



Board of Public Works & Safety and Stormwater Board

Regular Meeting Agenda

2:00 p.m. March 9, 2020

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

Call to Order by Mayor Jeremy Stutsman

Approval of Minutes – None

Changes to Agenda

OPEN BIDS, QUOTES AND PROPOSALS

- (1) Open Quotes for Demolition of Seven Houses (Q20-0-003)

NEW BUSINESS

- (1) SR 119 Closure for Kids & Teens Triathlon (JN: 2007-0017) (Sailor)
- (2) Buggy Trail Re-Route Balancing Change Order (JN: 2012-0033) (Sailor)
- (3) Unpaid Final Water/Sewer Accounts (Saenz)
- (4) Central Fire Station Parking North Parking Lot Expansion (Happer)
- (5) Acceptance of Easement for at NE corner of Midway Rd and Ferndale Rd (Marks)
- (6) Agreement with Rooney and Co., LLC (Marks)
- (7) Occupancy Permit Agreement for 1616 Clover Creek Lane with Philip D. Leichty and Virginia M. Leichty, Paul D. Hochstetler d/b/a Freedom Builders (Marks)



- (8) Occupancy Permit Agreement for 1618 Clover Creek Lane with Calvin C. Graber and Sharon Mockler Graber, Paul D. Hochstetler d/b/a Freedom Builders (Marks)
- (9) Occupancy Permit Agreement for 112 Tulip Blvd. with Jose Tapia and Lorie Tapia, Granite Ridge Builders, Inc. (Marks)
- (10) Central Garage Surplus Property, Resolution 2020-09 (Windsor)
- (11) Grant Agreement and Banjo Master Services Agreement, Resolution 2020-10 (Marks)

PRIVILEGE OF THE FLOOR

APPROVAL OF CLAIMS

Adjournment



**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

March 9, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Open Quotes for Demolition Project – 7 Houses

Bids are due to be opened today for Demolition Project of 7 Houses on E. Lincoln Ave.

Read Page 18's Total Cost



**Engineering Department
CITY OF GOSHEN**

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

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

MEMORANDUM

TO: Board of Public Works & Safety

FROM: Engineering Department

RE: **SR 119 STREET CLOSURE FOR KIDS & TEENS TRIATHLON
(JN: 2007-0017)**

DATE: March 9, 2020

The Engineering Department on behalf of the Parks Department is requesting the closure of **SR 119 on Saturday, July 11, 2020 from 7:00 AM to 12:00 PM** for the Kids' & Teens' Triathlon event.

The closure of SR 119 will be **from South 3rd Street to Indiana Avenue.**

The Goshen Street Department will be assisting in the set up and removal of the barricades.

The Engineering Department has submitted a permit request to INDOT.

Motion Requested: Approve the road closures on Saturday, July 11, 2020, associated with the Kid's & Teens Triathlon.

**ACCEPTED: BOARD OF PUBLIC WORKS AND SAFETY
CITY OF GOSHEN, INDIANA**

Mayor

Member

Member

CONCURRENCE FOR TEMPORARY USE OF CITY OR COUNTY STREETS OR ROADS

TO BE ATTACHED TO STATE FORM 41769

Detour of SR 119 or US _____ over the following:

Third Street, Lincoln Avenue & Indiana Avenue

It is agreed that any damages to county roads, city streets, intersections, public or private property and/or drainage caused by this road closing and/or detour will be the responsibility of the:

- County Highway Commission
- City Street Department
- City Administration
- Town Board
- Others

Signed by : _____
Mayor

1. _____

2. _____
or two (2) members of the Town Board

1. _____

2. _____
or two (2) members of County Highway Dept.

THE APPLICANT AGREES TO INDEMNIFY, DEFEND, EXCULPATE, AND HOLD HARMLESS THE STATE OF INDIANA, ITS OFFICIALS AND EMPLOYEES FROM ANY LIABILITY DUE TO LOSS, DAMAGE, INJURIES OR OTHER CASUALTIES OF WHATSOEVER KIND, OR BY WHOMSOEVER CAUSED TO THE PERSON OR PROPERTY OF ANYONE ON OR OFF THE RIGHT-OF-WAY ARISING OUT OF, OR RESULTING FROM THE ISSUANCE OF THIS PERMIT OR THE WORK CONNECTED THEREWITH, OR FROM THE INSTALLATION, EXISTENCE, USE, MAINTENANCE, CONDITION, REPAIRS, ALTERATION, OR REMOVAL OF ANY EQUIPMENT OR MATERIAL, WHETHER DUE IN WHOLE OR IN PART TO THE NEGLIGENT ACTS OR OMISSIONS (1) OF THE STATE, ITS OFFICIALS, AGENTS OR EMPLOYEES; OR (2) OF THE APPLICANT, HIS AGENTS OR EMPLOYEES OR THE PERSONS ENGAGED IN THE PERFORMANCE OF THE WORK, OR (3) THE JOINT NEGLIGENCE OF ANY OF THEM: INCLUDING ANY OF THEM: INCLUDING ANY CLAIMS ARISING OUT OF THE WORKMEN'S COMPENSATION ACT OR ANY OTHER LAW, ORDINANCE, ORDER, OR DECREE. THE APPLICANT ALSO AGREES TO PAY ALL REASONABLE EXPENSES AND ATTORNEY'S FEES INCURRED OR IMPOSED ON THE STATE IN CONNECTION HEREWITH IN THE EVENT THAT THE APPLICANT SHOULD DEFAULT UNDER THE PROVISIONS OF THIS PARAGRAPH.



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MEMORANDUM

TO: Board of Works and Safety and Stormwater Board

FROM: Dustin Sailor, P.E., Director of Public Works

RE: **BUGGY TRAIL RE-ROUTE BALANCING CHANGE ORDER - JN: (2012-0033)**

DATE: March 9, 2020

Please find attached Change Order No. 2, a balancing change order

Please approve Balancing Change Order No. 2 with Kibby Excavating, for a decrease of \$1,232.90. The final project cost is \$51,245.49. Total increases to date are \$4,218.99, which is a 8.97% increase.

CHANGE ORDER FORM

Pg 1 of 3

Change Order No. 2

Date: 3/9/20

***CITY OF GOSHEN, INDIANA
OFFICE OF THE CITY ENGINEER
204 E. Jefferson Street, Suite 1
Goshen, IN 46528***

OWNER: City of Goshen

PROJECT NAME: Buggy Trail Re-Route

PROJECT NUMBER: 2012-0033

CONTRACTOR: Kibby Excavating

I. DESCRIPTION OF WORK INVOLVED (Use additional sheets if needed)

Line item adjustments to serve as a balancing change order.

14	Compacted Aggregate Subbase, No. 53 Crushed (Note: This balances the line item out)	-17.00 TON	@ \$45.70	-----	-\$776.90
15	Compacted Aggregate Shoulder, No. 53 (Note: This balances the line item out)	-8.00 TON	@ \$57.00	-----	-\$456.00

			Subtotal -	..	-\$1,232.90

CHANGE ORDER FORM

II. ADJUSTMENTS IN AMOUNT OF CONTRACT

1. Amount of original contract	\$47,026.50
2. Net (Addition/ Reduction) due to all Previous Contract Supplements Numbers 1 to <u>1</u>	\$5,451.89
3. Amount of Contract, not including this supplement	\$52,478.39
4. Addition/Reduction -to Contract due to this supplement	(\$1,232.90)
5. Amount of Contract, including this supplemental	\$51,245.49
6. Total (Addition/ Reduction) due to all Change Orders (Line 2 + Line 4)	\$4,218.99
7. Total percent of change in the original contract price Includes Change Order No. 1 to <u>2</u> (Line 6 divided by Line 1)	8.97%

III. CONTRACT SUPPLEMENT CONDITIONS

1. The contract completion date established in the original contract or as modified by previous Contract Supplement(s) is hereby ~~extended~~/~~reduced~~ by 0 calendar days, making the final completion date N/A.

2. Any additional work to be performed under this Contract supplement will be carried out in compliance with the specifications included in the preceding Description of Work Involved, with the supplemental contract drawing designed as _____, and under the provisions of the original contract including compliance with applicable equipment specifications, general specifications and project specifications for the same type of work.

3. This Contract Supplement, unless otherwise provided herein, does not relieve the contractor from strict compliance with the guarantee provisions of the original contract, particularly those pertaining to performance and operation of equipment.

CHANGE ORDER FORM

Pg. 3 of 3

Change Order No. 2

RECOMMENDED FOR ACCEPTANCE



Dustin Sailor, P.E.
Director of Public Works

ACCEPTED: BOARD OF PUBLIC WORKS AND SAFETY
CITY OF GOSHEN, INDIANA

Mayor

Member

Member

ACCEPTED: CONTRACTOR

Kibby Excavating

BY: _____
Signature of authorized representative of Contractor

*****REQUEST*****

DATE: Monday, March 9, 2020

TO: GOSHEN BOARD OF WORKS

FROM: GOSHEN WATER & SEWER
KELLY SAENZ

RE: UNPAID FINAL ACCOUNTS

The original amount of unpaid final Water/Sewer accounts for this period was \$11,678.26
Collection letters were sent out and payments of \$2,962.58 had been collected.

