. An employee who has been on lay off status for a period of time equal to his/her seniority at the time of lay off or two (2) years, whichever is the lesser, shall cease to accumulate additional seniority until recalled.

Section 3.

A "lay off" is defined to be a necessary reduction in the workforce of the Police Department. Lay offs shall be made in the reverse order of seniority, that is the employee with the least seniority shall be laid off first and the employee with the most seniority shall be laid off last.

Section 4.

A "recall" shall be an increase in the workforce of the Police Department following a lay off. Recall shall be made by seniority with the employee with the most seniority being the first individual to be recalled and the employee with the least seniority being the last individual to be recalled. No new police officer will be hired until all laid off police officers have been offered an opportunity to return. All promotions during a period of lay off are temporary until the full complement prior to the lay off is reached, at which time the pre-lay off rank structure shall be reinstated.

Section 5.

Any employee laid off shall be given at least thirty (30) days' notice prior to said lay off. No police officer's position or current work-related responsibilities shall be replaced by civilian or volunteer help until the complement of police officers is returned to the level prior to the lay off.

ARTICLE XXV Indemnification

Section 1.

- (A) The City shall indemnify and hold harmless each employee from all claims, suits, costs and judgements because of the reasonable acts or omissions of the employee arising out of or in the course of the performance of the duties of such employee; provided, however, that if an employer other than the City provides indemnification for the actions of the employee, the City shall not provide indemnification. Indemnity shall not be provided in the event the employee willfully violates any legal order of a superior officer or the rules and regulations of the Police Department, ordinances of the City of Goshen, laws of the State of Indiana, or laws of the United States of America.
- (B) Should any criminal action be instituted against any employee for any action arising out of or in the course of the performance of the duties of such employee, and should such proceedings be dismissed or result in a final disposition in favor of such employee, the City shall reimburse such employee for the cost of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial of all appeals.
- (C) Should any proceeding described in paragraph (B) of this Section be dismissed due to a plea bargain or other agreement with the employee which avoids criminal sanctions, the City shall not be responsible for fees and expenses incurred.

Section 2.

The City shall take such actions as it deems appropriate to forestall the execution of judgment against an employee personally, and if notwithstanding such efforts by the City execution is levied, the City shall indemnify and hold harmless the employee for any judgment covered under Section 1 of this Article.

Section 3.

- (A) The City shall provide legal counsel of the City's choosing to any employee against whom legal action has commenced as a result of the acts or omissions of the employee as set forth in Section 1 of this Article.
- (B) An employee shall have the option to retain his/her own attorney at his/her own expense to represent his/her interests in litigation without diminishing the responsibilities of the City under this Article.

Section 4.

As a condition precedent to the right of indemnification under this Article, any employee desiring indemnification shall:

- (A) Tender in writing to the City's attorney a notice of the City's obligation to appear and defend any litigation as may result in a judgment covered by the Article and grant to the City the right to make such investigation, negotiation and settlement of any claim that the City deems appropriate.
- (B) Give written notice containing the particulars sufficient to identify the employee involved and information as to the time, place, and circumstances thereof to the City's attorney as soon as reasonably practical following a covered occurrence.

- (C) Forward immediately any or all suit papers, demands, notices, summons, complaints or other process received by such employee to the City's attorney.
- (D) Cooperate with the City in the conduct or settlement of any legal proceedings and additionally grant the City the right to free access and use of all hospital, medical, and doctor's records and reports as to any employee's physical or mental condition in the conduct or settlement of any legal proceedings.

ARTICLE XXVI Grievance Procedure and Binding Arbitration

Section 1.

A "grievance" is defined to mean any difference that may arise between the parties or between the City and a Police Department employee covered by this agreement as to any matter involving interpretation, meaning, application, or violation of any of the provisions of this contract. A "grievant" is defined as any employee covered by this contract, group of employees, or the Lodge.

- (A) It shall first be the responsibility of the grievant to reduce the grievance into writing within sixty (60) days after it arises and present it to the Chief.
- (B) If the grievance is not resolved after a period of seven (7) days after being presented to the Chief, the written grievance shall be presented to the City's Board of Public Works and Safety.
- (C) If the matter is not resolved by the Board of Public Works and Safety within fourteen (14) days to the satisfaction of the grievant, the matter may be submitted to arbitration in accordance with the terms and conditions set forth below.

Section 2.

The grievant may send written notice of a demand for arbitration to the City. If within ten (10) days after the notice of the demand for arbitration the parties are unable to agree upon an arbitrator, then the grievant may request the Goshen Bar Association President to submit a panel of three (3) practicing attorneys. Upon submission of the panel, the City shall strike one (1) name within two (2) business days at which time the grievant shall strike one (1) of the remaining two (2) names within two (2) business days, and the name then remaining shall be the arbitrator. The impartial arbitrator shall hold hearings upon the issues, make such investigations as shall be deemed necessary to a proper decision, and render such decision in writing. A decision of the arbitrator shall be final and binding upon the parties. The arbitrator is authorized to conduct a hearing in an informal manner and without recourse to the technical, common-law rules of evidence required in judicial proceedings. Every person who is a party to such proceeding shall have the right to submit evidence in open hearing and shall have the right of cross-examination. Hearings may be held at any place in the county agreed to by the parties, or in the absence of agreement, as determined by the arbitrator.

Section 3.

The arbitrator's fees and necessary expenses of arbitration shall be borne by the losing party. However, it is agreed that such fees and expenses shall not include the attorney fees of either party.

ARTICLE XXVII Bill of Rights

All police officers within the bargaining unit shall be entitled to the protection of what shall hereafter be termed as the "Police Officers' Bill of Rights." The wide-ranging powers and duties given to police officers on or off duty involve them in all manner of contacts and relationships with the public. Of these contacts come many questions concerning the actions of police officers. These questions often require investigation by superior officers. In an effort to ensure these investigations are conducted in a manner which is conducive to good order and discipline, the following rules are promulgated:

Section 1. Internal Affairs Investigations

The procedures contained in this Section apply only to Police Department internal affairs investigations.

- (A) Advance Notice to Officer. Prior to being interviewed regarding an internal affairs investigation for any reason which could lead to disciplinary action, an officer shall be:
- (1) Informed in writing of the nature of the investigation and whether the officer is a witness or a suspect, if and when known;
 - (2) Informed of other information necessary to reasonably apprise him/her of the nature of the allegations of the complaint, including the date, time, and location of the occurrence;
 - (3) Afforded an opportunity and facilities to contact and consult privately with an attorney of his/her choosing and/or representative of the Lodge;
 - (4) Whenever a delay in conducting the interview will not jeopardize the successful accomplishment of the investigation or when criminal culpability is not an issue, advance notice shall be given to the officer not less than twenty-four (24) hours before the initial interview commences or written reports are required from the officer.
- (B) Interview Safeguards. Any interview of an officer shall be when the officer is on duty unless the seriousness of the complaint dictates otherwise.
- (1) If prior to or at any time during the interview of a police officer it is determined that he/she may be charged with a criminal offense, he/she shall be immediately informed of his/her constitutional rights and the interview shall be terminated unless the officer chooses to waive his/her constitutional rights of self-incrimination.
 - (2) Interviews shall take place at the department police station facility, or elsewhere if mutually agreed, unless the emergency of the situation necessitates otherwise.
 - (3) An attorney or representative chosen by the officer must be, depending on the seriousness of the criminal matter under investigation and the need for immediate action, available within a reasonable period of time, and if any interview session is delayed more than twenty-four (24) hours because of the unavailability of the attorney or representative chosen by the officer, the officer may be subjected to disciplinary action up to and including suspended from duty without pay until the interview occurs. However, no matter how extreme an emergency exists, no interview shall take place until the officer shall be given a minimum of three (3) hours to obtain the services of a representative and/or attorney.

- (4) The officer being interviewed shall be informed of the name, rank, and command of the officer in charge of the investigation and the interviewing officer.
 - (5) Interviews shall be done under circumstances free of intimidation or coercion and shall not otherwise violate the officer's constitutional rights. The officer shall not be subjected to offensive or abusive language. No promise or reward shall be made as an inducement to answer questions unless the promise or reward is reduced to writing.
 - (6) Interviews shall not be overly long. The officer shall be entitled to reasonable intermissions as he/she shall request for personal necessities, telephone calls, and rest periods, with one (1) ten (10) minute intermission every hour if he/she requests.
 - (7) All interviews shall be limited in scope to activities, circumstances, events, conduct, or acts which pertain to the subject of investigation.
 - (8) Investigations shall be concluded without delay.
- (C) Investigation Results.
- (1) The officer will be furnished with a copy of the summary report of the internal investigation which will contain all material facts of the matter.
 - (2) The officer will be furnished with the names of all witnesses and complainants who will appear against him/her and/or whose statements will be used against him/her.
- (D) When Disciplinary Action Results.
- (1) When the investigation results in a determination of a sustained complaint and disciplinary action, only the findings and the disciplinary order will be placed in the officer's personnel file unless the officer requests inclusion of the complete record.
 - (2) No dismissal, demotion, or other punitive measures shall be taken against an officer unless he/she is notified of the action and a reason for such action prior to the effective date of such action.
- (E) Notice to Department Members. Within twenty-four (24) hours or as soon as reasonably feasible of an officer being advised of an internal investigation, an email shall be sent to the Police Department members advising an internal investigation is underway and the officer being investigated. When the internal investigation is concluded and the officer has been notified, a second email shall be sent within twenty-four (24) hours or as soon as reasonably feasible to the Police Department members advising of the results of the investigation. This information will not exceed the information provided to the media or public under a public records request.

Section 2. Personal Privileges

- (A) No officer shall be required for purposes of assignment or other personnel action to disclose any item of his/her property, income assets, source of income, or personal or domestic expenditures, including those of any member of his/her family, unless such information is obtained pursuant to proper legal process or tends to indicate a conflict of interest with respect to the performance of his/her official duties.

- (B) No officer shall have his/her residence, private place of business, if any, private vehicle or locker space assigned to him/her by the Police Department searched unless a valid search warrant is obtained or he/she voluntarily agrees to such search.
- (C) No member of the immediate family of the officer shall be required to give a statement to the investigator or be interviewed by the investigator unless the immediate family member is first notified that a formal investigation is being conducted.

Section 3. Lodge Representation

- (A) Any employee questioned by any superior with respect to any matter which might involve disciplinary action shall have the right to have a representative of the Lodge present during such questioning.
- (B) The representative is only there as a witness and in a nonparticipating capacity. In the event such questioning is being recorded by either party, the other party shall be informed prior to any such recording and shall be furnished with a copy of the recording and given the opportunity to make a transcription of the recording.

Section 4. Political Activities

Except when on duty or in uniform, no officer shall be prohibited from engaging in political activities.

Section 5. Polygraph Examinations

Any police officer under investigation shall not be required to take a polygraph examination or certified voice stress analyzer against his/her will.

Section 6. Blood, Breath, and Urine Tests

Blood, breath, and urine tests for controlled substances are mandatory for any member of the department who is suspected of being under the influence of alcohol or any drug while on duty; provided, however, that the officer shall not be required to submit to any such tests in regards to any occurrence at a time when he/she, while off duty, was compelled to take immediate police action in response to an emergency situation except in the event of a property damage accident or personal injury accident.

Section 7. Maintenance of Records

- (A) Complaints investigated by the department shall be maintained as required by Indiana Code § 36-8-2-2.
- (B) A police officer shall have the opportunity, at a reasonable time during office hours, to review his/her active personnel file and any closed investigative file in which he/she was the accused. In the event there is any comment adverse to his/her interests in his/her personnel file, the officer shall have the right to file a written response thereto, which written response shall be attached to said adverse comments, and additionally, he/she shall have the right to file a grievance in regard to any such matter which is of such gravity that it could affect his/her promotional opportunities, which grievance shall then be processed in accordance with the grievance procedures.

- (C) Any officer who is reprimanded in any way, either orally, in writing, by suspension, deprivation of overtime or any other benefits, or disciplinary action in any way, shall have the right of appeal as provided by law.

Section 8. Discipline Up to Forty (40) Working Hours

- (A) The Chief of Police shall have the authority to issue oral and written reprimands, as well as suspensions, up to and including forty (40) working hours, of police officers without reporting such action to the City of Goshen Board of Public Works and Safety, unless the police officer receiving the disciplinary action (other than an oral reprimand) within seventy-two (72) hours after receiving notice of the written reprimand or suspension, requests that the Board review the Chief of Police's disciplinary action. There is no right to request a review of an oral reprimand.
- (B) If a request for review is timely filed with the Board by the police officer, the Chief of Police shall provide the Board with the disciplinary action taken by the Chief of Police and the reasons for such action. The Board shall review the action taken by the Chief of Police. The Board may elect to hold a hearing on the police officer's review request. If the Board elects to hold a hearing, the Board shall issue written notice of the hearing to the police officer in person or by a copy left at the police officer's last and usual place of residence at least fourteen (14) days before the date set for the hearing.

ARTICLE XXVIII Work Assignment Transfers

Section 1.

Work assignment transfers or watch changes will be allowed at the start of the first pay period after January 1st and the first pay period after July 1st of each year. The transfers will be made on the basis of seniority for officers other than command officers (Sergeants and above).

Section 2.

The following provisions shall be the policy pertaining to work assignment transfers:

- (A) When a transfer is made at the start of the calendar year, the officer involved will be allowed the opportunity to exercise the right of seniority for selecting regular days off.
- (B) When a transfer is made in the middle of the year, the officers involved will not be allowed the opportunity to exercise the right of seniority in regards to the selection of regular days off.
 - (1) Officers who voluntarily transfer, accept a promotion, or accept a lateral transfer to another shift and have any form of leave approved, shall be able to transfer the approved leave to the other shift providing it does not create a manpower shortage. Should the leave create a manpower shortage, the leave will be considered unapproved with the following exceptions:
 - (a) The administration may still approve the leave if the officer can verify they would suffer a substantial financial loss because of un-refundable expenses, or it would result in the officer's absence from a significant pre-planned event.
 - (2) Officers whose transfer to another shift was involuntary as a result of being bumped by higher seniority officers, and who have any form of leave approved, shall be able to transfer the approved leave to the other shift regardless of any manpower shortage the leave may cause. This also applies to officers whose transfer to another shift was affected by any other officer's promotion, lateral transfer, disciplinary action or demotion.
 - (3) Officers whose involuntary transfer:
 - (a) to the Patrol Division or Detective Division, or
 - (b) from a specialty unit (Drug Unit, Training Officer, or School Resource Officer),as a result of being administratively removed from an appointed position, and who have any form of leave approved, shall be able to transfer the approved leave to the new shift regardless of any manpower shortage the leave may cause.
- (C) The only exceptions to allowing transfers other than at the above prescribed times will be:
 - (1) If the affected officers work out a mutually acceptable agreement to make the transfer, contingent upon the agreement of these officers' respective Captains and upon the endorsement of the department administration.

- (2) In the event of any disciplinary action; or
- (3) In the process of promotional changes.

ARTICLE XXIX Safety Committee and Safety Equipment

Section 1.

A joint safety program shall be adopted and enforced by a joint safety committee comprised of an equal number of representatives from the Lodge and the City.

Section 2.

- (A) The City shall make reasonable provisions for the safety and health of police officers during the hours of their employment. It shall maintain its equipment in safe operating condition. The City shall furnish such protective devices and/or equipment as necessary to properly safeguard the health and safety of police officers and protect them from injury.
- (B) In the event a police officer believes that an assigned vehicle is unsafe for use during a tour of duty, it shall be returned to the station. If the officer in charge agrees with the police officer, the vehicle shall be redlined and a condition slip made out on the vehicle. The vehicle will remain out of service until the proper repairs are made. No police officer shall be required to operate an unsafe vehicle.
- (C) All patrol vehicles, marked and unmarked, used in the line of duty will be equipped with either a department long gun or the police officer's personal long gun that has been approved by the Police Department. A long gun case and/or gun rack will be supplied for the patrol vehicle, marked and unmarked, if requested by the police officer. The long gun will be located inside the vehicle (includes trunk) with easy access to the police officer.
- (D) All Police Department vehicles used in the line of duty shall be equipped with a minimum of air conditioning, AM/FM radio, heater, power windows, and power door locks. In addition, all vehicles used in the line of duty shall be equipped with emergency flashing lights, red and blue in color visible to the front and to the rear of the vehicle. All vehicles used in the line of duty shall be equipped with an audible siren with the same wattage as a marked patrol car has. All marked vehicles and detective cars shall be equipped with a lower lumbar device in the driver's seat for those employees who request such a device (factory installed inflatable type) to help alleviate lower back problems, subject to a policy agreed to by the FOP Lodge 52 and the City of Goshen Board of Public Works and Safety. This policy is for the purpose of determining whether a retrofit of a police vehicle will cause any problems with the auto insurance policy for those vehicles. The request for a lower lumbar device must be accompanied by a letter from the employee's family medical doctor, family chiropractic doctor, or any medical doctor who specializes in such medical problems. The City and/or the Chief of Police may request, at the expense of the City, that the employee requesting such a device be sent to a doctor of the City's choice to confirm such a device would be beneficial to the employee.

ARTICLE XXX Pay Days

Section 1.

All employees shall receive their pay biweekly, every other Friday. The only exception thereto shall be on the last pay day in December when, at the pleasure of the Clerk-Treasurer, said pay may be moved to facilitate year end bookkeeping procedures as that official deems necessary, provided, however, that said pay shall not be altered more than ten (10) calendar days from the regularly scheduled pay day.

Section 2.

All other pay shall be disbursed by the City as follows:

- (A) Court time and overtime pay shall be included in each biweekly check.
- (B) Technical skills pay shall be in addition to and a portion of each biweekly check on a pro rata basis.
- (C) Shift differential pay shall be in addition to and a portion of each biweekly check on a pro rata basis.
- (D) Clothing allowance pay shall be paid in equal amounts, semiannually on the first pay day in April and the first pay day in October of each year.
- (E) A payment in lieu of holiday pay shall be paid annually on the first pay day in November of each year.
- (F) Longevity increase shall be in addition to and a portion of each biweekly check on a pro rata basis.

Section 3.

Any error made in an employee's pay shall be corrected no later than the next pay day from the time the error is discovered.

ARTICLE XXXI Personnel Service Records

Section 1.

Except as required by Indiana Code § 36-8-2-2, no person other than the City's Mayor, members of the Board of Public Works and Safety, City Attorney, Chief of Police, Assistant Chief, Division Chiefs, Investigations and Community Relations Special Officer, shift Captains, or the highest-ranking officer of the employee's watch, section, division or unit shall read, view or copy an employee's personnel file, provided, however, this prohibition shall not be applicable to instances involving a disciplinary matter with respect to such employee.

Section 2.

Each employee shall be allowed access in order to inspect his/her personnel service record upon request, said request being addressed to the Chief of Police, and any such inspection shall be made during the Police Department's usual business hours and business week. An employee shall be given a copy of all additions to his/her personnel service record.

Section 3.

Shift Captains may keep temporary personnel files on their subordinate employees for evaluation purposes or corrective measures and may pass said temporary personnel files to an employee's new shift Captain if said employee bumps shifts.

ARTICLE XXXII Strike Prohibition

Section 1.

It is agreed that in the protection of the public health, safety and welfare of the citizens of Goshen, Indiana, the police thereof should not and will not be afforded the right to strike.

Section 2.

A strike by personnel of the Goshen Police Department shall constitute a violation of this contract and shall subject those individuals participating in such a strike action to possible discharge from the department and the possibility of civil charges relating to such action and violation being brought against them by the City.

