



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m., November 15, 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: November 8, 2021

Approval of Agenda

- 1) Acceptance of plat: Shoup-Parsons/Rappatta Minor Subdivision (Rhonda L. Yoder)
- 2) Permission to solicit bids for new Parks Department maintenance facility (Becky Hutsell)
- 3) Agreement with Troyer Group for Indiana Avenue reconstruction (Dustin Sailor)
- 4) Permission to negotiate contract for Wilden Avenue reconstruction (Dustin Sailor)
- 5) Agreement with Flock Group, Inc. for police video services (Bodie Stegelmann)
- 6) Agreement with Roberts Environmental for water-related services (Brandy Henderson)
- 7) Agreement with DesignPD (Agency 360) for cloud application services (Brandy Henderson)
- 8) Agreement with SpyGlass for technology expense management consulting (Richard Aguirre)

Privilege of the Floor

Approval of Civil City and Utility Claims

Adjournment



BOARD OF PUBLIC WORKS & SAFETY & STORMWATER BOARD MINUTES OF THE NOV. 8, 2021 REGULAR MEETING

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, and Barb Swartley

Absent: Member DeWayne Riouse

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

Review/Approval of Minutes: The minutes of November 1, 2021 meeting of the Board of Works & Safety & Stormwater were presented. **Board member Landis moved to approve the minutes as presented and the motion was seconded by Board member Swartley. Motion passed 4-0.**

Review/Approval of Agenda: Mayor Stutsman asked if there were any additions to the agenda to which there were none. **Landis moved to approve the agenda as presented and the motion was seconded by Swartley. Motion passed 4-0.**

1) Goshen Fire Department: Promotion of Travis M. Peak to Fire Captain

Fire Chief Dan Sink presented the request to the Board to promote Travis M. Peak to the position of Fire Captain for the Goshen Fire Department.

Landis/Swartley moved to approve the promotion of Travis M. Peak to the rank of Fire Captain for the Goshen Fire Department, effective November 8, 2021. Passed 4-0.

Mayor Stutsman then swore Fire Captain Travis M. Peak into office for the Goshen Fire Department.

2) Goshen Fire Department: Promotion of Matthew A. Dunithan

Fire Chief Dan Sink presented the request to the Board to promote Matthew A. Dunithan to the position of Fire Lieutenant for the Goshen Fire Department.

Landis/Swartley moved to approve the promotion of Matthew A. Dunithan to the rank of Fire Lieutenant for the Goshen Fire Department, effective November 8, 2021. Passed 4-0.

Mayor Stutsman swore Fire Lieutenant Matthew A. Dunithan into office for the Goshen Fire Department.

3) Goshen Fire Department: Promotion of Camden Bontrager

Fire Chief Dan Sink presented the request to the Board to promote Camden Bontrager to the position of Fire Sergeant for the Goshen Fire Department. Sink shared a memory at the expense of calling himself old of Bontrager and Sink's son as children playing catch in Sink's backyard.

Landis/Swartley moved to approve the promotion of Camden Bontrager to the rank of Fire Sergeant for the Goshen Fire Department effective November 8, 2021. Passed 4-0.

Mayor Stutsman swore Fire Sergeant Camden Bontrager into office for the Goshen Fire Department.

4) City Hall painting proposal

Mayor Stutsman said the lower level of City Hall has not been painted in a number of years. He added that the work is scheduled to be done over Thanksgiving weekend.



The work scheduled to be performed includes all prep work (sanding caulking, repairs), prime and paint two coats on unfinished trim, two coats on finished trim, and two coats on all walls. In response to a question from Landis, Mayor Stutsman stated the price is a rough estimate as it could be lower as work progresses and that all painting will be done inside.

Landis/Swartley moved to approve the proposal to have Chad B. Cripe prime and paint the lower level of City Hall for the price not to exceed \$3, 600.00. Passed 4-0.

5) Agreement with Newbury Square Construction, LLC

Brandy Henderson, a paralegal for the City Legal Department, presented an agreement to the Board for approval. Henderson stated the agreement is with Newbury Square Construction, LLC for the installation of a new steel roof over the existing shingle roof at Violet Cemetery. The roof was damaged by hail during the summer of 2019. Newbury Square Construction, LLC is to be paid \$9,609.84 for the work that is to be completed as soon as possible as weather allows and hopes to have the project completed by the end of the year.

Landis/Swartley moved to approve and execute the agreement with Newbury Square Construction, LLC for the installation of a new steel roof over the existing shingle roof at 2818 Violet Road (Cemetery) that was damaged by hail at a cost of \$9,609.84 and that is to be completed as soon as possible as weather allows. Passed 4-0.

6) Agreement with Short Stack Press, LLC

Brandy Henderson, a paralegal for the City Legal Department, presented an agreement on behalf of the City's Environmental Resilience Department to the Board for approval. The agreement with Short Stack Press, LLC is for artwork to be included in the Goshen Sensory Trail Project that is to be completed by Dec.1, 2021. Henderson said the City will compensate the artist \$1,500.00 provided by funds from the Community Connections for People with Disabilities grant through the Indiana Office of Community and Rural Affairs that partnered with the Indiana Division of Disability and Rehabilitative Services. Mattie Lehman, a Stormwater specialist for the City, provided a rough draft of interpretative stormwater signs that will be added to the trail.

Landis/Swartley moved to approve the agreement with Short Stack Press, LLC for artwork to be performed as part of the Goshen Sensory Trail Project at the cost of \$1,500.00 to be paid with funds received through a grant from the Community Connections for People with Disabilities. Passed 4-0

7) Agreement with Donohue and Associates, Inc.

Brandy Henderson, a paralegal for the City Legal Department, presented an agreement for the Board's approval with Donohue and Associates, Inc. for the lift station cellular telemetry project. Donohue and Associates, Inc. will be paid \$28,000 for the services that will take approximately 120 days to complete. In response to a question from Landis, City Engineer Bryce Gast stated the project is intended to upgrade radio communication at lift stations throughout the city to a cellular modem. Gast stated cellular telemetry is more reliable and plans to upgrade more lift stations.

Landis/Swartley moved to approve and execute the agreement with Donohue and Associates for the lift station cellular telemetry project at a cost of \$28,000 with and approximate completion time of 120 days. Passed 4-0.

8) Amendment #1 to agreement with Crossroads Ambulance Sales and Service, LLC

Carla Newcomer, a paralegal with the City Legal Department, presented an agreement with Crossroads Ambulance Sales and Service, LLC. Newcomer said the agreement is to amend the agreement signed Aug. 27, 2021 for the remount of a refurbished ambulance on a City-owned chassis. She added that after an inspection, it was determined that the curbside attendant seat needed to be replaced due to a tear in the upholstery.



The seal cannot be re-upholstered because the seats must be specially constructed to provide a sealed barrier to blood borne pathogens and other microbes. The seat is also 11 years old. Said the cost to replace the seat with a new EVS sewn seat with a 3-point seat belt in claret red is \$945.00.

Landis/Nichols moved to approve and execute the amendment to the agreement with Crossroads Ambulance Sales and Service, LLC for the replacement of a curb side attendant seat with an EVS sewn seat belt at a cost of \$945.00. Passed 4-0.

9) Agreement with Indiana Public Employers' Plan, Inc. (IPEP)

Carla Newcomer, a paralegal with the City Legal Department, presented a grant agreement with the Indiana Public Employers' Plan Inc. to purchase a drone on behalf of the Goshen Fire Department. Newcomer said the total purchase price of the drone is \$7,273.99, with the City's portion being 20% or \$1,454.80.

Landis/Swartzley moved to approve and authorize the Mayor to execute the Grant Agreement with Indiana Public Employers' Plan, Inc. (IPEP) for the purchase of a drone for the Goshen Fire Department. Passed 4-0.

10) Agreement amendment with Haviland Products Company

Brandy Henderson, a paralegal with the City Legal Department, presented an amendment on behalf of Goshen Utilities to the Board for approval to extend the original agreement dated Dec. 30, 2018. The agreement is for Haviland Products Company to purchase sodium bisulfite and would extend for a third, one-year term through Dec. 31, 2022. The new agreement would be based on the same terms and conditions as the original agreement.

Landis/Swartzley moved to approve and execute the agreement amendment with Haviland Products Company and authorize Mayor Stutsman to extend the agreement to Dec. 31, 2022. Passed 4-0.

11) Agreement amendment with Kemira Water Solutions, Inc.

Brandy Henderson, a paralegal with the City Legal Department, presented an amendment on behalf of Goshen Utilities to extend the original agreement dated Dec. 17, 2019. The agreement is for Kemira Water Solutions, Inc. to purchase ferric chloride. The extension is for the second, one-year term through December 31, 2022. The new agreement would be based on the same terms and conditions as the original agreement.

Landis/Swartzley moved to approve the agreement amendment with Kemira Water Solutions, Inc. and authorize Mayor Stutsman to extend to agreement to Dec. 31, 2022. Passed 4-0.

12) Agreement for Well Maintenance for 1A, 1, 2, 3, 5, and 6A

Brandy Henderson, a paralegal with the City Legal Department, presented an agreement on behalf of the Goshen Water and Sewer Department with Peerless-Midwest Inc. The following wells are in need of maintenance:

- Shock Clean Well #1A and a Pump Overhaul with the amount not to exceed \$35,868.00.
- High Service of Well #1 and a Pump Overhaul with the amount not to exceed \$35,868.00.
- Hilltop Booster of Well #2 and a Pump Overhaul with the amount not to exceed \$14,426.00.
- High Service of Well #3 and a Pump Overhaul with the amount not to exceed \$26,627.00.
- High Service of Well #5 and a Pump Overhaul with the amount not to exceed \$22,168.00.
- Double Disk Clean of Well #6A and a Pump Overhaul with the amount not to exceed \$43,181.00.

The total cost for the above maintenance is not to exceed \$165,720. Water and Sewer Superintendent Kent Holdren responded to a question from Landis stating that the previous agreement specified Well #14 as needing special cleaning. Holdren said wells are inspected every year and that in some years, wells that need more cleaning. Holdren added it varies from year to year.

Landis/Swartzley moved to approve and execute the agreement for Well Cleaning and Maintenance with Peerless Midwest, Inc. with a total cost for the maintenance not to exceed \$165,720.00. Passed 4-0.



13) Police Department conditional offer of employment for Anthony W. Reese

City Legal Compliance Administrator Shannon Marks presented to the Board for approval, on behalf of the Goshen Police Department, a conditional offer of employment for Anthony W. Reese. Marks stated the agreement sets the conditions that Reese must meet prior to beginning employment with the Goshen Police Department. She added that the agreement provides payment of a hiring bonus as Reese completes Tier 1 basic training requirements and has an active certification with the Indiana Law Enforcement Training Board. Once a position becomes available, the Goshen Police Department will request that the Board confirm the offer.

Landis/Swartley moved to extend a conditional offer of employment to Anthony W. Reese as a probationary patrol officer and move to approve and authorize the Mayor to execute the Conditional Offer of Employment Agreement with Anthony W. Reese, which includes the payment of a hiring bonus. Passed 4-0.

14) Resolution 2021-27: 2022 City Holiday Schedule

Shannon Marks, a paralegal with the City Legal Department, stated that the Common Council has delegated to the Board of Public Works and Safety to determine a City holiday schedule on an annual basis. The Board is also authorized to designate the date to be observed for a holiday that falls on a Saturday or Sunday. Marks added that Resolution 2021-27 would approve the holiday schedule for 2022 and designate the following dates to be observed for holidays that fall on a Saturday or Sunday:

- New Year's Day, Friday, December 31, 2021 (in lieu of January 1)
- Juneteenth Nation Independence Day, Monday June 20, 2022 (in lieu of June 19)
- Christmas Eve, Friday, December 23, 2022 (in lieu of December 24)
- Christmas Day, Monday, December 26, 2022 (in lieu of December 25)

Landis/Swartley moved to approve Resolution 2021-27, 2022, the City Holiday Schedule for 2022. Passed 4-0.

15) Dumpster request

Mayor Stutsman presented an email he received from Grant Mielke regarding the temporary placement of a dumpster. Mielke requested to rent a 5-10 yard dumpster to be placed outside of his business at 1195 South Main Street. The dumpster would be placed in two parking spots on Friday, Nov. 12 or Saturday, Nov. 13, 2021. Mayor Stutsman added the dumpster will be removed as soon as the company that owns the dumpster can return to pick it up once the cleanup is complete.

Landis/Swartley moved to approve the request to place a dumpster at 1195 South Main Street on Friday, Nov. 12 or Saturday, Nov. 13, 2021 and that it be removed as soon as possible when work is done. Passed 4-0.

Privilege of the Floor

Education and Grant Writer for the Environmental Resilience Department Theresa Sailor presented an agreement with Aquascapes Consulting, LLC for on-site consulting services for the water feature for the Ashley Vanvurst Sensory Trail (Exhibit A). Sailor explained the \$24,000 cost is for consulting purposes only and does not include any additional costs that may occur throughout the project. Sailor said none are expected. Sailor presented virtual models of what the water feature will look like and explained how the water will be a consistently moving system that will be chemical free and pondless. The water will be circulated by two large pumps. She said the feature is being created to encourage wildlife and visitors of the feature to interact with the water and improve mental health with the sound of moving water. Sailor stated that all of the construction will be done by the Parks Department and is scheduled to be concluded by Thanksgiving.

Brandy Henderson, a paralegal with the City Legal Department, also presented to the Board for approval an agreement from Aquascapes a Right to Photograph and Record release. This release would allow Aquascapes to use the finished project for its various media and marketing outlets.



In response to a question from Landis, Henderson added that the grant that provided funds to complete this project requires invoices related to the project be turned in by Dec. 1, 2021. She added that at that time, the final amount of the project will be presented to the Board for approval. The Board consulted with City Attorney Bodie Stegelmann on if a public site required this form. Stegelmann stated that due to Aquascapes presenting the form, the Board could approve it.

Landis/Nichols moved to approve and, execute the agreement with Aquascapes Consulting, LLC for on-site consulting services for the construction of water feature for the Ashley Vanvurst Sensory Trail with costs expected to be \$24,000 and to authorize Mayor Stutsman to execute the Aquascapes agreement for a Right to Photograph and Record release. Passed 4-0.

With no further matters before the Board, Mayor Stutsman/Landis moved to approve Civil City and Utility Claims and adjourn. Passed 4-0 at 2:36 p.m.

EXHIBIT A: Agreement with Aquascapes Consulting, LLC for On-Site Consulting Services for the Water Feature for the Ashley Vanvurst Sensory Trail. (13 pages)

APPROVED

Jeremy Stutsman, Chair

Michael Landis, Member

Mary Nichols, Member

Barb Swartley, Member

DeWayne Riouse, Member

ATTEST

Richard R. Aguirre, Clerk-Treasurer



Rhonda L. Yoder, AICP
PLANNING & ZONING DEPARTMENT, 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

MEMORANDUM

To: Board of Public Works & Safety

From: Rhonda L. Yoder, Planning & Zoning Administrator

Date: November 15, 2021

RE: Acceptance of Plat
Shoup-Parsons/Rappatta Minor Subdivision, Lots 1 and 2

The Plan Commission at their meeting of August 17, 2021, granted approval for a two-lot minor residential subdivision, Shoup-Parsons/Rappatta Minor Subdivision.

The subject property is an unplatted tax parcel, approximately 0.333 acre (\pm 14,513 SF), zoned Residential R-1, that contains two single family homes. The owner is requesting the subdivision in order to create a lot for each house, so that each house may be sold individually. Public infrastructure (street, water, sewer) and subdivision drainage is existing.

The subdivision was granted a variance by the Board of Zoning Appeals on September 28, 2021, for the following R-1 District deficiencies:

- 7' rear (west) building setback for Lot 1, where 25' is required
- 5,663 square feet of area for Lot 2, where 8,000 square feet of lot area is required
- 48.18' lot frontage for Lot 2, where 66' is required
- 6' side (north) building setback for Lot 2, where 8' is required

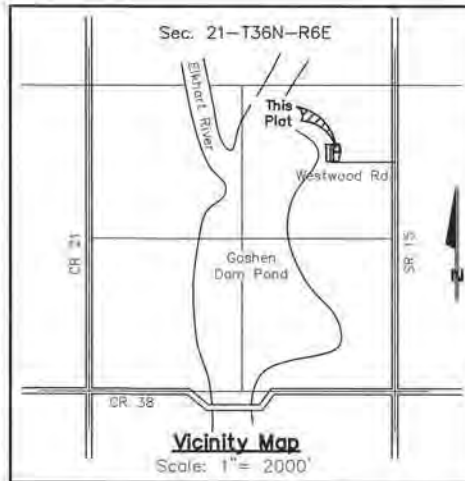
Subdivision drainage is existing and there are no infrastructure improvements associated with the plat so bonds are not required.

Right of way is existing, but a new roadway and utility easement is being established along the entire Mayflower Place frontage to address existing roadway and utility encroachments. The easement is in lieu of right of way, as there was no space to dedicate additional right of way since all of the development is existing and the existing right of way is narrow.

The subdivision meets Zoning and Subdivision Ordinance requirements.