The uncollected amount equals \$8,715.68

Therefore I am requesting to **move our uncollected finalized accounts from active to Collection,
Sewer Liens and Write offs.**

These are accounts for the most part were finalized thru **Friday, November 22, 2019**

WATER:	\$4,193.87
SEWER:	\$4,521.81

TOTALS 10-2019

REPORT TOTAL		\$11,678.26
BPS TOTAL	\$4,184.97	\$7,493.29
COUNTY TOTAL	\$4,508.89	\$2,984.40
W-WRITE OFF	\$8.90	\$2,975.50
S-WRITE OFF	\$12.92	\$2,962.58
PAYMENT TOTAL	\$2,962.58	\$0.00
AGREEMENT TOTAL		

PAYMENTS 10-2019

<u>ACCOUNT #</u>	<u>CUSTOMER NAME</u>	<u>AMOUNT PD.</u>
235-0980-06	MEGAN M MCCLINTON	\$158.51
238-0600-12	AMY R CRAW	\$218.33
238-2010-09	DARYLLYN SCHMUCKER	\$96.54
280-0360-12	MICHAEL GILBERT	\$182.89
284-0350-01	BETSY P BRAUN	\$23.57
285-0060-02	MARSHA L SCHROCK	\$107.43
311-3880-06	SERGIO REGALADO	\$32.45
312-0420-08	ROCHELLE BENVEHISTE	\$239.92
316-2720-05	EMILIO CRUZ	\$100.66
317-0090-98	ANGELA A WYNN	\$132.94
319-0980-07	RYAN W HANEY	\$361.12
319-0990-03	MATTHEW CRUZ RIDENOUR	\$409.84
320-2390-05	NITZA G MANRIQUEZ	\$106.66
402-1330-04	ANGELA M ROGERS	\$69.75
403-0480-18	KYLE R SMALL	\$166.64
403-0600-04	SAUL RODRIGUEZ JR	\$57.98
419-0010-08	KIMBERLY S MCCREARY	\$273.54
419-0020-10	SKYLER KRULL	\$182.55
419-0590-05	MICHIANA INVESTMENTS HOLDINGS	\$2.96
425-9000-00	JOHN E DOOLEY	\$22.38
445-1510-08	MARY ANN KRAY	\$15.92

TOTAL PAYMENTS \$2,962.58

COUNTY ACCOUNTS 10-2019

<u>ACCOUNT #</u>	<u>CUSTOMER NAME</u>	<u>AMOUNT PD.</u>
235-1460-08	UBALDO MAGALLANES	\$185.77
238-0950-98	KEVIN MILLER	\$536.75
238-2010-09	PAUL G. & LYDIA W. SHIRK	\$70.23
238-2040-03	SCOTT VAN GILST	\$84.88
280-2330-05	MICHAEL D MCKEE	\$596.12
292-2160-00	DENNIS J & DEBORAH MCCARTHY	\$489.51
309-0590-01	ONE ACCORD DEVELOPMENTS LLC	\$95.66
320-0240-14	LEHMAN DEVELOPMENT INC	\$537.60
400-1410-01	RONALD DAVIDHIZAR	\$223.71
402-0600-02	BRANDON KRAMER	\$148.78
403-0310-11	RONALD DAVIDHIZAR	\$337.29
404-0030-04	MARIO & LETITIA CALDERON	\$144.44
439-0860-00	MERLE & BETTY REYNOLDS	\$25.29
445-1250-04	THERESA M DOBSON	\$381.94
450-0370-08	PAMELA HUTTON LEWIS	\$650.92

TOTAL TO COUNTY \$4,508.89

SEWER WRITE OFF ACCOUNTS 10-2019

ACCOUNT #	CUSTOMER NAME	SEWER AMOUNT
421-0360-10	SHASHETTA WILCHER	\$12.92

TOTAL SEWER WRITE OFF: \$12.92

**** Accounts that have a balance of \$25.00 or less, bankruptcy, deceased and agreements****

WATER WRITE OFF ACCOUNTS 10-2019

ACCOUNT #	CUSTOMER NAME	WATER AMOUNT
421-0360-10	SHASHETTA WILCHER	\$8.90

TOTAL WATER WRITE OFF: \$8.90

**** Accounts that have a balance of \$25.00 or less, bankruptcy, deceased and agreements****



Mike Happer, Assistant Chief
FIRE DEPARTMENT, CITY OF GOSHEN
1728 Reliance Rd. • Goshen, IN 46526-7620

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03/03/20

To: Board of Works and Public Safety

Ref: Central Fire Station North Parking Lot Improvements and Expansion

We would like your permission to improve the alley and to expand the current parking area on the North side of the Central Fire Station located @ 209 N. 3rd Street.

Currently we have a hard time using this space because to it is too close to the cars that are parked along the building.

We would like to extend the current parking area 6 feet to the North (see map). The vacant lots where the expansion would take place is owned by the City and was intended to be used for future fire station improvements.

The existing alley that runs through our parking lot has deteriorated. The parking area on the north side of the alley currently has asphalt milling in place. The approval will be for new asphalt hard surface installed with sub base on the alley and parking area on the north side, which will eliminate the millings and improve our current parking situation.

Permission has been obtained from Planning and Engineering Department for this project.

Thank you for your consideration.

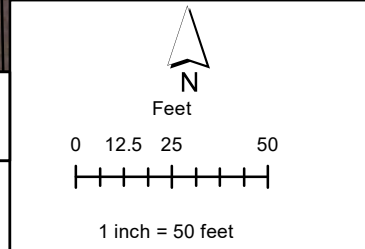
A handwritten signature in black ink that reads "Mike Happer".



Central Fire Station North Parking Lot Improvements and Expansion

February 2020 - Map Created

April 2019 Aerial Photograph



The City of Goshen's Digital Data is the property of the City of Goshen and Elkhart County, Indiana. All graphic data supplied by the city and county has been derived from public records that are constantly undergoing change and is not warranted for content or accuracy. The city and county do not guarantee the positional or thematic accuracy of the data. The cartographic digital files are not a legal representation of any of the features depicted, and the city and county disclaim any assumption of the legal status they represent. Any implied warranties, including warranties of merchantability or fitness for a particular purpose, shall be expressly excluded. The data represents an actual reproduction of data contained in the city's or county's computer files. This data may be incomplete or inaccurate, and is subject to modifications and changes. City of Goshen and Elkhart County cannot be held liable for errors or omissions in the data. The recipient's use and reliance upon such data is at the recipient's risk. By using this data, the recipient agrees to protect, hold harmless and indemnify the City of Goshen and Elkhart County and its employees and officers. This indemnity covers reasonable attorney fees and all court costs associated with the defense of the city and county arising out of this disclaimer.

The City of Goshen
 Department of Public Works & Safety
 Office of Engineering
 204 East Jefferson Street, Goshen, Indiana 46528
 Phone: 574-534-2201 Fax: 574-533-8626



CITY OF GOSHEN LEGAL DEPARTMENT

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March 9, 2020

To: Board of Public Works and Safety

From: Shannon Marks

Subject: Acceptance of Easement

Attached for the Board's acceptance is an Easement from GEENEN DeKOCK PROPERTIES IN, LLC. This is for a 325 square foot easement for City utility purposes adjacent to a current lift station at the northeast corner of Midway Road (County Road 26) and Ferndale Road (County Road 15) as depicted on the attached drawing.

It is recommended that the Board make a motion to accept the Easement and authorize the Mayor to execute the Acceptance page.

EASEMENT

GEENEN DeKOCK PROPERTIES IN, LLC, a Michigan limited liability company (Grantor), grants to the **City of Goshen, Indiana** (City), a municipal corporation and political subdivision of the State of Indiana, whose mailing address is 202 South Fifth Street, Goshen, Indiana 46528, for One Dollar (\$1) and other good and valuable consideration, an easement on the real estate (Easement) situated in Elkhart County, State of Indiana, as depicted upon the drawing attached as Exhibit A and more particularly described as follows:

A PART OF LOT NUMBERED 4A2 AS SAID LOT IS KNOWN AND DESIGNATED ON THE RECORD PLAT OF THE REPLAT OF LOTS 1, 2A, AND 4A OF COUNTY HOME SUBDIVISION AS RECORDED IN PLAT BOOK 31, PAGE 85, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA; SAID SUBDIVISION BEING LOCATED IN THE SOUTHWEST QUARTER (SW1/4) OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 5 EAST, CONCORD TOWNSHIP, ELKHART COUNTY, INDIANA; SAID PART OF LOT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT NUMBERED 4A2 AS SAID LOT IS KNOWN AND DESIGNATED ON THE RECORD PLAT OF THE REPLAT OF LOTS 1, 2A, AND 4A OF COUNTY HOME SUBDIVISION AS RECORDED IN PLAT BOOK 31, PAGE 85, IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA; THENCE NORTH 00 DEGREES 03 MINUTES 15 SECOND EAST ALONG THE WEST LINE OF SAID LOT NUMBERED 4A2, A DISTANCE OF 25.00 FEET TO THE NORTHWEST CORNER OF A LIFT STATION EASEMENT AS SHOWN ON SAID RECORD PLAT AND AS RECORDED IN INSTRUMENT NUMBER 94-007158 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA AND THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING NORTH 00 DEGREES 03 MINUTES 15 SECONDS EAST ALONG SAID WEST LINE OF LOT NUMBERED 4A2, A DISTANCE OF 25.00 FEET; THENCE SOUTH 89 DEGREES 13 MINUTES 22 SECONDS EAST PARALLEL WITH THE SOUTH LINE OF SAID LOT NUMBERED 4A2,

A DISTANCE OF 13.00 FEET; THENCE SOUTH 00 DEGREES 03 MINUTES 15 SECOND WEST PARALLEL WITH THE WEST LINE OF SAID LOT NUMBERED 4A2, A DISTANCE OF 25.00 FEET TO A POINT ON THE NORTH LINE OF SAID EXISTING LIFT STATION EASEMENT AS SHOWN ON SAID RECORD PLAT AND AS RECORDED IN INSTRUMENT NUMBER 94-007158 IN THE OFFICE OF THE RECORDER OF ELKHART COUNTY, INDIANA; THENCE NORTH 89 DEGREES 13 MINUTES 22 SECONDS WEST ALONG SAID NORTH LINE OF EXISTING EASEMENT AND PARALLEL WITH SAID SOUTH LINE OF LOT NUMBERED 4A2, A DISTANCE OF 13.00 FEET TO THE AFOREMENTIONED POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT ENCOMPASSING 325 SQUARE FEET (0.008 ACRE), MORE OR LESS. SUBJECT TO ALL EASEMENTS, RESTRICTIONS, AND PUBLIC RIGHTS OF WAY OF RECORD.

The Easement is part of the real estate more commonly known as 2815 County Home Road, Goshen, Indiana, and part of Parcel Number 20-06-25-303-003.000-013. Grantor obtained title to the real estate by Quitclaim Deed dated July 10, 2007 and recorded July 16, 2007 in the Office of the Recorder of Elkhart County, Indiana as Instrument No. 2007-19415.

The Easement is granted to City for Goshen City utilities purposes.

Grantor grants City access to the Easement for the purposes of installing, operating and maintaining the Goshen City utilities within the Easement.

City shall restore the surface of the Easement after any entry by City to as good as or better condition than it was prior to the entry. City shall promptly pay for or otherwise rectify any damage caused by City to Grantor's adjoining real estate.

City is not obligated to replace any improvements extending over or into the Easement that may be damaged or removed during any subsequent entry.

