



## **MINUTES of December 7, 2020 Regular Meeting**

### **Board of Public Works & Safety and Stormwater Board**

Held 2:00 p.m. Goshen Police & Court Building, 111 East Jefferson Street, Goshen, Indiana

Present: Chair Jeremy Stutsman, Member Mary Nichols, Member Mike Landis

Absent: None

No minutes were presented.

Mayor Stutsman suggested to add Item #18 (Lexipol with Police Department) and Item #19 (Amend SWAT Team Agreement) to the agenda.

**Nichols/Landis moved to approve the agenda as suggested. Passed 3-0**

#### Open Bids: Eisenhower Dr. Reconstruction Project, JN: 2020-0013

Landis opened the sealed bids and Mayor Stutsman read:

Niblock Excavating - \$1,859,571.05

Walsh & Kelly - \$1,967,939.45

Reith-Riley - \$2,099,223.00

Phend & Brown - \$1,787,372.45

**Mayor Stutsman/Nichols moved to refer these bids to the Engineering Department for review.**

**Passed 3-0**

#### Electrical License Request for Christopher Vann

Assistant Building Commissioner Myron Grise presented the packet memo.

**Nichols/Landis moved to approve the Electrical License for the City of Goshen to Christopher Vann. Passed 3-0**



#### Sewer Charge Relief Request

Amy Warner, representing Courtyard Condominiums, explained that they were notified of a leak Nov. 10<sup>th</sup>, immediately took action and had the leak in their main sprinkler system pit fixed by Nov. 11. Water and Sewer Supervisor Kent Holdren stated that Matthew Beard investigated the leak and found it to be a continuous and slow leak. Holdren recommended relief be granted.

Landis asked if the meter located at the site was a smart meter. Holdren stated that it was, but a commercial 100 cubic foot per hour smart meter, so the slow leak did not trigger a notification.

Utility Office Manager Kelly Saenz also stated that a leak of the size is on a report that is only run once a month.

**Nichols/Landis moved to grant sewer relief to Courtyard Condominiums in the amount of \$2,712.88. Passed 3-0**

#### Change Order 5: PD Training Center, JN 2018-0014

Director of Public Works Dustin Sailor presented the packet memo.

Sailor added that the area under the steps was originally to be enclosed and is valuable storage space.

**Nichols/Landis moved to approve Change Order No. 5 for the Goshen Police Department Shooting Range Training Center Project for an increase of \$2,305.16. Passed 3-0**

#### Change Order 6: Training Center, JN: 2018-0014

Sailor presented the packet memo.

Sailor stated that the building will normally hold 80-100 people and without proper ventilation there is a chance for moisture build-up.

Landis asked what initiated this change order. Sailor stated it was after the Engineering Inspector and Building Commissioner had separate discussions.

**Nichols/Landis moved to approve Change Order No.6 for the Goshen Police Department Shooting Range Training Center Project for an increase of \$41,966.76 and seven days. Passed 3-0**

#### Downtown Snow Removal Agreement with Aquascapes of Michiana

City Attorney Bodie Stegelmann presented the agreement; explained that this came through Downtown EID, which reached out to a number of contractors with only one showing interest.



Mayor said Kare Anderson told him they had contacted multiple contractors and this was the only one they could find.

**Nichols/Landis moved to approve the snow removal agreement for Goshen Downtown Economic Improvement District with Aquascapes of Michiana, LLC. Passed 3-0**

2021 Asphalt Paving Project, JN: 2020-0002A

Civil City Engineer Josh Corwin presented the packet memo.

**Nichols/Landis moved to approve the agreement with Niblock Excavating for the 2021 Asphalt Paving Project in the amount of \$845,436.25. Passed 3-0**

2021 Concrete Paving Project, JN: 2020-0002B

Corwin presented the packet memo.

**Nichols/Landis moved to approve the agreement with Premium Concrete for the 2021 Concrete Paving Project in the amount of \$593,590.00. Passed 3-0**

2021 Sidewalk 50/50 Program, JN: 2021-0001

Corwin presented the packet memo.

**Nichols/Landis moved to approve the agreement with DC Construction for the 2021 Sidewalk & Curb Reconstruction Project in the amount of \$87,814.00. Passed 3-0**

Bridge Repairs Project, JN: 2021-0010

Corwin presented the packet memo.