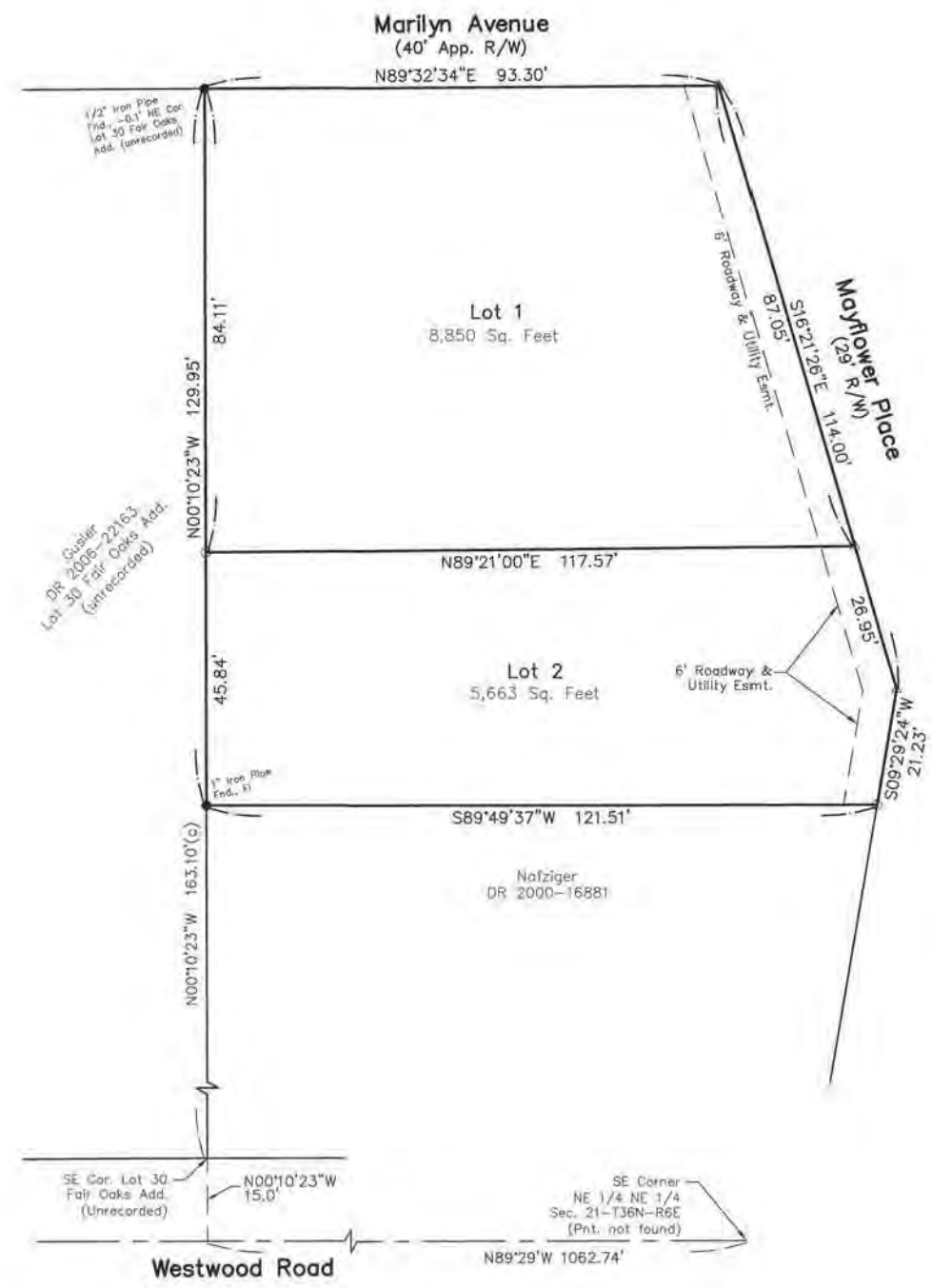
Please accept the plat with the easements and sign the plat.

Suggested Motion: Move to accept the plat with easements for Shoup-Parsons/Rappatta Minor Subdivision.



Shoup-Parsons/Rappatta Minor Subdivision

A Part of the Northeast Quarter of Section 21 Township 36 North, Range 6 East, Elkhart Township, Elkhart County, Indiana



Record Legal Descriptions

DR 2019-12390
 Commencing at a stone marking the Southeast corner of the Northeast one-quarter of the Northeast one-quarter of Section 21, Township 36 North, Range 6 East, Elkhart County, Indiana; thence North 89 degrees and 29 minutes West, along the south line of the North one-half of said Northeast one-quarter, 1062.74 feet; thence North zero degrees and 31 minutes East, 15.0 feet to an iron stake, the place of beginning or this description (said iron stake being the Southeast corner of Lot 30 in the unrecorded plat of Fair Oaks Addition); thence continuing North zero degrees and 31 minutes East, along the East line of said Lot, 233.1 feet to an iron stake; thence South 89 degrees and 51 minutes East, 110.85 feet to an iron stake; thence South 15 degrees and 45 minutes East, 51.58 feet to an iron stake; thence South 10 degrees and 22 minutes West, 187.0 feet to an iron stake; thence North 89 degree and 29 minutes West, 93.45 feet to the place of beginning, said above described tract containing 0.595 acres.

Commencing at a stone marking the Southeast corner of the Northeast one-quarter of the Northeast one-quarter of Section 21, Township 36 north, Range 6 East, Elkhart County, Indiana; thence North 89 degrees and 29 minutes West, along the South line of the North one-half of the said Northeast one-quarter, 1062.74 feet; thence North zero degrees and 31 minutes East, along the East line of the Lot No. 30, in the unrecorded plat of Fair Oaks Addition, 248.1 feet to an iron stake, the place of beginning of this description; thence continuing North zero degrees and 31 minutes East, 50.0 feet to an iron stake at the Northeast corner of said Lot No. 30; thence South 89 degrees and 51 minutes East, along the South line of Marilyn Avenue, 93.3 feet to an iron stake; thence South 14 degrees and 45 minutes East, 62.42 feet to an iron stake; thence North 89 degrees and 51 minutes West, 110.85 feet to the place of beginning. Said above described tract containing 0.140 acres.

Less and except therefrom: Commencing at a stone marking the Southeast corner of the North one-half of the Northeast quarter of aforesaid Section 21, and running thence North 89 degrees 29 minutes West, 969.28 feet along the centerline of Westwood Road; thence North 15 feet to an iron pipe which is the point of beginning; thence North 89 degrees 29 minutes West 95.45 feet to an iron pipe; thence North 0 degrees 31 minutes East, 163.1 feet to an iron pipe; thence south 89 degrees 29 minutes East, 121.51 feet to an iron pipe; thence south 10 degrees 22 minutes West, 165.67 feet to the point of beginning, containing 0.402 acres, more or less.

- Legend**
- Existing Monument (Origin Unknown Unless Otherwise Noted)
 - ⊕ 5/8" Rebar and Cap Set (Barnes 20200084)
 - △ Mag Nail Set
 - FI Mon. Flush with Ground
 - 0.1' Elev. of Mon. above Ground (Typ.)



	Elkhart, IN p. 574.293.7762 South Bend, IN p. 574.232.4388 Fort Wayne, IN p. 266.242.2323
CLIENT	Allan Kauffman 400 Marilyn Avenue Goshen, IN 46526
OWNER	Marilyn A. Rappatta Rev. Living Trust 400 Marilyn Avenue Goshen, IN 46525
SCALE: 1" = 20'	DRAWN BY: jpb
DATE: 06/17/2021	SURVEYED: 06/02/2021
PROJ: 400 Marilyn Avenue	JOB NO. 2021-0186
DESC: Final Plat	REF: DOC. NO.: 2019-12390
LOC: NE 1/4 Sec. 21-T36N-R6E, Elkhart Twp.	C-1621P

11/1/2021 10:54:12 AM C:\Users\jpr\OneDrive\Documents\Shoup-Parsons-Rappatta Minor Subdivision\Shoup-Parsons-Rappatta Minor Subdivision.dwg 11/17/2021 10:57:55 AM

Shoup-Parsons/Rappatta Minor Subdivision
 A Part of the Northeast Quarter of Section 21 Township 36 North, Range
 6 East, Elkhart Township, Elkhart County, Indiana

Statement of Utilities

An easement is hereby granted to the City of Goshen, all public utility companies including Frontier, Northern Indiana Public Service Company, and several private utility companies where they have a certificate of territorial authority to render service and their respective successors and assigns, to install, place, and maintain sewers, water mains, gas mains, conduits, cables, poles and wires, either overhead or underground with all necessary braces, guys, anchors, and other appliances in, upon, along and over the strips of land designated on that plat marked "utility easement" for the purposes of servicing the public in general with sewer, water, gas, electric, and telephone service, including the right to use the streets, where necessary and to overhang lots with aerial service wires to serve adjacent lots, together with the right to enter upon said easements for public utilities at all times for any of the purposes aforesaid and to trim and keep trimmed and trees, shrubs, or saplings that interfere with any such utility equipment. No permanent building shall be placed on said easement, but some may be used for gardens, shrubs, landscaping, and other purposes that do not interfere with the use of said easement for such public utility purposes.

Drainage Maintenance Certification

The maintenance of all drainage facilities including culverts and swales shall be the responsibility of each lot owner, and no owner shall permit, allow or cause any of said facilities to be obstructed or removed or to in any way impede the flow of water across or through said facilities. In the event any such facilities become damaged or in disrepair, it shall be the responsibility of the lot owner to repair such facilities at the owner's expense.

In the event of the owner's failure to maintain such drainage facilities in good order and repair, appropriate governmental authority of the City of Goshen, Indiana, may repair such drainage facilities and invoice the costs of such repair to the lot owner. The City of Goshen, Indiana, is granted an easement across a lot owner's real estate for the purpose of repairing any drainage facilities on said lot owner's real estate. The amount of any assessment for the costs of such repair, as assessed by said governmental authority, shall constitute a lien upon the real estate of the lot owner and an encumbrance upon the title to said lot.

The City of Goshen, Indiana, is further granted right of action for the collection of said indebtedness from the lot owner, and for the foreclosure of said lien in the manner in which mortgages are foreclosed under the laws of said State of Indiana. Any such collection and/or foreclosure action shall be maintained in the courts of general jurisdiction of the State of Indiana, and shall be commenced in Goshen, Indiana.

Survey Statement

This plat is in accordance with Title 865, Article 1, Chapter 12 of the Indiana Administrative Code with the lines of this plat conforming to a survey prepared by Jeffrey S. Barnes, PS of Jones Petrie Rafinski on June 17, 2021 and being recorded in the Office of the Recorder of Elkhart County in Instrument 2021-30249.

Surveyor's Certificate

I, Jeffrey S. Barnes, hereby certify that I am a land surveyor, licensed in compliance with the laws of the State of Indiana, that this plat correctly represents a survey performed under my direct supervision in accordance with I.A.C. 865-1-12 and that all the monuments will be installed in accordance with the provisions of the platting ordinance; and that their location, size, type and material are accurately shown.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

 Jeffrey S. Barnes, PS 15#20200084 11/09/2021 Date



Deed of Dedication

I the undersigned Marilyn A. Rappatta owner of the real estate shown and described here, do hereby lay off, plat, and subdivide said real estate in accordance with the within plat. This subdivision shall be known and designated as Shoup-Parsons/Rappatta Minor Subdivision. All street and alleys and public open spaces shown and not heretofore dedicated, are hereby dedicated to the public. Front building setback lines are hereby established as shown on this plat, between which lines and the property line of the streets, there shall be erected or maintained no building or structure. The strips of ground shown on this plat and marked "Easement", reserved for the use of the public utilities for the installation of water and sewer mains, poles, ducts, lines and wires and drainage facilities subject at all times to the proper authorities and to the easement herein reserved. No permanent or other structures are to be erected or maintained upon said strips of land, but owners of lots in this subdivision shall take their titles subject to the rights of the public utilities, and to the rights of the owners of other lots in this subdivision.

Marilyn Ann Rappatta
 Individually

Marilyn A. Rappatta Revocable Living Trust,
 By: Marilyn A. Rappatta, Trustee

Owner's Certification

This is to certify that the undersigned are the owners of land herein described on the annexed plat, and have caused the same to be surveyed and subdivided as indicated thereon, for the uses and purposes therein set forth, thereon indicated.
 Dated this _____ day of _____, 2021.

Marilyn Ann Rappatta
 Individually

Marilyn A. Rappatta Revocable Living Trust,
 By: Marilyn A. Rappatta, Trustee

Notary Public Certificate

State of Indiana)
) ss;
 County of Elkhart)

Before me, the undersigned a notary public in and for said County and State, personally came the above owners and acknowledged the execution of this plat.

Witness my hand and seal this _____ day of _____, 2021.

Notary Public _____

My Commission Expires _____

Resident of _____ County

Acceptance of Dedication

Be it resolved by the Board of Public Works and Safety, City of Goshen, Indiana that the dedications on this plat are hereby approved and accepted this _____ day of _____, 2021.

Jeremy P. Slutzman

Michael A. Landis

Mary Nichols

Barb Swartley

DeWayne Klouse

Plan Commission Staff Approval

Under the authority provided by Chapter 174, Acts of 1947, enacted by the General Assembly of the State of Indiana and Ordinance adopted by the Common Council of the City of Goshen, Indiana, this plat was given approval by the City of Goshen, as follows:

Approved by the Zoning Administrator on behalf of the City Planning Commission on this _____ day of _____, 2021.

Rhonda Yoder, Zoning Administrator

Auditor

Duly entered for taxation this _____ day of _____, 2021.

Patricia A. Pickens Auditor, Elkhart County, Indiana

Recorder

Received for record this _____ day of _____, 2021, at _____ and recorded in Plat Book _____ Page _____, Instrument No. _____.

Jennifer L. Doriot Recorder, Elkhart County, Indiana

 JONES PETRIE RAFINSKI		Elkhart, IN p. 574.293.7762
		South Bend, IN p. 574.232.4388
		Fort Wayne, IN p. 260.242.2532
CLIENT	Allan Kauffman 400 Marilyn Avenue Goshen, IN 46526	
OWNER	Marilyn A. Rappatta Rev. Living Trust 400 Marilyn Avenue Goshen, IN 46525	
© 2021 JPR - All Rights Reserved REF. DOC. NO.: 2019-12390		
SCALE:	1" = 20'	DRAWN BY: jsb
DATE:	06/17/2021	CHECKED BY: _____
PROJ.:	400 Marilyn Avenue	
DESC.:	Final Plat	
LOC.:	NE 1/4 Sec. 21-T36N-R6E, Elkhart Twp.	
		C-1621P



**Department of Community Development
CITY OF GOSHEN**

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

Phone (574) 537-3824 • Fax (574) 533-8626 • TDD (574) 534-3185
communitydevelopment@goshencity.com • www.goshenindiana.org

Memorandum

TO: Board of Public Works & Safety

FROM: Becky Hutsell, Redevelopment Director

RE: REQUEST FOR PERMISSION TO SOLICIT BIDS FOR THE CONSTRUCTION OF
A NEW PARKS DEPARTMENT MAINTENANCE FACILITY AT 610 E
PLYMOUTH AVENUE

DATE: November 15, 2021

The City has contracted with Abonmarche Consultants to design a new Parks Department Maintenance Facility at the city-owned property at 610 E Plymouth Avenue. Design has been coordinated with City staff over the past 10 months and full construction drawings are nearly complete. We are requesting the Board's approval to solicit bids for this work.

The project will be funded with a combination of TIF funding from the Redevelopment Commission as well as Civil City funds. The Engineer's Estimate for the project is roughly \$2 million dollars and it is anticipated that construction will begin in the spring.

REQUESTED MOTION: Grant permission to solicit bids for the construction of a new Parks Department Maintenance Facility at 610 East Plymouth Avenue



**Engineering Department
CITY OF GOSHEN**

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

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

MEMORANDUM

TO: Board of Public Works and Safety

FROM: Goshen Engineering

RE: **INDIANA AVENUE RECONSTRUCTION
PROJECT NO. 2021-0023**

DATE: November 12, 2021

The Engineering Department has identified the portion of Indiana Avenue between Pike St. and Chicago Ave. as a high priority for reconstruction due to poor road conditions and deteriorating utilities along the corridor. Indiana Avenue has also been identified as a location for a north-south connector in Bicycle Master Plan. The proposed project will look to update the aging infrastructure and add a multi-use path along the corridor.

With the proposed improvements, Engineering has identified this project as a good candidate for future Community Crossing Matching Grant funding opportunities. It is the intent to have all design and bidding documents prepared and ready. Engineering will then submit this project for the grant application at the next opportunity. Engineering has been working with Troyer Group to look at the improvements for this corridor and requests approval of the agreement in the amount of \$201,278.00 for survey, geotechnical investigation, and design-related services.

Thank you for your consideration of this request.

Requested Motion: Approve the agreement with Troyer Group for Professional Services for the Indiana Avenue Reconstruction in the amount of \$201,278.00

AGREEMENT

**Indiana Avenue Reconstruction
From Pike Street to Chicago Avenue**

THIS AGREEMENT is entered into on _____, 2021, which is the last signature date set forth below, by and between **Troyer Group, Inc.** (“Contractor”), whose mailing address is 3930 Edison Lakes Parkway, Mishawaka Indiana, 46545, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Contractor shall provide City the Design Services for the Reconstruction of Indiana Avenue from Pike Street to Chicago Avenue which services are more particularly described in Contractor’s August 27, 2021 proposal attached as Exhibit A (hereinafter referred to as “Duties”).

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

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) Contractor acknowledges that time is of the essence and that the timely performance of its Duties is an important element of this agreement. Contractor shall perform all Duties as expeditiously as is consistent with professional skill and care in the orderly progress of the Duties.
- (C) Contractor shall commence the Duties as soon as practical after receiving a notice to proceed from City.
- (D) Contractor shall complete all Duties on or before June 1, 2022.

Section 3. Compensation

- (A) City agrees to compensate Contractor the sum of \$ 201,278.00 for performing all Duties.
- (B) City agrees to compensate Contractor as follows for performing all Duties:
 - Geotechnical Lump Sum of \$18,235.00
 - Contingent Geotech Engineering (per day) Lump Sum of \$4,960.00
 - Pavement Design..... Lump Sum \$4,883.00

R/W Staking for Utilities.....	Lump Sum \$4,000.00
Field Survey.....	Hourly Not-to-Exceed \$26,000.00
Design, Plan Development & Rule 5.....	Hourly Not-to-Exceed \$122,800.00
SEPA Document Preparation	Hourly Not to Exceed \$7,100.00
Utility Coordination	Hourly Not to Exceed \$13,300.00

Section 4. Payment

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

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

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

Section 5. Ownership of Documents

All documents, records, applications, plans, drawings, specifications, reports, and other materials, regardless of the medium in which they are fixed, (collectively “Documents”) prepared by Contractor or Contractor’s employees, agents or subcontractors under this agreement, shall become and remain the property of and may be used by City. Contractor may retain a copy of the Documents for its records, including electronic files, as instruments of professional service. Nevertheless, the final documents prepared under this agreement shall become the property of City upon completion of the services and payment in full of all monies due to Contractor.

Section 6. Licensing/Certification Standards

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

Section 7. Independent Contractor

- (A) Contractor shall operate as a separate entity and independent contractor of the City of Goshen. Any employees, agents or subcontractors of Contractor shall be under the sole and exclusive direction and control of Contractor and shall not be considered employees, agents or subcontractors of City.

City shall not be responsible for injury, including death, to any persons or damages to any property arising out of the acts or omissions of Contractor and/or Contractor's employees, agents or subcontractors.

- (B) Contractor understands that City will not carry worker's compensation or any other insurance on Contractor and/or Contractor's employees or subcontractors. Prior to commencing work under this agreement, and if Contractor utilizes employees or subcontractors to perform work under this agreement, Contractor agrees to provide City a certificate(s) of insurance showing Contractor's and any subcontractor's compliance with workers' compensation statutory requirements.
- (C) Contractor is solely responsible for compliance with all federal, state and local laws regarding reporting of compensation earned and payment of taxes. City will not withhold federal, state or local income taxes or any other payroll taxes.

Section 8. Non-Discrimination

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

Section 9. Employment Eligibility Verification

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

Section 10. Contracting with Relatives

Pursuant to Indiana Code § 36-1-21, if the Contractor is a relative of a City of Goshen elected official or a business entity that is wholly or partially owned by a relative of a City of Goshen elected official, the

Contractor certifies that Contractor has notified both the City of Goshen elected official and the City of Goshen Legal Department of the relationship prior to entering into this agreement.