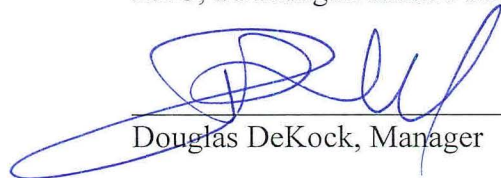
Grantor may use, occupy and possess the Easement in a manner that is consistent with and does not interfere with City's rights contained in this Easement.

The terms of this Easement shall be binding upon and inure to the benefit of the heirs, assigns and successors in interest of the parties.

The undersigned represents and certifies that such person is a duly authorized representative of Grantor and has been fully empowered to execute this Easement on behalf of Grantor; that the Grantor has full capacity to grant the Easement described; and that all necessary action for granting this Easement has been taken.

IN WITNESS WHEREOF, the undersigned has executed this Easement on FEBRUARY 25, 2020.

GEENEN DeKOCK PROPERTIES IN, LLC, a Michigan limited liability company

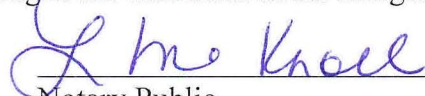


Douglas DeKock, Manager

STATE OF MICHIGAN)
) SS:
COUNTY OF Ottawa)

Before me, the undersigned Notary Public, on February 25, 2020, personally appeared Douglas DeKock, Manager of **GEENEN DeKOCK PROPERTIES IN, LLC**, a Michigan limited liability company, and acknowledged the execution of the foregoing instrument.

(SEAL)



Notary Public
Printed: Lisa Marie Knoll
County of residence: Allegan
My commission expires: 8/5/2026
Commission number: _____

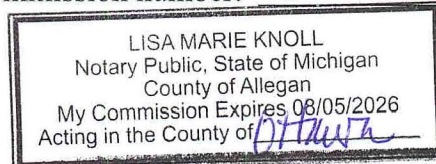
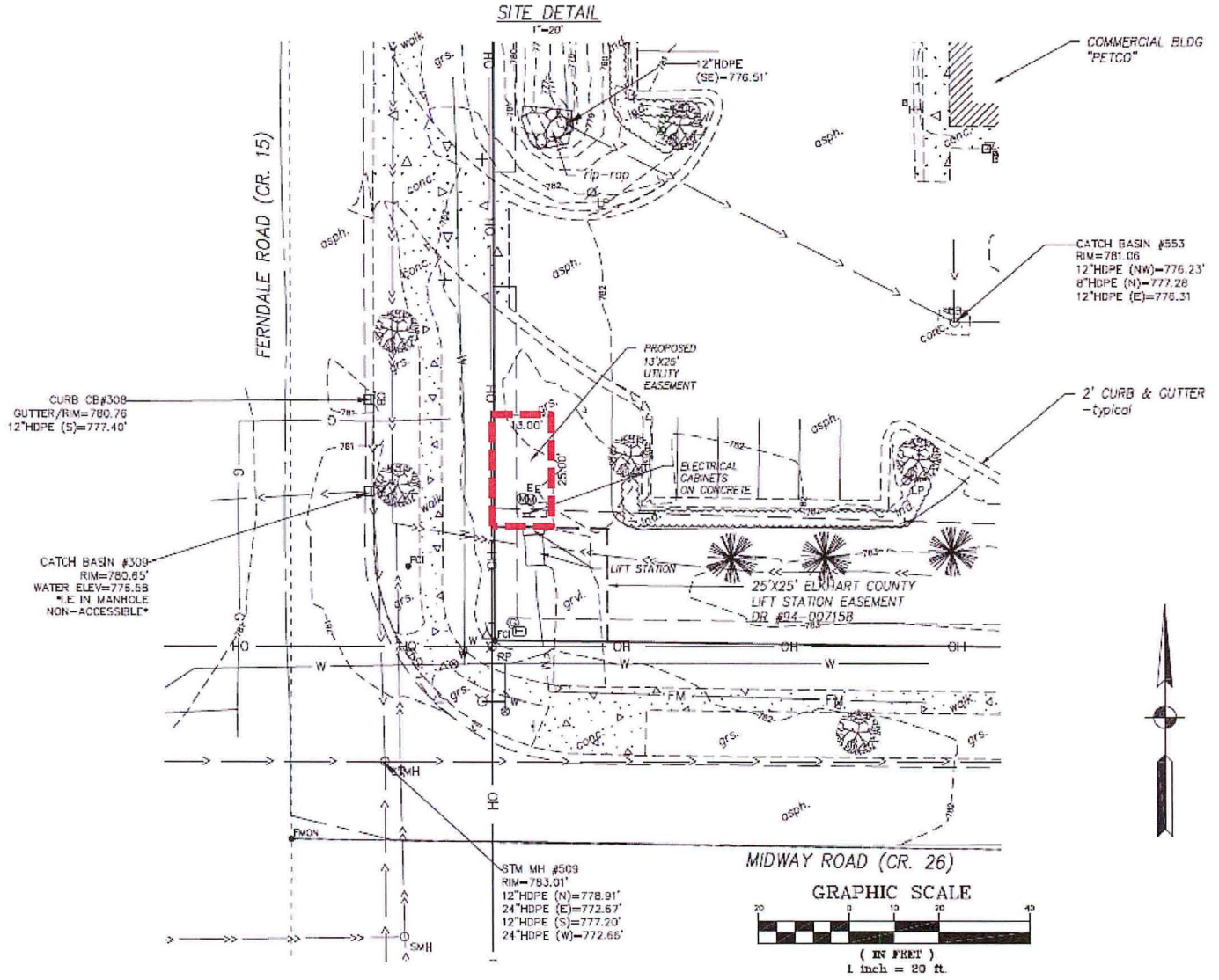


EXHIBIT A



ACCEPTANCE

The **City of Goshen, Indiana**, by the Goshen Board of Public Works and Safety, acknowledges the receipt of this Easement from **GEENEN DeKOCK PROPERTIES IN, LLC**, a Michigan limited liability company, and accepts the Easement pursuant to the terms and conditions on _____, 2020.

Jeremy P. Stutsman, Mayor

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

Before me, the undersigned Notary Public, on _____, 2020, personally appeared Jeremy P. Stutsman the Mayor of the City of Goshen, Indiana on behalf of the Goshen Board of Public Works and Safety, and acknowledged the execution of the Acceptance.

(SEAL)

Shannon Marks, Notary Public
Resident of Elkhart County
My commission expires May 17, 2024
Commission number: 0685467

Prepared by Larry A. Barkes, Attorney No. 3568-20, for City of Goshen Legal Department, 204 East Jefferson Street, Suite 2, Goshen, Indiana 46528, (574) 537-3820.

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



CITY OF GOSHEN LEGAL DEPARTMENT

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March 9, 2020

To: Board of Public Works and Safety
From: Shannon Marks
Subject: Agreement with Rooney and Co, LLC

Attached for the Board's approval and execution is an agreement with Rooney and Co, LLC. Rooney and Co, LLC will prepare the Indiana Medicaid Freestanding Governmental Ambulance Provider Cost Report for the fiscal years ending December 31, 2019, December 31, 2020, December 31, 2021 and December 31, 2022, and file all required information for consideration of a supplemental payment adjustment to the City for the costs of providing ambulance services to eligible Medicaid beneficiaries.

The City will pay Rooney and Co, LLC a flat fee of \$16,000 for all services which is payable in four (4) equal installments. Each installment will be paid upon the completion of the cost report and filing of all necessary information for each respective fiscal year.

It is recommended that the Board of Public Works and Safety make a motion to **approve and execute the agreement with Rooney and Co, LLC.**

AGREEMENT

THIS AGREEMENT is made and entered into on March _____, 2020, between **Rooney and Co, LLC**, an Indiana limited liability company (“Rooney”), and the **City of Goshen, Indiana**, by and through its Board of Public Works and Safety on behalf of the Goshen Fire Department (“City”).

WHEREAS City desires to secure the services of Rooney to prepare annual cost reports to be used in filing for supplemental payment adjustments that are to reimburse an in-state government-owned ambulance provider the actual incurred costs of providing ambulance services to eligible Medicaid beneficiaries.

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

SCOPE OF SERVICES

Rooney shall prepare, from data and information supplied to Rooney by City’s Fire Department, the Indiana Medicaid Freestanding Governmental Ambulance Provider Cost Report on behalf of City and Goshen Fire Department for each of the fiscal years ending December 31, 2019, December 31, 2020, December 31, 2021 and December 31, 2022. The purpose is to determine the Medicaid program ambulance costs for potential additional Medicaid reimbursement.

Rooney shall prepare the cost reports in compliance with the cost allocation principles found in OMB Circular A-87 and CMS Pub. 15-1 and based on the instructions outlined in the Indiana Health Coverage Program June 4, 2013 Medicaid Bulletin BT201316. Should the cost allocation principles or instructions be revised at any time, then the cost report shall be prepared based on the latest cost allocation principles or instructions in effect.

Rooney will provide City’s Fire Department a planning guide to assist in compiling the necessary data and information that is required for Rooney’s completion of the Indiana Medicaid Freestanding Governmental Ambulance Provider Cost Reports. City shall submit to Rooney in a timely manner, but no later than April 30 of each year, all data and information necessary to complete the respective cost report for the preceding fiscal year.

Rooney will not audit or otherwise verify the data submitted to Rooney by City. Rooney may request clarifications from City with regards to the data provided. As required by the Office of Medicaid Policy and Planning, City shall maintain adequate documentation to support the cost reports filed.

All statements, records, schedules, working papers, or memoranda prepared by Rooney while performing services under this agreement shall remain the property of Rooney, except the completed cost report for each fiscal year shall become the property of the City.

Rooney will submit on behalf of City all required information for consideration of the payment adjustment for each fiscal year electronically to Myers and Stauffer LC on or before the filing deadline for each respective fiscal year.

Regardless of whether or not separate, several, joint or concurrent liability may be imposed upon Rooney, City shall indemnify and hold harmless Rooney from and against all damages, claims, and liability arising from or connected with incorrect data negligently or fraudulently provided by City. If Rooney shall become a party to litigation or be required to respond to an audit of City based upon the incorrect data negligently or fraudulently provided or the failure of the cost report to be timely submitted due to the

suspension or termination of Rooney's work due to non-payment or failure to provide the data or other necessary information on a timely basis, then City shall hold Rooney harmless and indemnify Rooney with respect to all associated costs, including without limit to attorney's fees, court costs, interest, and penalties.