**Nichols/Landis moved to approve the agreement with Northern Indiana Construction for the 2021 Bridge Repairs Project in the amount of \$117,821.08. Passed 3-0**



iWave Supplemental Information

Director of Public Works Dustin Sailor presented the packet memo. Sailor shared that he had this equipment installed in his home and his family noticed a benefit.

Assistant Building Commissioner Myron Grise stated he and his wife have had similar equipment since about 2004, it has helped his wife tremendously and they believe in it.

Clerk-Treasurer Adam Scharf said Sailor's assessment was fair, though Scharf would not personally chose this option over unambiguously beneficial equipment like HEPA filtration that does not have long-term exposure risk for VOCs, microparticles, etc.

Landis asked how many buildings this system would be installed in. Sailor stated is would be most city buildings with the exception of Parks Department buildings.

Mayor added that he had this system installed in his own home for the past two weeks and believes it has been helpful. Mayor also stated the main goal is to protect City staff and guests. Said would discuss with Scharf and perhaps City Hall could be excluded.

**Nichols/Landis moved to approve the agreement to install ionizers in HVAC systems in City of Goshen Buildings to inactivate airborne pollutants including viruses with OJS Building Services, Inc. in the amount of \$54,575.00. Passed 3-0**

Revised Ordinance 5067 and Resolution 2020-03 – 2021 Compensation for Police Department

Stegelmann presented the packet memo.

Stegelmann stated that a minor error in calculated vacation pay for non-sworn employees of the Police Department was discovered and corrected.

**Nichols/Landis moved to approve the revised Ordinance 5067 and Resolution 2020-32 titled 2021 Compensation for Police Department Employees. Passed 3-0**

Agreement with Goshen City Firefighters Association Local No. 1443

Stegelmann presented the packet memo.

**Nichols/Landis moved to approve and execute the agreement between the City of Goshen and the Goshen Firefighters Association Local No. 1443. Passed 3-0**



Resolution 2020-33: Approve 2021 Compensation for Fire Department Employees

Stegelmann presented the packet memo.

**Nichols/Landis moved to approve and execute Resolution 2020-33 to approve 2021 Compensation for Fire Department Employees. Passed 3-0**

Approve and Accept Infrastructure: Northbrooke Subdivision, JN:2017-2045

Sailor presented the packet memo.

**Nichols/Landis moved to approve the acceptance of infrastructure of water main, sanitary sewer, storm sewer and the streets for maintenance on the Northbrooke Subdivision with a total cost of \$651,876.00. Passed 3-0**

College Ave. and Dierdorff Rd. Lane Restrictions for NIPSCO

Sailor presented the packet memo.

**Nichols/Landis moved to approve extending the lane restriction on Dierdorff Road to December 14, 2020 and to also approve the College Avenue closure on December 8, 2020 from Dierdorff Road to US 33 and finally to approve the road closure from December 9 through December 10, 2020 on Dierdorff Road from College Ave. to Keystone Drive. Passed 3-0**

Use of Parking Spaces at 113-115 E. Lincoln Ave.

Clerk-Treasurer Adam Scharf presented the packet memo.

**Nichols/Landis moved to approve the temporary closure of three parking spaces in front of 113-115 E. Lincoln Ave. from 7:00 a.m. to 10:00 a.m. on Wednesday December 9, 2020. Passed 3-0**

Agreement with Lexipol

Police Chief Jose' Miller presented the agreement. (Attached, along with addendum, as *Exhibit A*.)

Miller stated that Lexipol stays up-to-date on Fire Department and Police Department policies and recommends any changes throughout the subscription. Miller acknowledged that it can be difficult to stay up-to-date on these policies.

Mayor stated that the City would still have control of their policies and can choose to deny or accept any suggested changes. Stegelmann confirmed this statement. Stegelmann also stated that if the agreement were to end, the City



would keep all work product. Stegelmann noted that he had spoken with Salem Insurance, and our insurance underwriter likes when cities use services like this, though it may not result in a direct premium discount. Mayor also added that updated policies would be accessible online and patrol officers would be able to take quizzes to stay up to date on any policy changes.

Fire Chief Dan Sink stated that this is a widely respected company, he supports the Police Department working with this company and is in current discussions for the Fire Department to work with them as well.