Section 11. No Investment Activities in Iran

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

Section 12. Indemnification

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

Section 13. Insurance

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

Section 14. Force Majeure

- (A) Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance under this contract is prevented

by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party and could not have been avoided by exercising reasonable diligence. Examples of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.

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

Section 15. Default

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

Section 16. Termination

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

- (B) City may terminate this agreement, in whole or in part, in the event of default by Contractor.
- (C) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

Section 17. Notice

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

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

Contractor: The Troyer Group, Inc.
3930 Edison Parkway
Mishawaka, IN 46545

Section 18. Subcontracting or Assignment

- (A) Except as provided in paragraph (B), Contractor shall not subcontract or assign any right or interest under the agreement, including the right to payment, without having prior written approval from City. Any attempt by Contractor to subcontract or assign any portion of the agreement shall not be construed to relieve Contractor from any responsibility to fulfill all contractual obligations.
- (B) Acknowledged that Contractor will subcontract with Earth Exploration Inc., and Territorial Engineering, LLC. Amendments

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

Section 19. Waiver of Rights

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

Section 20. Applicable Laws

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

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

Section 21. Miscellaneous

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

Section 22. Severability

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

Section 23. Binding Effect

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

Section 24. Entire Agreement

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

Section 25. Authority to Bind Contractor

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

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

Troyer Group, LLC

Jeremy P. Stutsman, Mayor

Michael A. Landis, Member

Mary Nichols, Member

DeWayne Riouse, Member

Barb Swartley, Member

Date Signed: _____

Printed: _____

Title: _____

Date Signed: _____



**Engineering Department
CITY OF GOSHEN**

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

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

MEMORANDUM

TO: Board of Public Works and Safety

FROM: Engineering

RE: **WILDEN AVENUE RECONSTRUCTION - DES. NO. 1400715
PERMISSION TO NEGOTIATE CE CONTRACT
PN: 2014-0035**

DATE: November 11, 2021

INDOT solicited Requests for Proposals for Construction Inspections Services for the Wilden Avenue Reconstruction from Rock Run Creek to Sixth Street. The proposals were due to the Engineering Department on October 15, 2021, and the City received four (4) proposals. Proposals were evaluated by a team comprised of Mike Landis, Jason Hoffman, and Josh Corwin. DLZ was selected as the highest scoring firm.

At this time, we are requesting the board's approval to proceed with contract negotiations with the selected firm and authorize Mayor Stutsman to execute the contract.

Thank you for your consideration of this request.

RFP Scoring Tabulation Sheet

Version 6-29-21 - LPA

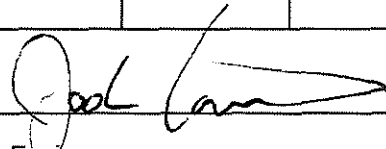
RFP Scoring Tabulation for: Wilden Avenue Reconstruction

Item Title: Construction Inspection

Des. No.: 1400715

	Member 1 <small>(enter name below)</small>	Member 2 <small>(enter name below)</small>	Member 3 <small>(enter name below)</small>	Member 4 <small>(enter name below)</small>	Member 5 <small>(enter name below)</small>		
	Mike	Jason	Josh				
Consultants <small>(list consultants below and enter each Members score under their name)</small>						Weighted Scores Total	Ranking
A&Z Engineering	85	105	50			240	2
DLZ	68.04	108.04	73.04			249.12	1
Lawson-Fisher Associates	53.64	123.64	53.64			230.92	4
Structurepoint	68.88	108.88	53.88			231.64	3
						0	
						0	
						0	
						0	
						0	
						0	

Employee in Responsible Charge Signature: _____



Title: City Engineer

Date: 11/2/2021



CITY OF GOSHEN LEGAL DEPARTMENT
Bodie J. Stegelmann, City Attorney

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

bodiestegelmann@goshencity.com • www.goshenindiana.org
Phone (574) 537-3854 • Fax (574) 537-3817 • TDD (574) 534-3185

To: Board of Public Works and Safety
From: Bodie J. Stegelmann
Date: November 10, 2021
Re: Government Agency Customer Agreement with Flock Group, Inc.

The City of Goshen Police Department seeks to enter into an agreement with Flock Group, Inc. for the provision of law enforcement video services. The annual cost of the services is Twenty Thousand Dollars (\$20,000.00), and the agreement is for a renewable One (1) year term, with options for the City to terminate the agreement at its discretion.

Motion Requested: Authorization for the City to enter and agreement with Flock Group, Inc. at an annual cost of Twenty Thousand Dollars (\$20,000.00).

**FLOCK GROUP INC.
SERVICES AGREEMENT
ORDER FORM**

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Agency**”) (each of Flock and Customer, a “**Party**”). This order form (“**Order Form**”) hereby incorporates and includes the “GOVERNMENT AGENCY AGREEMENT” attached (the “**Terms**”) which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

Agency: City of Goshen Police Department Legal Entity Name:	Contact Name: Shawn Turner
Address: 111 E Jefferson St Goshen, Indiana 46528	Phone: 574-370-8694 E-Mail: sturner@goshencity.com
Expected Payment Method:	Billing Contact: (if different than above)

Initial Term: 24 months Renewal Term: 24 months	Billing Term: Annual payment due Net 30 per terms and conditions
--	---

Name	Price	QTY	Subtotal
Flock Falcon Camera	\$2,500.00	8.00	\$20,000.00
Implementation Fee	\$0.00	8.00	\$0.00

(Includes one-time fees)

Year 1 Total \$20,000.00

Recurring Total: \$20,000.00

I have reviewed and agree to the Customer Implementation Guide on Schedule B at the end of this agreement.

By executing this Order Form, Agency represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

Agency: City of Goshen Police Department

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

GOVERNMENT AGENCY CUSTOMER AGREEMENT

This Government Agency Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the police department or government agency identified in the signature block below (“**Agency**”) (each a “**Party**,” and together, the “**Parties**”).

RECITALS

WHEREAS, Flock offers a software and hardware solution for automatic license plate detection through Flock’s technology platform (the “**Flock Service**”), and upon detection, the Flock Service creates images and recordings of suspect vehicles (“**Footage**”) and can provide notifications to Agency upon the instructions of Non-Agency End User (“**Notifications**”);

WHEREAS, Agency desires to purchase, use and/or have installed access to the Flock Service in order to create, view, search and archive Footage and receive Notifications, including those from non-Agency users of the Flock System (where there is an investigative purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

WHEREAS, because Footage is stored for no longer than (thirty) 30 days in compliance with Flock’s records retention policy, Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

WHEREAS, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the purpose of crime awareness and prevention by police departments and archiving for evidence gathering (“**Purpose**”).

AGREEMENT

NOW, THEREFORE, Flock and Agency agree as follows and further agree to incorporate the Recitals into this Agreement.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

- 1.1 “**Authorized End User**” shall mean any individual employees, agents, or contractors of Agency accessing or using the Flock Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.
- 1.2 “**Agency Data**” will mean the data, media and content provided by Agency through the Flock Services. For the avoidance of doubt, the Agency Data will include the Footage and geolocation information and environmental data collected by sensors built into the Units.
- 1.3 “**Documentation**” will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Flock Services which are provided by Flock to Agency in accordance with the terms of this Agreement.
- 1.4 “**Embedded Software**” will mean the software and/or firmware embedded or preinstalled on the Hardware.
- 1.5 “**Flock IP**” will mean the Flock Services, the Documentation, the Hardware, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.
- 1.6 “**Footage**” means still images and/or video captured by the Hardware in the course of and provided via the Flock Services.
- 1.7 “**Hardware**” shall mean the Flock cameras and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services. The term “**Hardware**” excludes the Embedded Software.
- 1.8 “**Implementation Fee(s)**” means the monetary fees associated with the Installation Services, as defined in Section 1.9 below.
- 1.9 “**Installation Services**” means the services provided by Flock regarding the installation, placements and configuration of the Hardware, pursuant to the Statement of Work attached hereto.
- 1.10 “**Flock Services or Services**” means the provision, via the Web Interface, of Flock’s software application for automatic license plate detection, searching image records, and sharing Footage.
- 1.11 “**Non-Agency End User**” means a Flock’s non-Agency customer that has elected to give Agency access to its data in the Flock system.
- 1.12 “**Non-Agency End User Data**” means the Footage, geolocation data, environmental data and/or notifications of a Non-Agency End User.
- 1.13 “**Unit(s)**” shall mean the Hardware together with the Embedded Software.

1.14 “**Usage Fee**” means the subscription fees to be paid by the Agency for ongoing access to Flock Services and Hardware.

1.15 “**Support Services**” shall mean On-site Services and Monitoring Services, as defined in Section 2.9 below.

1.16 “**Web Interface**” means the website(s) or application(s) through which Agency and its Authorized End Users can access the Flock Services in accordance with the terms of this Agreement.

2. FLOCK SERVICES AND SUPPORT

2.1 **Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Service Term (as defined in Section 6.1) and No-Fee Term, solely for the Authorized End Users. The Footage will be available for Agency’s designated administrator, listed on the Order Form, and any Authorized End Users to access via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account, and select a password and username (“**User ID**”). Flock will also provide Agency the Documentation to be used in accessing and using the Flock Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User’s use of the Flock Services and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, including without limitation using a third party to host the Web Interface which the Flock Services makes available to Agency and Authorized End Users **WARRANTIES PROVIDED BY SUCH THIRD PARTIES, ARE THE AGENCY’S SOLE AND EXCLUSIVE REMEDY AND FLOCK’S SOLE AND EXCLUSIVE LIABILITY WITH REGARD TO SUCH THIRD-PARTY SERVICES, INCLUDING WITHOUT LIMITATION HOSTING THE WEB INTERFACE.** To the extent practicable, Agency agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Agency from time to time.

2.2 **Embedded Software License.** Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware by Flock; in each case, solely as necessary for Agency to use the Flock Services.

2.3 **Documentation License.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Service Term in connection with its use of the Flock Services as contemplated herein, and under Section 2.4, below.

2.4 **Usage Restrictions.** The purpose for usage of the Hardware, Documentation, Services, support, and the Flock IP is solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency and not for tracking activities that the system is not designed to capture (“**Permitted Purpose**”). Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Agency acknowledges that nothing in this Agreement will be construed to grant Agency any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Flock Services or Flock IP; (vi) use the Services, support, Hardware, Documentation or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Agency’s rights under Sections 2.1, 2.2, or 2.3.

2.5 **Retained Rights; Ownership.** As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock’s sole discretion. There are no implied rights.

2.6 **Suspension.** Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency’s and any Authorized End User’s access to any portion or all of the Flock IP if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Agency’s or any Authorized End User’s use of the Flock Service disrupts or poses a security risk to the Flock Service or any other customer or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock’s provision of the Flock Services to Agency or any Authorized End User is prohibited by applicable law; (e) any vendor of Flock has suspended or terminated Flock’s access to or use of any third party services or products required to enable Agency to access the Flock IP; or (f) Agency has violated any term of this provision, including, but not limited to, utilizing the Flock Services for anything other than the Permitted Purpose (each such suspension, in accordance with this Section 2.6, a “**Service Suspension**”). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Agency (including notices sent to Flock’s registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Flock Service as soon as reasonably possible

after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Agency or any Authorized End User may incur as a result of a Service Suspension. To the extent that the Service Suspension is not caused by Agency's direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of any suspension (for any continuous suspension lasting at least one full day).

2.7 Installation Services.

2.7.1 Designated Locations. Prior to performing the physical installation of the Units, Flock shall advise Agency on the location and positioning of the Units for optimal license plate image capture, as conditions and location allow. Flock and Agency must mutually agree on the location (mounting site or pole), position and angle of the Units (each Unit location so designated by Agency, a "**Designated Location**"). Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency's delay in identifying the choices for the Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready. Designated Locations that are suggested by Flock and accepted by Agency without alteration will be known as Flock Designated Locations. After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Agency, any subsequent changes to the deployment plan ("**Reinstalls**") driven by Agency's request will incur a charge for Flock's then-current list price for Reinstalls, as listed in the then-current Reinstall Policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, removing foliage, camera replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like.

2.7.2 Agency's Installation Obligations. Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. The "**Agency Installation Obligations**" include, to the extent required by the deployment plan, but are not limited to electrical work to provide a reliable source of 120V AC power that follow Flock guidelines and comply with local regulations if adequate solar exposure is not available. Agency is solely responsible for (i) any permits or associated costs, and managing the permitting process; (ii) any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use, or (iii) any other services performed in connection with installation of the Hardware. Flock will provide options to supply power at each Designated Location. If Agency refuses alternative power supply options, Agency agrees and understands that Agency will not be subject to any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar. Flock will make all reasonable efforts within their control to minimize suspension of Flock Services. Any fees payable to Flock exclude the foregoing. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation.

2.7.3 Flock's Installation Obligations. The Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are selected by Agency. Following the initial installation of the Hardware and any subsequent Reinstalls or maintenance operations, Flock's obligation to perform installation work shall cease; however, Flock will continue to monitor the performance of the Units for the length of the Term and will receive access to the Footage for a period of three (3) business days after the initial installation in order to monitor performance and provide any necessary maintenance solely as a measure of quality control. Agency can opt out of Flock's access to Footage after the initial installation which would waive Flock's responsibility to ensure such action was successful. Agency understands and agrees that the Flock Services will not function without the Hardware. Labor may be provided by Flock or a third party.

2.7.4 Security Interest. The Hardware shall remain the personal property of Flock and will be removed upon the termination or expiration of this Agreement. Agency agrees to perform all acts which may be necessary to assure the retention of title of the Hardware by Flock. Should Agency default in any payment for the Flock Services or any part thereof or offer to sell or auction the Hardware, then Agency authorizes and empowers Flock to remove the Hardware or any part thereof. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right.

2.8 Hazardous Conditions. Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless. Any additional expenses incurred by Flock as a result of the discovery or presence of hazardous material or hazardous conditions shall be the responsibility of Agency and shall be paid promptly upon billing.

2.9 Support Services. Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Subject to the terms hereof, Flock will provide Agency with reasonable technical and on-site support and maintenance services ("**On-Site Services**") in-person or by email at hello@flocksafety.com. Flock will use commercially reasonable efforts to respond to requests for support.

2.10 **Special Terms.** From time to time, Flock may offer certain “Special Terms” related to guarantees, service and support which are indicated in the proposal and on the order form and will become part of this Agreement. To the extent that any terms of this agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

2.11 **Changes to Platform.** Flock Safety may, in its sole discretion, make any changes to any system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock Safety’s products or services to its customers, (b) the competitive strength of, or market for, Flock Safety’s products or services, (c) such platform or system’s cost efficiency or performance, or (ii) to comply with applicable law.

3. AGENCY RESTRICTIONS AND RESPONSIBILITIES

3.1 **Agency Obligations.** Upon creation of a User ID, Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person’s name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency will not share its account or password with anyone, and must protect the security of its account and password. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

3.2 **Agency Representations and Warranties.** Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content and retention thereof. To the extent allowed by the governing law of the state mentioned in Section 10.6, or if no state is mentioned in Section 10.6, by the law of the State of Indiana, Agency hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses, including without limitation costs and attorneys’ fees, in connection with any claim or action that arises from an alleged violation of the foregoing, Agency’s Installation Obligations, or otherwise from Agency’s use of the Services, Hardware and any Embedded Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Agency’s use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

4. CONFIDENTIALITY; AGENCY DATA; NON-AGENCY DATA

4.1 **Confidentiality.** Each Party (the “*Receiving Party*”) understands that the other Party (the “*Disclosing Party*”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “*Proprietary Information*” of the Disclosing Party). Proprietary Information of Flock is non-public information including but not limited to features, functionality, designs, user interfaces, trade secrets, intellectual property, business plans, marketing plans, works of authorship, hardware, customer lists and requirements, and performance of the Flock Services. Proprietary Information of Agency includes non-public Agency Data, Non-Agency End User Data, and data provided by Agency or a Non-Agency End User to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services. The Receiving Party shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Proprietary Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Proprietary Information and the parties’ respective rights therein, at all times exercising at least a reasonable level of care. Each party agrees to restrict access to the Proprietary Information of the other party to those employees or agents who require access in order to perform hereunder. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock’s use of the Proprietary Information may include processing the Proprietary Information to send Agency Notifications or alerts, such as when a car exits Agency’s neighborhood, or to analyze the data collected to identify motion or other events.

The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by Receiving Party prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to Receiving Party without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party.

Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any subpoena, summons, judicial order or other judicial or governmental process, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to obtain a protective order or otherwise oppose the disclosure. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Having received notice prior to data being deleted, Flock may store Footage in order to comply with a valid court order but such retained Footage will not be retrievable without a valid court order.

4.2 Agency and Non-Agency End User Data. As between Flock and Agency, all right, title and interest in the Agency Data and Non-Agency End User Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Agency Data and Non-Agency End User Data and perform all acts with respect to the Agency Data and Non-Agency End User Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.9 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Agency Data and Non-Agency End User Data as a part of the Aggregated Data (as defined in Section 4.4 below). As between Flock and Agency, Agency is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Agency Data and Non-Agency End User Data. As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion.

4.3 Feedback. If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

4.4 Aggregated Data. Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data that does not refer to or identify Agency or any individuals or de-identifies such data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Agency Data and data derived therefrom). For the sake of clarity, Aggregated Data is compiled anonymous data which has been stripped of any personal identifying information. Agency acknowledges that Flock will be compiling anonymized and/or aggregated data based on Agency Data and Non-Agency End User Data input into the Services (the “*Aggregated Data*”). Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to (i) use and distribute such Aggregated Data to improve and enhance the Services and for other marketing, development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts, and (ii) disclose the Agency Data and Non-Agency End User Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein.

5. PAYMENT OF FEES

5.1 Fees. Agency will pay Flock the first Usage Fee, the Implementation Fee and any fee for Hardware (as described on the Order Form, together the “*Initial Fees*”) as set forth on the Order Form on or before the 7th day following the Effective Date of this Agreement. Flock is not obligated to commence the Installation Services unless and until the Initial Fees have been made and shall have no liability resulting from any delay related thereto. Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each payment period. All payments will be made by either ACH, check, or credit card. The first month of Flock Services corresponding to the first Usage Fee payment will begin upon the first installation of Hardware. For Agencies who purchase ten (10) or more Units, in the event that only a portion of the Units are installed at the first installation with additional Units to be installed at a later date, Usage Fees shall be calculated on a pro rata basis corresponding to the then-installed Units. Agencies will be invoiced for the additional Units immediately upon installation of the remaining Units.

5.2 Changes to Fees. Flock reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days’ notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email). Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock’s customer support department. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

5.3 Invoicing, Late Fees; Taxes. Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection, and may result in immediate termination of Service. To the extent allowable by law or Agency regulations pertaining to tax-exempt entities, Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock’s net income.