TERM

This agreement shall be effective upon the date of execution and approval by both parties which is the date of the last signatory to the agreement. The parties acknowledge that time is of the essence and that the timely performance of Rooney's services is an important element of this agreement. Rooney shall perform all services as expeditiously as is consistent with professional skill and care until Rooney's completion of the cost reports and filing of all required information for consideration of the payment adjustment.

This agreement specifically includes Rooney's preparation of the cost reports and filing all necessary information for each fiscal year ending December 31, 2019, December 31, 2020, December 31, 2021 and December 31, 2022.

COMPENSATION

City shall pay Rooney a flat fee of Sixteen Thousand Dollars (\$16,000) for all services provided under this agreement payable in four (4) equal installments. Rooney shall invoice City Four Thousand Dollars (\$4,000) upon completion of the cost report and submission of all required information to Myers and Stauffer LC for each respective fiscal year. City shall remit payment due to Rooney within thirty (30) days of City's receipt of the invoice from Rooney.

Rooney shall have a current W-9 Form on file with the City before the City will issue any payment.

INDEPENDENT CONTRACTOR

Rooney shall be deemed an independent contractor and operate as a separate entity from City. Rooney agrees to comply with all federal, state and local laws regarding reporting of compensation earned and payment of taxes.

NON-DISCRIMINATION

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

EMPLOYMENT ELIGIBILITY VERIFICATION

Rooney shall enroll in and verify the work eligibility status of all newly hired employees of Rooney through the E-Verify program as defined by Indiana Code § 22-5-1.7-3. Rooney is not required to verify the work eligibility status of all newly hired employees through the E-Verify program if the E-Verify program no longer exists exist.

Rooney or any subcontractor shall not knowingly employ or contract with an unauthorized alien. Rooney or any subcontractor shall not retain an employee or contract with a person that Rooney or any subcontractor subsequently learns is an unauthorized alien.

Rooney shall require any subcontractor performing services under this agreement to certify that the subcontractor does not knowingly employ or contract with an unauthorized alien, and the subcontractor shall not retain an employee or continue to contract with a person that the subcontractor subsequently learns is an unauthorized alien. Rooney shall also require the subcontractor to certify that the subcontractor has enrolled and is participating in the E-Verify program. Rooney agrees to maintain on file this certification throughout the duration of the term of a contract with the subcontractor.

City may terminate the agreement if Rooney or any subcontractor fails to cure a breach of this provision no later than thirty (30) days after the date of being notified by City of a breach.

By execution of this agreement, Rooney affirms under penalties for perjury that Rooney does not knowingly employ or contract with an unauthorized alien.

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 five (5) days after the notice is deposited in the US mail or when received at the appropriate address.

Address for notices to the City: City of Goshen
 Attention: Goshen Fire Department
 209 North Third Street
 Goshen, IN 46526

 with a copy to: City of Goshen
 Attention: Legal Department
 204 East Jefferson Street, Suite 2
 Goshen, IN 46528

Address for notices to Rooney: Rooney and Co, LLC
 Attention: Lisa Rooney, Manager
 7839 Islay Road
 Indianapolis, IN 46217

SUBCONTRACTING OR ASSIGNMENT

Rooney 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 to subcontract or assign any portion of the agreement shall not be construed to relieve Rooney from any responsibility to fulfill all contractual obligations.

AMENDMENT

Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties and such modification is approved by the Goshen Board of Public Works and Safety. Any verbal representations or modifications concerning the agreement shall be of no force and effect.

MISCELLANEOUS

- (1) Rooney shall provide all services under this agreement in compliance with all applicable federal, state and local laws, rules, regulations and ordinances, as the same shall be in full force and effect during the term of the agreement.
- (2) This agreement shall be construed in accordance with and governed by the laws of the State of Indiana.
- (3) In the event that legal action is brought to enforce or interpret the terms of and conditions of this agreement, the proper venue for such action will be in a court of competent jurisdiction in Elkhart County, Indiana.
- (4) In the event that either party brings an action to enforce any right conferred by this agreement or to force the other party to fulfill any obligation imposed by this agreement, the prevailing party of such action shall be entitled to recover all costs of that action, including reasonable attorneys' fees.
- (5) 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 this agreement shall not affect the validity or enforceability of any other provision of this agreement.
- (6) All provisions, covenants, terms and conditions of this agreement apply to and bind the parties and their legal heirs, representatives, successors and assigns.
- (7) This agreement constitutes the entire agreement between the parties and supersedes all other agreements or understanding between City and Rooney.

AUTHORITY TO EXECUTE

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

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

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

Rooney and Co, LLC

Jeremy P. Stutsman, Mayor

By: _____

Michael A. Landis, Member

Printed: _____

Mary Nichols, Member

Title: _____

Date: March _____, 2020

Date: March 9, 2020



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

March 9, 2020

To: Goshen Board of Public Works and Safety and Stormwater Board

From: Shannon Marks

Subject: Occupancy Permit Agreement with Philip D. Leichthy and Virginia M. Leichthy, Husband and Wife, and Paul D. Hochstetler doing business as Freedom Builders

It is recommended that the Board approve and authorize the Mayor to execute the Occupancy Permit Agreement with Philip D. Leichthy and Virginia M. Leichthy, Husband and Wife, and Paul D. Hochstetler doing business as Freedom Builders concerning the completion of the construction project at 1616 Clover Creek Lane.

OCCUPANCY PERMIT AGREEMENT

THIS AGREEMENT is entered into on _____, 2020, between the **City of Goshen, Indiana** by and through the Goshen Board of Public Works and Safety and Stormwater Board (“Goshen”), and **Philip D. Leichty and Virginia M. Leichty, Husband and Wife, and Paul D. Hochstetler doing business as Freedom Builders**, (hereinafter collectively referred to as “Permittee”).

Permittee obtained a building permit for the construction of a residence on Philip D. Leichty and Virginia M. Leichty’s real estate at 1616 Clover Creek Lane, Goshen, Indiana (“Site”). The construction project is substantially complete except for certain exterior work that cannot be completed due to weather conditions.

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

WORK

Permittee agrees to complete the following remaining item(s) of work (“Work”) as soon as conditions permit, but no later than June 15, 2020:

- (1) Permanently stabilize the Site which shall include grading, adding topsoil where needed, seeding and mulching of the grounds. This shall specifically include stabilization of approximately 2,700 square feet of disturbed area with seed and a temporary stabilization measure such as anchored mulch, hydromulch, or erosion control blankets. In addition, all adjacent and/or affected inlets shall be kept covered until the Site has been completely and permanently stabilized.
- (2) Plant all required landscaping at the Site according to the plan submitted to the Goshen Planning and Zoning Department. This shall include planting one street tree.

SURETY

Permittee agrees to provide Goshen a surety in the amount of Seven Hundred Thirty-five Dollars (\$735) (“Surety”) to insure the timely and proper completion of the Work under the terms of this agreement. The Surety may be in the form of a surety bond, letter of credit, or cash bond, including a corporate check or cashier’s check (which City Clerk-Treasurer will cash). The Surety is to insure the timely and proper completion of the obligations under this agreement and is not intended for the benefit of any third party, including Permittee’s contractors or subcontractors. Upon satisfactory completion of the Work, Goshen will release the Surety.

If the Surety is in the form of cash or a check, the Permittee must have a current W-9 on file with the City Clerk-Treasurer so a check may be issued to refund the Surety.

CERTIFICATE OF OCCUPANCY

Except for the Work yet to be completed as set forth above, once the construction project complies with all applicable City ordinances and requirements, Goshen will issue a Certificate of Occupancy for the Site on the condition that Permittee complies with the terms of this agreement.

FORCE MAJEURE

If Permittee’s performance under this agreement is prevented because of an occurrence that is beyond the control of the Permittee which could not have been avoided by exercising reasonable diligence, Permittee’s

time for performance will be extended. Such extension shall be for no longer than necessary given the nature of the occurrence which causes the delay. Examples of such occurrences are tornadoes, floods, or more than a typical number of days where rainfall prohibits the performance required of the Permittee.

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

DEFAULT

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

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

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

SUBCONTRACTING OR ASSIGNMENT OF CONTRACT

Permittee shall not subcontract or assign any right or interest under the agreement without having prior written approval from the Goshen Board of Public Works and Safety and Stormwater Board, provided, however, that Permittee shall be permitted to independently engage any contractors, subcontractors, or laborers to perform the Work, and such engagement shall not be considered to be an impermissible subcontracting or assignment by Permittee of any right or interest under this agreement. Except as provided herein, any attempt by Permittee to subcontract or assign any portion of the agreement shall not be construed to relieve Permittee from any responsibility to fulfill Permittee's obligations.

AMENDMENTS

Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties and such modification is approved by the Goshen Board of Public Works and Safety and Stormwater Board. Any verbal representations or modifications concerning the agreement shall be of no force and effect.

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.

NOTICES

All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in this

agreement. Notice will be considered given five (5) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

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

Address for Permittee: Philip D. Leichty and Virginia M. Leichty
405 Franklin Street
Goshen, IN 46526

and

Paul D. Hochstetler doing business as Freedom Builders
54824 County Road 33
Middlebury, IN 46540

APPLICABLE LAWS

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

In addition, all provisions required by law to be inserted into this agreement shall be deemed to be inserted whether they are actually included or not. Any provision of this agreement or incorporated documents, if any, 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 this agreement and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.

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

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

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.

BINDING EFFECT

All provisions, covenants, terms and conditions of the agreement apply to 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 Goshen and Permittee.

AUTHORITY TO EXECUTE

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

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

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

Permittee

Jeremy P. Stutsman, Mayor

Date: March _____, 2020

Philip D. Leichty

Virginia M. Leichty

Date: _____

Paul D. Hochstetler
doing business as Freedom Builders

Paul D. Hochstetler

Date: _____



CITY OF GOSHEN LEGAL DEPARTMENT

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

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

March 9, 2020

To: Goshen Board of Public Works and Safety and Stormwater Board

From: Shannon Marks

Subject: Occupancy Permit Agreement with Calvin C. Graber and Sharon Mockler Graber and Paul D. Hochstetler doing business as Freedom Builders

It is recommended that the Board approve and authorize the Mayor to execute the Occupancy Permit Agreement with Calvin C. Graber and Sharon Mockler Graber and Paul D. Hochstetler doing business as Freedom Builders concerning the completion of the construction project at 1618 Clover Creek Lane.