ARTICLE XXXIII Successor Municipality

If the City succeeds to another form of municipal government, or chooses to merge with one or more municipal governments for the providing of police service, or contracts with another municipality to provide police service, the transfer, merger or consolidation which is made shall provide that the successor government or authority shall assume all of the terms and conditions herein for the life of this contract.

ARTICLE XXXIV Savings Clause

If any provision of this agreement or application thereto to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the agreement and the application of such provisions to other persons or circumstances, other than those to which it is held invalid, shall not be affected thereby.

ARTICLE XXXV General Matters

Section 1. Right to Record Meetings

The Lodge or the City shall have the right to tape record any meeting held between the City and the Lodge referencing wages and grievances.

Section 2. Keeping of a Police Officer's Gun

Upon retiring with a minimum of twenty (20) years seniority, a police officer shall retain his/her service weapon which had been issued to him/her by the City.

Section 3. Lodge Representation

All employees may be offered a choice to be a member of the Fraternal Order of Police or remit an amount equal to the dues of the Lodge as a contribution for representation in the negotiation of this contract.

This Section does not obligate the City to make any deduction except as provided by Article V.

ARTICLE XXXVI Shift Differential Pay

Section 1.

In recognition of the officers who work the afternoon and night watches, the following will become just compensation.

Section 2.

Those watches affected will be defined as the afternoon watch and the night watch, and the officers regularly assigned there.

- (A) The officers working the afternoon watch will receive an annual compensation based on a yearly total of Three Hundred Fifty Dollars (\$350.00).
- (B) The officers working the night watch will receive an annual compensation based on a yearly total of Five Hundred Dollars (\$500.00).
- (C) Nothing in this Article shall be construed to indicate compensation is due for occasional work during these hours.

Section 3.

The pay shall be included in his/her biweekly pay, changing when his/her watch assignment changes.

ARTICLE XXXVII Wellness Program

Section 1.

The City of Goshen shall fund a program for all personnel under the contract for Two Hundred Dollars (\$200.00) per person. This shall be given to each employee upon presentation of a claim for expenses from any of the recognized list of options from Section 2.

Section 2.

The City will pay claims for expenses up to the limits specified in Section 1 from the following:

- (A) Billing from valid physical fitness program.
- (B) Complete physical from a doctor, urgent care center, or hospital.
- (C) Expenses for dental and/or optical insurance.
- (D) Billing for dental and/or optical insurance.
- (E) Weight loss and nutrition counseling, smoking cessation, and stress management.
- (F) Consultation and therapy for the employee; employee and spouse; employee and dependents; employee, spouse and dependents; or if in the context of joint counseling involving the employee, individual sessions for spouse or dependents.
- (G) Physical fitness equipment. (i.e., bar bells, bike machines, etc.)

Section 3.

The payment will be paid at the first pay period following the approval of the claim. The employee must submit all claims by November 30th of each year. All claims must be for the member only, except in the case of joint counseling. Minimum claim must be Twenty-five Dollars (\$25.00) or more, except at the end of the year (November 30th of any calendar year) where it can be the balance of any qualified claims up to the employee's limit.

ARTICLE XXXVIII Secondary Employment

Section 1.

Any requests to the City of Goshen or the Goshen Police Department for police services as a secondary employment, which requires an officer to be in a police capacity, must first be referred to a FOP designate, unless a specific officer is needed, then that officer is solely responsible for that service. All such police related secondary employment must be approved by the administrative personnel of the Goshen Police Department before it can be accepted. If no specific officer is requested by the organization or business, or if he/she does not want it, the detail shall be referred to the FOP designate for dissemination.

- (A) The FOP designate shall post the secondary employment request on the bulletin board area designated for FOP business.
- (B) The requests shall be posted on a rotating basis with each request, e.g.: first request, 11:00 p.m.; second request, 7:00 a.m.; and third request, 3:00 p.m., etc.
- (C) The request will be open to sworn officers only for a period of three (3) full days. Reserve officers and Special Police Officers may sign up after that time.
- (D) A Special Police Officer who is assigned as a School Resource Officer is exempt from the above requirements for any secondary employment that is related to their School Resource Officer functions at any Goshen Community School and may be immediately eligible for/chosen first for such secondary employment.
- (E) Suggested Rate of Pay.
 - (1) The suggested rate of pay for secondary employment related to police services shall be at least Twenty-five Dollars (\$25.00) per hour. The suggested rate of pay is considered to be a minimum and a greater rate of pay may be negotiated dependent upon the availability of officers.
 - (2) Secondary employment that is preexisting and is below the suggested rate of pay shall be honored and will continue at the rate of pay agreed upon. In the event that the preexisting secondary employment is terminated for a period of six (6) months, the rate of pay will then be at the suggested rate of pay of Twenty-five Dollars (\$25.00) per hour.
 - (a) Exceptions to the above subsection include:
 - (i) Elkhart County Fair; and
 - (ii) Goshen High School.
- (F) Exception to the Above Sections.
 - (1) The posting requirement (paragraphs (B) and (C)) may be waived when there is insufficient manpower available to fill the request and the employment request is made within the three (3) day waiting period.

- (2) The Goshen Police Reserves shall be exempt from this Article for the preexisting employment of Goshen High School functions.
- (3) For the posting of manpower requests for traffic control at the annual Elkhart County Fair, Goshen Police Reserves shall be treated equally with full-time sworn officers and be allowed to sign up at the same time.

ARTICLE XXXIX Cafeteria Plan

An optional cafeteria plan will be offered by the City and administered at the City's expense. Each employee would be able to designate annually what portion of his/her income, if any, would be placed in the cafeteria plan subject only to the limitations and restrictions imposed by the plan and federal statutes. City will not contribute to the amount placed in the employee's cafeteria plan.

ARTICLE XL**Tuition Reimbursement**

Section 1.

All full-time sworn police officers may receive tuition reimbursement for successful completion of college undergraduate or graduate courses, subject to prior approval as described in Section 2, taken at an accredited college or university in the calendar year in which the grade for the course was earned.

Section 2.

Before City will consider reimbursement, the officer must have the Police Chief approve the course selection in writing. The Chief is to approve any course which will likely benefit the City of Goshen, or in the case of an officer pursuing an undergraduate degree, the Chief shall approve any course that will further the officer's degree requirements in a field that will benefit the City of Goshen. If for any reason the course is not approved, the officer may appeal the Chief's decision to a three (3) member board consisting of an appointee of the Union, the Mayor and the City's Human Resources Manager.

Section 3.

The City will not reimburse tuition for any hours taken in a calendar year exceeding six (6) hours.

Section 4.

The amount of tuition that the City will reimburse per credit hour will be limited to the cost of a credit hour at Indiana University at Bloomington.

Section 5.

Successful completion shall require a grade of C or higher.

Section 6.

In order to be eligible to claim reimbursement for a graduate level course, the officer must have an undergraduate degree or a statement from the school that the course will count toward the undergraduate course requirement.

Section 7.

Should an officer leave the Goshen City Police Department before the fifth anniversary date of earning the grade in a course for which the officer received tuition reimbursement, the officer will repay the City in accordance with the following schedule:

- (A) Before the first anniversary date, one hundred percent (100%) of the tuition paid by the City.
- (B) Before the second anniversary date, eighty percent (80%) of the tuition paid by the City.
- (C) Before the third anniversary date, sixty percent (60%) of the tuition paid by the City.
- (D) Before the fourth anniversary date, forty percent (40%) of the tuition paid by the City.
- (E) Before the fifth anniversary date, twenty percent (20%) of the tuition paid by the City.

- (F) Any officer who leaves the employ of the Goshen City Police Department due to death or disability which makes continued employment impossible will not repay the City for any tuition reimbursement.

ARTICLE XLI Health Management Program

The Union and Lodge representatives agree to strongly encourage all employees and their spouses to participate in any health care education program offered by the City, without cost to the employee, designed to reduce health care costs.

ARTICLE XLII Hiring Bonus

- (A) City may enter into an agreement with a new employee for the payment of a hiring bonus at the time City extends an offer of employment. The agreement shall be presented to the Board of Public Works and Safety for approval.
- (B) To be eligible for this hiring bonus, the new employee must meet the following prerequisites before beginning employment as a police officer with the Goshen Police Department:
 - (1) The police officer must have successfully completed the minimum Tier I basic training requirements established by the Indiana Law Enforcement Training Board;
 - (2) The police officer must have an active certification with the Indiana Law Enforcement Training Board;
 - (3) The police officer must have separated from another Indiana law enforcement agency as an active reserve officer or paid police officer within twelve (12) months of accepting the employment offer with the City of Goshen;
 - (4) The police officer must have served the other Indiana law enforcement agency as an active reserve officer or paid police officer a minimum of one (1) year; and
 - (5) The police officer must be a first-time employee of the Goshen Police Department as a police officer.
- (C) The amount of the hiring bonus and when it will be paid will be determined by the Board of Public Works and Safety.
- (D) Upon commencement of employment, a police officer meeting the eligibility prerequisites under paragraph (B) will receive a base wage equal to the base wage paid to a patrol officer.
- (E) Upon commencement of appointment, a police officer meeting the eligibility prerequisites under paragraph (B) will receive forty-five (45) hours of paid sick leave.
- (F) The appointment of a police officer is probationary for a period not to exceed one (1) year. The Police Chief may recommend to the Board that the police officer receive permanent appointment at any time within the probationary period.
- (G) In the event the police officer voluntarily leaves City employment or is terminated for cause prior to the police officer's second employment anniversary date, the police officer shall repay City any hiring bonus paid prior to the last day of employment. No repayment will be due City if the police officer leaves City employment due to disability or illness which make it impractical to continue to serve as a police officer in the foreseeable future, or death.
- (H) The police officer shall forfeit any future hiring bonus payments under paragraphs (C) if:
 - (1) Any disciplinary action in excess of a written warning is taken against the police officer at any time during the first five years of employment; and

- (2) The police officer receives performance evaluations with a score of less than thirty-two (32) after the police officer's first year of employment.

SIGNATURE PAGE

The Lodge and the City, by and through their duly authorized officers and representatives and intending to be legally bound now sign this agreement on _____, 2021.

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

Elkhart FOP Lodge 52, Inc.

Jeremy P. Stutsman, Mayor

Nick McCloughen

Michael A. Landis, Board Member

Kyle Priem

Mary Nichols, Board Member

Sammy Johnson

DeWayne Riouse, Board Member

Barb Swartley, Board Member

EXHIBIT A – Base Salaries

SWORN POLICE OFFICERS		
Position	2022*	2023*
Captain	\$70,032	\$72,483
Lieutenant	\$64,876	\$67,147
School Resource Officer**	\$64,876	\$67,147
Detective	\$64,876	\$67,147
Sergeant	\$61,479	\$63,631
Patrol Officer	\$58,181	\$60,217
Probationary Patrol Officer	\$53,527	\$55,400

* In addition to the wages set forth, the City will pay the employer’s contribution to the pension plan for sworn members as required by Indiana Code § 36-8-8-6, and the City will pay two percent (2%) of the employee’s contribution to the pension plan to the extent the contribution is required by Indiana Code § 36-8-8-8.

** A sworn police officer appointed to the School Resource Officer position shall receive Lieutenant pay as authorized above while assigned to the School Resource Officer position unless the officer is a Probationary Patrol Officer. If the officer is a Probationary Patrol Officer, the officer will receive pay as a Probationary Patrol Office until the end of the officer’s probationary period.



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

November 1, 2021

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Resolution 2021-29 – A Policy for the Issuance of Certificate of Occupancy Prior to Completion of Construction Project

Resolution 2021-29 modifies and replaces the City's 2011 policy for the issuance of a certificate of occupancy even though a construction project is not in full compliance with all provisions of the City Code.

Under the policy, a certificate of occupancy may be issued for a construction project that is substantially complete except for 1) the installation of certain parts or equipment that are currently unavailable due to a manufacturing or shipping delay, or 2) the completion of exterior site work that is delayed due to weather conditions. In all situations, the temporary inability to complete the construction project cannot create a substantial health or safety hazard to any person occupying the building or structure.

The builder and/or property owner will be required to submit a written application to the City. If the application is approved, the builder and/or property owner will be required to enter into an agreement with the City which sets forth the remaining work to be completed. If the cost of the remaining work is estimated to be at least \$2,000, or if the remaining work includes the installation of a hard surface, regardless of cost, the builder and/or property owner will also be required to provide a surety equal to the estimated cost of the remaining work to be completed.

Suggested Motion:

Move to adopt Resolution 2021-29, A Policy for the Issuance of Certificate of Occupancy Prior to Completion of Construction Project.

RESOLUTION 2021-29

A Policy for the Issuance of Certificate of Occupancy Prior to Completion of Construction Project

WHEREAS, Goshen City Code Section 6.1.1.9 requires that all work to construct, alter, remodel, rehabilitate, or add to any building or structure be in full compliance with all other ordinances and amendments to the Goshen City Code.

WHEREAS, pursuant to Goshen City Code Section 6.1.1.16, a certificate of occupancy for a building or structure may not be issued unless such construction, alterations or repairs comply with Goshen City Code Title 6, Article 1.

WHEREAS, some construction projects may be substantially complete except for the installation of certain parts or equipment that are currently unavailable, or certain exterior site work is delayed due to weather conditions.

NOW, THEREFORE, BE IT RESOLVED by the Goshen Board of Public Works and Safety that a certificate of occupancy may be issued prior to the completion of a construction project pursuant to the following requirements:

- (1) All construction, alteration, or repair work on a building construction project must pass a final inspection by the Goshen Building Department except as provided by paragraph (2).
- (2) All construction, alteration, or repair work on a building construction project is substantially complete and must pass inspection of the Goshen Building Department except for the installation of certain parts or equipment that are currently unavailable due to a manufacturing and/or shipping delay, and the temporary inability to install such parts or equipment does not create a substantial health or safety hazard to any person occupying the building. The inability to install such parts or equipment must be a documented manufacturing and/or shipping delay, and not the inability of a contractor to schedule and install such parts or equipment in a timely basis.
- (3) All exterior site work required on the construction project must comply with all other Goshen City Code requirements, including all applicable zoning requirements and stormwater runoff control requirements, unless such site work cannot be completed due to weather conditions, and the temporary inability to complete such site work does not create a substantial health or safety hazard to any person occupying the building or structure. Such site work would include, but not be limited to, the stabilization of the disturbed land areas, planting all required landscaping and trees, installation of hard surface driveway or parking areas, installation of concrete sidewalks and/or curbing. The inability to complete

all exterior site work must be due to the seasonal weather conditions, and not the inability of a contractor to schedule and complete such exterior site work in a timely basis.

- (4) If a construction project cannot be completed due to reasons as set forth in paragraph (2) and/or paragraph (3), the builder (if the builder is responsible for completing the remaining work) and/or the property owner must submit a written application to the Stormwater Management Department to request the issuance of a certificate of occupancy before the completion of the construction project.
 - (a) If the construction project is substantially complete except for the inability to complete exterior site work due to winter weather conditions, the City will accept and consider applications between the first Monday in November and the second Monday in March.
 - (b) If the construction project is substantially complete except for the inability to complete exterior site work due to other seasonal weather conditions not covered under paragraph (a) or due to the inability to install certain parts or equipment that are currently unavailable due to a manufacturing and/or shipping delay, the City will accept and consider such applications on a case by case basis.
- (5) If the application is approved, the City shall prepare an Agreement for the Completion of the Construction Project (Agreement) to be entered into between the City and the builder and/or property owner which sets forth the remaining items of work to be completed on the construction project and the date(s) which the work must be completed.
- (6) The builder and/or property owner shall provide the City a surety in the form of a bond, letter of credit, cashier's check, corporate check or cash to ensure the timely and proper completion of the remaining work pursuant to the terms of the Agreement if the cost of the remaining work to be completed is estimated by the City to be at least Two Thousand Dollars (\$2,000), or if the remaining work to be completed includes the installation of a driveway, parking lot, sidewalk, curbing or other hard surface improvements, regardless of cost. The amount of the surety shall be equal to the cost of the remaining work to be completed as estimated by the City.
- (7) Upon execution of the Agreement by all parties and the City's receipt of the surety, if required, the Goshen Building Department will issue a certificate of occupancy.
- (8) Upon the completion of the construction project, the City shall inspect the site to confirm the remaining work under the Agreement has been satisfactorily completed. The City will release the builder and/or property owner, as applicable, from the provisions of the Agreement and release its interest in the surety, if such was provided, upon the satisfactory completion of the remaining work.
- (9) Entering into an Agreement for the Completion of a Construction Project shall be viewed as an exception to evenly enforced rules, and not as the rule itself. The City shall expect builders and property owners to use best efforts to schedule work on projects such that the project fully complies with the Goshen City Code prior to the issuance of a certificate of occupancy.

BE IT FURTHER RESOLVED that this Resolution specifically repeals and replaces Resolution 2011-G.

PASSED and ADOPTED by the Goshen Board of Public Works and Safety on November _____, 2021.

Jeremy P. Stutsman, Mayor

Mary Nichols, Board Member

DeWayne Riouse, Board Member

Michael A. Landis, Board Member

Barb Swartley, Board Member



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November 1, 2021

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Resolution 2021-31 – Project Coordination Contract with the State of Indiana for the Bidding, Construction and Funding of the Railroad Protection Project at the Beaver Lane and Madison Street Crossings

Resolution 2021-31 approves the terms and conditions of the Project Coordination Contract with the State for the bidding, construction and funding of the railroad protection project at the Beaver Lane and Madison Street crossings, and authorizes the Mayor to execute the agreement on behalf of the city. Under this agreement, in federal funds will be allocated to the project to pay 90% of eligible costs, up to a maximum of \$1,129,253.40. The City agrees to fund the remaining costs.

Suggested Motion:

Move to pass and adopt Resolution 2021-31 – Project Coordination Contract with the State of Indiana for the Bidding, Construction and Funding of the Railroad Protection Project at the Beaver Lane and Madison Street Crossings.

RESOLUTION 2021-31

**Project Coordination Contract
with the State of Indiana
for the Bidding, Construction and Funding of the Railroad Protection Project
at the Beaver Lane and Madison Street Crossings**

WHEREAS the City of Goshen has applied, and the Indiana Department of Transportation (InDOT) has approved the City’s application for federal funds for a Section 130 Railroad Safety Railroad Protection Project at the Beaver Lane and Madison Street crossings (hereinafter referred to as the “Project”).

WHEREAS federal funds will be made available to pay ninety percent (90%) of eligible Project costs. The maximum amount of federal funds allocated to the Project is \$1,129,253.40.

WHEREAS the City agrees to fund the City’s share of cost for this Project, including any cost in excess of the City’s ten percent (10%) of eligible Project costs which are not covered by federal funds.

WHEREAS pursuant to Indiana Code § 36-1-7 et seq., a power that may be exercised by one governmental entity may be exercised by one entity on behalf of another governmental entity if the entities enter into a written agreement under Indiana Code § 36-1-7-3.

WHEREAS all aspects for the completion of the Project will be coordinated between the City and InDOT pursuant to the terms and conditions of the Project Coordination Contract attached to this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Goshen Board of Public Works and Safety approves the terms and conditions of the Project Coordination Contract with the State of Indiana for the Project attached to and made a part of this resolution.

BE IT FURTHER RESOLVED that the Goshen Board of Public Works and Safety agrees to fund the City’s share of the Project costs, including any cost in excess of ten percent (10%) of eligible Project costs which are not covered by federal funds.