5.4 No-Fee Term Access. Subject to Flock’s record retention policy, Flock offers complimentary access to the Flock System for thirty (30) days (“*No Fee Term*”) to Agency when Non-Agency End Users intentionally prescribe access or judicial orders mandate access to Non-Agency End User Data. Agency agrees to pay the Initial Fees and Usage Fees according to Section 5.1 and will receive Flock’s complimentary access to the Flock Service and Footage for no additional cost. Should such access cause Flock to incur internal or out-of-pocket costs that are solely the result of the access, Flock reserves the right to invoice these costs to Agency under Section 5.3 and Agency agrees to pay them. The complimentary No-Fee Term access to Flock Services shall survive the expiration or termination of this Agreement for five (5) years unless Agency provides written notice of the intent to cancel access to Flock Services.

6. TERM AND TERMINATION

6.1 **Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “*Initial Term*”). *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms for the greater of one year and the length set forth on the Order Form* (each, a “*Renewal Term*”, and together with the Initial Term, the “*Service Term*”) *unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

6.2 **Agency Satisfaction Guarantee.** At any time during the agreed upon term, an Agency not fully satisfied with the service or solution may self-elect to terminate their contract. Self-elected termination will result in a one-time fee of actual cost of removal and labor, said cost not to exceed \$500 per camera. Upon self-elected termination, a refund will be provided, prorated for any fees paid for the remaining Term length set forth previously. Self-termination of the contract by the Agency will be effective immediately. Flock will remove all equipment at Flock’s own convenience, within a commercially reasonable period upon termination. Advance notice will be provided.

6.3 **Termination.** In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock’s material breach, Flock will refund to Agency a pro-rata portion of the pre-paid Fees for Services not received due to such termination.

6.4 **Effect of Termination.** Upon any termination of the Service Term, Flock will collect all Units, delete all Agency Data, terminate Agency’s right to access or use any Services, and all licenses granted by Flock hereunder will immediately cease. Agency shall ensure that Flock is granted access to collect all Units and shall ensure that Flock personnel does not encounter Hazardous Conditions in the collection of such units. Upon termination of this Agreement, Agency will immediately cease all use of Flock Services.

6.5 **No-Fee Term.** The initial No-Fee Term will extend, after entering into this Agreement, for thirty (30) days from the date a Non-Agency End User grants access to their Footage and/or Notifications. In expectation of repeated non-continuous No-Fee Terms, Flock may in its sole discretion leave access open for Agency’s Authorized End Users despite there not being any current Non-Agency End User authorizations. Such access and successive No-Fee Terms are deemed to be part of the No-Fee Term. Flock, in its sole discretion, can determine not to provide additional No-Fee Terms or can impose a price per No-Fee Term upon thirty (30) days’ notice. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon 30 days’ notice.

6.6 **Survival.** The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 5.4, 6.5, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1 and 10.5.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1 **Remedy.** Upon a malfunction or failure of Hardware or Embedded Software (a “**Defect**”), Agency must first make commercially reasonable efforts to address the problem by contacting Flock’s technical support as described in Section 2.9 above. If such efforts do not correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit provided that such inspection and test shall occur within seventy-two (72) hours after Agency notifies the Flock of a Defect. In the event of a Defect, Flock will repair or replace the defective Unit at no additional cost. In the event that a Unit is lost, stolen, or damaged, Flock agrees to replace the Unit at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Units, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen units and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted.

7.2 **Exclusions.** Flock will not provide the remedy described in Section 7.1 above if any of the following exclusions apply: (a) misuse of the Hardware or Embedded Software in any manner, including operation of the Hardware or Embedded Software in any way that does not strictly comply with any applicable specifications, documentation, or other restrictions on use provided by Flock; (b) damage, alteration, or modification of the Hardware or Embedded Software in any way; or (c) combination of the Hardware or Embedded Software with software, hardware or other technology that was not expressly authorized by Flock.

7.3 **Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Upon completion of any installation or repair, Flock shall clean and leave the area in good condition. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock’s reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE HARDWARE AND/OR EMBEDDED SOFTWARE. THE FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND INSTALLATION SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF INDIANA.

7.5 Insurance. Flock and Agency will each maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of their business risk. Certificates of Insurance will be provided upon request.

7.6 Force Majeure. Flock Safety is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of Agency or any Authorized End User.

8. LIMITATION OF LIABILITY AND INDEMNITY

8.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF AN EMERGENCY, AGENCY SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF INDIANA.

8.2 Additional No-Fee Term Requirements. IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.5 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Except for Flock's willful acts, Agency agrees to pay for Flock's attorneys' fees to defend Flock for any alleged or actual claims arising out of or in any way related to the No-Fee Term.

8.3 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties. Agency will not pursue any claims or actions against Flock's suppliers.

8.4 Indemnity. Agency hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of Section 3.2, a breach of this Agreement, Agency's Installation Obligations, Agency's sharing of any data in connection with the Flock system, Flock employees or agent or Non-Agency End Users, or otherwise from Agency's use of the Services, Hardware and any Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of Section 3.2 or this Agreement.

9. RECORD RETENTION

9.1 Data Preservation. The Agency agrees to store Agency Data and Non-Agency End User Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Agency's consideration for paid access and no-fee access to the Flock System, to the extent that Flock is required by local, state or federal law to store the Agency Data or the Non-Agency End User Data, Agency agrees to preserve and securely store this data on Flock's behalf so that Flock can delete the data from its servers and, should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Agency upon demand.

10. MISCELLANEOUS

10.1 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.2 Assignment. This Agreement is not assignable, transferable or sublicensable by Agency except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement without consent.

10.3 Entire Agreement. This Agreement, together with the Order Form(s), the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>), and Deployment Plan(s), are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected.

10.4 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever.

10.5 Costs and Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

10.6 Governing Law; Venue. This Agreement shall be governed by the laws of the State of Indiana without regard to its conflict of laws provisions. To the extent that the arbitration language below does not apply, the federal and state courts sitting in the State of Indiana will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement. The parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement. Any dispute arising out of, in connection with, or in relation to this agreement or the making of validity thereof or its interpretation or any breach thereof shall be determined and settled by arbitration in Indiana by a sole arbitrator pursuant to the rules and regulations then obtaining of the American Arbitration Association and any award rendered therein shall be final and conclusive upon the parties, and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The service of any notice, process, motion or other document in connection with an arbitration award under this agreement or for the enforcement of an arbitration award hereunder may be effectuated by either personal service or by certified or registered mail to the respective addresses provided herein.

10.7 Publicity. Unless otherwise indicated on the Order Form, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.

10.8 Export. Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10.9 Headings. The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated Sections.

10.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.11 Authority. Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the organizations and individuals they are representing.

10.12 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

flock safety

Let's defeat crime together.™



CUSTOMER IMPLEMENTATION GUIDE

LAW ENFORCEMENT

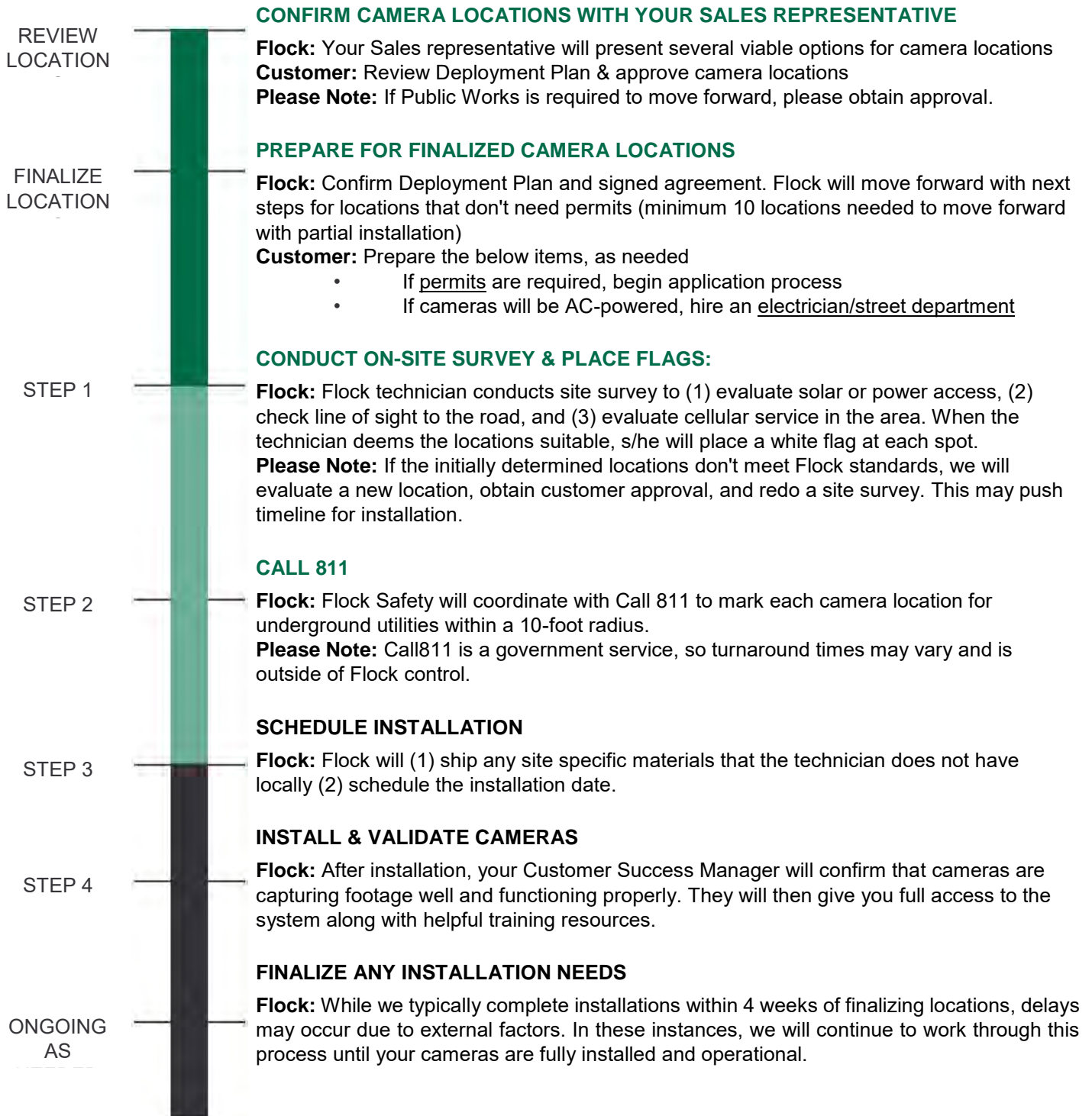
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IMPLEMENTATION TIMELINE


This timeline provides general guidance and understanding of your installation process. While we typically complete installations 6-8 weeks after locations have been finalized, delays can occur as noted in the timeline below:



IMPLEMENTATION TEAM

FLOCK TEAM	HOW WILL THEY SUPPORT YOU
 <p data-bbox="293 835 553 905">Customer Success Manager</p>	<p data-bbox="716 506 1333 569">Your Customer Success Manager is your strategic partner for your lifetime as a Flock customer.</p> <p data-bbox="716 600 1349 751">They will be your guide through the installation process. After install, they will help you understand how best to leverage the Flock Safety tool to solve crime. You should reach out to them when you want to discuss:</p> <ul data-bbox="813 762 1325 947" style="list-style-type: none"> • Training • Benefits of features • Best practices for getting relevant data • Opportunities to expand the security network in your area • Feedback on your partnership with Flock
 <p data-bbox="277 1318 578 1350">Flock Safety Support</p>	<p data-bbox="716 1010 1365 1129">The Flock Safety Support team is committed to answering all your day-to-day questions as quickly as possible. To get in touch with support, simply email support@flocksafety.com. Support can help you:</p> <ul data-bbox="813 1140 1227 1350" style="list-style-type: none"> • Request camera maintenance • Troubleshoot online platform • Contract / Billing questions • Update account information • Camera Sharing questions • Quick “How to” questions in your Flock Account
 <p data-bbox="253 1734 602 1803">Product Implementation Specialist</p>	<p data-bbox="716 1419 1292 1482">Your Product Implementation Specialist is your technical product expert.</p> <p data-bbox="716 1482 1308 1602">They will help translate your goal for using Flock Safety cameras into a technical plan that can be executed and enable you to solve crime. Your specialist will work with you to:</p> <ul data-bbox="797 1612 1373 1860" style="list-style-type: none"> • Review the cameras in your deployment • Ensure that the deployment plan is set up for success from a technological standpoint in addition to meeting your goals for the product • If any of your locations require permits, a member of the Product Implementation team will assist you in packaging your application(s).

IMPLEMENTATION TEAM

 <p>Field Operations Team</p>	<p>The Field Operations team is responsible for the physical installation and maintenance of cameras and associated equipment provided by Flock. This includes a large team of technicians, schedulers, and many others involved in ensuring the delivery of your product.</p> <p>They take the technical plan you finalized with Product Implementation and work closely with other teams at Flock to make sure that your cameras are installed quickly and safely, and in a way that maximizes the opportunity to solve crime at a specific location.</p> <p>*Note*: For all Installation questions or concerns, please always direct them to your Customer Success Manager and not to the technician.</p>
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Please Note: On some occasions, third parties outside of Flock Safety may be (or need to be) involved in your implementation.

OUTSIDE PARTY	WHEN THEY MAY BE INVOLVED
<p>Electrician/Street Department</p>	<p>If your Flock cameras need to be AC powered, you (customer) are responsible for providing an electrician to ensure power connectivity</p>
<p>Public Works (LE)</p>	<p>To weigh in on use of public Right of Ways or property</p>
<p>Department of Transportation (DOT), City, or County Agencies</p>	<p>If installation in your area requires permitting</p>

THINGS TO CONSIDER WHEN PICKING LOCATIONS

Falcon Cameras

- Use Cases

- Flock LPRs are designed to capture images of rear license plates, aimed in the direction of traffic.
- Flock LPRs are not designed to capture pedestrians, sidewalks, dumpsters, gates, other areas of non-vehicle traffic, intersections

- Placement

- They capture vehicles driving away from an intersection.
- They cannot point into the middle of an intersection.
- They should be placed after the intersection, to prevent stop and go motion activation, or "stop and go" traffic.

- Mounting

- They can be mounted on existing utility, light, or traffic signal poles, or 12 foot Flock poles. ****NOTE**** Permitting (or permission from pole owner) may be required in order to use existing infrastructure or install in specific areas, depending on local regulations & policies.
- They should be mounted one per pole*. If using AC power, they can be mounted 2 per pole.

*Cameras need sufficient power. Since a solar panel is required per camera, it can prevent sufficient solar power if 2 cameras and 2 solar panels were on a single pole (by blocking visibility). Therefore if relying on solar power, only one camera can be installed per pole.

- They can be powered with solar panels or direct wire-in AC Power (no outlets). ****NOTE**** Flock does not provide Electrical services. The agency or community must work with an electrician to wire the cameras once installed. Electrician services should be completed within 2 days of installation to prevent the camera from dying.

- They will require adequate cellular service using AT&T or T-Mobile to be able to process & send images

- Any Flock equipment mounted over 14 feet or on a horizontal beam will require a bucket truck. If mounting in this way:

- Flock will request use of a bucket truck through the customer or Public Works
- If a bucket truck is not available through the customer, Flock will have to procure one.

****Note**** This will lead to delays on install & any subsequent maintenance visits based on bucket truck availability

- Flock will likely require traffic control assistance provided by customer to install or provide maintenance with a bucket truck



THINGS TO CONSIDER WHEN Solar Panels

- Solar panels need unobstructed southern-facing views



CUSTOMER RESPONSIBILITIES: AC-POWERED CAMS

In the event your Flock cameras need to be AC-powered, the customer is responsible for acquiring an electrician and ensuring they connect the camera to power. See *steps 2 and 6 below*.



Don't Let Access to Solar Limit Your Power Needs

The Flock Safety license plate reading camera system can leverage AC power to help your community solve crime no matter the location.



Easy to Use Install Power Kit

Work with Local Electricians

Efficient Quote & Installation Process

How to Get Started with a Powered Install

- 1. Create a Deployment Plan**
Work with Flock to select the best location(s) for your cameras and power sources.
- 2. Acquire an Electrical Quote**
Contact an electrician to receive a quote to run 120volt AC power to the camera.
- 3. Sign Flock Safety Agreement**
Sign the Flock Safety purchase order to begin the installation of the cameras.
- 4. Conduct Site Survey**
Flock will mark camera locations, locate underground utilities and mark if present.
- 5. Install Camera**
Flock will install the camera and AC power kit at the specified camera location.
- 6. Connect Camera to Power**
Notify the electrician that the camera is ready for the power connection installation.

flock safety | www.flocksafety.com | 866-901-1781

Visit flocksafety.com/power-install for the full plan, FAQs & to get started!



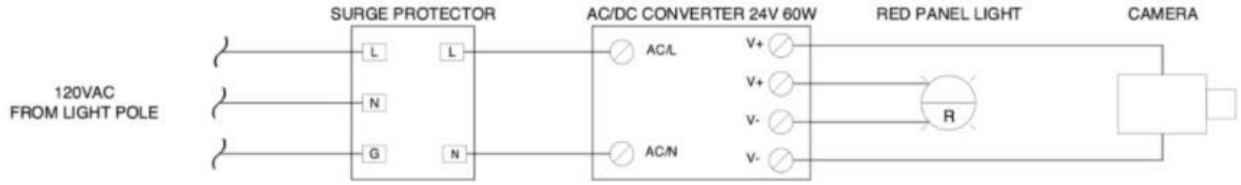
ELECTRICIAN HANDOUT

Electrician Installation Steps

1. Run AC cable and conduit to the box according to NEC Article 300 and any applicable local codes. The gland accepts ½" conduit
2. Open the box using hinges
3. Connect AC Mains per wiring diagram below:
 - a. Connect AC Neutral wire to the Surge Protector white Neutral wire using the open position on the lever nut.
 - b. Connect AC Line wire to the Surge Protector black Line wire using the open position on the lever nut.
 - c. Connect AC Ground wire to the Surge Protector green ground wire using the open position on the lever nut.
4. Verify that both the RED LED is lit on the front of the box
5. Close box and zip tie the box shut with the provided zip tie
6. While still on site, call Flock who will remotely verify that power is working correctly:
 - Southeast Region** - (678) 562-8766
 - West-Region** - (804) 607-9213
 - Central & NE Region** - (470) 868-4027



ELECTRICIAN HANDOUT



FAQS ABOUT AC-POWERED FLOCK CAMERAS

What voltage is supported?

The AC kit is designed to work with 120VAC infrastructure by default. A 240VAC version is available on request.

How much power does this consume?

Peak current draw is 1.5 A at 120VAC. Average power draw is roughly 30W in high traffic conditions, but may be lower when less vehicles are present.

Who is responsible for contracting to install?