OCCUPANCY PERMIT AGREEMENT

THIS AGREEMENT is entered into on _____, 2020, between the **City of Goshen, Indiana** by and through the Goshen Board of Public Works and Safety and Stormwater Board (“Goshen”), and **Calvin C. Graber and Sharon Mockler Graber, and Paul D. Hochstetler doing business as Freedom Builders**, (hereinafter collectively referred to as “Permittee”).

Permittee obtained a building permit for the construction of a residence on Calvin C. Graber and Sharon Mockler Graber’s real estate at 1618 Clover Creek Lane, Goshen, Indiana (“Site”). The construction project is substantially complete except for certain exterior work that cannot be completed due to weather conditions.

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

WORK

Permittee agrees to complete the following remaining item(s) of work (“Work”) as soon as conditions permit, but no later than June 15, 2020:

- (1) Permanently stabilize the Site which shall include grading, adding topsoil where needed, seeding and mulching of the grounds. This shall specifically include stabilization of approximately 2,700 square feet of disturbed area with seed and a temporary stabilization measure such as anchored mulch, hydromulch, or erosion control blankets. In addition, all adjacent and/or affected inlets shall be kept covered until the Site has been completely and permanently stabilized.
- (2) Plant all required landscaping at the Site according to the plan submitted to the Goshen Planning and Zoning Department. This shall include planting one street tree.

SURETY

Permittee agrees to provide Goshen a surety in the amount of Seven Hundred Thirty-five Dollars (\$735) (“Surety”) to insure the timely and proper completion of the Work under the terms of this agreement. The Surety may be in the form of a surety bond, letter of credit, or cash bond, including a corporate check or cashier’s check (which City Clerk-Treasurer will cash). The Surety is to insure the timely and proper completion of the obligations under this agreement and is not intended for the benefit of any third party, including Permittee’s contractors or subcontractors. Upon satisfactory completion of the Work, Goshen will release the Surety.

If the Surety is in the form of cash or a check, the Permittee must have a current W-9 on file with the City Clerk-Treasurer so a check may be issued to refund the Surety.

CERTIFICATE OF OCCUPANCY

Except for the Work yet to be completed as set forth above, once the construction project complies with all applicable City ordinances and requirements, Goshen will issue a Certificate of Occupancy for the Site on the condition that Permittee complies with the terms of this agreement.

FORCE MAJEURE

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

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

DEFAULT

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

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

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

SUBCONTRACTING OR ASSIGNMENT OF CONTRACT

Permittee shall not subcontract or assign any right or interest under the agreement without having prior written approval from the Goshen Board of Public Works and Safety and Stormwater Board, provided, however, that Permittee shall be permitted to independently engage any contractors, subcontractors, or laborers to perform the Work, and such engagement shall not be considered to be an impermissible subcontracting or assignment by Permittee of any right or interest under this agreement. Except as provided herein, any attempt by Permittee to subcontract or assign any portion of the agreement shall not be construed to relieve Permittee from any responsibility to fulfill Permittee's obligations.

AMENDMENTS

Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties and such modification is approved by the Goshen Board of Public Works and Safety and Stormwater Board. Any verbal representations or modifications concerning the agreement shall be of no force and effect.

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.

NOTICES

All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in this agreement. Notice will be considered given five (5) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

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

Address for Permittee: Calvin C. Graber and Sharon Mockler Graber
16110 Easton Court
Goshen, IN 46526

and

Paul D. Hochstetler doing business as Freedom Builders
54824 County Road 33
Middlebury, IN 46540

APPLICABLE LAWS

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

In addition, all provisions required by law to be inserted into this agreement shall be deemed to be inserted whether they are actually included or not. Any provision of this agreement or incorporated documents, if any, 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 this agreement and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.

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

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

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.

BINDING EFFECT

All provisions, covenants, terms and conditions of the agreement apply to 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 Goshen and Permittee.

AUTHORITY TO EXECUTE

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

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

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

Permittee

Jeremy P. Stutsman, Mayor

Date: March _____, 2020

Calvin C. Graber

Sharon Mockler Graber

Date: _____

Paul D. Hochstetler
doing business as Freedom Builders

Paul D. Hochstetler

Date: _____



CITY OF GOSHEN LEGAL DEPARTMENT

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

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

March 9, 2020

To: Goshen Board of Public Works and Safety and Stormwater Board

From: Shannon Marks

Subject: Occupancy Permit Agreement with Jose Tapia and Lorie Tapia, Husband and Wife and Granite Ridge Builders, Inc.

It is recommended that the Board approve and authorize the Mayor to execute the Occupancy Permit Agreement with Jose Tapia and Lorie Tapia, Husband and Wife, and Granite Ridge Builders, Inc. concerning the completion of the construction project at 112 Tulip Boulevard.

OCCUPANCY PERMIT AGREEMENT

THIS AGREEMENT is entered into on March _____, 2020, between the **City of Goshen, Indiana** by and through the Goshen Board of Public Works and Safety and Stormwater Board (“Goshen”), and **Jose Tapia and Lorie Tapia, Husband and Wife**, and **Granite Ridge Builders, Inc.**, (hereinafter collectively referred to as “Permittee”).

Permittee obtained a building permit for the construction of a building on Jose Tapia and Lorie Tapia, Husband and Wifes real estate at 112 Tulip Boulevard, Goshen, Indiana (“Site”). The construction project is substantially complete except for certain exterior work that cannot be completed due to weather conditions.

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

WORK

Permittee agrees to complete the following remaining item(s) of work (“Work”) as soon as conditions permit, but no later than June 15, 2020:

- (1) Permanently stabilize the Site which shall include grading, adding topsoil where needed, seeding and mulching of the grounds. This shall specifically include stabilization of approximately 12,000 square feet of disturbed area with seed and a temporary stabilization measure such as anchored mulch, hydromulch, or erosion control blankets. In addition, all adjacent and/or affected inlets shall be kept covered until the Site has been completely and permanently stabilized.
- (2) Plant all required landscaping at the Site according to the plan submitted to the Goshen Planning and Zoning Department. This shall include planting one street tree.
- (3) Install the concrete sidewalks at the Site parallel to Tulip Boulevard.

SURETY

Permittee agrees to provide Goshen a surety in the amount of Two Thousand Six Hundred Twenty-five Dollars (\$2,625) (“Surety”) to insure the timely and proper completion of the Work under the terms of this agreement. The Surety may be in the form of a surety bond, letter of credit, or cash bond, including a corporate check or cashier’s check (which City Clerk-Treasurer will cash). The Surety is to insure the timely and proper completion of the obligations under this agreement and is not intended for the benefit of any third party, including Permittee’s contractors or subcontractors. Upon satisfactory completion of the Work, Goshen will release the Surety.

If the Surety is in the form of cash or a check, the Permittee must have a current W-9 on file with the City Clerk-Treasurer so a check may be issued to refund the Surety.

CERTIFICATE OF OCCUPANCY

Except for the Work yet to be completed as set forth above, once the construction project complies with all applicable City ordinances and requirements, Goshen will issue a Certificate of Occupancy for the Site on the condition that Permittee complies with the terms of this agreement.

FORCE MAJEURE

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

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

DEFAULT

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

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

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

SUBCONTRACTING OR ASSIGNMENT OF CONTRACT

Permittee shall not subcontract or assign any right or interest under the agreement without having prior written approval from the Goshen Board of Public Works and Safety and Stormwater Board, provided, however, that Permittee shall be permitted to independently engage any contractors, subcontractors, or laborers to perform the Work, and such engagement shall not be considered to be an impermissible subcontracting or assignment by Permittee of any right or interest under this agreement. Except as provided herein, any attempt by Permittee to subcontract or assign any portion of the agreement shall not be construed to relieve Permittee from any responsibility to fulfill Permittee's obligations.

AMENDMENTS

Any modification or amendment to the terms and conditions of the agreement shall not be binding unless made in writing and signed by both parties and such modification is approved by the Goshen Board of Public Works and Safety and Stormwater Board. Any verbal representations or modifications concerning the agreement shall be of no force and effect.

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.

NOTICES

All written notices, properly addressed and sent by U.S. mail or delivered personally to the address provided below shall constitute sufficient notice whenever written notice is required for any purpose in this agreement. Notice will be considered given five (5) days after the notice is deposited in the U.S. mail or when received at the appropriate address.

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

Address for Permittee: Jose Tapia and Lorie Tapia, Husband and Wife
125 Brookside Manor
Goshen, IN 46526

and

Granite Ridge Builders, Inc.
Anthony J. Reineke, Registered Agent
1020 Woodland Plaza Run
Fort Wayne, IN 46825-1528

APPLICABLE LAWS

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

In addition, all provisions required by law to be inserted into this agreement shall be deemed to be inserted whether they are actually included or not. Any provision of this agreement or incorporated documents, if any, 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 this agreement and applicable laws, rules, regulations or ordinances, the most stringent or legally binding requirement shall govern.

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

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

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.

BINDING EFFECT

All provisions, covenants, terms and conditions of the agreement apply to 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 Goshen and Permittee.

AUTHORITY TO EXECUTE

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

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

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

Permittee

Jeremy P. Stutsman, Mayor

Date: March _____, 2020

Jose Tapia

Lorie Tapia

Date: _____

Granite Ridge Builders, Inc.

By: _____

Printed: _____

Title: _____

Date: _____



**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

March 9, 2020

To: Board of Public Works and Safety
From: Keitha Windsor
Subject: Resolution to Declare as Surplus & Approval of Disposal Surplus Property

The City's Central Garage wishes to have the following equipment declared as surplus property and to dispose of the surplus property in accordance with IC 5-22-22:

- | | | |
|-----|---|---------------------------|
| 1. | Snow Ex Liquid Sprayer | |
| 2. | Mauldin Asphalt Paver | 030-B-69TKS8Y2-01030 |
| 3. | 2012 Falcon Patch Wagon | 1F9P41420CM339121 |
| 4. | 2011 Slide in Salt Spreader | 11051620369378006 |
| 5. | 2008 10Ft Salt/Sander | 68010630000194823-1 |
| 6. | 2007 F250
With 2007 Boss Straight Blade Plow | 1FTNF21587EA38602
6905 |
| 7. | 1995 American Roads Leaf Vac #2 | 1A9SC233XRM274060 |
| 8. | EZ Go Electric Golf Cart | 369382 |
| 9. | 1999 GMC T7500 | 1GDM7C1J7WJ507272 |
| 10. | 2006 Colorado 4WD 2Dr | 1GCDT146468238716 |
| 11. | 2007 Impala | 2G1WS55R779304041 |
| 12. | 2002 GEM Electric Vehicle | 5ASAG27462F018003 |
| 13. | 1997 Tahoe 4WD | 3GNEK18R9VG169579 |
| 14. | 2005 Impala | 2G1WF55K059334812 |

Suggested motion: In accordance with IC 5-22-22 resolve to declare above listed equipment as surplus property and to dispose of the surplus property consistent with Resolution 2020-09

RESOLUTION 2020-09

**DECLARING SURPLUS AND APPROVING THE DISPOSAL
OF SURPLUS PERSONAL PROPERTY**

WHEREAS various City of Goshen departments and offices have surplus personal property that has been left in the city's custody and remained unclaimed for more than one year or is no longer needed or is unfit for the purpose for which it was intended.