Mayor said when Goshen originally looked at this in 2016 it was too expensive and only a dozen Indiana cities were using Lexipol. Now many more are.

Landis asked about frequency of updates. Stegelmann discussed monitoring changes in case law and constitutional law, noting that Lexipol does this, which is very difficult to do locally.

**Nichols/Landis moved to approve and authorize the Mayor to sign the agreement with Lexipol, approve the addendum, and authorizes the Mayor to sign. Passed 3-0**

#### Change to SWAT Team Agreement

Assistant Fire Chief Anthony Powell presented the agreement (attached as *Exhibit B*), noting the change in training hours from 20 hours a month to 8-12 hours a month.

**Nichols/Landis moved to approve the amended agreement. Passed 3-0**

#### Privilege of the Floor

No one spoke.

**Stutsman/Nichols moved to approve Civil City and Utility claims and adjourn. Passed 3-0**

*Adjournment at 2:50 p.m.*



*Exhibit A: Agreement and addendum with Lexipol (11 pgs.)*

*Exhibit B: Amended Elkhart County Regional SWAT Team Memorandum of Understanding (6 pgs.)*

APPROVED

A handwritten signature in black ink, appearing to read "J. Stutsman", written over a horizontal line.

Jeremy Stutsman, Chair

A handwritten signature in black ink, appearing to read "Michael A. Landis", written over a horizontal line.

Michael Landis, Member

A handwritten signature in black ink, appearing to read "Mary Nichols", written over a horizontal line.

Mary Nichols, Member

ATTEST

A handwritten signature in black ink, appearing to read "Adam Scharf", written over a horizontal line.

Adam Scharf, Clerk-Treasurer



AGREEMENT FOR USE OF SUBSCRIPTION MATERIAL

Agency's Name: Goshen Police Department  
Agency's Address: 111 E Jefferson St Ste 5  
Goshen, Indiana 46528

Attention: Chief Jose Miller

Lexipol's Address: 2611 Internet Boulevard, Suite 100  
Frisco, Texas 75034

Prepared By: Jessica Levenberg

Effective Date: \_\_\_\_\_  
(to be completed by Lexipol upon receipt of signed Agreement)

The Agreement for Use of Subscription Material is between Lexipol, LLC, a Delaware limited liability company ("**Lexipol**"), and the Agency identified above. The Agreement consists of (a) this cover sheet; (b) **Exhibit A** (Subscriptions Being Purchased and Subscription Fees) attached to this cover sheet, (c) **Exhibit B** (General Terms and Conditions) attached to this cover sheet, and (d) **Exhibit C** (Scope of Services) attached to this cover sheet. Capitalized terms that are used in Exhibit A and not defined therein shall have the respective meanings given to them in Exhibit B.

Goshen Police Department

Lexipol

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: Van Holland

Title: \_\_\_\_\_

Title: Chief Financial Officer

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_



**EXHIBIT A**

**SUBSCRIPTIONS BEING PURCHASED AND SUBSCRIPTION FEES**

**Agency is purchasing the following:**

**Annual Subscription**

<b>QTY</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE</b>	<b>DISC</b>	<b>DISC AMT</b>	<b>EXTENDED</b>
1	Annual Law Enforcement Policy Manual & Daily Training Bulletins w/Supplemental Publication Service w/ Procedures (12 Months)	USD 18,469.00	20%	USD 3,693.80	USD 14,775.20
<b>Annual Subscription Discount:</b>					USD 3,693.80
<b>Annual Subscription TOTAL:</b>					USD 14,775.20

**One Time Implementation Fee**

<b>QTY</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE</b>	<b>DISC</b>	<b>DISC AMT</b>	<b>EXTENDED</b>
1	Law Enforcement Full Implementation	USD 25,093.00	10%	USD 2,509.30	USD 22,583.70
<b>One Time Implementation Fee Discount:</b>					USD 2,509.30
<b>One Time Implementation Fee TOTAL:</b>					USD 22,583.70

\*Law Enforcement pricing is based on 64 Law Enforcement Sworn Officers.

\*The above subscription services, and when applicable, implementation services, shall be invoiced by Lexipol upon the execution of this Agreement.

**Notes**

Year 1 Total \$37,358.90

**Discount Notes**

Annual 20% Promotional Discount.