The customer is responsible for contracting an electrician. We can help answer questions, but the customer is responsible for identifying and contracting an electrician.

Who is responsible for maintenance?

Flock will handle all maintenance related to the camera and power equipment installed by Flock. However, any problems with the electrical supply are the responsibility of the customer. The AC junction box has two lights to indicate the presence of power and make it easy for quick diagnosis if there is a problem related to the AC power source.

In the event the camera indicates to Flock that there is a power supply problem, Flock will notify the customer and request that the customer verify the lights on the AC junction box. If the AC Source light is illuminated, Flock will send a technician to investigate. If the AC source light is not illuminated the customer should check any GFCI's or breakers in the supply circuit or call the electrician who installed the power supply.



How much does it cost?

Work required to bring AC power to each location will be different, so exact pricing is not possible. The primary driver of cost is the distance from AC power source to the intended camera location.

What information do I need to provide my electrician?

The Flock deployment plan and these work instructions should be sufficient to secure a quote. It will be helpful if you know the location of existing power infrastructure before creating the deployment plan.

Can you plug into my existing power outlet?

The Flock AC power adapter does not use a standard outlet plug, but must be directly wired into the power mains. While using outlet plugs may be convenient, they can easily be unplugged presenting a tampering risk to this critical safety infrastructure. If an outlet is close to the camera, the electrician can route power directly to the camera with a direct wire-in connection.

How long does this process typically take?

The installation process typically takes 6-8 weeks. In order to accelerate the process, be sure to have the electrician perform his work shortly after the Flock technician finishes installing the camera.

What kind of electrician should I look for?

Any licensed electrician should be able to perform this work, though we have found that those who advertise working with landscape lighting are most suited for this work.

What happens if the electrician damages the equipment?

The customer is responsible for contracting the electrician. Any liability associated with this work would be assumed by the customer. If any future work is required at this site due to the electrical infrastructure or the work performed by the electrician would be the responsibility of the customer.

When should the electrician perform his work?

Once Flock installs the camera, you will receive an email alert letting you know that this has been completed. After this, you will need to schedule the electrician to route power to the pole.

What if my electrician has questions about Flock's AC Kit?

You should share the [AC-Power Kit Details](#) packet with the electrician if they have questions.

What if the AC power is on a timer?

Sometimes the AC power will be on a timer (like used for exterior lighting). Flock requires that the AC power provided to the camera be constant. The source that the electrician uses must not be on a timing circuit.



INSTALLATION SERVICE BRIEF

Below outlines the statement of work for your Flock Camera Installation:

WHAT IS COVERED BY FLOCK	WHAT IS <i>NOT</i> COVERED BY FLOCK	SPECIAL NOTE
Flock Cameras & Online Platform	Traffic Control and any associated costs	
Mounting Poles	Electrician & ongoing electrical cost	
AC Power Kit (as needed)	Engineering Drawings	
Solar Panels (as needed)	Relocation Fees	<i>exc. changes during initial installation</i>
Site Surveys and Call 811 Scheduling	Contractor licensing fees	
Installation Labor Costs	Permit application processing fees	
Customer Support / Training	Specialist mounting equipment	<i>Including, but not limited to, *MASH poles or adapters</i>
Cellular Data Coverage	Bucket trucks	
Maintenance Fees (review Fees Sheet for more details)	Loss, theft, damage to Flock equipment	
Data storage for 30 days	Camera downtime due to power outage	<i>Only applicable for AC-powered cameras</i>

*MASH poles: Manual for Assessing Safety Hardware (MASH) presents uniform guidelines for crash testing permanent and temporary highway safety features and recommends evaluation criteria to assess test results



PERMITTING:

PRE-INSTALL QUESTIONNAIRE

1. Timeline

- In Flock Safety's experience, in-depth permitting requirements can **add 2+ months to the installation timeline**. Law enforcement agencies and city governments can work with their local Public Works or Department of Transportation offices directly to help expedite the process. When Flock Safety customers manage the permitting processes, results tend to come more quickly.
- Is your agency able to own the permitting process with Flock Safety's assistance?

2. Right of Way

- Will any of the Flock Safety cameras be installed on city, state or power company owned poles or in city, county, or state Right of Way (RoW)?
 - What is the RoW buffer?
 - Will additional permits or written permission be required from third-party entities (such as DOT, power company, public works, etc)?
- Will any cameras be installed on city-owned traffic signal poles (vertical mass)?
 - If yes, please provide heights/photos to determine if a bucket truck is needed for the installation.
Note: If height is greater than 15 feet tall, a bucket truck is **required**.

3. AC Power vs. Solar

- If AC powered, is there a 120V power source available, and is there access to an electrician who can connect the existing wire to the Flock Safety powered installation kit?
- If solar powered, consider the size of the solar panel and potential to impact



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visibility of DOT signs/signals:

- Single Panel: 21.25" x 14" x 2" (Length x Width x Depth)
- Double Panel: 21.25" x 28" x 2" (LxWxD)



4. Traffic Control & Installation Methods

- **If a bucket truck is required**, this typically necessitates a full lane to be blocked in the direction of travel. **Can you provide a patrol car escort, or will full traffic control be required?**
 - Note: If traffic control is required, you may incur additional costs due to city/state requirements; Fees will be determined by quotes received.
- **If full traffic control required (cones, arrowboard)**
 - Will standard plans suffice, or are custom plans needed? Custom plans can double the cost, while standard plans can be pulled from the Manual of Uniform Traffic Control Devices ([MUTCD](#)).
 - Will a non-sealed copy of the traffic plan suffice? Or does the traffic plan need to be sealed and/or submitted by a professional engineer?
 - Are there state-specific special versions/variances that must be followed?
- **If a bucket truck is *not* required**, the shoulder or sidewalk should suffice and enable Flock Safety to proceed without traffic control systems in place.
 - Note: In some states (i.e. California), sidewalks may require signage. If signage is mandatory, Will your Public Works department be able to assist?

5. Paperwork & Required Forms

- Flock Safety will need copies of paperwork to complete prior to proceeding (ex. business license applications, encroachment permit applications). We can save critical time by gathering these documents upfront. We appreciate your assistance in procuring these.

6. Contacts

- If Flock Safety will need to interface directly with the departments, please share



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the contact information of the following departments:

- Permitting
- Public Works
- Traffic Department



FEE SCHEDULING

*Fee Schedule

After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Customer, any subsequent changes to the deployment plan (“Reinstalls”) driven by a Customer’s request will incur a fee per the table below.

All fees are per reinstall or required visit (in the case that a reinstall is attempted but not completed) and include labor and materials. If you have any questions, please email support@flocksafety.com.

*Below fee schedule is subject to change;

REINSTALL OR JOB TYPE	REINSTALL FEE
Camera or pole relocation	\$150
Camera replacement as result of vandalism, theft, or third party damage	\$500
Pole replacement as a result of vandalism, theft, or third party damage	\$150
Pole upgrade	\$300
Angle Adjustment - Customer request	\$125
Installation of additional Flock Safety sign (including cost of sign)	\$100
Convert camera to use of electrical outlet (excluding cost of electrical work)	\$150
Other site visit/technician visit that does not result in a reinstall being required	\$150

HELP CENTER

Our Help Center is filled with tons of resources to help you navigate through the online platform. Below you will find some common questions and their relevant help article:

How do I search camera footage? How do I add a user?

How do I add a vehicle to my own Hot List?

How do I enable browser notifications for Hot List alerts? How do I get text alerts for Hot List?

How do I request camera access from other nearby agencies?

How do I use the National Lookup to search for a plate?

(National Lookup - network of law enforcement agencies that have opted to allow their Flock cameras to be used for searches)

How do I reset my / another user's password?

CUSTOMER SUPPORT

You can reach our customer support team anytime by emailing support@flocksafety.com.

They can help answer any "How-To" questions you may have.





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**Legal Department
CITY OF GOSHEN**

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

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

November 15, 2021

To: Board of Public Works and Safety
From: Brandy L. Henderson
Subject: Agreement with Roberts Environmental Services LLC

Roberts Environmental Services LLC has been providing waste characterization sampling, excavation oversight, and excavation confirmation of sampling at the City's North Water Plant at 308 North 5th Street (State Cleanup ID #0000563).

Roberts Environmental Services LLC has completed quarterly sampling at the Site through the September 2020 sampling event, at which time a closure evaluation was requested from IDEM in October 2020. IDEM responded via email on October 22, 2021 requesting one (1) additional sampling event before closure.

The services included in this Agreement shall be completed within four (4) weeks after the closure report is approved by IDEM (weather permitting) and the total cost for all work shall not exceed \$12,400.00.

Suggested motion: Move to enter into an agreement with Roberts Environmental Services LLC to provide ground water sampling, reporting and well abandonment at a cost not to exceed \$12,400.00 with all services to be completed within four (4) after the closure report is approved by IDEM (weather permitting).

AGREEMENT

2021 Quarterly Ground Water Sampling and Well Closure

THIS AGREEMENT is entered into on this ____ day of _____, 2021, between Roberts Environmental Services, LLC, hereinafter referred to as "Consultant", and the City of Goshen by its Board of Public Works and Safety, hereinafter referred to as "City".

WHEREAS, Consultant has been providing waste characterization sampling, excavation oversight, and excavation confirmation of sampling at the City's North Water Plant at 308 North 5th Street (State Cleanup ID #0000563). (June 13, 2017 Agreement, June 12, 2018 Agreement Amendment, June 11, 2019 Agreement Amendment #2)

WHEREAS, Consultant has completed quarterly sampling at the Site through the September 2020 sampling event, at which time a closure evaluation was requested from IDEM in October 2020. IDEM responded via email on October 22, 2021 requesting one (1) additional sampling event before closure.

WHEREAS, Consultant's proposed activities are limited because the ground water monitoring will only focus on specific sampling locations and because the proposed analytical parameters will be limited to specific potential contaminants of concern (COCs) and/or select indicator contaminants. The primary COCs at the Site are Polynuclear aromatic hydrocarbons (PAHs).

WHEREAS, Consultant's proposal dated November 2, 2021 is incorporated into this agreement and attached hereto at *Exhibit A*.

NOW THEREFORE, in consideration of the terms, conditions and mutual covenants contained in this Agreement, the parties agree as follows:

SCOPE OF SERVICES

Consultant's services under this Agreement shall consist of one (1) final closure event monitoring well sampling at the six (6) on-Site monitoring wells located at City of Goshen's North Water Plant, 308 N. 5th Street and provide reporting on the data, all in accordance with IDEM's requirements.

The low-flow sampling and analysis activities will be consistent with previous quarterly sampling events.

The ground water samples will be submitted for analysis of PAHs using U.S. EPA Method 8270-SIM (low-level analyses to meet IDEM SLs).

Per IDEM guidelines, one (1) field duplicate ("FD") sample, one (1) matrix spike/matrix spike duplicate ("MS/MSD") sample, and one (1) trip blank ("TB") sample will be collected and analyzed during each sampling event for a total of nine (9) samples per quarter.

IDEM will require Level IV quality assurance/quality control (QA/QC) which has been incorporated into the costs of the proposal.

Closure Reporting

Updated tables and maps will be provided after the sampling event and Consultant will communicate with the IDEM project manager requesting that closure be granted for the Site. Assuming IDEM approves closure after sampling event, data from all of the quarterly sampling events will be summarized and incorporated into a closure report. The closure report will include

full-color tables, ground water flow maps, contaminant maps, laboratory reports, historical data, and text descriptions of the activities that took place over the course of the project.

IDEM also requires an evaluation of risks associated with any remaining contamination at the Site, which will likely involve the need for an Environmental Restrictive Covenant ("ERC"). A draft ERC will be prepared for IDEM's review as part of the closure report. Then final signed/notarized ERC will need to be recorded on the property deed and a copy of the ERC forwarded to IDEM before they will grant NO Further Action ("NFA") status for the Site. Electronic copies of the report will be provided (draft and final versions). The closure activities will also include monitoring well abandonments after the closure report is approved by IDEM.

TERM OF THE AGREEMENT

This Agreement shall become effective on the date of execution and approval by both parties.

Consultant acknowledges that time is of the essence and that the timely performance of its services is an important element of this Agreement. Consultant shall perform all services as expeditiously as is consistent with professional skill and care in the orderly progress of the project pending weather and property access issues.

The sampling event will occur within three (3) to four (4) weeks of approval pending weather and other potential delays. A draft of the closure report will be submitted to the City for review and comment within forty-five (45) to sixty (60) days following receipt of closure approval from IDEM. Comments or clarifications requested by the City prior will be incorporated into a final report prior to submission to IDEM.

COMPENSATION

The City agrees to compensate Consultant for the services in this agreement in accordance with Consultant's hourly rates and expense fees in Exhibit A and Consultant's fee schedule as set forth in the table below based on hours actually worked for an amount not exceed Twelve Thousand Four Hundred Dollars (\$12,400.00).

Fee Schedule	
Ground Water Sampling	\$3,000.00
Surcharge for Level IV QA/QC during the Closure Sampling Event	\$150.00
Disposal of up to two (2) drums of Investigative Derived Waste	\$370.00
Closure Report	\$6,500.00
Well Abandonments	\$1,600.00
Previous Un-Invoiced Labor (October 2020 to October 2021)	<u>\$780.00</u>
	\$12,400.00

Payment(s) to Consultant for services rendered under this agreement shall be made by the City upon receipt of a detailed invoice from Consultant for services completed provided satisfactory performance of Consultant has been attained. The detailed invoice shall include the total contract amount, payments to date, remaining contract balance, percentage of completed work and employee names and hours worked on specific task(s). Consultant is required to have a current W9 Form on file with the City before the City will issue any payment. Payment will be made within forty-five (45) days following City's receipt of the detailed invoice from Consultant. Payment is deemed to be made on the date of mailing the check.

INDEPENDENT CONTRACTOR

Consultant shall be deemed an independent contractor operating as a separate entity from the City of Goshen. The City shall not be responsible for injury, including death, to any persons or damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of Consultant.

NON-DISCRIMINATION

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

INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its agents, officers, and employees from any and all liability, obligations, claims actions, causes of action, judgments, liens, damages, penalties or injuries arising out of any intentional, reckless or negligent act or omission by Consultant or any of their officers, agents, officials, and employees, during the performance of services under this Agreement with the City of Goshen. Such indemnity shall include attorney’s fees and all costs and other expenses incurred by the City, and shall not be limited to insurance required under the provisions of this Agreement.

INSURANCE

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

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

Workers Compensation & Employer’s Liability	Statutory Limits
General Liability	Combined Bodily Injury and Property Damage \$1,000,000 Each Occurrence and \$2,000,000 Aggregate
Professional Liability	Combined Bodily Injury and Property Damage \$1,000,000 Each Occurrence and Aggregate
Automobile Liability.....	Combined Bodily Injury and Property Damage \$1,000,000 Each Occurrence and Aggregate

Each certificate shall require that written notice be given to the City at least thirty (30) days prior to the cancellation or a change in the policy that would not meet the minimum limits of liability set forth above.

FORCE MAJEURE

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

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

BREACH

It shall be mutually agreed that if Consultant fails to provide the services or comply with the provisions of this Agreement, and Consultant is not able to correct the breach within fifteen (15) calendar days after the City provides written notice to Consultant of such breach, the City may provide or have provided alternative provisions to correct and/or complete the projects. Consultant shall be responsible for any and all costs that are incurred and such costs may be deducted from amounts owed to Consultant expenses to correct the breach or complete the project. If such costs exceed the amounts owed to Consultant, Consultant is liable to reimburse the City for such costs. If Consultant fails to perform the work or comply with the provisions of this Agreement, then Consultant may be considered in default.

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

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

TERMINATION

The parties may terminate this Agreement under any of the following conditions:

- (1) The contract may be terminated in whole or in part, at any time, by mutual written consent of both parties. Consultant shall be paid for all work performed and expenses reasonably incurred prior to notice of termination.
- (2) The City may terminate this contract, in whole or in part, in the event of default by Consultant. In such event, the City may issue a written notice of default and provide a period of time in which Consultant shall have the opportunity to cure. If the default is not cured within the time period allowed, the contract may be terminated by the City. In the event of default and failure to satisfactorily remedy the default after receipt of written notice, the City may secure similar work in any manner deemed proper by the City, and Consultant shall be liable to the City for any excess costs incurred.
- (3) The rights and remedies of the parties under this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Upon termination for any reason, the City shall be entitled to the use of all plans, drawings, specifications and other documents pertaining to the project prepared by Consultant under this Agreement.

OWNERSHIP OF DOCUMENTS

The City acknowledges Consultant's documents, plans, drawings, specifications, including electronic files, as instruments of professional service. Nevertheless, the final documents prepared under this Agreement shall become the property of the City upon completion of the services and payment in full of all monies due to Consultant.

ASSIGNMENT

Neither party shall subcontract or assign any right or interest under the contract, including the right to payment, without having prior written approval from the other. Such approval shall not be unreasonably withheld. Any attempt by either party to subcontract or assign any portion of the contract shall not be construed to relieve that party from any responsibility to fulfill all contractual obligations.

MODIFICATIONS

It is mutually understood and agreed that no alteration or variation of the terms in this Agreement including the scope of services, completion of services and compensation, and that no alteration or variation of the conditions of this Agreement shall be binding unless specifically agreed to in writing by the parties. Any modification or amendment to the terms and conditions of the Agreement shall not be binding unless made in writing and signed by both parties. Any verbal representations or modifications concerning the Agreement shall be of no force and effect.

NOTICES

All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in the Agreement. Notice will be considered given three (3) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

Address for notices to the City:

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

Address for notices to Consultant:

Roberts Environmental Services, LLC
Attention: Jeffrey C. Roberts
2112 Carmen Court
Goshen IN 46526

APPLICABLE LAWS

Consultant agrees to comply with all applicable federal, state and local laws, rules, regulations, or ordinances as the same shall be in full force and effect during the term of this Agreement.

MISCELLANEOUS

- A. Any provision of this Agreement or incorporated documents shall be interpreted in such a way that they are consistent with all provisions required by law to be inserted into the Agreement. In the event of a conflict between these documents and applicable laws, rules, regulations or ordinances, the most stringent requirements shall govern.
- B. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and any suit must be brought in a court of competent jurisdiction in Elkhart County, Indiana.

C. In the event legal action is brought to enforce or interpret the terms and conditions of this Agreement, the non-prevailing party will pay all costs incurred by the prevailing party including reasonable attorney's fees.

EMPLOYMENT ELIGIBILITY VERIFICATION

Consultant shall enroll in and verify the work eligibility status of all their newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3.

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

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

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

Consultant affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien.

CONTRACTING WITH RELATIVES

Pursuant to IC 36-1-21, if Consultant is wholly or partially owned by a relative of an elected official of the City of Goshen Consultant certifies that Consultant has notified in writing both the elected official of the City of Goshen and the City's legal department prior to entering into this contract that an elected official of the City of Goshen is a relative of an owner of Consultant.