WHEREAS the City of Goshen wishes to dispose of the surplus personal property.

NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works and Safety that:

1. The personal property set forth in Exhibit A is declared as surplus property.
2. Authorization is given for the disposal of the surplus property in accordance with the provisions of Indiana Code § 5-22-22 et seq., including engaging a licensed auctioneer to advertise the sale and conduct a public auction; using an approved Internet auction site; selling the property at public sale or by sealed bids with advertising; selling the property at a public or private sale or transferring the property without advertising provided the estimated value of the property is less than \$5,000; selling recyclable materials collected in conjunction with a recycling program at a public or private sale or transfer the property without advertising; or demolishing or junking property that is worthless or of no market value.
3. The City of Goshen Legal Department is authorized to determine the best method(s) to dispose of the surplus property based on the nature of the property, the number of items to be disposed, and the estimated total value of the property.

PASSED and ADOPTED on March 9, 2020.

Board of Public Works and Safety
City of Goshen, Indiana

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

Michael A. Landis, Member

EXHIBIT A

Surplus Property
March 9, 2020

1.	Snow Ex Liquid Sprayer	
2.	Mauldin Asphalt Paver	030-B-69TKS8Y2-01030
3.	2012 Falcon Patch Wagon	1F9P41420CM339121
4.	2011 Slide in Salt Spreader	11051620369378006
5.	2008 10Ft Slide in Salt Spreader	68010630000194823-1
6.	2007 F250	1FTNF21587EA38602
	With 2007 Boss Straight Blade Plow	6905
7.	1995 American Roads Leaf Vac #2	1A9SC233XRM274060
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11.	2007 Impala	2G1WS55R779304041
12.	2002 GEM Electric Vehicle	5ASAG27462F018003
13.	1997 Tahoe 4WD	3GNEK18R9VG169579
14.	2005 Impala	2G1WF55K059334812



**Legal Department
CITY OF GOSHEN**

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

To: Board of Public Works and Safety
From: Bodie J. Stegelmann
Date: March 5, 2020
Re: Authorize Grant Agreement and Banjo Master Services Agreement

The Indiana Drug Enforcement Association (“IDEA”) offered to the City of Goshen Police Department grant funds to pay for the use of a certain Internet and mobile software platform for the real time display of live, shared events indexed by location and content. The grant funds offered to the Police Department by IDEA requires the Police Department to contract with Banjo, Inc. to provide the software services contemplated by the IDEA grant. The City of Goshen Legal Department negotiated the terms of the Grant Agreement and the Banjo Master Services Agreement, which required signed copies of the agreements to be submitted to the IDEA and to Banjo on March 6, 2020.

Motion Requested: Authorization for the Police Department to accept grant funds from the Indiana Drug Enforcement Association to pay for use of an internet and mobile software platform for real time display of live, shared events and ratification of agreements with IDEA and with Banjo, Inc.

RESOLUTION 2020-10

Authorize Grant Agreement and Banjo Master Services Agreement

WHEREAS the Indiana Drug Enforcement Association (“IDEA”) offered to the City of Goshen Police Department grant funds to pay for the use of a certain Internet and mobile software platform for the real time display of live, shared events indexed by location and content;

WHEREAS the grant funds offered to the Police Department by IDEA requires the Police Department to contract with Banjo, Inc. to provide the software services contemplated by the IDEA grant;

WHEREAS the City of Goshen Legal Department negotiated the terms of the Grant Agreement and the Banjo Master Services Agreement, which required signed copies of the agreements to be submitted to the IDEA and to Banjo on March 6, 2020;

BE IT RESOLVED by the Goshen Board of Public Works and Safety that:

- A. The City of Goshen authorizes the Police Department to accept grant funding from the IDEA to pay for the Internet and mobile software platform for real time display of live, shared events indexed by location and content, and to enter into an agreement with Banjo, Inc. to provide such services.
- B. The agreement between the City and IDEA and between the City and Banjo, Inc., executed by Jose Miller, Chief, Goshen City Police Department and attached to this Resolution, are hereby approved and ratified.

PASSED by the Goshen Board of Public Works and Safety on March 9, 2020.

Jeremy P. Stutsman, Mayor

Mary Nichols, Member

Michael A. Landis, Member

GRANT AGREEMENT

Agreement # BAN2019-06

This Grant Agreement (this "Grant Agreement"), entered into by and between **Indiana Drug Enforcement Association ("IDEA" or "Grantor")**, the **GOSHEN POLICE DEPARTMENT ("Grantee")**, and the _____, as the Grantee's fiscal agent, if applicable, is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

Whereas, the IDEA is an Indiana not-for-profit corporation whose purpose is to encourage and develop programs to educate the public concerning the hazards of drug abuse, to encourage a high standard of enforcement of federal and state narcotics laws through training and education, and to foster a spirit of trust and cooperation among all police officers and law enforcement agencies;

Whereas, the IDEA received a grant from the Office of the Indiana Attorney General ("the OAG") to be used for programs concerning the hazards of drug abuse, such programs subject to consultation with and approval by the OAG; and

Whereas, the OAG has reviewed and approved the Grantee's application submitted to IDEA;

Now, therefore, the parties agree as follows:

1. Purpose of this Grant Agreement; Grant Funds.

The purpose of this Grant Agreement is to enable the IDEA to award a grant not-to-exceed **\$20,005.00** to the Grantee for eligible costs related to the development, establishment and implementation of a Live Time Intelligence platform and Child Abduction Recovery module (collectively, "Platform"), as described more fully in **Exhibit A** of this Grant Agreement, which is incorporated fully by reference. The funds received by the Grantee pursuant to this Grant Agreement shall be used only to implement the Platform and for no other purpose.

2. Representations and Warranties of the Grantee. The Grantee represents and warrants that the information set forth in its grant application is true, complete and accurate. The Grantee expressly agrees to promptly repay all funds paid to it under this Grant Agreement should it be determined that it made any material misrepresentation on its grant application.

3. Implementation of and Modification. The Grantee shall develop, establish and implement the Platform in accordance with **Exhibit A**. Grantee shall enter into a separate agreement with Banjo, Inc., to develop and implement the Platform for its service area. Clause 18 of this Grant Agreement shall govern those contracts. Modification of the implementation of the Platform shall require prior written approval of the IDEA.

4. Term. This Grant Agreement shall be for a period of one (1) year. This Grant Agreement commences on the date it is approved by the Grantor, and shall remain in effect for one full year thereafter. Unless otherwise provided herein, it may be renewed for one additional term upon the written agreement of the parties.

5. Grant Funding.

A. The IDEA shall fund this grant in the amount not-to-exceed **\$20,005.00**. The approved Platform Budget is set forth in **Exhibit A**. The Grantee shall not spend more than the amount in the Platform Budget without the prior written consent of the IDEA, nor shall the costs funded by this Grant Agreement and those funded by any local and/or private share be changed or modified without the prior written consent of the IDEA.

B. The Grantee shall submit to the IDEA written reports until the completion of the implementation of the Platform. These reports shall be submitted on a quarterly basis and shall contain such detail on the costs and expenses for the implementation of the Platform in a format determined by the IDEA. The quarterly reports shall be completed and submitted to the IDEA no later than fifteen (15) calendar days following the last day of the reporting quarter.

C. The disbursement of grant funds to the Grantee shall not be made until all documentary materials and quarterly reports required by this Grant Agreement have been received and approved by the IDEA.

6. Payment of Claims.

A. If the IDEA agrees to provide advance payment, advance payment shall be made only upon submission of a proper claim setting out the intended purposes of those funds. After such funds have been expended, Grantee shall provide the IDEA with a reconciliation of those expenditures. Otherwise, all payments shall be made thirty (30) days in arrears.

B. The IDEA may require evidence furnished by the Grantee that substantial progress has been made toward completion of the implementation of the Platform prior to making the first payment under this Grant. All payments are subject to the IDEA's determination that the Grantee's performance to date conforms to the implementation of the program as approved, notwithstanding any other provision of this Grant Agreement.

C. Claims shall be submitted to the IDEA within fifteen (15) calendar days following the end of the quarter in which work on or for the implementation of the Platform was performed. The IDEA has the discretion, and reserves the right, to NOT pay any claims submitted later than thirty (30) calendar days following the last day of the reporting quarter. All final claims and reports must be submitted to the IDEA within thirty (30) calendar days after the expiration or termination of this Grant Agreement. Payment for claims submitted after that time may, at the discretion of the IDEA, be denied. If grant funds have been advanced and are unexpended at the time that the final claim is submitted, all such unexpended grant funds must be returned to the IDEA.

D. Claims must be submitted in a format as determined by the IDEA. Claims improperly submitted will be returned to the Grantee and not processed for payment. Failure to comply with the provisions of this Grant Agreement may result in the denial of a claim for payment.

7. Program Monitoring by the IDEA.

The IDEA may conduct on-site or off-site monitoring reviews of the Platform during the term of this Grant Agreement and for up to ninety (90) days after it expires or is otherwise terminated. The Grantee shall extend its full cooperation and give full access to the Platform site and to relevant documentation to the IDEA and its designees, for the purpose of determining, among other things:

- A. whether the activities for the establishment and implementation of the Platform are consistent with those set forth in **Exhibit A**, the grant application, and the terms and conditions of the Grant Agreement;
- B. the actual expenditure of funds expended to date on the establishment and implementation of the Platform is in conformity with the amounts for the Platform budget as set forth in **Exhibit A**;
- C. that Grantee is making timely progress with the establishment and implementation of the Platform, and that its project management, financial management and control systems, procurement systems and methods, and overall performance are in conformance with the requirements set forth in this Grant Agreement and are fully and accurately reflected in program reports submitted to the IDEA.