BE IT FURTHER RESOLVED that Mayor Jeremy P. Stutsman is authorized to execute the Project Coordination Contract on behalf of the Goshen Board of Public Works and Safety and the City of Goshen.

PASSED by the Goshen Board of Public Works and Safety on November 1, 2021.

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

DeWayne Riouse, Member

Michael A. Landis, Member

Barb Swartley, Member

INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY

PROJECT COORDINATION CONTRACT

CONTRACT #0000000000000000000056266

Des. No.: 1801265 & 1900391

LPA DUNS #963491266

CFDA No.: 20.205

This Contract is entered into by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as "INDOT"), and the **CITY OF GOSHEN**, a local public agency in the State of Indiana (hereinafter referred to as the "LPA"), and collectively referred to as the "PARTIES" is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by the Office of the Indiana Attorney General. In consideration of those mutual undertakings and covenants, the PARTIES agree as follows:

NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

- A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA and Grant Administration
Attention: Director of LPA and Grant Administration
100 North Senate Avenue, Room N955-LPA
Indianapolis, Indiana 46204

With a copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204

- B. Notices to INDOT regarding project management shall be sent to respective District Office:

INDOT LPA
100 North Senate Avenue
Indianapolis, Indiana 46204

- C. Notices to the LPA shall be sent to:

City of Goshen
202 South Fifth Street
Suite 1
Goshen, IN 46528

RECITALS

WHEREAS, the LPA has submitted an application to receive federal funds for the project described in **Attachment A** (the "Project"), which is attached herein and made an integral part of this Contract; and

WHEREAS, INDOT has approved of the LPA's application for federal funding, and the PARTIES desire to enter into this Contract to establish the responsibilities for the Project; and

WHEREAS, the LPA shall be responsible for its share of the Project cost as stated in this Contract; and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all federal requirements and fiscally manage the Project; and

WHEREAS, the PARTIES have determined the Project is in the best interests of the citizens of the State of Indiana; and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations; and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

I. PROJECT DESCRIPTION.

1.1. The Parties are entering into this Contract to complete the Project described as follows:

Des. No.	<u>1801265 & 1900391</u>
Program:	<u>Section 130 Railroad Safety</u>
Type of Project:	<u>Railroad Protection</u>
General Scope/Location:	<u>1801265 Beaver Lane at NS RR DOT # 510019A in Goshen</u> <u>1900391 Madison St. at NS RR DOT #510039L in Goshen</u>

II. LPA RESPONSIBILITIES.

- 2.1. The LPA shall complete the Project in accordance with INDOT's Design Manual (See http://www.in.gov/indot/design_manual/) and all pertinent state and federal laws, regulations, policies and guidance, including the INDOT's LPA Guidance Document (See <https://www.in.gov/indot/2390.htm>). The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/2523.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/2493.htm>).
- 2.2. The LPA shall select the consultant in accordance with INDOT's consultant selection procedure for the consultant services to be eligible for federal funding or federal credits.

- 2.3. If the LPA contracts with a consultant, contractor, or other agent to complete work on the Project, the LPA may use either the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/2833.htm>, or an agreement that has been reviewed and approved by INDOT.
- 2.4. The LPA shall provide all relevant documents including, but not limited to, all plans, specifications, and special provisions, to INDOT for its review and approval, which said approval will not be unreasonably withheld. If INDOT does not approve the LPA submittal, the LPA shall modify the submittal to secure INDOT's approval. If the LPA fails to provide a submittal, untimely provides the submittal, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.
- 2.5. The LPA shall complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
- 2.6. If the LPA fails to meet any of the requirements of Sections 2.1, 2.2, 2.4, or 2.5 above, INDOT will not let the construction Project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
- 2.7. The cost of the invoice of the construction, utility, and/or railroad work shall be paid by the LPA no later than thirty (30) calendar days from the date of letting.
- 2.8. The LPA shall make timely payments of costs to INDOT to avoid delays and increased costs to the Project. If the LPA fails to make timely payments of the full amount invoiced by INDOT, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of **Attachment A**, which is attached hereto and incorporated herein by reference, and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
- 2.9. The LPA shall be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the Project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.
- 2.10. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this Section are deemed to be incompetent, inadequate or are otherwise insufficient, or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
 - 2.10.1. If project inspection will be provided by full-time LPA employees, the personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal aid shall be submitted to the District office, referenced on Page 1 of the Contract for payment.
 - 2.10.2. If project inspection will be provided by the LPA's consultant, INDOT must approve, in writing, the consultant personnel prior to their assignment to the Project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's Ready for Contracts date for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All

claims for federal aid shall be submitted to the District office, referenced on page 1 of this Contract for payment.

- 2.11.** The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the Project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.
- 2.12.** The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2389.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
- 2.13.** If FHWA or INDOT invokes sanctions per Section 6.6.2. of this Contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
- 2.13.1.** In the event of a correctable noncompliance, the LPA shall make the corrections to the satisfaction of FHWA and INDOT in a reasonable amount of time. In the event the LPA fails to make the required corrections, Sections 2.14.2 and 2.14.3 (as applicable) shall apply.
- 2.13.2.** In the event a citation for noncompliance: (1) is unable to be corrected, (2) the LPA fails to make corrections, (3) the LPA makes corrections which are not acceptable to FHWA and INDOT, or (4) for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, Section 2.14.2 shall apply and adjustments shall be made as follows:
- A. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation which have been paid by INDOT to the LPA.
 - B. If no right-of-way costs have been paid by INDOT to the LPA or on the LPA's behalf, INDOT shall not pay any claim or billing for right-of-way that is subject to the FHWA citation.
 - C. The LPA is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
- 2.13.3.** If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA's noncompliance with right-of-way requirements, and construction work has commenced, the following shall apply:
- A. INDOT may elect to terminate, suspend, or continue construction work in accordance with the provisions of the construction contract.
 - B. INDOT may elect to pay its obligations under the provisions of the construction contract.
 - C. If the noncompliance can be corrected, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.
 - D. In the event a citation for noncompliance: (1) is unable to be corrected, (2) the LPA fails to make corrections, (3) the LPA makes corrections which are not acceptable to FHWA and INDOT, or (4) for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA shall reimburse INDOT the full amount the LPA paid for said construction work, less the amount of federal funds allowed by FHWA.

- 2.13.4.** The LPA shall reimburse INDOT the total cost of the Project not eligible for federal participation.
- 2.13.5.** If for any reason INDOT is required to repay to FHWA the sum(s) of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum(s) within forty-five (45) days after receipt of an invoice from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

III. INDOT RESPONSIBILITIES.

- 3.1.** INDOT shall have full authority and access to inspect and approve all plans, specifications, and special provisions for the Project, regardless of when those plans, specifications, special provisions, or other such Project documents were created.
- 3.2.** After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.
- 3.3.** If the LPA owes INDOT money which is more than sixty (60) days past due, INDOT will not open the construction bids for the Project.
- 3.4.** Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of **Attachment A**, and fulfillment of all other pre-letting obligations of this Contract, INDOT shall, in accordance with applicable laws and rules, including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11, conduct a scheduled letting.
- 3.5.** Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.
- 3.6.** Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.
- 3.7.** If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA's share of the construction cost.
- 3.8.** INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.
- 3.9.** In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.
- 3.10.** After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's invoice, make final payment to INDOT pursuant to **Attachment A** or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

IV. PROJECT FUNDS.

- 4.1. INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with **Attachment A** (Project Funds).

V. TERM AND SCHEDULE.

- 5.1. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract), between **July 1, 2021 and June 30, 2022**, INDOT will make the federal funds shown in Section I.A. and/or Section I.B. of **Attachment A** available for the Project, provided the Project is eligible, and provided the federal funds shown in Section I.B. of **Attachment A** are available.
- 5.2. In the event that federal funds for the Project are not obligated during the time listed in Section 5.1, but the LPA has the plans, special provisions, and cost estimate for the Project ready such that federal funds can be obligated between **July 1, 2022 and June 30, 2024**, INDOT will schedule the contract for letting, provided the Project is eligible, and provided the federal funds shown in Section I.B. of **Attachment A** are available.
- 5.3. In the event that federal funds for the Project are not obligated during the period listed in Section 5.1 or Section 5.2, the federal funds allocated to the Project may be obligated in the fiscal year chosen by INDOT or the federal funds allocated to the Project will lapse.
- 5.4. If the Program is Group I or Group II, Sections 5.1, 5.2 and 5.3 do not apply, but will be obligated according to the fiscal year programmed in the most current MPO TIP, provided the MPO funding is within their fiscal year allocation.

VI. GENERAL PROVISIONS

- 6.1. **Access to Records.** The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
- 6.2. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- 6.3. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State. The State considers the LPA to be a "sub-recipient" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations),

following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract.

For audits conducted pursuant to Indiana Code 5-11-1, and audited by the Indiana State Board of Accounts on the time schedule set forth by the Indiana State Board of Accounts, the LPA shall provide to the Indiana State Board of Accounts, all requested documentation necessary to audit the Local Public Agency in its entirety.

If the audit is conducted by an independent public or certified public accountant and not the Indiana State Board of Accounts, the LPA shall submit the completed audit to the Indiana State Board of Accounts within 10 (ten) days of the completion of the audit.

The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State.

- 6.4. Authority to Bind LPA.** The signatory for the LPA represents that he/she has been duly authorized to execute this Contract on behalf of the LPA, and has obtained all necessary or applicable approvals to make this Contract fully binding upon the LPA when his/her signature is affixed and accepted by the State.
- 6.5. Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:
- A.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the LPA, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreement, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
 - B.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.
 - C.** The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
- 6.6. Compliance with Laws.**

- 6.6.1.** The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
- 6.6.2.** The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
- 6.6.3.** The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."
- 6.6.4.** The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, et seq., IC §4-2-7, et seq. and the regulations promulgated thereunder. If the LPA has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the LPA shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Contract. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the LPA or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
- 6.6.5.** The LPA warrants that the LPA and its contractors shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this Contract. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- 6.6.6.** As required by IC §5-22-3-7:
- (1) The LPA and any principals of the LPA certify that:
 - A. the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - B. the LPA will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
 - (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
 - A. has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

- B. will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

6.7. Debarment and Suspension.

- 1. The LPA certifies by entering into this Contract that neither it nor its principals nor any of its contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the LPA.
- 2. The LPA certifies that it will verify the state and federal suspension and debarment status for all contractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor. The LPA shall immediately notify INDOT if any contractor becomes debarred or suspended, and shall, at INDOT's request, take all steps required by INDOT to terminate its contractual relationship with the contractor for work to be performed under this Contract.

6.8. Disadvantaged Business Enterprise Program. Notice is hereby given to the LPA or a LPA Contractor that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

6.9. Disputes.

- 6.9.1.** Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- 6.9.2.** The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.
- 6.9.3.** If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved

within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

- 6.9.4.** The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
- 6.9.5.** INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.
- 6.10. Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the LPA hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The LPA will give written notice to the State within ten (10) days after receiving actual notice that the LPA, or an employee of the LPA in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the LPA certifies and agrees that it will provide a drug-free workplace by:

- A.** Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the LPA's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B.** Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the LPA's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C.** Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D.** Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;
- E.** Within thirty (30) days after receiving notice under subdivision (3)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of

drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

6.11. Employment Eligibility Verification. The LPA affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien. The LPA further agrees that:

- A. The LPA shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The LPA is not required to participate should the E-Verify program cease to exist. Additionally, the LPA is not required to participate if the LPA is self-employed and do not employ any employees.
- B. The LPA shall not knowingly employ or contract with an unauthorized alien. The LPA shall not retain an employee or contract with a person that the LPA subsequently learns is an unauthorized alien.
- C. The LPA shall require its contractors, who perform work under this Contract, to certify to the LPA that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The LPA agrees to maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the LPA fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

6.12. Force Majeure. In the event that any Party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected Party (hereinafter referred to as a "Force Majeure Event"), the Party who has been so affected shall immediately or as soon is reasonably possible under the circumstances give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

6.13. Funding Cancellation Clause. As required by Financial Management Circular 2007-1 and IC 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

6.14. Governing Laws. This Contract shall be governed, construed and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

6.15. Indemnification. The LPA agrees to indemnify, defend, exculpate, and hold harmless the State of Indiana, and INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other

legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:

- A. of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- B. of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- C. of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
- D. the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract. INDOT will not provide indemnification to the LPA.

6.16. Merger & Modification. This Contract constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

6.17. Non-Discrimination.

6.17.1. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the LPA covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The LPA certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any subcontractor.

6.17.2. INDOT is a recipient of federal funds, and therefore, where applicable, the LPA and any subcontractors shall comply with requisite affirmative action requirements, including

reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

The LPA agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, limited English proficiency, or status as a veteran).

- 6.17.3.** During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
- A.** Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - B.** Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
 - C.** Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.
 - D.** Information and Reports: The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal

Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

6.18. Payment. All payments (if any) shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.

6.19. Penalties, Interest and Attorney's Fees. INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

6.20. Pollution Control Requirements. If this Contract is for \$100,000 or more, the LPA:

- A. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
- B. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
- C. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance

under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.

- 6.21 Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
- 6.22. Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204-2249

- 6.23. General.** This Contract represents the entire understanding between the PARTIES relating to the subject matter and supersedes any and all prior oral and/or written communications, understandings or agreements relating to the subject matter. Any amendment or modification to this Contract must be in writing and be signed by duly authorized representatives of the PARTIES (and by all necessary approving State agencies or parties). Neither this Contract nor any portions of it may be assigned, licensed or otherwise transferred by the LPA without the prior written consent of INDOT. This Contract will be binding upon the PARTIES and their permitted successors or assigns. Failure of either Party to enforce any provision of this Contract will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Contract. The Recitals and "Notice to PARTIES" on page 1 of the Contract are hereby made an integral part and specifically incorporated into this Contract.

[Remainder of this page intentionally left blank.]

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the LPA, or that the undersigned is the properly authorized representative, agent, member or officer of the LPA. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the LPA, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Party attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:
https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTRCTS.GBL

In Witness Whereof, the LPA and the State have, through their duly authorized representatives, entered into this Contract. The PARTIES, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

CITY OF GOSHEN

Indiana Department of Transportation

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Electronically Approved by:
Department of Administration

Electronically Approved by:
State Budget Agency

By: (for) Lesley A. Crane, Commissioner

By: (for) Zachary Q. Jackson, Director

Form approval has been granted by the Office of the Attorney General pursuant to IC 4-13-2-14.3(e) on October 22, 2020. FA 20-82

ATTACHMENT A
PROJECT FUNDS

I. Project Costs.

A. This contract is just for the one (1) phase checked below:

_____ Preliminary Engineering or
_____ Right-of-Way or
 X Construction;

B. If the Program is receiving federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP, or any increase or decrease in the funding from a prior year, authorized by the MPO that may not be reflected in the current TIP, are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay ___% of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is dependent upon the current TIP allocation. As of this date, ___, the maximum amount according to the TIP dated ___ is \$___. The most current MPO TIP page, or MPO authorization, is uploaded into INDOT's Scheduling Project Management System (SPMS).

OR

C. Federal-aid Funds made available to the LPA by INDOT will be used to pay **90%** of the eligible Project costs. The maximum amount of federal funds allocated to the project is **\$1,129,253.40.**

D. The LPA understands and agrees that it is INDOT's policy to only allow non-discretionary changes to a Project scope after bidding. Changes to the Project scope after bidding that are by the choice of the LPA and are not required to complete the Project will not be eligible for federal-aid funds and must be funded 100% locally.

E. The LPA understands and agrees that the federal-aid funds allocated to the Project are intended to accomplish the original scope of the Project as designed. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the Local Program.

F. If the Program is Group I or Group II, Section E. does not apply. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the MPO.

G. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of **Attachment A** of this Contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.

- H. Every project must have a project end date based upon the reasonable timeframe for the project phase to be completed. If a project end date lapses, the project is no longer eligible for federal reimbursement in accordance with 2 CFR 200. See <https://www.in.gov/indot/2833.htm>.
- I. Costs will be eligible for FHWA participation provided that the costs:
- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
 - (2) Are verifiable from INDOT's or the LPA's records;
 - (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22;
 - (4) Are included in the approved budget, or amendment thereto; and
 - (5) Were not incurred prior to FHWA authorization.

II. Billings.

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.
2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.
3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment A and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
4. Federal funds on projects which have not been billed for a twelve (12) month period are considered inactive and must be removed from the project in accordance with 2 CFR 200. To receive federal funding within the twelve (12) month period, INDOT must receive a billing within nine (9) months. See <https://www.in.gov/indot/2833.htm>.

III. Repayment Provisions.

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.



**COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CITY OF GOSHEN**

204 East Jefferson Street, Suite 4 • Goshen, IN 46528-3405

Phone (574) 533-9370 • Fax (574) 533-8626 • TDD (574) 534-3185
meaghanbylsma@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Board of Public Works and Safety

FROM: Meaghan Bylsma, Community Development Specialist

DATE: November 1, 2021

RE: Approval of CBDO Agreements for Multi-Unit Housing Rehabilitation for Program Years 2020 & 2021

Please approve the following CBDO (Community Based Development Organization) agreements for multi-unit housing rehabilitation for the CDBG Program Years of 2020 and 2021, and authorize the Mayor to sign the agreements:

Housing Grants

(#1) Lacasa, Inc. – multi-family housing rehab (2020)	\$122,000
(#2) Lacasa, Inc. – multi-family housing rehab (2021)	\$141,597

CDBG funds for Project #1 were made available in Program Year 2020; however, implementation is unable to begin until Program Year 2021. CDBG funding for Project #2 was made available in Program Year 2021, and implementation is scheduled to begin within this same program year.

The agreements are attached.

Suggested Motion: Approve the CBDO agreements for multi-unit housing rehabilitation projects for the CDBG Program Years of 2020 and 2021, and authorize the Mayor to sign the agreements.

CITY OF GOSHEN
COMMUNITY DEVELOPMENT BLOCK GRANT
COMMUNITY BASED DEVELOPMENT ORGANIZATION (CBDO) AGREEMENT
MULTI UNIT HOUSING REHABILITATION
Program Years 2020-2021: July 1, 2020-June 30, 2022

This Housing Rehabilitation Agreement (the “Agreement”) is entered into by and between the City of Goshen, Indiana (the “City”) and Lacasa, Inc. (the “CBDO”), an Indiana not-for-profit corporation, as of this 1st day of November 2021.

WITNESSETH:

WHEREAS, such Housing Rehabilitation grant will be funded through the entitlement city’s Community Development Block Grant program (“CDBG Program”) established under Title I of the Housing and Community Development Act of 1974, as amended, and the rules, regulations, policy memoranda and other authority thereunder (collectively, the “Act”) and administered by the City.