SEVERABILITY

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

BINDING EFFECT

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

ENTIRE AGREEMENT

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

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

[Signatures on the following page]

City of Goshen
Board of Public Works and Safety

Roberts Environmental Services, LLC

Jeremy P. Stutsman, Mayor

Jeffrey C. Roberts, President

Michael Landis, Member

Date: _____

Mary Nichols, Member

Barb Swartley, Member

DeWayne Riouse, Member

Date: _____



November 2, 2021

ROBERTS Project No.: 17-10638-40

Kent Holdren
Superintendent Water/Sewer
City of Goshen
308 North 5th Street
Goshen, Indiana 46528

**Proposal for Ground Water
Sampling & Closure Reporting
City of Goshen - North Water Plant
308 N. 5th Street
State Cleanup Program ID #0000563
Goshen, Indiana**

Dear Mr. Holdren:

Roberts Environmental Services, LLC (“ROBERTS”) is pleased to submit the following proposal for a final ground water monitoring event along with closure reporting at the above referenced property in Goshen, Indiana (hereinafter referred to as the “Site”). ROBERTS has performed these activities since 2017, in accordance with a 2017 Request for Quote (“RFQ”) provided to ROBERTS by the City of Goshen (“the City”) on April 24, 2017. Polynuclear aromatic hydrocarbon (“PAH”) impacts above applicable Indiana Department of Environmental Management (“IDEM”) screening levels (“SLs”) in soil and perched ground water have been identified at the Site (IDEM State Cleanup Program (“SCP”) ID #0000563). A monitoring well network of six (6) shallow, 2.0-inch diameter, permanent monitoring wells was installed at the Site in January 2017. ROBERTS has completed quarterly sampling at the Site through the September 2020 sampling event, at which time a closure evaluation was requested from IDEM in October 2020. IDEM responded via email on October 22, 2021 requesting one (1) additional sampling event before closure.

ROBERTS’ proposed activities are limited because the ground water monitoring will only focus on specific sampling locations and because the proposed analytical parameters will be limited to specific potential contaminants of concern (“COCs”) and/or select indicator contaminants. The primary COCs at the Site are PAHs.

SCOPE OF WORK

Monitoring Well Sampling. ROBERTS proposes to perform one (1) final closure event monitoring well sampling at the six (6) on-Site monitoring wells. The low-flow sampling and analysis activities will be consistent with previous quarterly sampling events. The ground water samples will be submitted for analysis of PAHs using U.S. EPA Method 8270-SIM (low-level analysis to meet IDEM SLs). Per IDEM guidelines, one (1) field duplicate (“FD”) sample, one (1) matrix spike/matrix spike duplicate (“MS/MSD”) sample, and one (1) trip blank (“TB”) sample will also be collected and analyzed during each sampling event for a total of nine (9) samples per quarter. Note that IDEM will require Level IV quality assurance/quality control (“QA/QC”), which has

been incorporated into the costs of this proposal.

Closure Reporting. Updated tables and maps will be provided after the sampling event and ROBERTS personnel will communicate with the IDEM project manager requesting that closure be granted for the Site. Assuming IDEM approves closure after sampling event, data from all of the quarterly sampling events will be summarized and incorporated into a closure report. The closure report will include full-color tables, ground water flow maps, contaminant maps, laboratory reports, historical data, and text descriptions of the activities that took place over the course of the project.

IDEM also requires an evaluation of risks associated with any remaining contamination at the Site, which will likely involve the need for an Environmental Restrictive Covenant (“ERC”). A draft ERC will be prepared for IDEM’s review as part of the closure report. The final signed/notarized ERC will need to be recorded on the property deed and a copy of the ERC forwarded to IDEM before they will grant No Further Action (“NFA”) status for the Site. Electronic copies of the report will be provided (draft and final versions). The closure activities will also include monitoring well abandonments after the closure report is approved by IDEM.

COST ESTIMATE

ROBERTS proposes to conduct the services proposed herein on a time-and-expenses basis and in accordance with ROBERTS’ general labor and equipment fee schedules in effect at the time the work is performed. ROBERTS estimates the project (as described in the preceding text) can be completed for a not-to-exceed cost estimate of **\$12,400**, which will be progress billed throughout the project.

SUMMARY OF ESTIMATED PROJECT COSTS	
<u>Ground Water Sampling (1 Closure Sampling Event)</u> Six (6) monitoring wells for PAHs analysis plus QA/QC	\$3,000
<u>Laboratory Analysis Level IV QA/QC</u> Surcharge for Level IV QA/QC during the Closure Sampling Event	\$150
<u>Disposal of Up to two (2) Drums of Investigative Derived Waste</u> One (1) drum plus one (1) existing	\$370
<u>Closure Report</u> Closure report with Draft ERC and Record of Site Closure Form 54472	\$6,500
<u>Monitoring Well Abandonments</u> Abandonment of six (6) monitoring wells by an Indiana Licensed Water Well Driller. Forward monitoring well abandonment logs to IDEM and IDNR.	\$1,600
<u>Previous Un-Invoiced Labor</u> October 2020 to October 2021	\$780
TOTAL ESTIMATED COST	\$12,400

ROBERTS does not foresee an exceedance of this cost estimate for the scope of work described in the preceding text. However, we will keep you apprised of the project status and budget and will not exceed our estimate without prior authorization. This estimate does not include a field contingency, but reflects costs representative for completing the work described. Any modifications necessary to complete the proposed work will be discussed prior to providing supplemental services.

SCHEDULE

ROBERTS can schedule this project immediately upon receipt of a signed authorization to proceed, pending weather and property access issues. The work scope proposed by ROBERTS assumes that limited regulatory liaison will be required at this time (brief phone calls, e-mails, submittals of the reports, etc.). Please note that presentations/trips to meet with regulatory staff in Indianapolis or extensive responses to IDEM comments are not included in the budget.

Project Timeline: The sampling event will occur within three (3) to four (4) weeks of approval pending weather and other potential delays. A draft of the closure report will be submitted to the City for review and comment within forty-five (45) to sixty (60) days following receipt of closure approval from IDEM. Comments or clarifications requested by the City prior will be incorporated into a final report prior to submission to IDEM.

The estimated costs presented above are based on the following assumptions/limitations:

- Access to the Site and the wells will be unencumbered and no delays will be incurred locating wells, organizing access, or gaining access to the Site, including each individual monitoring well.
- ROBERTS will not be responsible for costs associated with characterization, transportation, and disposal of any contaminated soil cuttings or ground water from the sampling activities. However, ROBERTS personnel can assist with these activities. An on-Site temperature-controlled area for storing investigation-derived waste ("IDW") is also required.
- ROBERTS' cost estimate is based on fieldwork being performed in Level D personal protective equipment.
- Sampling activities at the Site will not exceed one (1) workday for the sampling activities and will occur Monday through Friday, excluding holidays.

TERMS AND CONDITIONS

The work will be performed in accordance with ROBERTS Standard Terms & Conditions for Environmental Services, which are attached and are incorporated in this proposal by reference. As noted in our terms and conditions, this proposal, including the cost contained herein, is applicable for 90 calendar days. Please indicate your acceptance of the proposal (and the referenced Terms & Conditions herein) by having an authorized representative sign the attached authorization page and returning the original document to ROBERTS.

Mr. Kent Holdren
City of Goshen

November 2, 2021
Page 4 of 4

We appreciate this opportunity to offer our services to you. If you have any questions regarding the scope of work or cost estimate, please feel free to call either of the undersigned at your earliest convenience.

Sincerely,

Roberts Environmental Services, LLC



David D. Jeffers, LPG
Senior Hydrogeologist

Roberts Environmental Services, LLC



Jeffrey C. Roberts
President

Attachment: Authorization to Proceed
ROBERTS Standard Terms & Conditions

**AUTHORIZATION FOR ROBERTS ENVIRONMENTAL SERVICES, LLC, TO
PROCEED WITH PROJECT DESCRIBED IN PRECEDING PROPOSAL**

Proposal/Project Number: 17-10638-40
Proposal Date: November 2, 2021
Client: **City of Goshen**

Proposal Title: Proposal for Ground Water
Sampling & Closure Reporting
City of Goshen - North Water Plant
308 N. 5th Street
Goshen, Indiana

The undersigned hereby authorizes Roberts Environmental Services, LLC ("ROBERTS") to proceed on the above-referenced project in accordance with the referenced proposal and its associated work scope, terms, and conditions. By authorizing the work, the undersigned acknowledges that ROBERTS' proposed work scope is adequate for the undersigned's purposes. The undersign further acknowledges that they read, understand, and agree to the terms and conditions governing the project, including, but not limited to, the Standard Terms and Conditions for this project, which are incorporated herein, and are authorized to contractually bind the above-named Client in executing this authorization. In no event shall any subsequent work order or similar document vary the terms and conditions of this authorization, including all terms and conditions incorporated by reference, without the express written agreement of ROBERTS.

Signature

Typed or Printed Name

Title

Date

ROBERTS will proceed with the authorized work after this Authorization to Proceed with an *original signature* has been received.

PLEASE RETURN THIS PAGE TO ROBERTS UPON COMPLETION

Roberts Environmental Services, LLC

Standard Terms & Conditions for Environmental Services

I(a). All work performed by Roberts Environmental Services, LLC, hereinafter called "ROBERTS", for Client is subject to the terms and limitations presented in this document, except that this document incorporates, and may be modified by, the provisions of the specific work scope and/or proposal prepared by ROBERTS. In the event of any conflict, the terms of the work scope and/or proposal shall govern.

(b). ROBERTS generally offers different levels of service to satisfy the needs and desires of different clients. Client must determine the level of service adequate for its purpose and warrants that it has reviewed the work scope and has deemed it acceptable for the service that is being provided.

(c). Unless specified in the work scope or proposal to Client, ROBERTS will not perform the following service or work and assumes no responsibility to Client to perform such services:

- An analysis, audit, or other determination as to whether the Client and/or facility being assessed is in compliance with federal, state, or local laws, statutes, ordinances, or regulations;
- Direct or indirect storage, arranging for or actually transporting, disposing, treating, or monitoring hazardous or non-hazardous substances, materials, or wastes; and
- Testing for the presence of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, radon gas, or any airborne pollutants or pollutants in soil or groundwater.

II. ROBERTS' services provided under these standard terms & conditions are performed on a lump-sum or time-and-expenses basis incurred during the completion of the project as described in ROBERTS' proposal. Client and ROBERTS agree that time and expenses for any additional work items outside the scope of work in ROBERTS' proposal shall be charged at the rates in the attached Labor Fee Schedule and Equipment, Supplies, and External Expenses Fee Schedule.

III. For those services or expenses described in the proposal, Client authorizes ROBERTS to execute purchases and contracts for subconsultants; purchase expendable supplies; perform test borings, sampling, or other investigative or exploratory work. Any additional purchases or services not included in a lump-sum or time-and-expenses cost estimate will be charged to Client at their direct cost plus 10%.

IV. Unless stated otherwise, ROBERTS' work scope and/or proposal and associated costs contained therein are applicable for 90 calendar days.

V. ROBERTS' invoices are payable upon receipt. Client shall give ROBERTS written notice of any invoiced amounts disputed by Client within ten (10) calendar days after Client's receipt of the invoice, such notice shall include the amount disputed and the basis for the dispute. Client shall pay all undisputed amounts according to the following stated terms. Invoices outstanding for more than thirty (30) days after the invoice date shall incur a late-payment charge at the rate of 1.5% per month (18% per annum) from the invoice date. If Client fails to pay any invoice within sixty (60) calendar days of the invoice date, ROBERTS shall have the right, upon three (3) days written notice to Client, to stop work and recover from Client payment for all work executed and any additional costs incurred by ROBERTS in collecting past-due amounts from Client.

VI. ROBERTS strives to perform its services in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants practicing in the same locality and under similar conditions at the time ROBERTS' services are performed. No warranty, expressed or implied, is included or intended in this document or any other document generated in the course of ROBERTS' services.

VII. The total cumulative liability of ROBERTS, its employees, directors, officers, agents, and subcontractors, to Client arising from services performed or to be performed by ROBERTS, including any legal fees or costs awarded under this document, shall not exceed 100% of the gross compensation received by ROBERTS for the specific work item at issue or ten thousand dollars (\$10,000), whichever is greater, regardless of the legal theory under which such liability is imposed.

VIII. ROBERTS and Client agree to waive any claims against each other for any special, incidental, or consequential damages incurred by either due to the fault of the other, regardless of the nature of the fault, or whether it was committed by Client or ROBERTS, their employees, agents, or subcontractors. Special, incidental, and consequential damages include, but are not limited to, delays, shutdowns or other disruptions, cost of capital, loss of use, and loss of profits or revenue.

IX(a). Client recognizes that conditions at sites where samples and data are gathered are inherently random, variable in space and time, and indeterminate in nature and that conditions may differ from those encountered at the time and locations where borings, surveys, inspections, or explorations are made. Therefore, ROBERTS' data, interpretations, opinions, and recommendations are based solely on the information available to ROBERTS at the time and obtainable with the methods employed. Information obtained from ROBERTS' inspections, analysis, analysis, and testing of the site and

materials is considered evidence with respect to the detection, identification, quantification, distribution of contaminants, and remediation cost estimates, but any inference or conclusion based thereon is an opinion based on ROBERTS' professional judgment and shall not be construed as a representation of fact. Client acknowledges that inspecting, sampling, and testing reduce, but do not eliminate, the risk that contaminants may escape detection. A site at which contaminants are not found or do not exist at the time of ROBERTS' inspection or work may later, due to intervening causes such as natural groundwater flow or human activities, become contaminated. Because these risks are beyond ROBERTS' control, Client agrees to assume these risks.

(b). Client shall provide ROBERTS all information in Client's possession, custody, or control concerning the project site which could affect ROBERTS' performance of the work, and ROBERTS may rely on information provided by Client and others in performing services under this document. However, ROBERTS' services to Client do not include an independent analysis of work conducted and information provided by independent laboratories or other independent contractors or consultants retained by ROBERTS or Client, and ROBERTS shall not be responsible for the reliability of such information nor bound by interpretations by others of information developed by ROBERTS.

X(a). ROBERTS shall be responsible solely for the on-site safety of its own employees, and this responsibility shall not be construed by any party to relieve the site owner, Client, or Client's contractors and/or subcontractors from their customary and contractual responsibilities and obligations to maintain a safe project site.

(b). Client agrees to assume the responsibility of reporting to any federal, state, or local public agencies any conditions at the site that may present a potential danger to public health, safety, or the environment and, to the extent required by law, to promptly report regulated conditions, including without limitation, the discovery of releases of hazardous substances at the site, to appropriate public authorities in accordance with applicable laws. Client further agrees to indemnify ROBERTS for any claims resulting from or related to Client's failure to properly report such conditions or releases to the appropriate agencies.

(c). The requirements of all parts of this article shall apply continuously and shall not be limited to normal working hours.

XI(a). Professional fees paid to ROBERTS by Client are in exchange only for ROBERTS' services. Therefore, all reports, recommendations, drawings, specifications, boring logs, field data and notes, laboratory test data, calculations, estimates, and other documents prepared by ROBERTS are instruments of service, not products, and as such remain the property of ROBERTS.

Documents provided by Client shall remain Client's property. ROBERTS shall retain all records related to services performed for a period of five (5) years following submission of the final report, during which time they will be made available to Client for review at all reasonable times.

(b). The services, data, and opinions of ROBERTS performed for and expressed in its instruments of service are for the sole and exclusive use of Client and shall not be provided to or relied upon by any other party without ROBERTS' express written consent. Client acknowledges that the passage of time may result in significant changes in technology, regulations, and economic or site conditions that could render ROBERTS' instruments of service inaccurate or inadequate. Because ROBERTS' instruments of service are limited to the specific project, property, and dates of ROBERTS' services, neither Client nor any other party shall rely on the information, opinions, or conclusions contained in ROBERTS' instruments of service after two (2) years from their date of final issuance without ROBERTS' expressed written consent. Reliance on ROBERTS' instruments of service after such time shall be at the user's sole risk. If Client requests that ROBERTS review its instruments of service after two (2) years from their date of final issuance, ROBERTS shall be entitled to additional compensation at its most current rates or other such terms as may be agreed upon by ROBERTS and Client.

(c). Client agrees to waive any claim against ROBERTS and to defend, indemnify and hold ROBERTS harmless from any claim or liability for injury or loss allegedly arising from the Client's unauthorized use or disclosure to a third party of ROBERTS' information, opinions, or instruments of service or their use in a manner which is incorrect, inappropriate, not intended by ROBERTS, not foreseen at the time ROBERTS' services were rendered, or allegedly arising from considering ROBERTS' instruments of service as products. Such indemnification shall extend to any claim or liability for injury or loss arising from failure to follow ROBERTS' recommendations. Client further agrees to compensate ROBERTS for any time spent or expenses incurred by ROBERTS in defense of any such claim, in accordance with ROBERTS' most current fee and expense schedules and policies.

(d). In the event that ROBERTS is served a subpoena or other similar lawful request for documents or testimony directly or indirectly relating to ROBERTS' information, opinions, or instruments of service, Client agrees to compensate ROBERTS for any time spent or expenses incurred by ROBERTS in providing such documents or testimony, in accordance with ROBERTS' most current fee and expense schedules and policies.

XII. ROBERTS carries Professional liability, pollution liability, and general liability insurance, and worker's compensation insurance. Certificates of coverage will be forwarded to Client upon request. Within the limits of said insurance or the total cumulative

liability referenced in Item VII, whichever is less, ROBERTS agrees to save Client harmless from any loss, damage, injury, or liability arising directly from negligent acts and negligent omissions by ROBERTS, ROBERTS' employees, agents, subcontractors, and their employees or agents arising in connection with the performance of the work described in the proposal and/or work scope. If Client's contract or purchase order places greater responsibilities on ROBERTS or requires further insurance coverage, ROBERTS will purchase additional insurance (if reasonably procurable) at Client's expense to protect ROBERTS, but ROBERTS shall not be responsible for property damage from any cause, including but not limited to fire and explosion, beyond the amounts and coverage of ROBERTS' insurance. In addition, Client shall name ROBERTS as an additional insured in any hold-harmless agreements between Client and any contractor who may perform work in connection with any study, report, interpretations, or design prepared by ROBERTS.

XIII. Unless otherwise agreed, Client shall furnish reasonable and safe access to all areas of the site and/or its facilities and structures necessary for ROBERTS and its subcontractors to perform the work specified in the proposal. ROBERTS assumes no responsibility for not assessing structures and areas that are inaccessible, locked, or unsafe to enter.