8. Audits and Maintenance of Records.

Grantee shall submit to an audit of funds paid through this Grant Agreement, and shall make all books, accounting records and other documents available at all reasonable times during the term of this Grant Agreement and for a period of three (3) years after final payment for inspection by the IDEA or its authorized designee.

9. Compliance with Laws.

A. The Grantee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Grant Agreement shall be reviewed by the IDEA and the Grantee to determine whether the provisions of this Grant Agreement require formal modification.

B. The Grantee certifies by entering into this Grant Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana.

C. The Grantee warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana, and agrees that it will immediately notify the IDEA of any such actions.

D. The Grantee warrants that the Grantee and any contractors performing work in connection with the establishment and implementation of the Program shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this Grant Agreement. Failure to do so may be deemed a material breach of this Grant Agreement.

E. The Grantee affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

10. Drug-Free Workplace Certification. The Grantee shall make a good faith effort to provide and maintain a drug-free workplace for the purposes of the Program.

11. Employment Eligibility Verification. The Grantee hereby swears or affirms under the penalties of perjury that:

- A. The Grantee has enrolled and is participating in the E-Verify program;
- B. The Grantee has provided documentation to the IDEA that it has enrolled and is participating in the E-Verify program;
- C. The Grantee does not knowingly employ an unauthorized alien.
- D. The Grantee shall require its contractors who perform work under this Grant Agreement to certify to Grantee that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The Grantee shall maintain this certification throughout the duration of the term of a contract with a contractor.

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

12. Governing Law. This Grant Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana, and any dispute arising out of this Grant Agreement or otherwise concerning the Parties' obligations under this Grant Agreement will be resolved in the courts located in Elkhart County, Indiana, unless the Parties mutually agree to a different method of dispute resolution.

13. Indemnification. Neither party shall indemnify the other. Either party shall have the right to seek any remedy available to that party under Indiana Law.

14. Nondiscrimination. The Grantee covenants that it shall not discriminate against any employee or applicant for employment relating to this Grant with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Grantee certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

15. Notice to Parties.

Whenever any notice, statement or other communication is required under this Grant, it shall be sent by first class mail or via an established courier / delivery service to the following addresses, unless otherwise specifically advised.

- A. Notices to the IDEA shall be sent to:
Gary Ashenfelter
INDIANA DRUG ENFORCEMENT ASSOCIATION
18106 Cumberland Road
Noblesville, IN 46060
- B. Notices to the Grantee shall be sent to:
Chief Jose D. Miller
Goshen City Police Department
111 E. Jefferson Street
Goshen, Indiana 46528

With Copy to:
Bodie J. Stegelmann, City Attorney
Goshen City Legal Department
204 E. Jefferson Street
Goshen, Indiana, 46526

16. Order of Precedence. Any inconsistency or ambiguity in this Grant Agreement shall be resolved by giving precedence in the following order: (1) this Grant Agreement, (2) exhibits prepared by the IDEA, and (3) exhibits prepared by Grantee.

17. Termination for Breach.

- A. Failure to complete the establishment and implementation of the Platform and expend funds in accordance with this Grant Agreement may be considered a material breach, and shall entitle the IDEA to suspend grant payments until such time as all material breaches are cured to the IDEA's satisfaction.
- B. The expenditure of IDEA funds other than in conformance with **Exhibit A** may be deemed a breach. The Grantee explicitly covenants that it shall promptly repay to the IDEA all funds not spent in conformance with this Grant Agreement.

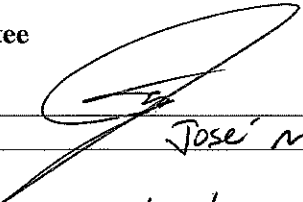
18. Third Party Contracts. IDEA and Grantee understand that Grantee will enter into separate data access contracts with Banjo, Inc. pursuant to independent contracts. Said contracts are essential to the function of the Platform. A sample contract is attached hereto for reference and labeled **Exhibit B**. Once executed, the contract shall be marked as **Exhibit C**, attached hereto, and shall be incorporated into and made a part of this Grant Agreement. IDEA reserves the right to reject any Exhibit submitted by the Grantee.

19. Travel. No expenses for travel will be reimbursed unless specifically authorized by this Grant Agreement. Any travel requests must be reviewed and approved by the IDEA prior to expenses incurred.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

Grantee

By:  _____
Jose Miller

Date: 03/05/20

Indiana Drug Enforcement Association

By: _____
Gary Ashenfelter, Training Coordinator

Date: _____

Fiscal Agent (if applicable)

By: _____

Date: _____

EXHIBIT A

PROJECT DESCRIPTION/BUDGET

Banjo, Inc.

I. OVERVIEW

Banjo, Inc. develops and maintains an Internet and mobile software platform for the real time display of live, shared events from around the world, indexed by location and content. Its mission is “to save lives and reduce human suffering by getting everyone live, validated information so they can make better decisions, faster.”

II. PROJECT SCOPE

Banjo, Inc. to pilot and develop a Live Time Intelligence platform, which provides 24/7 insight into unplanned events (e.g., mass shootings, traffic collisions, fires, school safety, etc) across the following counties and major cities within Indiana: Allen County, Saint Joseph County, Elkhart County, Fort Wayne, South Bend, Goshen, City of Elkhart, and Mishawaka. To provide this level of insight, Banjo, Inc. will be taking in all non-video live data signals that Banjo, Inc. is granted permission to use (e.g., 911 calls, automatic vehicle location, etc). Access will be provided to the cities and counties.

III. BUDGET/TERM

\$20,005.00 for 12 months.

EXHIBIT B
SAMPLE CONTRACT

EXHIBIT C

EXECUTED AGREEMENTS BETWEEN GRANTEE AND BANJO, INC.

**BANJO
MASTER SERVICES AGREEMENT**

This BANJO MASTER SERVICES AGREEMENT is between Banjo, Inc. ("**Banjo**") and the undersigned customer ("**Customer**"), and is entered into pursuant to the IDEA Grant Agreement – Contract Number # BAN2019-06, dated March 9, 2020, between the Indiana Office of the Attorney General and Banjo, and made effective as of the last date written below (the "**Effective Date**"). This Banjo Master Services Agreement consists of the Terms and Conditions, and other attachments hereto, including Scope of Work attached hereto as Appendix A and Price Schedules attached hereto as Appendix B, the IDEA GRANT AGREEMENT incorporated herein by reference and attached hereto as Appendix C, amendments and Service Orders (as defined below) (collectively, this "**MSA**", and together with the IDEA Grant Agreement, the "**Agreement**").

IN WITNESS WHEREOF, the duly authorized representatives of each of the parties hereto have executed this Agreement.

Customer:

GOSHEN POLICE DEPARTMENT

BANJO, INC.

By: _____

By: _____

Name: Jose Miller

Name: _____

Title: Chief of Police

Title: _____

Date: 03/05/20

Date: _____

Customer Address for Notifications:

**Chief Jose Miller
Goshen Police Department
111 East Jefferson Street
Goshen, Indiana 46528
574.533.8661**

With Copy to:

**Bodie J. Stegelmann, City Attorney
Goshen City Legal Department
204 E Jefferson Street
Goshen, Indiana 46528**

TERMS AND CONDITIONS

1. Definitions

1.1 The following terms, when used in this Agreement will have the following meanings:

"Affiliates" means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists. For the purposes of this definition, **"Control"** means beneficial ownership of 50% or more of the voting power or equity in an entity.

"Authorized User" means an individual who is authorized by Customer in accordance with this Agreement to access and use the Services under Customer's account.

"Confidential Information" means any information or data disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential in light of the nature of the information and the circumstances surrounding disclosure (including source code, algorithms, know-how, formulas, processes, ideas, inventions, schematics and other technical, business, financial and customer information, product development plans, forecasts and strategies). However, "Confidential Information" will not include any information which (a) is in the public domain through no fault of receiving party; (b) was properly known to receiving party, without restriction, prior to disclosure by the disclosing party; (c) was properly disclosed to receiving party, without restriction, by another person with the legal authority to do so; or (d) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

"Customer Data" means electronic data and other information submitted or made available by Customer to Banjo in connection with the Services, including data from Customer Data Sources.

"Customer Data Sources" means those data sources made available by Customer to Banjo from time to time pursuant to a separate addendum to this Agreement.

"Documentation" means the printed and digital instructions, on-line help files, technical documentation and user manuals made available by Banjo for the Services.

"Permitted Purpose" means receiving the Services for the purpose of public health and safety, emergency management and/or law enforcement at the national, state and local level, as applicable.

"Related Agencies" means those emergency response and/or law enforcement agencies associated with the Customer as listed on Appendix D attached hereto.

"Service" means the specific Banjo SaaS platform or other service identified in a Service Order.

"Service Order" means a service or sales order, quote or other similar document that sets forth the specific Services and pricing therefor, and that references this Agreement and is mutually executed by the parties.

"Third Party Content" means content made available through a data source other than Customer.

2. Services

2.1 Provision of Services. Subject to the terms and conditions of this Agreement, Banjo will make the Services available to Customer pursuant to this Agreement, and hereby grants Customer a personal, limited, non-exclusive, non-transferable license to access and use the Services for Customer's internal use only for the Permitted Purpose. With Banjo's prior written consent, Customer may permit its third party consultants, contractors, or agents, subject to confidentiality and use obligations at least as restrictive as those set forth in this Agreement, to access and use the Services as an Authorized User solely in connection with services provided by such entities to Customer. Customer will be liable in connection with any such access or use by such entities.

2.2 Customer Limitations. The rights granted herein are subject to the restrictions in this Section 2.2 (collectively, the **"License Restrictions"**). Customer **will not** (nor will it permit any third party to):

- a. use the Services to conduct any surveillance, monitoring (including credit reporting and credit monitoring), profiling, tracking, spying or aggregating data on any individual or groups of individuals, or otherwise in violation of any person's right to privacy, freedom of speech, religion, assembly, or association or other civil liberties, or in violation of U.S. federal or Indian state law, or the applicable terms of service;
- b. allow its Authorized Users to access or use the Service for any personal use, or access or use the Service for Customer's human resource purposes, including monitoring of employees;
- c. reverse engineer, decompile, disassemble or otherwise create, attempt to create or derive the source code underlying the Services;
- d. transfer, resell, re-distribute, lease, sub-license, or assign Services or otherwise offer the Services on a standalone basis, or permit any third party (other than contractors, as expressly set forth above) to access or use the Services;
- e. use the Services to build a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Services;
- f. remove any copyright, patent, trademark, or other proprietary notices, attributions (whether of Banjo or otherwise), restrictions or other similar notice from the Services, including any resulting signals, alerts or Third Party Content, as applicable;
- g. violate any codes of conduct, rules, guidelines, policies or other notices Banjo provides Customer or publishes in connection with the Service with respect to Third Party Content; or
- h. access or use the Services in an unlawful manner or otherwise outside the scope expressly permitted hereunder.