WHEREAS, the City has requested the assistance of the CBDO to administer the Multi-unit Housing Rehabilitation portion (the “Project”) of the CDBG Program;

WHEREAS, the Act contains certain requirements regarding the use of funds to fulfill a “national objective,” as defined in the Act;

WHEREAS, the national objective to be fulfilled by the City’s use of its CDBG Program is the rehabilitation of multi-unit, renter-occupied housing by the CBDO for low and moderate (“Low and Moderate”) income families. Low- and Moderate-income families are defined in the Act, and the income ranges and rent limits will be as established for the HOME Program, as published annually by Indiana Housing & Community Development Authority, with a separate Lien and Restrictive Covenant Agreement required to be executed and recorded for each individual multi-unit property receiving CDBG assistance;

WHEREAS, the Act requires that the CBDO demonstrate its intent to rehabilitate such housing for Low- and Moderate-income families;

WHEREAS, the Act prohibits discrimination under any program or activity funded with CDBG moneys on the basis of race, color, national origin, sex, age, or handicap; additionally, the Act prohibits discrimination in housing programs and activities funded with CDBG on the basis of sexual orientation, gender identity or marital status;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and CBDO agree as follows:

1. CBDO Designation and Administration of Grant. City hereby designates and CBDO hereby agrees to serve as a CBDO for the Multi-unit Housing Rehabilitation portion (the “Project”) of the CDBG Program and to administer the Project in accordance with this Agreement and the Act.
2. Scope of Services. CBDO agrees to perform the services under this Agreement as follows:
 - (a) To submit a final scope of work for the identified project, including estimated budget and project timeline, to be approved by the CDBG program before work proceeds.
 - (b) To implement the project per the approved scope of work referenced above.
 - (c) To obtain all federal, state, and local government approvals, permits, licenses, and review required by law to be obtained for the performance of the rehabilitation work under this Agreement.
 - (d) To comply with all applicable, federal, state, and local laws and regulations pertaining to the performance of the rehabilitation work under this Agreement.

- (e) To conduct Tier II Environmental Review for each multi-unit property selected for rehabilitation, including preparing any necessary maps, preparing photo documentation for each property, contacting the local and county historians for review and comment, and preparing all narrative and documentation for DHPA Section 106 review.
 - (f) To submit to the City any and all documents demonstrating compliance with all federal and state rules and regulations. Such demonstrations will be provided at the request of the City. City's failure to request any supporting documentation, however, shall not excuse any failure on the part of CBDO to have complied with the applicable federal and state rules and regulations.
 - (g) To file claims on a timely basis with the City for the release of funds from the CDBG Program for reimbursement of the direct costs and program delivery costs incurred under the Project. All claims will be accompanied by verification of all costs incurred. Copies of the following documents must be on file with the City in order to process a claim: cost estimate with construction details and costs; claim for payment; invoices supporting claim amount.
 - (h) Claims will be limited to the sum of One Hundred Twenty-two Thousand Dollars (\$122,000.00) for the Project. Program delivery costs are limited to a maximum of twenty five percent (25%) of direct costs, and shall not exceed Fifty Thousand Dollars (\$50,000.00).
 - (i) That all contracts and services and other procurement of materials, services, or construction shall be carried out in compliance with applicable laws and regulations, including but not limited to, those listed in Exhibit A.
 - (j) Provide proof of complying with all rules and regulations involving the rehabilitation work and Lead Based Paint requirements.
 - (k) That all federal fair housing and other requirements stated in the CDBG Program shall be met when performing the rehabilitation work under this Agreement.
 - (l) To maintain records adequate to identify and account for all costs pertaining to this agreement; to establish the eligibility of the household assisted under the program and such other records as may be required by statute, rule or regulations. These records shall be maintained for a period of four (4) years after project completion and shall be available to the City and authorized federal agencies.
 - (m) That City and Federal officials and representatives will have access to all books, accounts, records, reports, files, and other papers, things or property pertaining to the project in order to make audits, examinations, excerpts, and transcripts.
 - (n) To assist any or all of the City's personnel or agencies, designated by the City by contract or resolution or other written document, regarding the implementation of this Agreement, and such designated personnel and agencies shall provide information and cooperation to the CBDO to the extent provided in this Agreement and other contracts, resolutions, or written agreements.
 - (o) To provide any and all information as requested by the City to fulfill the requirements of the Federal Subaward Reporting System (FSRS). This includes having a DUNS # and maintaining a current and accurate Central Contractor Registration (CCR) account.
3. Release of Funds. The City agrees to release funds from the CDBG Program for direct costs and program delivery costs incurred by the CBDO as funds are requested by CBDO in accordance with City claim procedures as outlined in Exhibit B.
4. City Responsibilities. City agrees:
- (a) To retain all Tier I environmental responsibilities and the responsibility for initiating any applicable inter-governmental review process. However, nothing in this Agreement shall be construed to create environmental responsibilities that do not otherwise exist.

(b) To file required paperwork and documents with the U.S. Department of Housing and Urban Development and any other necessary agencies on a timely basis with respect to the CDBG Program and to pay properly submitted and documented claims of the CBDO on a timely basis.

5. Designation of Project Coordinators. For purposes of this Agreement, the Project Coordinator for the City shall be Rhonda Yoder, CDBG Administrator, City of Goshen. The Project Coordinator for the CBDO shall be Chris Kingsley, President, Lacasa, Inc. Communications pertaining to this Agreement shall be through the respective Project Coordinators for the City and CBDO.

6. Term of Agreement.

(a) As funds for this activity were made available in Program Year 2020, but implementation was unable to begin until Program Year 2021, the term of this Agreement shall run from and including the 1st day of July 2020 through and including the 30th day of June 2022. All of CBDO's claims to release funds from the CDBG Program shall be submitted to the City no later than the day specified by the CDBG Administrator near the end of the contract period, approximately June 3, 2022, so that all claims can be paid within the contract year, except as needed to complete projects, including the associated reporting and paperwork, extending the term of the contract no longer than the end of calendar year 2022.

(b) When the CDBG Administrator is notified that CDBG funds are no longer available due to funding changes or lack of funding by the U.S. Department of Housing and Urban Development to support continuation of performance of the Agreement, the Agreement shall be canceled with not less than 30 days' notice to the CBDO from the City.

7. Audit Compliance. The CBDO shall provide the amount of federal funds expended in the CBDO's fiscal year, as requested by the City. If the CBDO expends \$750,000 or more of federal funds in a fiscal year, an audit following 2 CFR 200.514 must be conducted and a copy of the audit submitted to the City for review, within 30 days after receipt of the auditor's report(s) or nine months after the end of the audit period, whichever is earlier. Any findings related to CDBG must be cleared by the City.

8. Uniform Administrative Requirements. CBDO agrees to comply with applicable uniform administrative requirements, as described in 2 CFR Part 200.

9. Notice. All notices required or permitted under this Agreement shall be submitted in writing to the other party to this Agreement, and delivered personally or sent by regular first-class mail:

City of Goshen, Indiana
Attn: Rhonda Yoder, CDBG
204 E. Jefferson Street, Suite 4
Goshen, Indiana 46528

Lacasa, Inc.
Attn: Chris Kingsley
202 N. Cottage Avenue
Goshen, Indiana 46528

Or at such other place as the parties may designate in writing from time to time.

10. Conflict of Interest. The CBDO represents that none of its employees, officers, or directors presently have any interest, either direct or indirect, which would conflict in any manner with CBDO's performance or procurement under this Agreement, and that no person having such interest shall be appointed or employed by CBDO; except that which is disclosed in writing by the CBDO to the City.

11. CBDO Status: Attached hereto as Exhibit C by this reference made a part hereof are copies of correspondence from the City dated the 13th day of April 2020 and the 24th day of May 2021 designating Lacasa, Inc., as a CBDO.

12. Tax Exempt Status. Attached hereto as Exhibit D by this reference made a part hereof is a copy of correspondence from the Internal Revenue Service dated the 28th day of January 2003 confirming the 501(c)(3) tax exempt status of the CBDO.

13. Default.

- (a) Upon CBDO's failure to comply with any of the terms and conditions contained within this Agreement or its failure to comply with the appropriate federal rules, laws, and regulations governing the administration of the CDBG funds, all rights inuring to the benefit of CBDO pursuant to this Agreement shall be suspended and this Agreement, shall be terminated upon delivery of written notice by the City. Furthermore, CBDO shall not be entitled to reimbursement from the City for any project in which CBDO is in default of its obligations imposed upon it pursuant to this Agreement, or is in violation of any federal rules, laws, or regulations governing the administration of CDBG funds. Upon City's default under this Agreement, all rights inuring to the benefit of City pursuant to this Agreement shall be suspended and this Agreement shall be terminated upon delivery of written notice by CBDO.

- (b) Upon default by a party to this Agreement, the non-defaulting party shall be entitled to recover its damages, penalties incurred, costs and expenses sustained, and reasonable attorney fees from the defaulting party in addition to the remedies provided in subparagraph (a) above. A party shall be in default under this Agreement in the event it violates or fails to comply with any of the terms and conditions contained within this Agreement or the applicable state and federal laws, rules, and regulations.

14. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however that no assignment shall be effective to relieve a party of any liability under this Agreement unless the other party has consented in writing to the assignment and agreed to the release of such liability. The City and CBDO hereby acknowledge receipt of a duly executed copy of this Agreement complete with all exhibits attached hereto.

IN WITNESS WHEREOF, the CBDO and the City have caused this Agreement to be executed by a duly authorized individual as of the date first above written.

CBDO: LACASA, INC.

By: _____
Chris Kingsley
President

ATTESTED:

By: _____

Printed: _____

Title: _____

CITY:

CITY OF GOSHEN, INDIANA BY
AND THROUGH THE MAYOR
OF THE CITY OF GOSHEN, INDIANA

By: _____
Jeremy P. Stutsman, Mayor

Exhibit A

I. Administrative Requirements

A. Financial Management

1. Accounting Standards

The CBDO agrees to comply with 2 CFR Part 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The CBDO shall administer its program in conformance with 2 CFR Part 200 as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The CBDO shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets the National Objective of the CDBG program of benefiting low/moderate income persons;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 2 CFR Part 200; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The CBDO shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of submission of the City's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The CBDO shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the City or their designees for review upon request.

4. Disclosure

The CBDO understands that client information collected under this contract is private, and the use or disclosure of such information, when not directly connected with the administration of the City's or CBDO's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service, and, in the case of a minor, that of a responsible parent/guardian, unless otherwise required by law.

5. Close-Outs

The CBDO's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, final close-out reports and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the CBDO has control over CDBG funds.

6. Audits and Inspections

All CBDO records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the CBDO within 30 days after receipt by the CBDO. Failure of the CBDO to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The CBDO hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning CBDO audits and, as applicable, 2 CFR Part 200.

C. Reporting and Payment Procedures

1. Indirect Costs

If indirect costs are charged, the CBDO will develop an indirect cost allocation plan for determining the appropriate CBDO's share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.

2. Payment Procedures

The City will pay to the CBDO funds available under this contract, based upon information submitted by the CBDO and consistent with any approved budget and City policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the CBDO, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund balances available in CBDO accounts. In addition, the City reserves the right to liquidate funds available under this contract for costs incurred by the City on behalf of the CBDO.

D. Procurement

1. OMB Standards

Unless specified otherwise within this Agreement, the CBDO shall procure all materials, property, or services in accordance with the requirements of 2 CFR Part 200.

2. Travel

The CBDO shall obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

II. Personnel and Participant Conditions

A. Civil Rights

1. Compliance

The CBDO agrees to comply with all local and State of Indiana civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act (HCDA) of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The CBDO agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (PL 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the CBDO shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. The CBDO, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The CBDO agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 USC 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the CBDO with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Equal Opportunity

1. Women- and Minority-Owned Businesses (W/MBE)

The CBDO will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the term “minority and female business enterprise” means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are Afro-Americans, Spanish-speaking, Spanish-surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The CBDO may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

2. Access to Records

The CBDO shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

3. Notifications

The CBDO will send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding, a notice, to be provided by the agency contracting office, advising the labor union or worker’s representative of the CBDO’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The CBDO will, in all solicitations or advertisements for employees placed by or on behalf of the CBDO, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The CBDO will include the provisions of Paragraphs II.A., Civil Rights, and B., Equal Opportunity, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or contractors.

C. Employment Restrictions

1. Prohibited Activity

The CBDO is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The CBDO agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 USC 327 *et seq.*), and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The CBDO agrees to comply with the Copeland Anti-Kickback Act (18 USC 874 *et seq.*) and its implementing regulations of the US Department of Labor at 29 CFR Part 5. The CBDO shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The CBDO agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided, that if wage rates higher than those required

under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the CBDO of its obligation, if any, to require payment of the higher wage. The CBDO shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause

a) Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 75, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the City, the CBDO and any of the CBDO's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, the CBDO and any of the CBDO's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The CBDO certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The CBDO further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The CBDO further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The CBDO certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b) Notifications

The CBDO agrees to send to each labor organization or representative of workers with which it has a collective bargaining Agreement, or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c) Subcontracts

The CBDO will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The CBDO will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 75 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The CBDO shall not assign or transfer any interest in this contract without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the CBDO from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

a) Approvals

The CBDO shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the City prior to the execution of such Agreement.

b) Monitoring

The CBDO will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c) Content

The CBDO shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d) Selection Process

The CBDO shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Hatch Act

The CBDO agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the USC.

4. Conflict of Interest

The CBDO agrees to abide by the provisions of 2 CFR Part 200 and 570.611, which include (but are not limited to) the following:

a) The CBDO shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b) No employee, officer or agent of the CBDO shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c) No covered person who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or Agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the CBDO, the City, or any designated public agency.

5. Lobbying

The CBDO hereby certifies that:

a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement;

b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal

- contract, grant, loan, or cooperative Agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly:
 - d) Lobbying Certification:
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
6. Copyright
If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.
 7. Religious Activities
The CBDO agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

III. Environmental Conditions

- A. Air and Water
The CBDO agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:
 - Clean Air Act, 42 USC, 7401 *et seq.*
 - Federal Water Pollution Control Act, as amended, 33 USC, 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
 - Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.
- B. Flood Disaster Protection
In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the CBDO shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).
- C. Lead-Based Paint
The CBDO agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.
- D. Historic Preservation
The CBDO agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 USC 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

IV. General Conditions

A. Responsibilities

The Grantee will carry out its activities in compliance with the requirements of Subpart K of 24 CFR 570, except, however, that the Grantee does not assume the City's environmental responsibilities or the responsibility for initiating the environmental review process under 24 CFR part 52.

Exhibit B

City of Goshen Weekly Payment Procedures for CDBG Claims Effective December 8, 2014

Thursday NOON	Deadline to submit claims to CDBG Administrator for processing the following week
Friday	CDBG Administrator Review of Claim: Incomplete claims will be held until all required information is received
Monday (Week 1)	CDBG Administrator Reporting in HUD's online system for each claim (required before a claim may be processed)
Tuesday AM Tuesday PM	First drawdown authorization by CDBG Administrator Voucher submitted by CDBG Administrator to Clerk Treasurer's Office
Wednesday Wednesday, 3pm	Second drawdown authorization by Clerk Treasurer's Office Deadline for claim to be processed by Clerk Treasurer's Office for Board of Works
Monday (Week 2)	Claim approved and signed by Board of Works – all CDBG vouchers must be hand-signed by BOW members
Tuesday	Check written by Clerk Treasurer's Office

**Exhibit C
CBDO Designation**



Rhonda L. Yoder, AICP
CDBG Program, CITY OF GOSHEN
204 East Jefferson Street, Suite 4 • Goshen, IN 46528-3405

Phone (574) 537-3815 • Fax (574) 533-8626 • TDD (574) 534-3185
rhodayoder@goshencity.com • www.goshenindiana.org

VIA ELECTRONIC MAIL

April 13, 2020

Lacasa
Chris Kingsley, President/CEO
202 N. Cottage Avenue
Goshen, IN 46528

RE: Community Based Development Organization (CBDO) Designation

Dear Chris:

The City of Goshen CDBG Program is pleased to inform you that the City of Goshen CDBG Program has designated Lacasa as a Community Based Development Organization (CBDO) for CDBG Program Year 2020 (July 1, 2020 – June 30, 2021).

As a result of this designation, Lacasa is eligible to receive CDBG funding to carry out special CBDO activities which may include the following types of projects: Neighborhood Revitalization, Community Economic Development, and Energy Conservation.

For Program Year 2020, the following activities have received tentative approval for CDBG funding:

- Multi-unit Housing Rehabilitation, 410 E Jefferson Street, up to \$122,000
- Energy Conservation, Multi-unit Housing, 215 W Madison Street, up to \$250,000

CDBG funding for CBDO activities will be a secondary funding source, used with HOME and/or LIHTC. Rents will follow the rents required by the primary funding source, typically HOME and/or LIHTC, as set by IHCDA. CDBG will require a concurrent five-year affordability period for all CBDO housing projects.

Please let me know if there are questions.

Sincerely,

A handwritten signature in black ink that reads "Rhonda Yoder".

Rhonda Yoder
CDBG Administrator

cc: Jim Davis, Chief Operating Officer
Brad Hunsberger, VP Real Estate Development



**COMMUNITY DEVELOPMENT BLOCK GRANT
CITY OF GOSHEN**

204 East Jefferson Street, Suite 4 • Goshen, IN 46528-3405

Phone (574) 533-9370 • Fax (574) 533-8626 • TDD (574) 534-3185
meaghanbylsma@goshencity.com • www.goshenindiana.org

VIA ELECTRONIC MAIL

May 24, 2021

Lacasa
Chris Kingsley, President/CEO
202 N. Cottage Avenue
Goshen, IN 46528

RE: Community Based Development Organization (CBDO) Designation

Dear Chris:

The City of Goshen CDBG Program is pleased to inform you that the City of Goshen CDBG Program has designated Lacasa as a Community Based Development Organization (CBDO) for CDBG Program Year 2021 (July 1, 2021 – June 30, 2022).

As a result of this designation, Lacasa is eligible to receive CDBG funding to carry out special CBDO activities which may include the following types of projects: Neighborhood Revitalization, Community Economic Development, and Energy Conservation.

For Program Year 2021, the following activity has received tentative approval for CDBG funding:

- Multi-unit Housing Rehabilitation, 214 S. 8th Street, up to \$141,597

CDBG funding for CBDO activities will be a secondary funding source, used with HOME and/or LIHTC. Rents will follow the rents required by the primary funding source, typically HOME and/or LIHTC, as set by IHCDA. CDBG will require a concurrent five-year affordability period for all CBDO housing projects.

Please let me know if there are questions.

Sincerely,

A handwritten signature in cursive script that reads "Meaghan Bylsma".

Meaghan Bylsma
Community Development Specialist

cc: Jim Davis, Chief Operating Officer
Brad Hunsberger, VP Real Estate Development

Exhibit D

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508
Cincinnati, Ohio 45201

Date: **JAN 28 2003**

LaCasa of Goshen, Inc.
202 North Cottage Avenue
Goshen, IN 46256-3346

Person to Contact:
Thomas Kallman, ID# 31-07250
Contact Telephone Numbers:
877-829-5500 Phone Toll-Free
513-263-3756 FAX
Federal Identification Number:
35-1554538

Dear Sir or Madam:

This modifies our letter dated November 18, 1970. In that letter we determined that your organization is exempt under section 501(a) of the Internal Revenue Code, as an organization described in section 501(c)(3). We determined that you were not a private foundation within the meaning of section 509(a) of the Code because you were an organization described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code.

In your letter dated November 11, 2002, you requested classification as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Based on the information you provided, we have determined that you meet the requirements for the requested foundation classification. Accordingly, we have granted your request and modified your foundation status to reflect an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

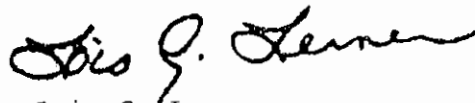
Your exempt status under section 501(a) of the Internal Revenue Code, as an organization described in section 501(c)(3) remains in effect.