XIV. For the purposes of safety and assessment, Client agrees to promptly advise ROBERTS of any hazardous substances or conditions known or suspected by Client, or known by Client to be alleged or rumored by others, to exist in, on, or near the project site and which may present a risk to human health or the environment. If Client fails to so advise ROBERTS or, notwithstanding, such advice, unanticipated occurrences of hazardous substances and/or conditions are discovered during the course of the work, and such discovery results in or, in ROBERTS' judgment, may result in injury or a human health risk, Client agrees to assume full responsibility and liability and shall hold ROBERTS harmless from any and all claims, demands, suits and liabilities for personal injury, disease, or medical expenses, including but not limited to continued health monitoring and/or death, property damage, and economic loss, including consequential damages, resulting directly or indirectly from ROBERTS' discovery of unanticipated hazardous substances and/or hazardous conditions. Client also acknowledges that withholding such information could affect the findings, conclusions, opinions, and recommendations of the agreed upon work scope.

XV. Client agrees to defend, hold harmless, and indemnify ROBERTS, its officers, representatives, and employees from and against any and all suits, claims, actions, losses and liabilities resulting from the following:

(a). Client's violation of any federal, state, or local statute, regulation, or ordinance, including without limitation the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response,

Compensation Liability Act, and any amendments to these regulations, ordinances, and acts in effect at the time the work is performed.

(b). Client's direct or indirect undertaking of or arrangement for the treatment, storage, disposal, or transportation of any wastes or residual materials found, identified, or generated at the project site during prosecution of field activities By ROBERTS on Client's behalf.

(c). Changed conditions or waste materials introduced to the project site by the Client, Client's employees or contractors, third persons, or natural processes after the completion of ROBERTS' on-site work.

(d). Damage, including consequential damages, due to damage to private, on-site utilities not properly marked by the Client, Client's employees, or its designated agent prior to field work pertaining to soil sampling, groundwater sampling, and all other methods of subsurface exploration, testing, and/or remediation. ROBERTS or its subcontractor will notify the state or regional underground plant protection services for the region in which the site is located. Typically, these services do not mark private utilities or on private property; therefore, Client assumes all responsibility for properly locating and identifying underground utilities prior to ROBERTS or its subcontractors performing field activities.

XVI. ROBERTS will not intentionally divulge information regarding its services for Client other than to parties designated by Client, except as necessary by law. Information that is in the public domain at the time the work is performed or is provided to ROBERTS by third parties is excepted from this condition.

XVII(a). All claims, disputes and other matters in controversy between ROBERTS and Client shall be subject to non-binding mediation before and as a condition precedent to other remedies provided by law. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, the amount of time or money at issue, and requiring that the matter be mediated within forty-five days of the service of notice. The mediation shall be administered by the American Arbitration Association in accordance with their most recent applicable mediation rules, or by such other person or organization as the parties may agree upon. No other action or suit may be commenced unless the mediation did not occur within forty-five (45) days after the service of notice, the mediation occurred but did not resolve the dispute, or a statute of limitations would elapse if suit was not filed prior to forty-five (45) days after service of notice.

(b). If a dispute at law arises related to the services provided under this document, then Client agrees (1) to personal jurisdiction in the State of Indiana; (2) the claim will be brought and tried in the state or federal courts located in Elkhart County, Indiana, and Client

waives the right to remove the action to any other county or jurisdiction; and (3) the prevailing party, in addition to any other remedy or compensation, shall be awarded reasonable costs incurred in litigating the claim, including staff time, court costs, attorney and expert witness fees, and other claim-related expenses.

XVIII. In the event that ROBERTS' field or technical services are interrupted by causes beyond its control, ROBERTS will request compensation for the labor, equipment, and other costs ROBERTS incurs to maintain its work force and capability for Client's benefit during the interruption. For purposes of this document, such causes include, but are not limited to, unusual weather conditions or other natural catastrophes; epidemics; war; riots; labor strikes; lockouts or other industrial disturbances; protest demonstrations; unanticipated site conditions; acts of governmental authorities; inability, despite reasonable diligence, to supply personnel, equipment, or material to the project; or any other cause beyond the reasonable control or contemplation of ROBERTS.

XIX. Neither Client nor ROBERTS shall delegate, assign, sublet, or transfer any duties, claims, or interests under this document, any accompanying work scope and/or proposal, or any breach of these terms and conditions, without the express written consent of the other. The terms and conditions contained in this document shall be binding upon ROBERTS and Client, their heirs, executors, administrators, successors, and assigns.

XX. These terms and conditions and the related work scope and/or proposal is the final and entire agreement between ROBERTS and Client and supersedes any prior written or oral agreements. These terms and conditions and accompanying work scope and/or proposal shall not be changed, modified, or amended except in writing and signed by Client and ROBERTS.

XXI. Any part of these terms and conditions later held to violate law, regulation, or policy shall be deemed void, and all remaining provisions shall continue in force. However, Client and ROBERTS shall in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable and which comes as close as possible to expressing the intent of the original voided provisions. All terms and conditions of this document allocating liability and responsibility between Client and ROBERTS shall survive completion of ROBERTS' services.

Attachments: 2021 Labor Fee Schedule
2021 Equipment, Supplies, and
External Expenses Fee Schedule

ROBERTS ENVIRONMENTAL SERVICES, LLC
2021 LABOR FEE SCHEDULE

Principal	\$173.00/hour
Sr. Project Manager/Geologist/Hydrogeologist/Scientist/Engineer	\$110 - \$140/hour
Project Geologist/Scientist/Engineer	\$91 - \$110/hour
Geologist/Scientist II	\$87 - \$91/hour
Geologist/Scientist I	\$80 - \$87/hour
Sr. Environmental Geologist/Scientist/Technician	\$71 - \$80/hour
Staff Environmental Geologist/Scientist/Technician	\$65 - \$71/hour
Project Administrator/Specialist	\$60 - \$65/hour

ROBERTS ENVIRONMENTAL SERVICES, LLC
2021 GENERAL EQUIPMENT, SUPPLIES, AND EXTERNAL EXPENSES FEE
SCHEDULE

COMMON EQUIPMENT:

<u>Item</u>	<u>Rate</u>	<u>Unit</u>
Company Vehicle (>50 mi Total)	\$38.00 (Plus Mileage)	Trip
Company Vehicle (<50 mi Total)	\$68.00	Trip
Photo Ionization Detector ("PID")	\$90.00	Day
Dual Phase Interface Probe	\$60.00	Day
Water Level Indicator	\$30.00	Day
Masterflex Peristaltic Pump ("MBP")	\$90.00	Day
Mechanical Bladder Pump	\$90.00	Day
Low Flow Submersible Pump	\$90.00	Day
Air Bladder Pump/Controller	\$220.00	Day
Pressure Washer	\$75.00	Day
Surveying Equipment	\$35.00	Day
Pneumatic Drum Vacuum	\$150.00	Day
Temperature/Conductivity Meter	\$15.00	Day
Optical Dissolved Oxygen Meter	\$50.00	Day
Aqua Troll 600 Multi-Parameter/Low Flow cell	\$150.00	Day
Hand-Auger (Various Sizes)	\$25.00	Day

COMMON SUPPLIES:

<u>Item</u>	<u>Rate</u>	<u>Unit</u>
Bailers, 0.07 to 1.5-inch O.D. Polyethylene	\$10.00	Each
Rigid Polyethylene Tubing	\$0.40	Foot
Decontamination Supplies	\$20.00	Day
Reconditioned 55-Gallon Drum	\$65.00	Each
0.5 Micron In-Line Filter	\$22.00	Each
Nitrile Disposable Gloves	\$0.60	Pair

[Other supplies necessary to complete a specific project will be dependent on nature of work being performed. These supplies will be billed in accordance with specific internal fee schedules or as an external expense, which is simply cost +10%]

EXTERNAL EXPENSES:

<u>Item</u>	<u>Rate</u>	<u>Unit</u>
<u>External Expenses</u> (such as, travel, lodging, subcontracted services, equipment rental, expendable materials purchased for project, etc.):	Cost+10%	----
<u>Per Diem</u> (includes food allowance plus nominal personal expenses):	\$35.00	Day
<u>Mileage</u> (company-owned or personal vehicle):	\$0.65	Mile



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 15, 2021

To: Board of Public Works and Safety

From: Brandy L. Henderson

Subject: Agreement with DesignPD, LLC dba Agency360 for cloud application services for GPD training

Attached for the Board's approval and execution is an agreement with DesignPD, LLC dba Agency360 for cloud application services for GPD training. There will be a one-time fee of \$1,000 to set up a website customized for Goshen Police Department's use, the initial fee of \$1,197.0 for the first year of licensing and an annual fee of \$1,197.00 every automatic renewal year after that.

Suggested Motion:

To Approve and execute the agreement with DesignPD, LLC dba Agency360 for cloud application services for GPD training at an initial cost of \$2,197.00.

AGREEMENT

Agency 360 Cloud Application Services

THIS AGREEMENT is entered into on _____, 2021, which is the last signature date set forth below, by and between DesignPD, LLC dba **Agency360** (“Vendor”), whose mailing address is 12175 Visionary Way, Suite 104, Fishers, IN 46038, and **City of Goshen, Indiana**, a municipal corporation and political subdivision of the State of Indiana acting through the Goshen Board of Public Works and Safety (“City”).

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

Section 1. Contractor Duties

Vendor shall provide Goshen Police Department with services for the implementation of Agency360 Cloud Application, which services are more particularly described in Vendor’s November 8, 2021 proposal attached as Exhibit A (hereinafter referred to as “Duties”).

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

Section 2. Effective Date; Term

- (A) The agreement shall become effective on the day of execution and approval by both parties.
- (B) The agreement shall be automatically renewed under the same terms and conditions on an annual basis unless written notice of the intent to terminate the agreement is delivered by either party to the other at least 90 days before the expiration of the term of the original agreement. The term of the renewal shall not be longer than the term of the original agreement.

Section 3. Compensation

- (A) A one-time implementation fee to build the site to Goshen Police Department’s specific needs at a cost of One Thousand Dollars (1,000.00).
- (B) Vendor will bill annually for a subscription-based licensing at a cost of One Thousand One Hundred Ninety-Seven Dollars (\$1,197.00) upon each annual renewal due date.

Section 4. Payment

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

City of Goshen
c/o Goshen Police Department
111 E. Jefferson Street
Goshen, IN 46528

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

Section 5. Licensing/Certification Standards

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

Section 6. Independent Contractor

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

Section 7. Non-Discrimination

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

Section 8. Employment Eligibility Verification

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

Section 9. Contracting with Relatives

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

Section 10. No Investment Activities in Iran

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

Section 11. Indemnification

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

Section 12. Force Majeure

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

of force majeure are natural disasters or decrees of governmental bodies not the fault of the affected party.

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

Section 13. Default

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

Section 14. Termination

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

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

Section 15. Notice

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

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

Contractor: DesignPD, LLV dba Agency 360
12175 Visionary Way, Suite 104
Fishers, IN 46038

Subcontracting or Assignment

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

Section 16. Amendments

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

Section 17. Waiver of Rights

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

Section 18. Applicable Laws

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

Section 19. Miscellaneous

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

Section 20. Severability

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

Section 21. Binding Effect

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

Section 22. Entire Agreement

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

Section 23. Authority to Bind Contractor

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

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

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

DesignPD, LLC dba Agency360

Jeremy P. Stutsman, Mayor

Printed: _____

Michael A. Landis, Member

Title: _____

Mary Nichols, Member

Date Signed: _____

Barb Swartley, Member

DeWayne Riouse, Member

Date Signed: _____

Cloud Application Services Agreement

Last Updated: April 21, 2021

This Cloud Application Services Agreement (**the Agreement**) shall be effective between Agency360 (**Agency360**), an Indiana Limited Liability Company, and the undersigned organization (**Customer**) as of the last signature date in this Agreement (**the Effective Date**).

Agency360 and the Customer are each a "**Party**" and collectively "**Parties**". This Agreement sets forth the terms and conditions for the purchase, delivery, use, and support of Agency360 software as a service (SaaS) subscription products and professional services (**Services**). In consideration of this Agreement, the Parties agree as follows:

1. Services

1.1 **Services.** Agency360 will (a) make the Services available to Customer and Customer's Users pursuant to this Agreement and any applicable Quote, (b) provide applicable standard support for the Services (or such other level of support specified in the applicable Quote), (c) use commercially reasonable efforts, using applicable current industry practices, to ensure the Services do not contain or transmit any Malicious Code, and (d) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for planned downtime (of which Agency360 will give advance notice). Agency360 provides an agency-wide license to measure performance standards and career progression of employees with access to the following customizable modules to track; Onboarding, Probationary, Performance Evaluation, and Training Management (Beta).

1.2 **Subscriptions.** Unless otherwise provided in the applicable Quote, Services are purchased as subscriptions. Any such modification to a subscription will be confirmed in writing by Customer, and both Agency360 and Customer shall be subject to the terms of this Agreement with respect to the additional Users and any new Services purchased in connection with such modification.

1.3 **Customer Responsibilities.** Customer will be responsible for (a) ensuring Customer and its Users comply with terms and conditions of this Agreement, (b) the accuracy, quality and legality of the Customer Data, the means by which the Customer obtained the Customer Data and Customer's use of the Customer Data in connection with the Services, (c) using reasonable efforts to prevent unauthorized

access to or use of Services, and provide prompt notice to Agency360 of any unauthorized access or use, (d) using the Services only in accordance with this Agreement, any applicable laws and government regulations, and (e) maintaining the security of end User logins and passwords and ensuring they are not shared by more than one user.

1.4 Restrictions. Customer acknowledges Agency360's exclusive and proprietary interest in the Services. Customer will not, and will ensure its Users do not (a) make any of the Services available to anyone other than Users or use any Services for the benefit of anyone other than Customer and its Users, unless otherwise agreed in writing by the parties, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any of the Services, or include any of the Services in a service bureau or outsourcing offering, unless otherwise agreed in writing by the parties, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy rights, publicity rights, copyright rights, or other rights of any person or entity, (d) use the Services to store or transmit Protected Health Information (PHI), unless otherwise agreed in writing by the parties, (e) use the Services to store or transmit Malicious Code, (f) interfere with or disrupt the integrity or performance of the Services (including, without limitation, activities such as security penetration tests, stress tests, and spamming activity), (g) attempt to gain unauthorized access to the Services or its related systems or networks, (h) modify, copy, or create derivative works based on the Services or any part, feature, function or user interface thereof, (i) access the Services for the purpose of building, selling or marketing a competitive product or service or copying any Agency360 Technology, (n) disassemble, reverse engineer, or decompile the Services, including Agency360 Technology or otherwise attempt to obtain or perceive the source code of Agency360 Technology, or (o) use the Services in a manner which violates any applicable laws.

1.5 Infringing or Restricted Content. Agency360 reserves the right to delete or disable content stored, transmitted or published by Customer using the Services upon receipt of a bona fide notification that such content infringes upon the Intellectual Property Rights of others, or if Agency360 otherwise reasonably believes any such content is in violation of Section 1.4.

1.6 Modifications to Services. The Services may be modified by Agency360 from time to time as it deems necessary to address changes in technology and the needs of its customers, provided that any such modification will not significantly degrade the functionality of the Services in any material manner. Agency360 will notify Customer in advance of any material modifications.

1.7 Third Party Services. The Services may permit Customer and its Users to access services or content provided by third parties through the Services ("Third Party Services"). Customer agrees that Agency360 is not the original source and shall not be liable for any inaccuracies contained in any content provided in a Third Party Services. Agency360 makes no representations, warranties or guarantees with respect to the Third Party Services or any content contained therein. Agency360 may discontinue access to any Third Party Services through the Services, if the relevant agreement with the applicable third party no longer

permits Agency360 to provide such access. If loss of access to any Third Party Services (to which Customer has a subscription under this Agreement) occurs during a Subscription Term, Agency360 will refund to Customer any prepaid fees for such Third Party Services covering the remainder of the Subscription Term.

1.8 Samples or Forms. The Software, Services, or Site may include sample forms, form components, policies, procedures, checklists, training requirements, memoranda, letters, or other documents, including financially or legally significant documents such as contracts and other sample content (**Example Content**). This Example Content is provided solely as examples, and the delivery and use of Example Content does not constitute legal, accounting, or other professional advice. Under no circumstances will Agency360 or its Affiliates be liable for any loss or damages caused by Customer reliance on information or advice obtained through its Services, including use of any of the Example Content. Customer is responsible for evaluating the accuracy, completeness, or usefulness of any information, opinions, advice, forms, or other Example Content available through Agency360 Services.

2. Proprietary Rights and Licenses

2.1 Limited License to Use Services. Subject to the terms and conditions of this Agreement, Agency360 hereby grants to Customer a non-exclusive, non-transferable, limited, royalty-free license, without right to sub-license, for the term of each Service Order, to access and use, and to permit its Users to access and use, the Services, solely for Customer's operations in its ordinary course of business.

2.2 Limited License to Use Customer Data. Customer hereby grants to Agency360 a non-exclusive, non-transferable, limited, royalty-free license, without right to sub-license (except to its sub-processors, as required for the provision of the Services), to aggregate, compile, transmit, and otherwise use the Customer Data, as necessary to perform the Services, to create Statistical Data and Anonymized Data for the purposes described in 2.3 below and as otherwise may be agreed in writing by Customer.

2.3 Statistical Data and Anonymized Data. Agency360 tracks and collects certain information about how Users use the Services and uses the information collected to obtain general statistics regarding the use of the Services and to evaluate how Users use and navigate the Services (**Statistical Data**). Agency360 may use Statistical Data for Agency360's internal analytical purposes, including the improvement and enhancement of the Services and Agency360's other offerings. At times, Agency360 may review the Statistical Data of multiple customers and may combine, in a non-personally-identifiable format, the Statistical Data with Statistical Data derived from other customers and users to create aggregate, anonymized data regarding usage history and statistics (**Anonymized Data**). Anonymized Data will not contain information that identifies or could be used to identify Customer or its Users. Customer agrees that Anonymized Data is not Confidential Information of Customer. Agency360 may use Anonymized Data to create reports that it may use and disclose for Agency360's commercial or other purposes.

2.4 Reservation of Rights. No rights or licenses are granted except as expressly set forth herein. Without limiting the foregoing, subject to the limited rights expressly granted in this Section 2, all right, title and interest (including all related Intellectual Property Rights) in and to (a) the Services and the Agency360 Technology is retained by Agency360, and (b) the Customer Data is retained by Customer.

2.5 Feedback and Volunteered Data. Customer grants Agency360 a worldwide, perpetual, irrevocable, royalty-free license to use, disclose, reproduce, license or otherwise distribute and incorporate into the Services and the Agency360 Technology any suggestions, enhancements, recommendations, or other feedback provided by Customer or its Users related to Agency360 Services or Agency360 Technology.

3. Fees

3.1 Fees. Customer will pay Agency360 all fees specified in the applicable Quote. Except as otherwise specified in this Agreement or in the applicable Quote, payment obligations are non-cancelable, and fees paid are non-refundable, and quantities purchased cannot be decreased during the relevant subscription term.