## EXHIBIT B

### GENERAL TERMS AND CONDITIONS

1. **Definitions.** For purposes of this Agreement, each of the following terms will have the meaning indicated in this Section:

1.1 **Agency's Account.** "***Agency's Account***" means the account by which Agency accesses the Subscription Materials.

1.2 **Agreement.** "***Agreement***" means (a) the cover sheet to which these General Terms and Conditions are attached, (b) Exhibit A (Subscriptions and Services Being Purchased and Related Fees) attached to that cover sheet, (c) these General Terms and Conditions, and (d) Exhibit C (Scope of Services).

1.3 **Initial Term/Contract Year.** "***Initial Term***" means the twelve-month period commencing on the Effective Date and "***Contract Year***" means each twelve-month period commencing on each anniversary of the Effective Date, except as may otherwise be modified by Section 2.1 Term below.

1.4 **Derivative Work.** "***Derivative Work***" means a work that is based on the Subscription Material or any portion thereof, such as a revision, modification, abridgement, condensation, expansion, or any other form in which the Subscription Material or any portion thereof may be recast, transformed, or adapted. For purposes of this Agreement, a Derivative Work also includes any compilation that incorporates any portion of the Subscription Material. Further, "***Derivative Work***" includes any work considered a "derivative work" under United States copyright law.

1.5 **Effective Date.** "***Effective Date***" means the date specified on the cover sheet to which these General Terms and Conditions are attached.

1.6 **Subscription Materials.** "***Subscription Materials***" means the policy manuals, supplemental policy publications, daily training bulletins and other materials provided by Lexipol to Agency from time to time during the term of this Agreement under the subscriptions purchased by Agency as specified in Exhibit A.

2. **Term and Termination.**

2.1 **Term.** This Agreement is effective upon the execution and delivery of this Agreement by both Lexipol and Agency, and shall continue in effect until the expiration of the Initial Term; provided, however, that the term of this Agreement will automatically be extended for successive one-year periods thereafter (each a Contract Year), unless either party gives written notice to the other party to the contrary not less than thirty (30) days prior to the expiration of the Initial Term or the then current Contract Year, as the case may be. Notwithstanding the foregoing, however, this Agreement will be subject to termination as provided in Section 2.2 below.

2.2 **Termination.** This Agreement may be terminated by either party, effective immediately, (a) in the event that the other party fails to discharge any obligation or remedy any default under this Agreement for a period of more than thirty (30) calendar days after it has been given written notice of such failure or default; or (b) in the event that the other party makes an assignment for the benefit of creditors or commences or has commenced against it any proceeding in bankruptcy, insolvency or reorganization pursuant to the bankruptcy laws of any applicable jurisdiction.

2.3 **Effect of Expiration or Termination.** Upon the expiration or termination of this Agreement, all of the rights granted to Agency by this Agreement to the subscriptions identified on Exhibit

A shall automatically terminate. The termination or expiration of this Agreement shall not, however, relieve either party from any obligation or liability that has accrued under this Agreement prior to the date of such termination or expiration. The right to terminate this Agreement pursuant to Section 2.2 above shall be in addition to, and not in lieu of, any other remedy, legal or equitable, to which the terminating party shall be entitled at law or in equity. The provisions of Sections 1 (Definitions), 4 (Copyright; Derivative Works; Lexipol's Ownership), 5 (Right to Use; Limitations on Use of Subscription Material and Derivative Works), 7 (Privacy Policy), 8 (Policy Adoption), 9 (Disclaimer of Liability), 10 (Limitation of Liability), 13 (Miscellaneous), and this Section 2.3 shall survive the expiration or termination of this Agreement for any reason whatsoever.

### **3. Subscription Fees, Etc.**

**3.1 Subscription Fee/Invoicing.** Lexipol will invoice Agency at the commencement of the Subscription Service (Initial Term) and thirty (30) days prior to the date for each Contract Year (refer to 2.1 above). Agency will pay to Lexipol the subscription fee specified on Exhibit A within thirty (30) days following Agency's receipt of the invoice for such subscription and renewal fees. All invoices will be sent to Agency at the address for Agency specified on the cover sheet to which these General Terms and Conditions are attached. All payments will be made to Lexipol at the address for Lexipol specified on the cover sheet to which these General Terms and Conditions are attached. Lexipol reserves the right to increase pricing for subsequent Contract Years.