Grantors and contributors may rely on this determination until the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act that resulted in your loss of such status, or acquired knowledge that the Internal Revenue Service had given notice that you would be removed from classification as a section 509(a)(1) organization.

Because this letter could help resolve any questions about your exempt status and/or foundation status, you should keep it with your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

cc: Randall M. Jacobs

**CITY OF GOSHEN
COMMUNITY DEVELOPMENT BLOCK GRANT
COMMUNITY BASED DEVELOPMENT ORGANIZATION (CBDO) AGREEMENT
MULTI UNIT HOUSING REHABILITATION
Program Year 2021: July 1, 2021-June 30, 2022**

This Housing Rehabilitation Agreement (the “Agreement”) is entered into by and between the City of Goshen, Indiana (the “City”) and Lacasa, Inc. (the “CBDO”), an Indiana not-for-profit corporation, as of this 1st day of November 2021.

WITNESSETH:

WHEREAS, such Housing Rehabilitation grant will be funded through the entitlement city’s Community Development Block Grant program (“CDBG Program”) established under Title I of the Housing and Community Development Act of 1974, as amended, and the rules, regulations, policy memoranda and other authority thereunder (collectively, the “Act”) and administered by the City.

WHEREAS, the City has requested the assistance of the CBDO to administer the Multi-unit Housing Rehabilitation portion (the “Project”) of the CDBG Program;

WHEREAS, the Act contains certain requirements regarding the use of funds to fulfill a “national objective,” as defined in the Act;

WHEREAS, the national objective to be fulfilled by the City’s use of its CDBG Program is the rehabilitation of multi-unit, renter-occupied housing by the CBDO for low and moderate (“Low and Moderate”) income families. Low- and Moderate-income families are defined in the Act, and the income ranges and rent limits will be as established for the HOME Program, as published annually by Indiana Housing & Community Development Authority, with a separate Lien and Restrictive Covenant Agreement required to be executed and recorded for each individual multi-unit property receiving CDBG assistance;

WHEREAS, the Act requires that the CBDO demonstrate its intent to rehabilitate such housing for Low- and Moderate-income families;

WHEREAS, the Act prohibits discrimination under any program or activity funded with CDBG moneys on the basis of race, color, national origin, sex, age, or handicap; additionally, the Act prohibits discrimination in housing programs and activities funded with CDBG on the basis of sexual orientation, gender identity or marital status;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and CBDO agree as follows:

1. CBDO Designation and Administration of Grant. City hereby designates and CBDO hereby agrees to serve as a CBDO for the Multi-unit Housing Rehabilitation portion (the “Project”) of the CDBG Program and to administer the Project in accordance with this Agreement and the Act.
2. Scope of Services. CBDO agrees to perform the services under this Agreement as follows:
 - (a) To submit a final scope of work for the identified project, including estimated budget and project timeline, to be approved by the CDBG program before work proceeds.
 - (b) To implement the project per the approved scope of work referenced above.
 - (c) To obtain all federal, state, and local government approvals, permits, licenses, and review required by law to be obtained for the performance of the rehabilitation work under this Agreement.
 - (d) To comply with all applicable, federal, state, and local laws and regulations pertaining to the performance of the rehabilitation work under this Agreement.

- (e) To conduct Tier II Environmental Review for each multi-unit property selected for rehabilitation, including preparing any necessary maps, preparing photo documentation for each property, contacting the local and county historians for review and comment, and preparing all narrative and documentation for DHPA Section 106 review.
 - (f) To submit to the City any and all documents demonstrating compliance with all federal and state rules and regulations. Such demonstrations will be provided at the request of the City. City's failure to request any supporting documentation, however, shall not excuse any failure on the part of CBDO to have complied with the applicable federal and state rules and regulations.
 - (g) To file claims on a timely basis with the City for the release of funds from the CDBG Program for reimbursement of the direct costs and program delivery costs incurred under the Project. All claims will be accompanied by verification of all costs incurred. Copies of the following documents must be on file with the City in order to process a claim: cost estimate with construction details and costs; claim for payment; invoices supporting claim amount.
 - (h) Claims will be limited to the sum of One Hundred Forty-One Thousand Five Hundred Ninety-seven Dollars (\$141,597.00) for the Project. Program delivery costs are limited to a maximum of twenty five percent (25%) of direct costs, and shall not exceed Fifty Thousand Dollars (\$50,000.00).
 - (i) That all contracts and services and other procurement of materials, services, or construction shall be carried out in compliance with applicable laws and regulations, including but not limited to, those listed in Exhibit A.
 - (j) Provide proof of complying with all rules and regulations involving the rehabilitation work and Lead Based Paint requirements.
 - (k) That all federal fair housing and other requirements stated in the CDBG Program shall be met when performing the rehabilitation work under this Agreement.
 - (l) To maintain records adequate to identify and account for all costs pertaining to this agreement; to establish the eligibility of the household assisted under the program and such other records as may be required by statute, rule or regulations. These records shall be maintained for a period of four (4) years after project completion and shall be available to the City and authorized federal agencies.
 - (m) That City and Federal officials and representatives will have access to all books, accounts, records, reports, files, and other papers, things or property pertaining to the project in order to make audits, examinations, excerpts, and transcripts.
 - (n) To assist any or all of the City's personnel or agencies, designated by the City by contract or resolution or other written document, regarding the implementation of this Agreement, and such designated personnel and agencies shall provide information and cooperation to the CBDO to the extent provided in this Agreement and other contracts, resolutions, or written agreements.
 - (o) To provide any and all information as requested by the City to fulfill the requirements of the Federal Subaward Reporting System (FSRS). This includes having a DUNS # and maintaining a current and accurate Central Contractor Registration (CCR) account.
3. Release of Funds. The City agrees to release funds from the CDBG Program for direct costs and program delivery costs incurred by the CBDO as funds are requested by CBDO in accordance with City claim procedures as outlined in Exhibit B.
4. City Responsibilities. City agrees:
- (a) To retain all Tier I environmental responsibilities and the responsibility for initiating any applicable inter-governmental review process. However, nothing in this Agreement shall be construed to create environmental responsibilities that do not otherwise exist.

- (b) To file required paperwork and documents with the U.S. Department of Housing and Urban Development and any other necessary agencies on a timely basis with respect to the CDBG Program and to pay properly submitted and documented claims of the CBDO on a timely basis.
5. Designation of Project Coordinators. For purposes of this Agreement, the Project Coordinator for the City shall be Rhonda Yoder, CDBG Administrator, City of Goshen. The Project Coordinator for the CBDO shall be Chris Kingsley, President, Lacasa, Inc. Communications pertaining to this Agreement shall be through the respective Project Coordinators for the City and CBDO.
6. Term of Agreement.
- (a) The term of this Agreement shall run from and including the 1st day of July 2021 through and including the 30th day of June 2022. All of CBDO's claims to release funds from the CDBG Program shall be submitted to the City no later than the day specified by the CDBG Administrator near the end of the contract period, approximately June 2, 2022, so that all claims can be paid within the contract year, except as needed to complete projects, including the associated reporting and paperwork, extending the term of the contract no longer than the end of calendar year 2022.
- (b) When the CDBG Administrator is notified that CDBG funds are no longer available due to funding changes or lack of funding by the U.S. Department of Housing and Urban Development to support continuation of performance of the Agreement, the Agreement shall be canceled with not less than 30 days' notice to the CBDO from the City.
7. Audit Compliance. The CBDO shall provide the amount of federal funds expended in the CBDO's fiscal year, as requested by the City. If the CBDO expends \$750,000 or more of federal funds in a fiscal year, an audit following 2 CFR 200.514 must be conducted and a copy of the audit submitted to the City for review, within 30 days after receipt of the auditor's report(s) or nine months after the end of the audit period, whichever is earlier. Any findings related to CDBG must be cleared by the City.
8. Uniform Administrative Requirements. CBDO agrees to comply with applicable uniform administrative requirements, as described in 2 CFR Part 200.
9. Notice. All notices required or permitted under this Agreement shall be submitted in writing to the other party to this Agreement, and delivered personally or sent by regular first-class mail:

City of Goshen, Indiana
 Attn: Rhonda Yoder, CDBG
 204 E. Jefferson Street, Suite 4
 Goshen, Indiana 46528

Lacasa, Inc.
 Attn: Chris Kingsley
 202 N. Cottage Avenue
 Goshen, Indiana 46528

Or at such other place as the parties may designate in writing from time to time.

10. Conflict of Interest. The CBDO represents that none of its employees, officers, or directors presently have any interest, either direct or indirect, which would conflict in any manner with CBDO's performance or procurement under this Agreement, and that no person having such interest shall be appointed or employed by CBDO; except that which is disclosed in writing by the CBDO to the City.
11. CBDO Status: Attached hereto as Exhibit C by this reference made a part hereof is a copy of correspondence from the City dated the 24th day of May 2021 designating Lacasa, Inc., as a CBDO.
12. Tax Exempt Status. Attached hereto as Exhibit D by this reference made a part hereof is a copy of correspondence from the Internal Revenue Service dated the 28th day of January 2003 confirming the 501(c)(3) tax exempt status of the CBDO.

13. Default.

- (a) Upon CBDO's failure to comply with any of the terms and conditions contained within this Agreement or its failure to comply with the appropriate federal rules, laws, and regulations governing the administration of the CDBG funds, all rights inuring to the benefit of CBDO pursuant to this Agreement shall be suspended and this Agreement, shall be terminated upon delivery of written notice by the City. Furthermore, CBDO shall not be entitled to reimbursement from the City for any project in which CBDO is in default of its obligations imposed upon it pursuant to this Agreement, or is in violation of any federal rules, laws, or regulations governing the administration of CDBG funds. Upon City's default under this Agreement, all rights inuring to the benefit of City pursuant to this Agreement shall be suspended and this Agreement shall be terminated upon delivery of written notice by CBDO.

- (b) Upon default by a party to this Agreement, the non-defaulting party shall be entitled to recover its damages, penalties incurred, costs and expenses sustained, and reasonable attorney fees from the defaulting party in addition to the remedies provided in subparagraph (a) above. A party shall be in default under this Agreement in the event it violates or fails to comply with any of the terms and conditions contained within this Agreement or the applicable state and federal laws, rules, and regulations.

14. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however that no assignment shall be effective to relieve a party of any liability under this Agreement unless the other party has consented in writing to the assignment and agreed to the release of such liability. The City and CBDO hereby acknowledge receipt of a duly executed copy of this Agreement complete with all exhibits attached hereto.

IN WITNESS WHEREOF, the CBDO and the City have caused this Agreement to be executed by a duly authorized individual as of the date first above written.

CBDO: LACASA, INC.

By: _____
Chris Kingsley
President

ATTESTED:

By: _____

Printed: _____

Title: _____

CITY:

CITY OF GOSHEN, INDIANA BY
AND THROUGH THE MAYOR
OF THE CITY OF GOSHEN, INDIANA

By: _____
Jeremy P. Stutsman, Mayor

Exhibit A

I. Administrative Requirements

A. Financial Management

1. Accounting Standards

The CBDO agrees to comply with 2 CFR Part 200 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The CBDO shall administer its program in conformance with 2 CFR Part 200 as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The CBDO shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets the National Objective of the CDBG program of benefiting low/moderate income persons;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 2 CFR Part 200; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570.

2. Retention

The CBDO shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of submission of the City's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The CBDO shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the City or their designees for review upon request.

4. Disclosure

The CBDO understands that client information collected under this contract is private, and the use or disclosure of such information, when not directly connected with the administration of the City's or CBDO's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service, and, in the case of a minor, that of a responsible parent/guardian, unless otherwise required by law.

5. Close-Outs

The CBDO's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, final close-out reports and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the CBDO has control over CDBG funds.

6. Audits and Inspections

All CBDO records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the CBDO within 30 days after receipt by the CBDO. Failure of the CBDO to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The CBDO hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning CBDO audits and, as applicable, 2 CFR Part 200.

C. Reporting and Payment Procedures

1. Indirect Costs

If indirect costs are charged, the CBDO will develop an indirect cost allocation plan for determining the appropriate CBDO's share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.

2. Payment Procedures

The City will pay to the CBDO funds available under this contract, based upon information submitted by the CBDO and consistent with any approved budget and City policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the CBDO, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund balances available in CBDO accounts. In addition, the City reserves the right to liquidate funds available under this contract for costs incurred by the City on behalf of the CBDO.

D. Procurement

1. OMB Standards

Unless specified otherwise within this Agreement, the CBDO shall procure all materials, property, or services in accordance with the requirements of 2 CFR Part 200.

2. Travel

The CBDO shall obtain written approval from the City for any travel outside the metropolitan area with funds provided under this Agreement.

II. Personnel and Participant Conditions

A. Civil Rights

1. Compliance

The CBDO agrees to comply with all local and State of Indiana civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act (HCDA) of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The CBDO agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (PL 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the CBDO shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. The CBDO, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The CBDO agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 USC 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the CBDO with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Equal Opportunity

1. Women- and Minority-Owned Businesses (W/MBE)

The CBDO will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the term “minority and female business enterprise” means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are Afro-Americans, Spanish-speaking, Spanish-surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The CBDO may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

2. Access to Records

The CBDO shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

3. Notifications

The CBDO will send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding, a notice, to be provided by the agency contracting office, advising the labor union or worker’s representative of the CBDO’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The CBDO will, in all solicitations or advertisements for employees placed by or on behalf of the CBDO, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The CBDO will include the provisions of Paragraphs II.A., Civil Rights, and B., Equal Opportunity, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or contractors.

C. Employment Restrictions

1. Prohibited Activity

The CBDO is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The CBDO agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 USC 327 *et seq.*), and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The CBDO agrees to comply with the Copeland Anti-Kickback Act (18 USC 874 *et seq.*) and its implementing regulations of the US Department of Labor at 29 CFR Part 5. The CBDO shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The CBDO agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided, that if wage rates higher than those required

under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the CBDO of its obligation, if any, to require payment of the higher wage. The CBDO shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause

a) Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 75, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the City, the CBDO and any of the CBDO's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, the CBDO and any of the CBDO's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The CBDO certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The CBDO further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The CBDO further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The CBDO certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b) Notifications

The CBDO agrees to send to each labor organization or representative of workers with which it has a collective bargaining Agreement, or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c) Subcontracts

The CBDO will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The CBDO will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 75 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The CBDO shall not assign or transfer any interest in this contract without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the CBDO from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

a) Approvals

The CBDO shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the City prior to the execution of such Agreement.

b) Monitoring

The CBDO will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c) Content

The CBDO shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d) Selection Process

The CBDO shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Hatch Act

The CBDO agrees that no funds provided, nor personnel employed under this contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the USC.

4. Conflict of Interest

The CBDO agrees to abide by the provisions of 2 CFR Part 200 and 570.611, which include (but are not limited to) the following:

a) The CBDO shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b) No employee, officer or agent of the CBDO shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c) No covered person who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or Agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the CBDO, the City, or any designated public agency.

5. Lobbying

The CBDO hereby certifies that:

a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement;

b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal

contract, grant, loan, or cooperative Agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

- c) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly:

- d) Lobbying Certification:

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The CBDO agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

III. Environmental Conditions

- A. Air and Water

The CBDO agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 USC, 7401 *et seq.*
- Federal Water Pollution Control Act, as amended, 33 USC, 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

- B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC 4001), the CBDO shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

- C. Lead-Based Paint

The CBDO agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

- D. Historic Preservation

The CBDO agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 USC 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

IV. General Conditions

A. Responsibilities

The Grantee will carry out its activities in compliance with the requirements of Subpart K of 24 CFR 570, except, however, that the Grantee does not assume the City's environmental responsibilities or the responsibility for initiating the environmental review process under 24 CFR part 52.

Exhibit B

City of Goshen Weekly Payment Procedures for CDBG Claims Effective December 8, 2014

Thursday NOON	Deadline to submit claims to CDBG Administrator for processing the following week
Friday	CDBG Administrator Review of Claim: Incomplete claims will be held until all required information is received
Monday (Week 1)	CDBG Administrator Reporting in HUD's online system for each claim (required before a claim may be processed)
Tuesday AM Tuesday PM	First drawdown authorization by CDBG Administrator Voucher submitted by CDBG Administrator to Clerk Treasurer's Office
Wednesday Wednesday, 3pm	Second drawdown authorization by Clerk Treasurer's Office Deadline for claim to be processed by Clerk Treasurer's Office for Board of Works
Monday (Week 2)	Claim approved and signed by Board of Works – all CDBG vouchers must be hand-signed by BOW members
Tuesday	Check written by Clerk Treasurer's Office

Exhibit C
CBDO Designation



COMMUNITY DEVELOPMENT BLOCK GRANT
CITY OF GOSHEN
204 East Jefferson Street, Suite 4 • Goshen, IN 46528-3405

Phone (574) 533-9370 • Fax (574) 533-8626 • TDD (574) 534-3185
meaghanbylsma@goshencity.com • www.goshenindiana.org

VIA ELECTRONIC MAIL

May 24, 2021

Lacasa
Chris Kingsley, President/CEO
202 N. Cottage Avenue
Goshen, IN 46528

RE: Community Based Development Organization (CBDO) Designation

Dear Chris:

The City of Goshen CDBG Program is pleased to inform you that the City of Goshen CDBG Program has designated Lacasa as a Community Based Development Organization (CBDO) for CDBG Program Year 2021 (July 1, 2021 – June 30, 2022).

As a result of this designation, Lacasa is eligible to receive CDBG funding to carry out special CBDO activities which may include the following types of projects: Neighborhood Revitalization, Community Economic Development, and Energy Conservation.

For Program Year 2021, the following activity has received tentative approval for CDBG funding:

- Multi-unit Housing Rehabilitation, 214 S. 8th Street, up to \$141,597

CDBG funding for CBDO activities will be a secondary funding source, used with HOME and/or LIHTC. Rents will follow the rents required by the primary funding source, typically HOME and/or LIHTC, as set by IHCDA. CDBG will require a concurrent five-year affordability period for all CBDO housing projects.

Please let me know if there are questions.

Sincerely,

A handwritten signature in black ink that reads "Meaghan Bylsma".

Meaghan Bylsma
Community Development Specialist

cc: Jim Davis, Chief Operating Officer
Brad Hunsberger, VP Real Estate Development

Exhibit D

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508
Cincinnati, Ohio 45201

Date: **JAN 28 2003**

LaCasa of Goshen, Inc.
202 North Cottage Avenue
Goshen, IN 46256-3346

Person to Contact:
Thomas Kallman, ID# 31-07250
Contact Telephone Numbers:
877-829-5500 Phone Toll-Free
513-263-3756 FAX
Federal Identification Number:
35-1554538

Dear Sir or Madam:

This modifies our letter dated November 18, 1970. In that letter we determined that your organization is exempt under section 501(a) of the Internal Revenue Code, as an organization described in section 501(c)(3). We determined that you were not a private foundation within the meaning of section 509(a) of the Code because you were an organization described in sections 509(a)(1) and 170(b)(1)(A)(i) of the Code.

In your letter dated November 11, 2002, you requested classification as an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi) of the Code. Based on the information you provided, we have determined that you meet the requirements for the requested foundation classification. Accordingly, we have granted your request and modified your foundation status to reflect an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

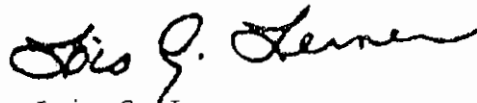
Your exempt status under section 501(a) of the Internal Revenue Code, as an organization described in section 501(c)(3) remains in effect.