3.2 Payment Terms. Except as otherwise specified in the Quote, fees are billed annually in advance of each year, but regardless of the billing cycle, Customer is responsible for the fees for the applicable subscription term.

3.3 Taxes. If Customer is tax exempt, Customer shall not have any obligation to reimburse any tax payment that would otherwise be due to Agency360. Proper tax-exemption documentation from Customer will be provided if requested.

3.4 Suspension of Services. If any amount owing by Customer is more than 30 days overdue, Agency360 may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full.

3.5 Payment Disputes. Agency360 will not exercise its rights under Section 3.4 so long as Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

5. Confidentiality

5.1 Definition of Confidential Information. **"Confidential Information"** means non public information designated as confidential, or given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential.

5.2 Obligations. Each party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law or court order, neither Party will disclose Confidential Information.

6. Customer Data

6.1 Data Protection. Agency360 will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by Agency360 personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by applicable law, or (c) as Customer expressly permits in writing. Customer acknowledges and agrees that it is commercially reasonable for Agency360 to rely upon the security processes and measures utilized by Agency360's cloud infrastructure providers.

6.2 Data Export, Retention and Destruction. Customer may export or delete Customer Data from the Services at any time during a Subscription Term, using the existing features and functionality of the Services. Customer is solely responsible for its data retention obligations with respect to Customer Data. If and to the extent Customer cannot export or delete Customer Data stored on Agency360's systems using the then existing features and functionality of the Services, Agency360 will, upon Customer's written request, make the Customer Data available for export by Customer or destroy the Customer Data. Except as otherwise required by applicable law, Agency360 will have no obligation to maintain or provide any Customer Data more than thirty (30) days after the expiration or termination of this Agreement.

7. Term; Termination

7.1 Term of Agreement. Subject to earlier termination, and unless agreed in writing or in the applicable Quote, this Agreement begins on the Effective Date and shall continue for a period of 12 months (**Subscription Term**). The Subscription Term will renew according to renewals detailed in 7.3.

7.2 Termination for Breach. A party may terminate this Agreement or any Service Order (a) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

7.3 Subscription Term and Renewal. At least 30 days prior to the expiration of a Subscription Term, Agency360 will send a notice to the Customer of the pricing applicable to a renewal subscription for a period equal to the expiring Subscription Term. Unless otherwise agreed in writing or in the applicable Quote, Agency360 reserves the right to increase the subscription fees up to 10% at the beginning of each new Subscription Term. The new Subscription Term shall be deemed to be effective if Customer (a) remits payment to Agency360 of the fees set forth in the invoice referencing the renewal, or (b) the Customer or any of its Users access or use the Services after the expiration of the previous Subscription Term.

7.4 Effect of Termination. Upon termination of this Agreement for any reason, Customer and its Users will cease all use of the Services and, except for Agency360's right to receive accrued but unpaid fees and as

provided in Section 10.11 (Survival), Section 1.4, and Section 5.2, all rights and obligations of the parties hereunder will automatically cease.

7.5 Suspension. Agency360 may suspend Customer's or any User's right to access or use any portion of the Services if Agency360 determines that Customer's or Users' use of the Services (i) poses a security risk to the Services, Agency360 or any third party, (ii) may adversely impact the Services, or the networks or data of any other Agency360 customer, business partner or service provider, (iii) does not comply with this Agreement or applicable law, or (iv) may subject Agency360 or any third party to liability. Agency360 will endeavor to provide as much notice as is reasonably practicable under the circumstances, and to reinstate the Services as soon as reasonably practicable following resolution of the issue.

7.6 Termination for Non-Appropriation of Funds. If Customer is subject to federal, state or local law which makes Customer's financial obligations under this Agreement contingent upon sufficient appropriation of funds by the applicable legislature (or other appropriate governmental body), and if such funds are not forthcoming or are insufficient due to failure of such appropriation, then Customer will have the right to terminate the Agreement at no additional cost and with no penalty by giving prior written notice documenting the lack of funding. Customer will provide at least thirty (30) days advance written notice of such termination. Customer will use reasonable efforts to ensure appropriated funds are available.

8. Representation and Warranties; Disclaimers

8.1 Agency360. Agency360 represents and warrants that (a) it has the full power and authority to enter into this Agreement, to perform its obligations under this Agreement, and to grant the licenses and rights granted to Customer in this Agreement; (b) this Agreement is the legal, valid, and binding obligation of Agency360; (c) it will comply with all applicable laws relating to its performance and/or obligations under this Agreement; (d) it will perform the Services in accordance with this Agreement in a timely, professional and workmanlike manner.

8.2 Customer. Customer represents and warrants that (a) it has the full power and authority to enter into this Agreement, to perform its obligations under this Agreement, and to grant the licenses and rights granted to Agency360; (b) this Agreement does not conflict with any other contract or obligation to which it is a party or by which it is bound; and (c) it will comply with all applicable laws relating to its performance and/or obligations under this Agreement.

8.3 Disclaimer of Implied Warranties. THE WARRANTIES SET FORTH IN SECTION 8.1 AND 8.2 ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY AGENCY360 AND CUSTOMER, HEREUNDER, RESPECTIVELY. EACH OF AGENCY360 AND CUSTOMER EXPRESSLY DISCLAIMS, AND THE OTHER PARTY HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING THE SERVICES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE,

ERROR-FREE OPERATION, UNINTERRUPTED ACCESS, THAT THE SERVICES ARE SECURE, OR THAT THE SERVICES WILL BE AVAILABLE CONSTANTLY AND IN AN UNINTERRUPTED MANNER AND ANY OTHER IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, ALL THIRD-PARTY OFFERINGS ARE PROVIDED "AS-IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER. AGENCY360 MAKES NO WARRANTY THAT THE SERVICES WILL COMPLY WITH THE LAWS (INCLUDING WITHOUT LIMITATION ANY LAWS RESPECTING DATA PRIVACY) OF ANY JURISDICTION OUTSIDE OF THE UNITED STATES OF AMERICA.

9. Limitation of Liability.

9.1 Exclusion of Certain Claims. REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, COST OF COVER OR SUBSTITUTE SERVICES, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, INCLUDING LOSS OF BUSINESS, REVENUE OR ANTICIPATED PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, AGENCY360 SHALL NOT BE LIABLE FOR THE CRIMINAL ACTS OF THIRD PARTIES.

9.2 Limitation of Liability. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE SUM OF ALL AMOUNTS REQUIRED TO BE PAID BY CUSTOMER TO AGENCY360 IN CONNECTION WITH THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE EVENT INITIALLY GIVING RISE TO SUCH LIABILITY.

10. General Provisions

10.1 Entire Agreement. This Agreement, and attached Quote executed by Customer (or deemed effective under Section 7.3) constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous written, electronic or oral communications, representations, agreements or understandings between the parties with respect thereto. Any Service Order executed (or deemed effective under Section 7.3) or amended, or any Subscription Term specified in any Service Order which is renewed or otherwise extended, shall be subject to the terms and conditions of this Agreement, as so modified or amended.

10.2 No Waiver. The failure of a party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision.

10.3 Assignment. This Agreement is not assignable, transferable or sublicensable by Customer except with Agency360's prior written consent.

10.4 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such provision will be deemed stricken from the Agreement and the remaining provisions of this Agreement will remain in full force and effect.

10.5 Relationship of Parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect whatsoever.

10.6 Publicity. Unless otherwise notified in writing, upon execution of this agreement Agency360 may identify Customer as one of its customers and use Customer's logo for such purposes, subject to any trademark usage requirements specified by Customer.

10.7 No Third Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

10.8 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given (a) when received, if personally delivered; (b) when receipt is electronically confirmed, if transmitted by facsimile or e-mail; (c) the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and (d) upon receipt, if sent by certified or registered mail, return receipt requested.

10.9 Force Majeure. Neither party will be liable for failure to perform its obligations hereunder, except the obligation to make payment due, to the extent that its performance is prevented, hindered or delayed as a result of strikes, riots, fires, explosions, acts of God, epidemics, pandemics, acts of terrorism, war, governmental action, labor conditions, internet service interruptions or slowdowns, vandalism or cyber-attacks, or any other cause beyond the reasonable control of such party.


10.10 Electronic Signatures; Counterparts. Signatures and other express indications of agreement sent by electronic means (facsimile or scanned and sent via e-mail or signed by electronic signature service where legally permitted) will be deemed original signatures. This Agreement may be signed in multiple counterparts, each of which will be deemed an original and which will together constitute one agreement.

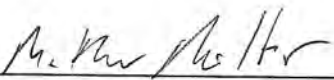
10.11 Survival. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, acknowledgements and reservations of proprietary rights, confidentiality obligations, warranty disclaimers, and limitations of liability.

Signature Page

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

AGENCY360

By:  _____ 11/8/2021
Date



Printed Name

CUSTOMER NAME: _____

By: _____
Date

Jeremy P. Stutsman, Mayor



INVOICE

Goshen Police Department (IN)
111 E Jefferson St
GOSHEN IN 46528
USA

Invoice Date
Oct 13, 2021

Invoice Number
INV-3216

Reference
QU-1588

DesignPD, LLC dba
Agency360
12175 Visionary Way
Suite 104
FISHERS IN 46038
USA

Description	Quantity	Unit Price	Tax	Amount USD
The one-time implementation fee to build the site includes access to all online resources to assist in site customization, video tutorials, user-guides, an Agency360 implementation specialist, and online user training sessions.	1.00	1,000.00	Tax on Sales	1,000.00
The Agency360 Platform Basic Annual subscription provides an agency-wide license to measure performance standards and career progression of a single employee position with access to 1 of each of the following customizable modules to track; Onboarding, Probationary, Performance Evaluation, and Training Management (Beta). Subscription includes: Unlimited Users, Secure Storage on MS Azure Gov Servers, Mobile and Tablet Accessibility, Online Knowledgebase of resources and videos, Template Library, User-driven Software Updates, Access to Industry Partnerships and Training Webinars, and Ongoing Support & Maintenance.	1.00	1,197.00	Tax on Sales	1,197.00
			Subtotal	2,197.00
			TOTAL USD	2,197.00

Due Date: Dec 12, 2021

The Term of Service is for the next 12 months after the invoice date for new customers and 12 months after the due date for renewals.

Agency360 W-9 Information can be found at: <https://support.agency360.com/knowledge/agency360-w-9-information>



[View and pay online now](#)



PAYMENT ADVICE

To: DesignPD, LLC dba Agency360
12175 Visionary Way
Suite 104
FISHERS IN 46038
USA

Customer	Goshen Police Department (IN)
Invoice Number	INV-3216
Amount Due	2,197.00
Due Date	Dec 12, 2021
Amount Enclosed	

Enter the amount you are paying above



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: Richard Aguirre, Clerk-Treasurer, and Jeffery Weaver, Deputy Clerk-Treasurer

RE: SpyGlass Agreement

DATE: November 15, 2021

Attached for the Board's approval and execution is an engagement letter for The SpyGlass Group, LLC regarding technology expense management consulting.

SpyGlass works with other municipalities, counties and school districts across the State of Indiana to recover efficiencies in technology usage. By analyzing current usage, SpyGlass works with vendors to recover improperly applied taxes, eliminate dormant and excessive services, and optimize plans for the City's purposes.

SpyGlass will review the two most recent months of billing for the City's accounts with Frontier, Comcast, Verizon, New Paris Telephone, Choice One, Celico Partnership, United Telephone, Windstream Holdings, and Penguin Management. From the invoices we provide, SpyGlass will present a report to the City which will suggest potential modifications to vendor accounts. SpyGlass will only bill the City for modifications we request of them.

Since SpyGlass will have access to our billing records, they agree to maintain confidentiality requirements as presented in the agreement in regards to all information that they review. Our legal department has reviewed these documents and provided their recommendations on maintaining data security which we have passed on to SpyGlass. The attached documents include the agreement, an addendum provided by our legal department, and the letter of authorization allowing SpyGlass to review our vendor records.

Requested Motion:

Move to approve and authorize the Clerk-Treasurer to execute the SpyGlass agreement.

SpyGlass Snapshot Audit Agreement

This agreement, effective as of the later of the dates of signature below ("Effective Date"), is between **The City of Goshen** ("Company"), and The SpyGlass Group, LLC, an Ohio limited liability company ("Auditor").

1. Primary Audit Services. Company is engaging Auditor as an independent contractor to analyze its primary telecommunications service accounts (Voice, Data, Internet, Cloud Services and Mobility/Cellular) to seek cost recovery, service elimination and cost reduction recommendations. Company will provide Auditor with the materials required to perform its analysis and Auditor will conduct a Kickoff meeting with Company to review the materials provided and introduce Auditor's personnel assigned to the project. Auditor will deliver the recommendations to Company at a Summary of Findings meeting, implement recommendations that Company elects for Auditor to implement, and deliver a complete telecommunications inventory to Company. Upon completion of implementation, Auditor will conduct an Industry Benchmark Analysis ("IBA") Meeting to compare Company's spending and audit results against industry peers as well as all SpyGlass clients, officially bringing closure to the engagement.

While Auditor is performing its analysis, Company will not make changes or perform internal cost reduction analysis with respect to provider accounts which Company has included within the scope of Auditor's review.

2. Fees. Company will pay Auditor the applicable fee set forth below ONLY for Auditor recommendations implemented within twelve (12) months of Auditor delivering the recommendation to Company:

- 50% of any "Cost Recovery", as defined below
- 12 times any "Service Elimination Savings", as defined below
- 12 times any "Cost Reduction Savings", as defined below

"Cost Recovery" is any refund, credit or compensation received by Company relating to past services or charges.

"Service Elimination Savings" is any monthly cost reduction received by Company relating to cancellation of any service, including monthly usage cost reduction (calculated as the average of the last 2 months of usage costs associated with the cancelled service).

"Cost Reduction Savings" is any monthly cost reduction received by Company relating to the modification, consolidation or negotiation of any service, account or contract, including post discount usage rate improvement (calculated as the (a) decrease in post discount per unit pricing realized by Company for any service, times (b) the average of Company's last two (2) months usage levels measured in such units for the modified service).

3. Invoicing and Payment. Fees for Cost Recovery are due as a one-time payment within 30 days of verification that Company has been issued the refund, credit or compensation resulting in such fees. Fees for Service Elimination Savings and Cost Reduction Savings are due as a one-time payment within 30 days of verification that the cancellation or other activity resulting in the Service Elimination Savings or Cost Reduction Savings has been completed. Auditor may issue separate invoices as different fees are earned.

4. Confidential Information. Auditor shall keep confidential and shall not divulge to any other person or entity who is not a director, officer or employee of Company, during the term of this Agreement or thereafter, any of the business secrets or other confidential information regarding Company which information has been received or become known to Auditor in the course of its consulting services hereunder and which has not otherwise become public knowledge; provided, however, that nothing in this Agreement shall preclude Auditor from disclosing information (a) to parties retained to perform services for Company, or (b) as may be required by law. Company shall keep confidential and shall not divulge to any other person or entity who is not a director, officer or employee of Auditor, during the term of this Agreement or thereafter, any of the business secrets or other confidential information regarding Auditor which has not otherwise become public knowledge, including, without limitation, Auditor's consulting services pricing structure, method of performing such consulting services and any of the details of this Agreement; provided, however, that nothing in this Agreement shall preclude Company from disclosing information as may be required by law.

5. Miscellaneous. This agreement is governed by the laws of the State of Indiana, without regard to principles of conflicts of law, and may be executed by facsimile and simultaneously in multiple counterparts. Company agrees that Auditor does not warranty the overall performance, Company satisfaction, or data accuracy of any telecommunications related carrier, provider, software manufacturer or vendor at any time whatsoever during or after the term of this agreement. Each person signing this agreement on behalf of a party represents that he or she has been duly authorized to sign this agreement and to bind the party on whose behalf this agreement is being signed by that signatory. **AUDITOR SHALL NOT BE LIABLE TO THE COMPANY FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR BUSINESS INTERRUPTION, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF EITHER PARTY HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE IN ADVANCE. IN ADDITION, IN NO EVENT SHALL AUDITOR'S LIABILITY TO COMPANY EXCEED THE FEES ACTUALLY PAID BY COMPANY TO AUDITOR.**

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the Effective Date.

COMPANY

AUDITOR

The SpyGlass Group, LLC

Signature: _____

Signature: _____

Print Name: _____

Print Name: Edward M. DeAngelo

Date: _____

Date: _____

ADDENDUM

THIS ADDENDUM is made and entered into the 2nd day of November, 2021, by and between The SpyGlass Group, LLC (hereinafter referred to as “Contractor”) and the City of Goshen, Indiana (hereinafter referred to as “City”).

WITNESSETH:

WHEREAS Contractor and City are parties to a certain agreement for Telecom Expense Management (“Agreement”); and

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

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

1. State Law Provisions.

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

b. Anti-Nepotism - Contractor is aware of the provisions under Indiana Code § 36-1-21 with respect to anti-nepotism in contractual relationships with governmental entities, and shall comply with such statute.

c. Investment Activity - Pursuant to Indiana Code § 5-22-16.5, Contractor certifies that Contractor is not engaged in investment activities in Iran.

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

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

2. No Waiver of Governmental Immunity. Nothing in the Agreement waives or is intended to waive any protections that may be applicable to City or any of its elected or appointed officials, employees, agents, or representatives under any applicable statutes, rules, or regulations providing governmental immunity, or any other rights, protections, immunities, defenses, or limitations on liability that City or such related parties are provided by law.

DATED EFFECTIVE with the effective date of the Agreement.

CITY:

CITY OF GOSHEN, INDIANA

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR:

The SpyGlass Group, LLC

By:  _____
07B32E2068A04E2...

Name: Edward M. DeAngelo

Title: Co-President

Date: 11/2/2021



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

Letter of Agency – Authorization to Access Telephone Provider Records

By signing this letter below, I am giving authorization to The SpyGlass Group, LLC and its affiliates (a) to access any and all customer service records, account information, contracts, long distance carrier information, pending order activity and/or any other information relevant to my local or long distance telecommunications service (voice or data), and (b) to establish electronic or online access to any billing for such service, if not already established, or if already established, to be provided login information for such electronic or online access. At SpyGlass' request, I give authorization to Provider to transmit customer service records and any requested documentation via email, fax to 440-348-9355 or mail to The SpyGlass Group, LLC, 25777 Detroit Rd., Ste. 400, Westlake, Ohio 44145. I represent that I have the authority to execute this form and grant this permission and I hereby desire for SpyGlass to be added as an authorized point of contact (POC) for these accounts. This permission shall remain in effect until I affirmatively revoke it. If I withdraw the authorization set forth in this Letter, I will notify Provider immediately in writing.

Client Information:

Signing Employee's Name: _____
Company Name: _____
Address: _____
City, State, Zip: _____
Telephone: _____

Provider Information:

Provider Name: _____
Account Number (s): _____

Authorized Signature: _____

Date: _____