**3.2 Taxes; Past Due Amounts.** All amounts required to be paid under this Agreement, unless otherwise stated on Exhibit A, are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the subscriptions purchased by Agency under this Agreement and/or delivery by Lexipol to Agency of Subscription Material, all of which Agency will be responsible for and will pay in full, except for taxes based on Lexipol's net income. In the event any amount owed by Agency is not paid when due, and such failure is not cured within ten (10) days after written notice thereof from Lexipol, then in addition to any other amount due, Agency shall pay a late payment charge on the overdue amount at a rate equal to the lower of (a) one percent (1%) per month, or (b) the highest rate permitted by applicable law.

**4. Copyright; Derivative Works; Lexipol's Ownership.** Agency acknowledges and agrees that the Subscription Material is a proprietary product of Lexipol, protected under U.S. copyright law, and that Lexipol reserves all rights not expressly granted in this Agreement. Subject to the terms and conditions contained in this Agreement, Lexipol hereby grants Agency the right to prepare Derivative Works, except as limited by the terms of this agreement; provided, however, that Agency acknowledges and agrees that Lexipol will be the sole owner of all right, title and interest in and to all Derivative Works prepared by or for Agency, including all copyrights and other intellectual property and proprietary rights therein or pertaining thereto, and Agency hereby assigns and transfers to Lexipol all right, title and interest in and to all Derivative Works prepared by or for Agency, including all copyrights and other intellectual property and proprietary rights therein or pertaining thereto. Agency will not remove from any copies of the Subscription Material provided by Lexipol to Agency any copyright notice or other proprietary notice of Lexipol appearing thereon, and shall include such copyright and other notices at the appropriate place on each copy of the Subscription Material and each copy of any Derivative Work made by or for Agency, in any form.

**5. Right to Use; Limitations on Use of Subscription Material and Derivative Works.** Subject to the terms and conditions contained in this Agreement, Lexipol hereby grants to Agency a perpetual, personal, fully paid-up, right to use, except as limited by the terms of this agreement the Subscription Material and any Derivative Works prepared by or for Agency, solely for the Agency's internal purposes. Agency will not use, copy, republish, lend, distribute, post on servers, transmit, redistribute, display, in whole or in part, by any means or medium, electronic or mechanical, or by any information storage and retrieval system, any Subscription Material or any Derivative Work prepared by or for Agency other than as expressly authorized by the immediately preceding sentence. Without limiting the generality of the foregoing, Agency will not import, upload, or otherwise make available any

Subscription Material or any Derivative Work prepared by or for Agency into or onto any third party knowledge, document, or other content management system or service without Lexipol's prior written consent. The foregoing does not, however, prohibit or restrict Agency from providing Subscription Material or Derivative Works prepared by or for Agency pursuant to an order from a court or other governmental agency or other legal process, or Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request, nor does it prohibit or restrict Agency from displaying the adopted/approved final policy document on a publicly accessible website for official Agency purposes, so long as Agency includes the appropriate copyright and other proprietary notices on such final policy document as required by Section 4 above.

6. **Account Security.** Agency is solely responsible for maintaining the confidentiality of Agency's user name(s) and password(s) and the security of Agency's Account. Agency will not permit access to Agency's Account, or use of Agency's user name(s) and/or password(s) by any person or entity other than authorized Agency personnel. Agency will immediately notify Lexipol in writing if Agency becomes aware that any person or entity other than authorized Agency personnel has used Agency's Account or Agency's user name(s) and/or password(s).

7. **Privacy Policy.** Lexipol will hold all information Agency provides in confidence unless required to provide information in accordance with an order from a court or other governmental agency or other legal process such as a Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request. Lexipol will use commercially reasonable efforts to ensure the security of information provided by Agency. Lexipol's system also uses Secure Socket Layer (SSL) Protocol for browsers supported by Lexipol application(s). SSL encrypts information as it travels between the Agency and Lexipol. However, Agency acknowledges and agrees that Internet data transmission is not always 100% secure and Lexipol does not warrant or guaranty that information Agency transmits utilizing the Lexipol system or online platform is 100% secure.

Agency acknowledges that Lexipol may provide view-only access and summary information (including but not limited to, status of number of policies developed or in development, percentage of staff reviews of developed policies, and percentage of DTBs taken) to the Agency's affiliated Risk Management Authority, Insurance Pool or Group, or Sponsoring Association, if they are actively funding their member Agencies' Subscription Fees.