Grantors and contributors may rely on this determination until the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act that resulted in your loss of such status, or acquired knowledge that the Internal Revenue Service had given notice that you would be removed from classification as a section 509(a)(1) organization.

Because this letter could help resolve any questions about your exempt status and/or foundation status, you should keep it with your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,



Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

cc: Randall M. Jacobs



**COMMUNITY DEVELOPMENT BLOCK GRANT
CITY OF GOSHEN**

204 East Jefferson Street, Suite 4 • Goshen, IN 46528-3405

Phone (574) 533-9370 • Fax (574) 533-8626 • TDD (574) 534-3185
meaghanbylsma@goshencity.com • www.goshenindiana.org

MEMORANDUM

TO: Board of Public Works & Safety

FROM: Meaghan Bylsma, Community Development Specialist

DATE: November 1, 2021

RE: Release of CDBG Lien Agreement-Deferred Payment Loan

Request approval for the release of a deferred payment loan executed in October 1996 for the CDBG housing rehab program.

This lien agreement in the amount of \$4,182.15 is for a property that was demolished during the U.S. 33 realignment project. The loan needs to be released to clean up the file.

Suggested Motion: Approve the release of the lien agreement-deferred payment loan executed in October 1996 for the CDBG housing rehab program.



City Clerk-Treasurer
CITY OF GOSHEN

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

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

clerktreasurer@goshencity.com • www.goshenindiana.org

TO: Board of Public Works, Safety & Stormwater

FROM: Jeffery Weaver, Deputy Clerk-Treasurer

RE: Baker Tilly Workforce Technology Solutions Agreement

DATE: November 1, 2021

Attached for the Board's approval and execution is an engagement letter for Baker Tilly US regarding payroll and reporting support for the City of Goshen. This agreement outlines services that Baker Tilly will provide in conjunction with our current ADP software subscription.

Currently, the City uses ADP WorkforceNow and Human Capital Management Suite for payroll processing, tax reporting and compliance management. In addition to the use of the software, our monthly fees to ADP also include access to technical support through phone and email.

This agreement moves the ADP technical support into the offices of Baker Tilly, who provided support for our tax and compliance issues over the past year. Baker Tilly retains a few ADP technicians in their own office and combines their expertise with Baker Tilly's tax and compliance expertise in order to provide the City with a comprehensive support package. Baker Tilly is already familiar with our Incode system and our time and attendance systems and is already working with us to streamline integration between our various systems. They will also add access to the HR Plus Bundle and the Benefits Administration module.

The agreement combines the ADP software fees and Baker Tilly support into a flat monthly fee of \$3,765.

Requested motion:

Move to approve and authorize the Clerk-Treasurer to execute the Baker Tilly Workforce Technology Solutions agreement.

City of Goshen

Start On Acceptance



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Audit Trail

Introduction

Hello Richard,

I've prepared a proposal and engagement letter for the City of Goshen to use ADP Workforce Now for payroll and HR processing. This includes the HR Plus Bundle and Benefits Administration module. As I mentioned, the HR Management module now includes the Onboarding tool and Document Cloud which you don't currently have, so those modules will be added to your software suite.

We have added language into the Engagement Fees section to explain Baker Tilly's paying of service fees due to ADP on behalf of the City of Goshen.

Please contact Noah Pleshek at noah.pleshek@bakertilly.com or 920-739-3319 with any questions.

Noah Pleshek

Service Summary

Company Code 5Y3

Baker Tilly Workforce Technology Solutions - HR Plus Bundle

- Exclusive access to Baker Tilly's dedicated ADP software and services support team via direct phone line and email.
- Compliance consulting services, if requested, relating to federal and state payroll filings (W-2, 941, etc.). Services available to be provided up to 2 times per calendar year.
- Assistance as requested with tax notice submission to ADP, resolution tracking, and follow up through resolution.
- Consulting relating to annual employee updates for wages, benefits, deductions, etc.. (guidance with updating employee records)
- Ongoing support including assistance with:
 - General earnings/deduction code maintenance and setup
 - Garnishment/Levy/Child Support setup
 - Mediation between ADP support and you to help resolve issues or answer questions
- Escalation of support issues at ADP to resolve if we deem it necessary to resolve through non-standard channels.
- General payroll inquiries that do not require significant time (10 minutes or less) or specialized knowledge or skills to answer.
- This service includes ADP software and technology fees related to your Payroll Essentials, HR Management, Onboarding, and Document Cloud modules for up to 300 active employees and 1 state and local jurisdictions.

Baker Tilly Workforce Technology Solutions - Benefits Administration w/ ACA Reporting

- **Requires HR Plus bundle or higher tier**
- This service includes ADP software and technology fees related to ADP's Benefits Administration module, including ACA reporting for up to 300 active employees

Company Code 6YJ

Baker Tilly Workforce Technology Solutions - HR Plus Bundle

- Exclusive access to Baker Tilly's dedicated ADP software and services support team via direct phone line and email.
- Compliance consulting services, if requested, relating to federal and state payroll filings (W-2, 941, etc.). Services available to be provided up to 2 times per calendar year.
- Assistance as requested with tax notice submission to ADP, resolution tracking, and follow up through resolution.
- Consulting relating to annual employee updates for wages, benefits, deductions, etc.. (guidance with updating employee records)
- Ongoing support including assistance with:
 - General earnings/deduction code maintenance and setup
 - Garnishment/Levy/Child Support setup
 - Mediation between ADP support and you to help resolve issues or answer questions
- Escalation of support issues at ADP to resolve if we deem it necessary to resolve through non-standard channels.
- General payroll inquiries that do not require significant time (10 minutes or less) or specialized knowledge or skills to answer.
- This service includes ADP software and technology fees related to your Payroll Essentials, HR Management, Onboarding, and Document Cloud modules for up to 35 active employees and 1 state and local jurisdictions.

Baker Tilly Workforce Technology Solutions - Benefits Administration w/ ACA Reporting

- **Requires HR Plus bundle or higher tier**

- This service includes ADP software and technology fees related to ADP's Benefits Administration module, including ACA reporting for up to 35 active employees

Company Code 6YL

Baker Tilly Workforce Technology Solutions - HR Plus Bundle

- Exclusive access to Baker Tilly's dedicated ADP software and services support team via direct phone line and email.
- Compliance consulting services, if requested, relating to federal and state payroll filings (W-2, 941, etc.). Services available to be provided up to 2 times per calendar year.
- Assistance as requested with tax notice submission to ADP, resolution tracking, and follow up through resolution.
- Consulting relating to annual employee updates for wages, benefits, deductions, etc.. (guidance with updating employee records)
- Ongoing support including assistance with:
 - General earnings/deduction code maintenance and setup
 - Garnishment/Levy/Child Support setup
 - Mediation between ADP support and you to help resolve issues or answer questions
- Escalation of support issues at ADP to resolve if we deem it necessary to resolve through non-standard channels.
- General payroll inquiries that do not require significant time (10 minutes or less) or specialized knowledge or skills to answer.
- This service includes ADP software and technology fees related to your Payroll Essentials, HR Management, Onboarding, and Document Cloud modules for up to 42 active employees and 1 state and local jurisdictions.

Baker Tilly Workforce Technology Solutions - Benefits Administration w/ ACA Reporting

- **Requires HR Plus bundle or higher tier**
- This service includes ADP software and technology fees related to ADP's Benefits Administration module, including ACA reporting for up to 42 active employees

Payment Schedule

Company Code 5Y3

\$3,015.00 every month

Recurring

Baker Tilly Workforce Technology Solutions - HR Plus Bundle

Baker Tilly Workforce Technology Solutions - Benefits Administration w/ ACA Reporting

Billed every month from 1st November, 2021 Services billed until change required

Company Code 6YJ

\$350.00 every month

Recurring

Baker Tilly Workforce Technology Solutions - HR Plus Bundle

Baker Tilly Workforce Technology Solutions - Benefits Administration w/ ACA Reporting

Billed every month from 1st November, 2021 Services billed until change required

Company Code 6YL

\$400.00 every month

Recurring

Baker Tilly Workforce Technology Solutions - HR Plus Bundle

Baker Tilly Workforce Technology Solutions - Benefits Administration w/ ACA Reporting

Billed every month from 1st November, 2021 Services billed until change required

General Terms and Conditions

October 22, 2021

Richard R. Aguirre
City of Goshen
202 South Fifth Street, Suite 2
Goshen, IN, 46528-3714
USA

Dear Richard R. Aguirre,

ENGAGEMENT LETTER – Baker Tilly US and City of Goshen

This Statement of Work and the standard business terms attached hereto (collectively, the “Engagement Agreement”) confirms the services City of Goshen, its successor or additional business entities (“the Company” or “you”) has asked Baker Tilly US, LLP (“Baker Tilly”, we”, us” or “our”) to perform and the terms under which we have agreed to provide the services.

Please read this Engagement Agreement carefully, because it outlines expectations and responsibilities for both Baker Tilly and the Company. The intention of this Engagement Agreement is to confirm your agreement with what is included with our services as well as the limitations of the services you have asked us to perform. If you have any questions regarding this letter please call to discuss prior to signing it.

Services To Be Provided

You have requested that we will assist you in the initial coordination of ADP’s processing of your payroll and ADP’s providing of certain other human resource (“HR”) related services as outlined below. These services will be provided to you by ADP via ADP’s Workforce Now cloud-based software. Following the initial coordination of the services to be provided by ADP we will provide you with ongoing coordination and assistance as follows:

- Access to dedicated ADP software and services support team via direct phone line and email
- Compliance consulting services, if requested, relating to federal and state payroll filings (W-2, 941, etc.). Services available to be provided up to 2 times per calendar year.
- Assistance as requested with tax notice submission to ADP, resolution tracking, and follow up through resolution.
- Consulting relating annual rate increases/decreases for wages, benefits, deductions, etc.. (guidance with updating employee records)
- Ongoing support including assistance with:
 - General earnings/deduction code maintenance and setup
 - Garnishment/Levy/Child Support setup
 - Mediation between ADP support and you to help resolve issues or answer questions
 - Escalation of support issues at ADP to resolve if we deem it necessary to resolve through non-standard channels.
 - General payroll inquiries that do not require significant time (10 minutes or less) or specialized knowledge or skills to answer.
- Implementation and pre-engagement support
 - Assistance with system and service selection
 - Coordination of product demonstrations and other telephone/video conferences
 - Assistance in gathering required information for implementation
 - Ongoing support and coordination throughout the implementation process (can be up to 6 months long)
 - Organization and coordination of implementation meetings between client and ADP implementation team. Providing expectations to both sides for results and timeline and assistance with delegation of responsibilities throughout implementation.

The objective of our engagement is to provide you with the tools and support to process your payroll and other human resource (“HR”) related functions. Additional services and tools may be available to you outside of this engagement. If additional needs are identified by us or you, a separate Statement of Work will be necessary to facilitate us providing those additional services to you.

Our Responsibilities and Limitations

We will not perform management functions or make management decisions and are not responsible for the ongoing performance, training and development of Company associates or management. Baker Tilly, in its sole professional judgment, reserves the right to refuse to take any action that could be construed as making management decisions or performing management functions and will notify the Company of such refusal.

We will not perform any activities that are management’s responsibility, including, but not limited to the following:

- determining or changing journal entries, any account codings or classifications of transactions, or any other accounting records without first obtaining your approval
- authorizing, approving, executing or consummating transactions or otherwise exercising authority on your behalf
- preparing source documents, in electronic or other form, that evidence the occurrence of a transaction making changes to source documents without your approval
- accepting responsibility to authorize or execute payment of your funds, electronically or otherwise
- releasing payroll information to ADP or any other entity designated by you without your prior review, approval and authorization
- accepting responsibility to sign or cosign your checks
- maintaining your bank account or otherwise having custody of your assets or funds
- making credit or banking decisions on your behalf
- approving vendor invoices for payment
- designing, implementing, maintaining or performing ongoing evaluations of your internal control

Our services do not include independent contractor classifications, labor regulation compliance or Employee Retirement Income Security Act compliance.

We are not being engaged to prepare, process, or compile your payroll and employee records. We are not required to, and will not, verify the accuracy or completeness of the information you will provide to us or to ADP for the engagement or otherwise gather evidence for the purpose of expressing an opinion or a conclusion.

In addition to ADP, we may, from time to time, and depending on the circumstances, use other third-party service providers in assisting with the coordination of the services to be provided to you by ADP, and in providing that assistance, may share confidential information about you with these service providers, but are committed to maintaining the confidentiality and security of your information.

Our engagement cannot be relied upon to disclose errors, fraud, or other illegal acts that may exist and, because of the limited nature of our work, detection is highly unlikely. However, we will inform the appropriate level of management of any material errors, and of any evidence that fraud may have occurred. In addition, we will report to you any evidence or information that comes to our attention during the performance of our services regarding illegal acts that may have occurred, unless they are clearly inconsequential. We have no responsibility to identify and communicate deficiencies in your internal control as part of this engagement. However, at your request, we can develop a separate engagement to identify potential deficiencies or material weaknesses in your internal control as it relates to the processing of your payroll.

Management’s Responsibilities, Representations, and Warranties

In connection with the payroll related services to be provided, management agrees to:

- Assume all management responsibilities, including making all management decisions and performing all management functions.
- Oversee the services, by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience.
- Evaluate the adequacy and results of the services performed.
- Accept responsibility for the results of the services.

You are responsible for the accuracy of the payroll and all other information that you provide to ADP. It is your responsibility to review and approve all payroll reports and other payroll related information prepared by ADP, including any payment or direct deposit amounts. ADP’s processing of your payroll and ADP’s providing of HR related services as outlined above is subject to the terms and conditions agreed upon by you and ADP. You agree that Baker Tilly has no responsibility or liability whatsoever for ADP’s performance in processing your payroll and ADP’s performance in providing the applicable HR related services as outlined above and waive any claims against Baker Tilly related to ADP’s performance of its obligations under the terms and conditions that you and ADP agreed upon.

In connection with the payroll related services to be provided, You represent and warrant to us that:

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- You have full power and authority to provide any information necessary to utilize the Services.
- All information provided to us and/or ADP in order to utilize the Services is true and accurate, including all information submitted to ADP for registration and billing.
- You grant to us permission to process the information you provide to us, and to share the same with ADP as may be necessary to provide the Services as stated in the prior section of this engagement letter.
- You are only using ADP money movement services to disburse payroll related payments in compliance with applicable anti-money laundering laws, rules and regulations.

Under Rule 1.700.040 of the AICPA Code of Professional Conduct, we are required to obtain your specific consent before disclosing your confidential information to ADP, a third party service provider. By signing this engagement letter you specifically consent to our disclosure of your confidential information to ADP to the extent necessary to perform the Services. Such information may include, but is not limited to, employee information and documentation, corporate ID verification documents, historical payroll tax returns, state and federal power of attorney forms, payroll funding information and bank account details.

Record Retention

By signing this Engagement Agreement you confirm that you agree that Baker Tilly is not liable for record retention. You at all times assume responsibility for the decision to maintain hard copies of your original documents.

All work paper and miscellaneous report copies that we are not required to retain are shredded at the conclusion of the Services. At the end of seven years files may be destroyed.

In the unlikely event that we do obtain any hard copy documents from you, all original paper documents provided by you will be returned to you promptly as our services are complete. We do not keep copies of all documents. It is your responsibility to safeguard your documents in case of future need. We may occasionally keep some copies we deem necessary to our Services.

Ownership of Workpapers

The documentation related to this engagement, including any workpapers, is the property of Baker Tilly and constitutes confidential information. We may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory record retention requirements. If we are required by law, regulation, or professional standards to make certain documentation available to Regulators, the Company hereby authorizes us to do so.

Engagement Fees

Invoices for the services provided will be rendered at the beginning of each month as work progresses and are payable on presentation in accordance with the attached billing schedule. A charge of 1.5% per month shall be imposed on accounts not paid within thirty (30) days of receipt of our statement for services provided. In accordance with our firm policies, work may be suspended if your account becomes thirty (30) days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notice of termination, even if we have not completed our payroll related services. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket expenditures through the date of termination.

Our fees, as summarized in the Payment Schedule provided, are based upon the current payroll [and HR] laws and regulations that have been issued and are effective as of the date of this letter. Should additional laws and regulations be issued subsequent to, or become effective for the periods covered by this engagement, our fees may be adjusted accordingly.

Transition Services

One-time fees to transition your records onto the ADP software outlined in the Service Summary and Payment Schedule sections will be due upon signing this Statement of Work. No transition work will commence until payment is received. Additional fees may be charged if the balances provided at the time of transition are not already reconciled to source documents or cannot otherwise be easily verified for their completeness and accuracy. We will bring these items to your attention when discovered and discuss necessary procedures and fees.

Monthly Services

Our monthly fee for payroll services is based on our understanding of your needs and structure as outlined in detail in the Services to be Provided section as well as the Service Summary section of this Statement of Work. The Company will be billed in accordance with the outlined recurring fees detailed in the Payment Schedule provided each month for these services. Invoices will be issued at the beginning of each month for services to be performed that month and are due upon receipt. These fees are comprised of a combination of software, support, and technology fees paid to ADP on your behalf and general support services provided by Baker Tilly staff. Of the fees above, based on your current number of employees and tax jurisdictions (detailed in the Service Summary), it is estimated that 65% will relate to fees to be paid to ADP by Baker Tilly on your behalf. The remainder of your fees relate to services to be provided by us as outlined in the "Services to be Provided" section of this Statement of Work. Baker Tilly will promptly pay all ADP fees associated with this Statement of Work. Should the Client engage with ADP for additional services, a new statement of work may be required to ensure ADP fees are addressed. Fees are subject to an annual review and also may be increased at any time due to changes in scope of services, technology, and labor costs.

- ADP software bundles and tools to be provided to you by ADP under the terms of your separate agreement with ADP are outlined in the Service Summary section of this Statement of Work.

The Company is responsible for any other out-of-pocket fees and expenses required in the course of providing our services other than the ADP services described above. We will obtain your approval prior to incurring significant out-of-pocket expenses. In addition, you may incur additional expenses with ADP for state/city applied for fees, wire transfer initiations, NSF charges, check/ACH reversals, check/payment reissuances, and early cashing of ADP TotalPay checks. These additional expenses will be paid to ADP by Baker Tilly and will be billed back to you as they are assessed.

Special projects may be also be required from time to time. Individual projects expected to be more than \$1,000 to complete will be explained and quoted prior to the commencement of work in a Scope Change Request.

During transition and thereafter, a successful working relationship requires a significant commitment on our part, as well as yours. You are responsible for providing information in a timely manner and by agreed upon due dates including responses to questions, calls for decisions, and devoting the resources necessary to achieve the objectives of the services. If the information you provide is not submitted in a timely manner or is incomplete or unusable, we reserve the right to charge additional fees and expenses for services required to correct the problem and/or update your accounting records upon receipt of past-due information. If this occurs, we will contact you to discuss the matter and the anticipated delay in performing our services.

Suspension or Termination of Services

We reserve the right to suspend or terminate our services, with 60 days prior notice in the event of nonpayment or other material default on your part that has not be cured within 10 days of written notice being provided to you of such default..

If our provision of services to you ends for any reason, you will have the option to continue any ADP services at your expense and will be subject to general ADP retail terms and pricing. You understand that if you do not assume responsibility for these services that they may be cancelled. Additional fees may apply if you request copies (digital or hard copy) of records from ADP.