In addition, Customer will ensure that its Authorized Users do not use temporary email addresses or share user accounts among multiple individuals.

2.3 Customer Responsibilities and Covenants.

- a. Customer will (i) be responsible for all access to and use of the Services and Documentation under its account (whether or not authorized), including by third party contractors, (ii) be solely responsible for decisions it makes as a result of the use of the Services, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and Documentation and notify Banjo promptly of any such unauthorized access or use, and (iv) be responsible for obtaining and maintaining any equipment, software and ancillary services needed to connect to, access or otherwise use the Services, including as set forth in the Documentation. Customer will be solely responsible for its failure to maintain such equipment, software and services.
- b. Customer shall access and use the Services in compliance with all applicable laws, including those that pertain to the privacy rights and civil liberties of individuals, as applicable.

2.4 License to Customer Data. Customer hereby grants Banjo read-only access to the Customer Data available to Customer pursuant to all licenses and contracts currently in place between Customer and their data vendors and use of the Customer Data in the performance of the Services, and to permit Banjo's third party consultants, contractors, or agents read-only access and use the Customer Data in furtherance of Banjo's performance of the Services.

2.5 Related Agency. Any Related Agency of Customer may enter into a Service Order executed by such Related Agency and Banjo ("**Related Agency Service Order**"), and each such Related Agency Service Order shall be subject to the applicability of this Agreement as if such Related Agency were a signatory to this Agreement. With respect to such Related Agency Service Orders, such Related Agency becomes a party to this Agreement and references to Customer in this Agreement are deemed to be references to such Related Agency. Each Related Agency Service Order is an obligation of the Related Agency that

executes such Related Agency Service Order and Customer, on a joint and several basis.

3. Fees

3.1 Fees. Customer will pay Banjo the fees set forth in the Service Orders within 30 days from the date of invoice. Interest shall accrue on past due amounts at the rate of one and one half percent (1.5%) per month, but in no event greater than the highest rate of interest allowed by law, calculated from the date such amount was due until the date that payment is received by Banjo. Except as otherwise specified herein or in any applicable Service Order (a) fees are quoted and payable in United States dollars and (b) payment obligations are non-cancelable and non-pro-ratable for partial months, and fees paid are non-refundable, except as expressly set forth herein.

3.2 Taxes. All amounts and fees stated or referred to in this Agreement are exclusive of taxes, duties, levies, tariffs, and other governmental charges (collectively, "Taxes"). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Banjo's net income.

4. Proprietary Rights and Confidentiality

4.1 Ownership Rights.

- a. As between the parties, Banjo owns all right, title, and interest in and to the Services, including all intellectual property rights in the Services and any derivative works thereof.
- b. Except for the limited express rights granted hereunder, Banjo reserves all rights, title and interests in and to the Services and Banjo's Confidential Information.

4.2 Confidentiality. Each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose, or permit to be disclosed, the same directly or indirectly, to any third party without the other party's prior written

consent, except as otherwise permitted hereunder. However, either party may disclose Confidential Information to its employees, officers, directors, attorneys, auditors, financial advisors and other representatives who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with those of this Agreement; and as required by law (in which case the receiving party will provide the disclosing party with prior written notification thereof, will provide the disclosing party with the opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law. Neither party will disclose the terms of this Agreement to any third party, except that either party may confidentially disclose such terms to actual or potential lenders, investors or acquirers. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section or the License Restrictions, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.

4.3 Use Information. Notwithstanding anything to the contrary, Banjo shall have the right to aggregate, collect, commingle, track and/or analyze (collectively, "Analyze") data and other information relating to the provision, and Customer's use and performance of, the Services (collectively, "Use Information") and shall be free (during and after the term hereof) to (i) use such data and other information to provide, develop and/or improve the Services and other Banjo offerings, and (ii) disclose such data and other information in an aggregated format that does not identify Customer or any individual. Banjo may use third party applications to Analyze and disclose Use Information to such third parties for the purpose of improving the Customer's experience and otherwise assisting Banjo provide the Services.

5. Term and Termination

- 5.1 Term. The term of this Agreement will commence on the Effective Date and continue until terminated as set forth below. Except as set forth in a Service Order or where otherwise prohibited by law, the term of such Service Order will automatically renew for successive renewal terms equal to the length of the initial term of such Service Order, unless either party provides the other party with written notice of non-renewal at least thirty (30) days prior to the end of the then-current term. All such renewals will be subject to then-current pricing.
- 5.2 Termination. Each party may terminate this Agreement upon written notice in the event (a) the other party commits any material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice of such breach or (b) subject to applicable law, upon the other party's liquidation, commencement of dissolution proceedings or assignment of substantially all its assets for the benefit of creditors, or if the other party becomes the subject of bankruptcy or similar proceeding that is not dismissed within sixty (60) days. Banjo may also terminate this Agreement or a Service Order, as applicable, immediately upon notice if Banjo reasonably determines that its provision of any of the Services is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason; provided, that Banjo will provide Customer with a pro rata refund of any prepaid fees for unearned Services.
- 5.3 Termination of Authorized User Accounts. Banjo may terminate the account of any Authorized User that violates the terms and conditions set forth in this Agreement.
- 5.4 Survival. Upon termination of this Agreement Customer will discontinue any further use of the Services and all rights and obligations will immediately terminate, except that any terms or conditions that by their nature should survive such termination will survive, including the License Restrictions and terms and conditions relating to payment, proprietary rights and confidentiality,

disclaimers, indemnification, limitations of liability and termination, and the general provisions below.

6. Warranties and Disclaimers

- 6.1 Banjo. Banjo warrants that it will maintain the Services in a manner which minimizes errors and interruptions in the Services and perform the Services in a professional and workmanlike manner. For breach of the express warranty set forth above, Customer's exclusive remedy shall be (a) the re-performance of the deficient Services, and (b) if Banjo cannot re-perform such deficient Services as warranted, either party may terminate the deficient Services, and Customer shall be entitled to recover a pro-rata portion of the fees paid to Banjo for such deficient Services.
- 6.2 DISCLAIMERS. The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, but Banjo shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled unavailability of the Services. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND EACH PARTY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, ACCURACY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, BANJO DOES NOT WARRANT OR GUARANTEE THE ACCURACY OF THE SERVICES (INCLUDING ANY INFORMATION OR DATA PROVIDED THEREIN) OR THAT ANY OR ALL SECURITY THREATS, VULNERABILITIES OR ATTACKS WILL BE ANTICIPATED, REPORTED OR ALERTED.
7. **INDEMNIFICATION**. Neither party shall indemnify the other.
8. **LIMITATION OF LIABILITY**
- Either party shall have the right to seek any remedy available to that party under Indiana law.
9. **General**
- 9.1 Export Compliance. Each party will comply with the export laws and regulations of the United States,

European Union and other applicable jurisdictions in providing and using the Services.

- 9.2 Publicity. Customer agrees that Banjo may refer to Customer's name and trademarks in Banjo's marketing materials and website; however, Banjo will not use Customer's name or trademarks in any other publicity (e.g., press releases, customer references and case studies) without Customer's prior written consent (which may be by email).
- 9.3 Assignment; Delegation. Neither party hereto may assign or otherwise transfer this Agreement, in whole or in part, without the other party's prior written consent. Notwithstanding the forgoing, Banjo may assign this Agreement without Customer's consent to a successor to all or substantially all of Banjo's assets or business related to this Agreement, or in connection with a merger or consolidation. In addition, Customer agrees that Banjo may have any of its obligations performed through an Affiliate of Banjo, provided that Banjo will remain responsible for its obligations hereunder and will be liable for such Affiliate's performance hereunder as if it were Banjo hereunder. Any attempted assignment, delegation, or transfer by either party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the parties and their successors and assigns.
- 9.4 Amendment; Waiver. No amendment or modification to this Agreement, nor any waiver of any rights hereunder, will be effective unless assented to in writing by both parties. Any such waiver will be only to the specific provision and under the specific circumstances for which it was given, and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.
- 9.5 Relationship. Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such

relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.

- 9.6 Unenforceability. If a court of competent jurisdiction determines that any provision of this Agreement is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement will remain in full force and effect and bind the parties according to its terms.
- 9.7 Governing Law. This Agreement will be governed by the laws of the State of Indiana, exclusive of its rules governing choice of law and conflict of laws. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of the Agreement will be subject to the exclusive jurisdiction and venue of the state and federal courts of the Northern District of Indiana or of Elkhart County, Indiana, and the parties hereby consent to the personal jurisdiction of these courts.
- 9.8 Notices. Any notice required or permitted to be given hereunder will be given in writing by personal delivery, certified mail, return receipt requested, or by overnight delivery. Notices to Customer must be sent to the email or other address set forth in the applicable Service Order. Notices to Banjo must be sent to the following address: Banjo, Inc., 10235 S. Jordan Gateway, South Jordan, UT 84095, Attn: Customer Support.
- 9.9 Entire Agreement; Counterparts. This Agreement comprises the entire agreement between Customer and Banjo with respect to its subject matter, and supersedes all prior and contemporaneous proposals, statements, sales materials or presentations and agreements (oral and written). No oral or written information or advice given by Banjo, its agents or employees will create a warranty or in any way increase the scope of the warranties in this Agreement. There shall be no force or effect to any different terms of any pre-printed purchase order or similar forms of

Customer, even if signed by the parties after the date hereof. This Agreement, including amendments hereto and Sales Orders, may be executed in two or more counterparts, including by facsimile or electronic signature transmission, with the same force and effect as if each of the signatories had executed the same instrument.

9.10 Force Majeure. Neither Party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control, including earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance,

terrorism, war (whether or not officially declared), internet service interruptions, cyber attacks (including denial of service attacks and data security breaches by third-parties), or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree.

9.11 Interpretation. For purposes hereof, "including" means "including without limitation".

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Appendix A
Related Agencies
[TO BE LISTED BY DEAL]