8. **Policy Adoption.** Agency hereby acknowledges and agrees that any and all policies and Daily Training Bulletins (DTBs) included in the Subscription Material provided by Lexipol have been individually reviewed, customized and adopted by Agency for use by Agency. Agency further acknowledges and agrees that neither Lexipol nor any of its agents, employees or representatives shall be considered "policy makers" in any legal or other sense and that the chief executive of Agency will, for all purposes, be considered the "policy maker" with regard to each and every such policy and DTB.

9. **Disclaimer of Liability.** Agency acknowledges and agrees that Lexipol its officers, agents, managers, and employees will have no liability to Agency or any other person or entity arising from or related to the Subscription Materials, or any act or omission by Agency or its personnel pursuant to, or in reliance on, any of the Subscription Materials, except in instances of negligence or willful misconduct on the part of Lexipol.

10. **Limitation of Liability.** Except in instances of negligence or willful misconduct on the part of Lexipol, Lexipol's cumulative liability to Agency and any other person or entity for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement or the use of any Subscription Materials shall not exceed the subscription fees actually paid to Lexipol for the use of the Subscription Materials under this Agreement during the twelve-month period immediately prior to the assertion of such claim, demand or action. In no event shall Lexipol be liable for any indirect, incidental, consequential, special, or exemplary damages or lost profits, even if Lexipol has been advised of the possibility of such damages. The limitations set forth in this Section shall apply whether Agency's claim is based on breach of contract, tort, strict liability, product liability or any other theory or cause of action.

11. **Non-Transferability.** The subscriptions and rights to use the Subscription Material granted by this Agreement are personal to Agency and Agency shall not assign or otherwise transfer the same to any other person or entity.

12. **Confidentiality.** From time to time during the term of this Agreement, either party may be required to disclose information to the other party that is marked "confidential" or the like, or that is of such a type that the confidentiality thereof is reasonably apparent ("Confidential Information"). The receiving party will: (a) limit disclosure of any Confidential Information of the other party to the receiving party's directors, officers, employees, agents and other representatives (collectively "Representatives") who have a need to know such Confidential Information in connection with the business relationship between the parties to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the confidential nature of the Confidential Information and of the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential and to use it only as permitted by this Agreement; (c) keep all Confidential Information confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third party (except as otherwise provided for herein). Notwithstanding the foregoing, however, a party may disclose Confidential Information of the other party pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request, or Freedom of Information Act (FOIA) request, or Public Records Act (PRA) request, or similar method, provided that the party proposing to make any such disclosure will promptly notify, to the extent practicable, the other party in writing of such demand for disclosure so that the other party may, at its sole expense, seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information. Each party shall be responsible for any breach of this Section by any of such party's Representatives.

#### **Miscellaneous.**

13.1 **Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of Indiana, without giving effect to any choice of law doctrine that would cause the law of any other jurisdiction to apply.

13.2 **Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties hereto and hereby expressly supersedes any and all prior written and oral agreements and understandings with respect to the subject matter hereof, including without limitation any and all agreements and understandings pertaining to the use of the Subscription Materials by Agency. No representation, promise, inducement, or statement of intention has been made by any party hereto that is not embodied in this Agreement. Terms and conditions set forth in any purchase order, or any other form or document of Agency, which are inconsistent with, or in addition to, the terms and conditions set forth in this Agreement, are hereby objected to and rejected in their entirety, regardless of when received, without further action or notification by Lexipol, and shall not be considered binding on Lexipol unless specifically agreed to in writing by it.

13.3 **Headings.** The captions and other headings contained in this Agreement are for convenience only and shall not be considered a part of or affect the construction and interpretation of any provision of this Agreement.

13.4 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document.

13.5 **Amendment.** No amendment, modification, or supplement to this Agreement shall be binding unless it is in writing and signed by the party sought to be bound thereby.

13.6 **Attorneys' Fees.** If any action is brought by either party to this Agreement against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees and expenses of litigation.