If the provision of services is suspended or terminated as provided herein, you agree that we will not be responsible for your failure to meet government and other deadlines, for any penalties or interest that may be assessed against you resulting from your failure to meet such deadlines, and for any other damages, including consequential damages.

Acknowledgement

The following signatures acknowledge the agreement to conduct the project as defined within this Statement of Work and in Baker Tilly's Standard Business Terms attached to this Statement of Work and incorporated herein. If you are in agreement with this letter, please sign the letter below as well as the last page of the Standard Business Terms. If you have any questions regarding this Engagement Agreement, please contact Noah Pleshek at noah.pleshek@bakertilly.com.

Yours sincerely,

Missy Thompson

Missy Thompson
Baker Tilly US

Acknowledgment of Terms of Engagement

By signing below, I confirm I have the authority to contract on behalf of City of Goshen I hereby agree to the terms of engagement dated On Acceptance as set out above in this letter of engagement.

I, Richard R. Aguirre, of City of Goshen confirm that I understand and agree to the terms of engagement.

Signed:

Print Name: Richard R. Aguirre

Date:

EXHIBIT A

Baker Tilly US, LLP Standard Business Terms Rev. June 2021

These Standard Business Terms (Terms) govern the services provided by Baker Tilly US, LLP (Baker Tilly, we, us or our) set forth in the Statement of Work to which these Terms are attached (the Services). These Terms, together with the Statement of Work to which they are attached, constitute the entire understanding and agreement between the client identified on such Statement of Work (the Client) and Baker Tilly with respect to the Services described in the Statement of Work (collectively, the Statement of Work and these Terms are referred to as the Agreement) and supersede and incorporate all prior or contemporaneous representations, understandings or agreements, and may not be modified or amended except by an agreement in writing signed between the parties hereto. This Agreement's provisions shall not be deemed modified or amended by the conduct of the parties. If there is a conflict between these Terms and the terms of any Statement of Work, these Terms shall govern.

Section 1. Confidentiality – With respect to this Agreement and any information supplied in connection with this Agreement and designated by the disclosing party (the Disclosing Party) as “Confidential Information” either by marking it as “confidential” prior to disclosure to the receiving party (the Recipient) or, if such information is disclosed orally or by inspection, then by indicating to the Recipient that the information is confidential at the time of disclosure and confirming in writing to the Recipient, the confidential nature of the information within ten (10) business days of such disclosure, the Recipient agrees to: (i) protect the Confidential Information in the same manner in which it protects its confidential information of like importance, but in no case using less than reasonable care; (ii) use the Confidential Information only to perform its obligations under this Agreement; and (iii) reproduce Confidential Information only as required to perform its obligations under this Agreement. This section shall not apply to information which is (A) publicly known, (B) already known to the recipient; © disclosed to a third party without restriction; (D) independently developed; or (E) disclosed pursuant to legal requirement or order, or as is required by regulations or professional standards governing the Services performed. Subject to the foregoing, Baker Tilly may disclose Client's Confidential Information to its subcontractors and subsidiaries.

Section 2. Deliverables – (a) Materials specifically prepared by Baker Tilly for Client as a deliverable under a Statement of Work (each a Deliverable) may, when fully paid for by Client, be used, copied, distributed internally, and modified by Client but solely for its internal business purposes. Client shall not, without Baker Tilly's prior written consent, disclose to a third party, publicly quote or make reference to the Deliverables. Baker Tilly shall retain all right, title and interest in and to: (i) the Deliverables, including but not limited to, all patent, copyright, trademark and other intellectual property rights therein; and (ii) all methodologies, processes, techniques, ideas, concepts, trade secrets and know-how embodied in the Deliverables or that Baker Tilly may develop or supply in connection with this Agreement (the Baker Tilly Knowledge). Subject to the confidentiality restrictions contained in Section 1, Baker Tilly may use the Deliverables and the Baker Tilly Knowledge for any purpose.

(b) The documentation for this engagement, including the workpapers, is not part of the Deliverables, is the property of Baker Tilly and constitutes confidential information. We may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory requirements for records retention. Baker Tilly does not retain any original client records; so we will return such records to you at the completion of the Services rendered under this engagement. When such records are returned to you, it is the Company's responsibility to retain and protect its accounting and other business records for future use, including potential review by any government or other regulatory agencies. By your signature below, you acknowledge and agree that, upon the expiration of the documentation retention period, Baker Tilly shall be free to destroy our workpapers related to this engagement. If we are required by law, regulation or professional standards to make certain documentation available to Regulators, Client hereby authorizes us to do so.

© Baker Tilly and the Company acknowledge that, at the time of the execution of this Engagement Letter, federal, state and local governments, both domestic and foreign, have restricted travel and/or the movement of their citizens due to the ongoing and evolving situation around COVID-19. In addition, like many organizations and companies in the United States and around the globe, Baker Tilly has restricted its employees from travel and onsite work, whether at a client facility or Baker Tilly facility, to protect the health of both Baker Tilly and its clients' employees. Accordingly, to the extent that any of the Services described in this Engagement Letter requires or relies on personnel to travel and/or perform work onsite, then Baker Tilly and the Company acknowledge and agree that when the performance of such work depends on physical access to Client's facilities, then such work may be supplanted with alternative procedures, or may be delayed, significantly or indefinitely and/or suspended at Baker Tilly's discretion. Baker Tilly and the Company agree to provide the other with prompt written notice in the event any of the onsite Services described herein, such as inventory observations and other procedures, will need to be supplanted, rescheduled and/or suspended. Baker Tilly and the Company also acknowledge and agree that any delays or workarounds due to the situation surrounding COVID-19 may increase the cost of the Services described herein. Baker Tilly will obtain the Company's prior written approval for any increase in the cost of Baker Tilly Services that may result from the situation surrounding COVID-19.

Section 3. Acceptance – Client shall accept Deliverables which (i) substantially conform to the specifications in the Statement of Work or (ii) where applicable, successfully complete the mutually agreed to acceptance test plan described in the Statement of Work. Client will promptly give Baker Tilly written notification of any nonconformance of the Deliverables with such requirements (Nonconformance) within thirty (30) days following delivery of such Deliverables, and Baker Tilly shall have a reasonable period of time, based on the severity and complexity of the Nonconformance, to correct the Nonconformance so that the Deliverables substantially conform to the specifications. If Client uses the Deliverable before acceptance, fails to promptly notify Baker Tilly of any Nonconformance within such 30-day period, or delays the beginning of acceptance testing more than five (5) business days past the agreed upon date for the start of such acceptance testing as specified or otherwise determined under the Statement of Work, then the Deliverable shall be deemed irrevocably accepted by the Client.

Section 4. Standards of Performance – Baker Tilly shall perform its Services in conformity with the terms expressly set forth in this Agreement. Accordingly, our Services shall be evaluated on our substantial conformance with such terms and standards. Any claim of nonconformance (and applicability of such standards) must be clearly and convincingly shown. Client acknowledges that the Services will involve the participation and cooperation of management and others of Client. Unless required by professional standards or Client and Baker Tilly otherwise agree in writing, Baker Tilly shall have no responsibility to update any of its work after its completion.

Section 5. Warranty – (a) Each party represents and warrants to the other that it has full power and authority to enter into and perform this Agreement and any Statement of Work entered into pursuant hereto and the person signing this Agreement or such Statement of Work on behalf of each party hereto has been properly authorized and empowered to enter into this Agreement. (b) Client warrants that it has the legal right and authority, and will continue to have the legal right and authority during the term of this Agreement, to operate, configure, provide, place, install, upgrade, add, maintain and repair (and authorize Baker Tilly to do any of the foregoing to the extent the same are included in the Services) the hardware, software and data that comprises any of Client's information technology system upon which or related to which Baker Tilly provides Services under this Agreement. © Baker Tilly warrants that any Services that it provides to Client under this Agreement and any Statement of Work will be performed in accordance with generally accepted industry standards of care and competence. Client's sole and exclusive remedy for a breach of Baker Tilly's warranty will be for Baker Tilly, in its sole discretion, to either: (i) use its reasonable commercial efforts to re-perform or correct the Services, or (ii) refund the fee Client paid for the Services that are in breach of Baker Tilly's warranty. Client must make a claim for breach of warranty in writing within thirty (30) days of the date that the Services that do not comply with Baker Tilly's warranty are performed. This warranty is voided in the event that Client makes alterations to the Services provided by Baker Tilly or to the environment in which the Services are used (including the physical, network and systems environments) that are not authorized in writing by Baker Tilly. If Client does not notify Baker Tilly of a breach of Baker Tilly's warranty during that 30-day period, Client will be deemed to have irrevocably accepted the Services. (d) Baker Tilly does not warrant any third-party product (each, a Product). All Products are provided to Client by Baker Tilly "AS IS." Baker Tilly will, to the extent it is allowed to by its vendors, pass through any warranties and indemnifications provided by the manufacturer of the Product. Client, recognizing that Baker Tilly is not the manufacturer of any Product, expressly waives any claim that Client may have against Baker Tilly based upon any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property right (each a Claim) with respect to any Product and also waives any right to indemnification from Baker Tilly against any such Claim made against Client by another. Client acknowledges that no employee of Baker Tilly or any other party is authorized to make any representation or warranty on behalf of Baker Tilly that is not in this Agreement. (e) This section 5 is Baker Tilly's only warranty concerning the Services and any deliverable, and is made expressly in lieu of all other warranties and representations, express or implied, including any implied warranties of merchantability, ACCURACY, TITLE, noninfringement or fitness for a particular purpose, or otherwise.

Section 6. Limitation on Damages and Indemnification – (a) The liability (including attorney’s fees and all other costs) of Baker Tilly and its present or former partners, principals, agents or employees related to any claim for damages relating to the Services performed under this Agreement shall not exceed the fees paid to Baker Tilly for the portion of the work to which the claim relates, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Baker Tilly relating to such Services. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, including the negligence of either party. Additionally, in no event shall either party be liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages, delays, interruptions or viruses arising out of or related to this Agreement even if the other party has been advised of the possibility of such damages. (b) As Baker Tilly is performing the Services solely for the benefit of Client, Client will indemnify Baker Tilly, its subsidiaries and their present or former partners, principals, employees, officers and agents against all costs, fees, expenses, damages and liabilities (including attorneys’ fees and all defense costs) associated with any third-party claim, relating to or arising as a result of the Services, Client’s use of the Deliverables, or this Agreement. © In the event Baker Tilly is requested by the Client; or required by government regulation, subpoena or other legal process to produce our engagement working papers or its personnel as witnesses with respect to its Services rendered for the Client, so long as Baker Tilly is not a party to the proceeding in which the information is sought, Client will reimburse Baker Tilly for its professional time and expenses, as well as the fees and legal expenses, incurred in responding to such a request. (d) Because of the importance of the information that Client provides to Baker Tilly with respect to Baker Tilly’s ability to perform the Services, Client hereby releases Baker Tilly and its present and former partners, principals, agents and employees from any liability, damages, fees, expenses and costs, including attorney’s fees, relating to the Services, that arise from or relate to any information, including representations by management, provided by Client, its personnel or agents, that is not complete, accurate or current, whether or not management knew or should have known that such information was not complete, accurate or current. (e) Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement. (f) The terms of this Section 6 shall apply regardless of the nature of any claim asserted (including, but not limited to, contract, tort or any form of negligence, whether of Client, Baker Tilly or others), but these Terms shall not apply to the extent finally determined to be contrary to the applicable law or regulation. These Terms shall also continue to apply after any termination of this Agreement. (g) Client accepts and acknowledges that any legal proceedings arising from or in conjunction with the Services provided under this Agreement must be commenced within twelve (12) months after the performance of the Services for which the action is brought, without consideration as to the time of discovery of any claim or any other statutes of limitations or repose.

Section 7. Personnel – During the term of this Agreement, and for a period of six (6) months following the expiration or termination thereof, neither party will actively solicit the employment of the personnel of the other party involved directly with providing Services hereunder. Both parties acknowledge that the fee for hiring personnel from the other party, during the project term and within six months following completion, will be a fee equal to the hired person’s annual salary at the time of the violation so as to reimburse the party for the costs of hiring and training a replacement.

Section 8. Data Privacy and Security – (a) To the extent the Services require Baker Tilly receive personal data or personal information from Client, Baker Tilly may process any personal data or personal information, as those terms are defined in applicable privacy laws, in accordance with the requirements of the applicable privacy law relevant to the processing in providing Services hereunder. Applicable privacy laws may include any local, state, federal or international laws, standards, guidelines, policies or regulations governing the collection, use, disclosure, sharing or other processing of personal data or personal information with which Baker Tilly or its Clients must comply. Such privacy laws may include (i) the EU General Data Protection Regulation 2016/679 (GDPR); (ii) the California Consumer Privacy Act of 2018 (CCPA); and/or (iii) other laws regulating marketing communications, requiring security breach notification, imposing minimum security requirements, requiring the secure disposal of records, and other similar requirements applicable to the processing of personal data or personal information. Baker Tilly is acting as a Service Provider/Data Processor in relation to Client personal data and personal information, as those terms are defined respectively under the CCPA/GDPR. Client is responsible for notifying Baker Tilly of any data privacy laws the data provided to Baker Tilly is subject to and Client represents and warrants it has all necessary authority (including any legally required consent from data subjects) to transfer such information and authorize Baker Tilly to process such information in connection with the Services described herein. Client agrees that Baker Tilly has the right to generate aggregated/de-identified data from the accounting and financial data provided by Client to be used for Baker Tilly business purposes and with the outputs owned by Baker Tilly. For clarity, Baker Tilly will only disclose aggregated/de-identified data in a form that does not identify Client, Client employees, or any other individual or business entity and that is stripped of all persistent identifiers. Client is not responsible for Baker Tilly's use of aggregated/de-identified data. (b) Baker Tilly has established information security related operational requirements that support the achievement of our information security commitments, relevant information security related laws and regulations, and other information security related system requirements. Such requirements are communicated in Baker Tilly's policies and procedures, system design documentation, and contracts with customers. Information security policies have been implemented that define our approach to how systems and data are protected. Client is responsible for providing timely written notification to Baker Tilly of any additions, changes or removals of access for Client personnel to Baker Tilly provided systems or applications. If Client becomes aware of any known or suspected information security or privacy related incidents or breaches related to this agreement, Client should timely notify Baker Tilly via email at dataprotectionofficer@bakertilly.com.

Section 9. Termination – (a) This Agreement may be terminated at any time by either party upon written notice to the other. However, upon termination of this Agreement, this Agreement will continue to remain in effect with respect to any Statement(s) of Work already issued at the time of such termination, until such Statements of Work are themselves either terminated or the performance thereunder is completed. (b) This Agreement and all Statements of Work may be terminated by either party effective immediately and without notice, upon: (i) the dissolution, termination of existence, liquidation or insolvency of the other party, (ii) the appointment of a custodian or receiver for the other party, (iii) the institution by or against the other party of any proceeding under the United States Bankruptcy Code or any other foreign, federal or state bankruptcy, receivership, insolvency or other similar law affecting the rights of creditors generally, or (iv) the making by the other party of any assignment for the benefit of creditors. © Client shall pay Baker Tilly for all Services rendered and expenses incurred as of the date of termination, and shall reimburse Baker Tilly for all reasonable costs associated with any termination. In the event that collection procedures are required, the Company agrees to be responsible for all expenses of collection including related attorneys' fees. (d) Any rights and duties of the parties that by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, limitation of liability, confidentiality, ownership of work product, and survival of obligations, any accrued rights to payment and remedies for breach of this Agreement shall survive the expiration or termination of this Agreement or any Statement of Work.

Section 10. Dispute Resolution – (a) Except for disputes related to confidentiality or intellectual property rights, all disputes and controversies between the parties hereto of every kind and nature arising out of or in connection with this Agreement as to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuation or termination of this Agreement shall be resolved as set forth in this Section using the following procedure: In the unlikely event that differences concerning the Services or fees should arise that are not resolved by mutual agreement, both parties agree to attempt in good faith to settle the dispute by engaging in mediation administered by the American Arbitration Association under its mediation rules for professional accounting and related services disputes before resorting to litigation or any other dispute-resolution procedure. Each party shall bear their own expenses from mediation and the fees and expenses of the mediator shall be shared equally by the parties. If the dispute is not resolved by mediation, then the parties agree that the dispute or claim shall be settled by binding arbitration. The arbitration proceeding shall take place in the city in which the Baker Tilly office providing the relevant Services is located, unless the parties mutually agree to a different location. The proceeding shall be governed by the provisions of the Federal Arbitration Act (FAA) and will proceed in accordance with the then current Arbitration Rules for Professional Accounting and Related Disputes of the AAA, except that no prehearing discovery shall be permitted unless specifically authorized by the arbitrator. The arbitrator will be selected from Judicate West, AAA, JAMS, the Center for Public Resources, or any other internationally or nationally-recognized organization mutually agreed upon by the parties. Potential arbitrator names will be exchanged within 15 days of the parties' agreement to settle the dispute or claim by binding arbitration, and arbitration will thereafter proceed expeditiously. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation or enforceability of any of these procedures, shall be governed by the FAA and resolved by the arbitrators. The arbitration will be conducted before a single arbitrator, experienced in accounting and auditing matters. The arbitrator shall have no authority to award nonmonetary or equitable relief and will not have the right to award punitive damages or statutory awards. Furthermore, in no event shall the arbitrator have power to make an award that would be inconsistent with the Engagement Letter or any amount that could not be made or imposed by a court deciding the matter in the same jurisdiction. The award of the arbitration shall be in writing and shall be accompanied by a well reasoned opinion. The award issued by the arbitrator may be confirmed in a judgment by any federal or state court of competent jurisdiction. Discovery shall be permitted in arbitration only to the extent, if any, expressly authorized by the arbitrator(s) upon a showing of substantial need. Each party shall be responsible for their own costs associated with the arbitration, except that the costs of the arbitrator shall be equally divided by the parties. Both parties agree and acknowledge that they are each giving up the right to have any dispute heard in a court of law before a judge and a jury, as well as any appeal. The arbitration proceeding and all information disclosed during the arbitration shall be maintained as confidential, except as may be required for disclosure to professional or regulatory bodies or in a related confidential arbitration. The arbitrator(s) shall apply the limitations period that would be applied by a court deciding the matter in the same jurisdiction, including the contractual limitations set forth in this Engagement Letter, and shall have no power to decide the dispute in any manner not consistent with such limitations period. The arbitrator(s) shall be empowered to interpret the applicable statutes of limitations. (b) Because a breach of any the provisions of this Agreement concerning confidentiality or intellectual property rights will irreparably harm the nonbreaching party, Client and Baker Tilly agree that if a party breaches any of its obligations thereunder, the nonbreaching party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights thereunder, including without limitation protection of its proprietary rights. The parties agree that the parties need not invoke the mediation procedures set forth in this section in order to seek injunctive or declaratory relief.

Section 11. Force Majeure – In the event that either party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any act of God, fire, casualty, flood, war, strike, lock out, failure of public utilities, injunction or any act, exercise, assertion or requirement of any governmental authority, epidemic, destruction of production facilities, insurrection, inability to obtain labor, materials, equipment, transportation or energy sufficient to meet needs, or any other cause beyond the reasonable control of the party invoking this provision (Force Majeure Event), and if such party shall have used reasonable efforts to avoid such occurrence and minimize its duration and has given prompt written notice to the other party, then the affected party's failure to perform shall be excused and the period of performance shall be deemed extended to reflect such delay as agreed upon by the parties.

Section 12. Taxes – Baker Tilly's fees are exclusive of any federal, national, regional, state, provincial or local taxes, including any VAT or other withholdings, imposed on this transaction, the fees, or on Client's use of the Services or possession of the Deliverable (individually or collectively, the Taxes), all of which shall be paid by Client without deduction from any fees owed by Client to Baker Tilly. In the event Client fails to pay any Taxes when due, Client shall defend, indemnify, and hold harmless Baker Tilly, its officers, agents, employees and consultants from and against any and all fines, penalties, damages, costs (including, but not limited to, claims, liabilities or losses arising from or related to such failure by Client) and will pay any and all damages, as well as all costs, including, but not limited to, mediation and arbitration fees and expenses as well as attorneys' fees, associated with Client's breach of this Section 12.

Section 13. Notices – Any notice or communication required or permitted under this Agreement or any Statement of Work shall be in writing and shall be deemed received (i) on the date personally delivered; or (ii) the date of confirmed receipt if sent by Federal Express, DHL, UPS or any other reputable carrier service, to applicable party (sending it to the attention of the title of the person signing this Agreement) at the address specified on the signature page of this Agreement or such other address as either party may from time to time designate to the other using this procedure.

Section 14. Miscellaneous – (a) This Agreement and any Statement(s) of Work constitute the entire agreement between Baker Tilly and Client with respect to the subject matter hereof and supersede all prior agreements, promises, understandings and negotiations, whether written or oral, regarding the subject matter hereof. No terms in any Client purchase order that are different from, or additional to, the terms of this Agreement will be accorded any legal effect and are specifically hereby objected to by Baker Tilly. This Agreement and any Statement of Work cannot be amended unless in writing and signed by duly authorized representatives of each party. Headings in this Agreement are included for convenience only and are not to be used to construe or interpret this Agreement. (b) In the event that any provision of this Agreement or any Statement of Work is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement or such Statement of Work did not contain the particular provisions held to be unenforceable. The unenforceable provisions shall be replaced by mutually acceptable provisions which, being valid, legal and enforceable, come closest to the intention of the parties underlying the invalid or unenforceable provision. If the Services should become subject to the independence rules of the U.S. Securities and Exchange Commission with respect to Client, such that any provision of this Agreement would impair Baker Tilly's independence under its rules, such provision(s) shall be of no effect. © Neither this Agreement, any Statement of Work, any claims nor any rights or licenses granted hereunder may be assigned, delegated or subcontracted by Client without the written consent of Baker Tilly. Either party may assign and transfer this Agreement and any Statement of Work to any successor that acquires all or substantially all of the business or assets of such party by way of merger, consolidation, other business reorganization, or the sale of interests or assets, provided that the party notifies the other party in writing of such assignment and the successor agrees in writing to be bound by the terms and conditions of this Agreement. (d) The validity, construction and enforcement of this Agreement shall be determined in accordance with the laws of the State of Illinois, without reference to its conflicts of laws principles, and any action (whether by arbitration or in court) arising under this Agreement shall be brought exclusively in the State of Illinois. Both parties consent to the personal jurisdiction of the state and federal courts located in Illinois. (e) The parties hereto are independent contractors. Nothing herein shall be deemed to constitute either party as the representative, agent, partner or joint venture of the other. Baker Tilly shall have no authority to bind Client to any third-party agreement. Though the Services may include Baker Tilly's advice and recommendations, all decisions regarding the implementation of such advice or recommendations shall be the responsibility of, and made by, Client. (f) The failure of either party at any time to enforce any of the provisions of this Agreement or a Statement of Work will in no way be construed as a waiver of such provisions and will not affect the right of party thereafter to enforce each and every provision thereof in accordance with its terms. (g) Client acknowledges that: (i) Baker Tilly and Client may correspond or convey documentation via Internet e-mail unless Client expressly requests otherwise, (ii) neither party has control over the performance, reliability, availability or security of Internet e-mail, and (iii) Baker Tilly shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption or alteration of any Internet e-mail. (h) Except to the extent expressly provided to the contrary, no third-party beneficiaries are intended under this Agreement. (i) The Services performed under this Agreement do not include the provision of legal advice and Baker Tilly makes no representations regarding questions of legal interpretation. Client should consult with its attorneys with respect to any legal matters or items that require legal interpretation under federal, state or other type of law or regulation. (j) Baker Tilly US, LLP is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. Baker Tilly US, LLP is not Baker Tilly International's agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International's behalf. None of Baker Tilly International, Baker Tilly US, LLP, nor any of the other member firms of Baker Tilly International has any liability for each other's acts or omissions. The name Baker Tilly and its associated logo is used under license from Baker Tilly International Limited.

Agreement Summary

Sender	Baker Tilly US
Recipient	City of Goshen
Effective Start Date	On Acceptance
Payment Authority	None
Payment Method	None
Document ID	prop_mecbb6mag6cabrqaofla
Status	Awaiting Acceptance

Audit Trail

⊕ Proposal created by Noah Pleshek (24.164.250.41)	30th July, 2021
● Proposal moved to awaiting acceptance by Noah Pleshek (24.164.250.41)	11th August, 2021
● Proposal sent to Jeffery Weaver - jefferyweaver@goshencity.com	11th August, 2021
● Proposal viewed by City of Goshen (50.76.88.4)	11th August, 2021
● Proposal revoked by Noah Pleshek (24.164.250.41)	11th August, 2021
● Proposal moved to awaiting acceptance by Noah Pleshek (24.164.250.41)	11th August, 2021
● Proposal sent to Jeffery Weaver - jefferyweaver@goshencity.com	11th August, 2021
● Proposal viewed by City of Goshen (50.76.88.4)	11th August, 2021
● Proposal reminder sent to Jeffery Weaver - jefferyweaver@goshencity.com	19th August, 2021
● Proposal reminder sent to Jeffery Weaver - jefferyweaver@goshencity.com	27th August, 2021
● Proposal reminder sent to Jeffery Weaver - jefferyweaver@goshencity.com	4th September, 2021
● Proposal revoked by Noah Pleshek (24.164.250.41)	22nd September, 2021
● Proposal moved to awaiting acceptance by Noah Pleshek (24.164.250.41)	24th September, 2021
● Proposal sent to Richard R. Aguirre - richardaguirre@goshencity.com	24th September, 2021
● Proposal viewed by City of Goshen (50.76.88.4)	24th September, 2021
● Proposal viewed by City of Goshen (50.76.88.4)	24th September, 2021
● Proposal viewed by City of Goshen (50.76.88.4)	24th September, 2021
● Email viewed by richardaguirre@goshencity.com (63.96.47.2)	24th September, 2021
● Proposal viewed by City of Goshen (50.76.88.4)	4th October, 2021
● Proposal viewed by City of Goshen (50.76.88.4)	4th October, 2021
● Proposal viewed by City of Goshen (50.76.88.4)	4th October, 2021
● Proposal viewed by City of Goshen (50.76.88.4)	4th October, 2021
● Proposal viewed by City of Goshen (50.76.88.4)	6th October, 2021
● Proposal reminder sent to jefferyweaver@goshencity.com	11th October, 2021
● Proposal reminder sent to richardaguirre@goshencity.com	11th October, 2021
● Proposal reminder sent to carlanewcomer@goshencity.com	11th October, 2021

- Proposal viewed by Richard R. Aguirre (50.76.88.4) 11th October, 2021
- Proposal viewed by Richard R. Aguirre (50.76.88.4) 11th October, 2021
- Email viewed by richardaguirre@goshencity.com (50.76.88.4) 11th October, 2021
- Proposal viewed by Richard R. Aguirre (50.76.88.4) 14th October, 2021
- Proposal revoked by Noah Pleshek (24.164.250.41) 21st October, 2021
- Proposal moved to awaiting acceptance by Noah Pleshek (24.164.250.41) 22nd October, 2021
- Proposal sent to Richard R. Aguirre - richardaguirre@goshencity.com 22nd October, 2021
- Email viewed by Richard R. Aguirre - richardaguirre@goshencity.com (99.95.117.152) 22nd October, 2021
- Proposal viewed by primary signatory: Richard R. Aguirre (50.76.88.4) 23rd October, 2021



**Engineering Department
CITY OF GOSHEN**

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

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

MEMORANDUM

TO: Board of Public Works, Safety and Stormwater

FROM: Engineering Department

RE: **APPROVAL & ACCEPTANCE OF INFRASTRUCTURE
CONCRETE PAVEMENT RECONSTRUCTION (PN: 2021-0002)**

DATE: 11/01/2021

The installation of infrastructure (concrete pavement, & rolled curb) has been satisfactorily completed for the above listed project. The Engineering Department recommends that the infrastructure be accepted for maintenance. The one-year maintenance bond in the amount of \$65,702.10 (10% of the construction costs) for the infrastructure has been submitted to the City of Goshen Engineering Department.

Requested Motion: Approve the acceptance of the infrastructure and maintenance bond for this project. Copies of the bond are attached for your review.

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

Jeremy Stutsman, Mayor

Barb Swartley, Member

Mary Nichols, Member

DeWayne Riouse, Member

Michael Landis, Member

Cc: Contractor
Street Dept.
Clerk Treasurer



MAINTENANCE BOND

Bond No MNT5936269

KNOW ALL MEN BY THESE PRESENTS:

That, Premium Concrete Services, Inc., 712 Richmond St, Elkhart, IN 46516
_____ as Principal,
and Old Republic Insurance Company, a corporation organized under
the laws of the State of Wisconsin and authorized to do a surety business in
the State of Indiana, as Surety, are held and firmly bound
unto the City of Goshen, as obligee
in the sum of Sixty Five Thousand Seven Hundred Two And 10/100
(65,702.10), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

SEALED with our seals and dated this 22nd day of October, 2021

WHEREAS, on the 7th day of December, 2020, the said principal as contractor, entered into a contract for:
2021 Concrete Roadway Repair Project, JN: 2021-0002

for the sum of Five Hundred Ninety-three Thousand Five Hundred Ninety And No/100
(\$593,590.00); and,

WHEREAS, under the terms of the specifications for said work, the said principal is required to give a bond in the amount of Sixty Five
Thousand Seven Hundred Two And 10/100 (\$ 65 702.10), to protect the
obligee against the result of faulty materials or workmanship for a period of Three (3) year(s) from and after the date of the completion and
acceptance of same, namely, until October 22, 2022

Now, THEREFORE, if the said principal shall for a period of one (1) year from and after the date of the completion and acceptance of
same by said obligee replace any and all defects arising in said work whether resulting from defective materials or defective workmanship,
then the above obligation to be void; otherwise to remain in full force and effect.

Premium Concrete Services, Inc.
By _____ Principal

Old Republic Insurance Company
By _____ Surety
Jennifer L. Kasznia
Jennifer L. Kasznia Attorney-in-Fact





OLD REPUBLIC INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That OLD REPUBLIC INSURANCE COMPANY, a Pennsylvania stock insurance corporation, does make, constitute and appoint:
 NICOLE L BICKNELL, MEGAN E RIESENBERG, MARK EDWARD WOBBE, BARBARA E PEARSON, JENNIFER L KASZANIA, SANDRA L JUNK, WILLIAM J CERNEY, III, WESLEY MANTOOTH, THERESA BURNS, JORDAN SCHEIBER, LISA M THOMAS, FAITH HUNT, PAMELA S. HIGGINBOTHAM of SOUTH BEND, IN its true and lawful Attorney(s)-in-Fact, with full power and authority for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, (other than self-insurance workers compensation bonds guaranteeing payment of benefits, or black lung bonds), as follows:

ALL WRITTEN INSTRUMENTS IN AN AMOUNT NOT TO EXCEED TWENTY MILLION (\$20,000,000) FOR ANY SINGLE OBLIGATION

and to bind OLD REPUBLIC INSURANCE COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This appointment is made under and by authority of the board of directors at a meeting held on December 10, 2019. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC INSURANCE COMPANY on December 10, 2019.

RESOLVED FURTHER, that the chairman, president or any vice president of the Company's surety division, in conjunction with the secretary or any assistant secretary of the Company, be and hereby are authorized and directed to execute and deliver, to such persons as such officers of the Company may deem appropriate, Powers of Attorney in the form presented to and attached to the minutes of this meeting, authorizing such persons to execute and deliver and affix the seal of the Company to bonds, undertakings, recognizances, and suretyship obligations of all kinds, other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and not guaranty bonds. The said officers may revoke any Power of Attorney previously granted to any such person.

RESOLVED FURTHER that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company
 (i) when signed by chairmen, president or any vice president of the Company's surety division and attested and sealed (if a seal be required) by any secretary or assistant secretary; or
 (ii) when signed by a duly authorized Attorney-in-Fact and sealed with the seal of the Company (if a seal be required).

RESOLVED FURTHER, that the signature of any officer designated above, and the seal of the Company, may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC INSURANCE COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 25th day of August, 2021

Karen J. Haffner
 Assistant Secretary



OLD REPUBLIC INSURANCE COMPANY

Alan Pavlic
 Vice President

STATE OF WISCONSIN, COUNTY OF WAUKESHA - SS

On this 25th day of August, 2021, personally came before me, Alan Pavlic and Karen J. Haffner, to me known to be the individuals and officers of the OLD REPUBLIC INSURANCE COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say: that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said organization.



Kathryn R. Pearson
 Notary Public

My Commission Expires: September 28, 2022

(Expiration of notary's commission does not invalidate this instrument)

CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC INSURANCE COMPANY, a Pennsylvania corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.



45-5314

ORSC 11008 (6-93)

GIBSON INSURANCE AGENCY, INC.

Signed and sealed at the City of Brookfield, WI this 22nd day of October, 2021

Karen J. Haffner
 Assistant Secretary

ORDER OF THE CITY OF GOSHEN BUILDING COMMISSIONER

September 30, 2021

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

To: Derek Doss
17601 CR 40
Goshen, IN 46526

RE: Premises at 724 S. Main Street, Goshen, Indiana

You are notified as a person holding a substantial property interest in the real estate at 724 S. Main Street, Goshen, Indiana, that the building at this location is in violation of the Goshen City Code as set forth in more detail below.

The Goshen Building Department inspected the subject real estate on July 8, 2021. Violations of the Neighborhood Preservation Ordinance (Minimum Housing Ordinance) were cited. The real estate was reinspected on August 5, 2021 which showed no significant improvement to the real estate.

The real estate is unsafe within the meaning of Indiana Code § 36-7-9-4 in that one or more buildings or structures on the real estate are in an impaired structural condition that make it unsafe to a person or property and dangerous to person or property because of a violation of Goshen City Code Title 6, Article 3, Chapter 1 concerning building condition or maintenance

The following violations of Section 6, Article 3, Chapter 1 of the Goshen City Code were cited by the Goshen Building Department inspector and have not been satisfactorily repaired or remedied:

1. Handrails for the stairways are not firmly fastened and are not capable of supporting normally imposed loads. (violation of Section 6.3.1.1(f)).
2. Tenant has removed smoke detectors on the property. (violation of Section 6.3.1.8(h)).
3. The smoke detectors have been removed or have not been installed in the rooms used for sleeping, or the common areas of the premises including the basement. (violation of Section 6.3.1.8(b)).
4. The door to the bedroom cannot be opened or closed and it has fallen off of its hinges and has not been reattached. (violation of Section 6.3.1.1(a)).
5. The building has windows that are cracked, broken, do not work properly, and are not weather tight. (violation of Section 6.3.1.1(d)).
6. The bathroom floor in the building has peeling linoleum. The floor around the toilet was not constructed properly and is not impervious to water and is not sanitary (violation of Section 6.3.1.4(b)).
7. The dwelling does not have a working toilet or a sink that is in good working condition. (violation of Section 6.3.1.2(b)).
8. There are holes in the walls throughout the dwelling that need to be repaired. (violation of Section 6.3.1.1(b)).

ORDER OF THE CITY OF GOSHEN BUILDING COMMISSIONER

Page 2

9. Evidence of insect infestation in premises. (violation of Section 6.3.1.6 (b)(4)).
10. Cracked switch plates and exterior light fixtures are in disrepair. (violation of Section 6.3.1.4(g)).

You are ordered to repair or rehabilitate the building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy or use so that the buildings and structures are in compliance with Title 6, Article 3, Chapter 1 of the Goshen City Code by October 29, 2021. In particular, you are ordered to make the following corrections:

1. Reattach handrail in stairwell
2. Replace smoke detectors that have been removed by tenant
3. Reattach and the bedroom door so that it can be opened and closed
4. Repair or replace broken or cracked windows
5. Repair floors in bathrooms and remove deteriorating materials so that they are impervious to water.
6. Repair or replace broken toilets
7. Clean or replace aerator in bathroom faucet to allow proper water pressure and replace missing handle from sink fixture
8. Repair holes in walls
9. Exterminate insects to eliminate infestation
10. Replace outside electrical fixtures and secure electrical wiring.
11. Replace cracked switch plate.

In the event that you fail to comply with this Order, the City of Goshen may take action to make the required corrections and will bill you for the costs of such work, including, the actual cost of the work performed and an amount equal to the average processing expense the City will incur in pursuing this matter. Such amounts can become a lien upon the real estate and can ultimately be enforced in the same manner as any other judgment.

You are further notified that a hearing will be held before the Goshen Board of Public Works and Safety on **Monday, November 1, 2021 at 2:00 p.m. (local time)**, or soon thereafter, for the purpose of reviewing the Order of the City of Goshen Building Commissioner. This hearing will be held at the Goshen Police & Court Building in the Court Room/Council Chambers at 111 East Jefferson Street, Goshen, Indiana.

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

Indiana Code § 36-7-9-27 requires that if you transfer your interest or any portion of your interest in the unsafe building affected by this Order to another person, you must supply the other person with full information regarding this Order prior to transferring that interest or agreeing to transfer that interest. Within five (5) days after transferring or agreeing to transfer a substantial property interest in the unsafe building, you must also supply Goshen Building Commissioner, Myron Grise with the full name, address and telephone number of the other person taking a substantial property interest in the unsafe building and/or premises, along with written copies of the agreement to transfer the interest or copies of the document

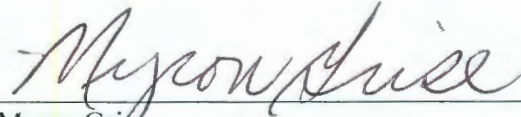
ORDER OF THE CITY OF GOSHEN BUILDING COMMISSIONER

Page 3

actually transferring the interest. Mr. Grise's office is located at 204 East Jefferson Street, Goshen, Indiana 46528, or you may contact him at (574) 534-2104. Should you fail to comply with these provisions, then you may be liable to the City of Goshen for any damage that the City of Goshen may suffer in the event that judgment is entered against the City by the other person to whom the transfer was made.

This Order of the City of Goshen Building Commissioner is issued on September ~~30~~, 2021

City of Goshen Building Department

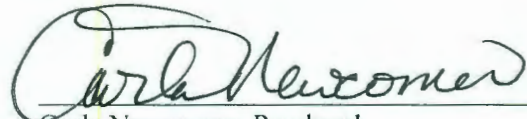


Myron Grise
Building Commissioner

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order of the City of Goshen Building Commissioner for the premises at 724 S. Main Street, Goshen, Indiana, was served by sending a copy by certified mail, return receipt requested and by regular first-class mail to the last known address of the following persons to be notified on September ~~30~~, 2021:

To: Derek A. Doss
17601 CR 40
Goshen, IN 46526



Carla Newcomer, Paralegal
City of Goshen Legal Department
204 East Jefferson Street, Suite 2
Goshen, Indiana 46528