**13.7 General Interpretation.** The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any person or entity.

**13.8 Notices.** Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given by personal delivery, by certified mail, postage prepaid, or by recognized overnight delivery service to the appropriate party at the address of such party stated on the cover sheet to which these General Terms and Conditions are attached, or such other address as such party may indicate by a notice delivered to the other party in accordance with the terms of this Section. Alternatively, electronic mail or facsimile notice is acceptable when acknowledged by the receiving party.

**13.9 Invalidity of Provisions.** Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof. Further, if a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable, then the parties agree that the court should endeavor to give effect to the parties' intention as reflected in such provision to the maximum extent possible.

**13.10 Waiver.** Lexipol's failure to exercise, or delay in exercising, any right or remedy under any provision of this Agreement shall not constitute a waiver of such right or remedy.

**13.11 Addendum.** The provisions of the Addendum (attached shall also apply.

End of General Terms and Conditions

## Scope of Services

### Policy Manual

Constitutionally sound, up-to-date policies are the foundation for consistent, safe public safety operations and are key to reducing risk and enhancing personnel and community safety. Lexipol's comprehensive policy manual covers all aspects of your agency's operations.

- More than 155 policies researched and written by public safety attorneys and subject matter experts
- Policies based on State and federal laws and regulations as well as nationwide best practices
- Content customized to reflect your agency's terminology and structure

### Daily Training Bulletins (DTBs)

Even the best policy manual lacks effectiveness if it's not backed by training. Lexipol's Daily Training Bulletins are designed to help your personnel learn and apply your agency's policy content through 2-minute training exercises.

- Scenario-based training ties policy to real-world applications
- Understanding and retention of policy content is improved via a singular focus on one distinct aspect of the policy
- Each Daily Training Bulletin concludes with a question that confirms the user understood the training objective
- Daily Training Bulletins can be completed via computers or from smartphones, tablets or other mobile devices
- Reports show completion of Daily Training Bulletins by agency member and topic

### Policy Updates

Lexipol's legal and content development teams continuously review state and federal laws and regulations, court decisions and evolving best practices. When needed, we create new and updated policies and provide them to your agency, making it simple and efficient to keep your policy content up to date.

- Updates delivered to you through Lexipol's web-based content delivery platform
- Changes presented in side-by-side comparison against existing policy so you can easily identify modifications/improvements
- Your agency can accept, reject or customize each update

### Web-Based Delivery Platform and Mobile App (Knowledge Management System)

Lexipol's online content delivery platform, called KMS, provides secure storage and easy access to all your policy and training content, and our KMS mobile app facilitates staff use of policies and training completion.

- Ability to edit and customize content to reflect your agency's mission and philosophy
- Efficient distribution of policies, updates and training to staff
- Archival and easy retrieval of all versions of your agency's policy manual
- Mobile app provides in-the-field access to policy and training materials

### Reports

Lexipol's Knowledge Management System provides intuitive reporting capabilities and easy-to-read reports that enhance command staff meetings and strategic planning.

- Track and report when your personnel have acknowledged policies and policy updates
- Produce reports showing completion of Daily Training Bulletins
- Sort reports by agency member, topic and other subgroups (e.g., shift, assignment)
- Reduce the time your supervisors spend verifying policy acknowledgement and training completion

### Supplemental Publication Service

Lexipol's Supplemental Publication Service (SPS) streamlines the storage of your agency's content, giving you one place to access procedures, guidelines, general orders, training guides or secondary policy manuals.

- Electronically links department-specific procedural or supplemental content to your policy manual
- Provides electronic issuance and tracking for your agency's procedural or supplemental content
- Allows you to create Daily Training Bulletins against your procedural content
- Designed for standard operating guidelines, procedures, general orders or field guides

## Law Enforcement Operations Procedures

To ensure consistent, effective and safe operations, a law enforcement agency's procedures should align with its policies and be accessible in an easy-to-understand format. Lexipol's Law Enforcement Procedure Guide and Framework, based on national best practices, gives you the guidance and a template to build such a procedure manual.

- More than 40 procedure guides designed to help you ensure your procedures follow important policy requirements and national best practices
- Each procedure provides an editable template to conveniently author new content and merge existing agency content
- Procedures are aligned with Lexipol policy requirements to address the most important operations of a law enforcement agency
- Well-structured and policy-aligned procedures enhance preparation for accreditation assessments

### **Full Implementation**

Lexipol's Full Implementation Service is individually tailored for agencies who want a start-to-finish, comprehensive policy adoption assistance. Lexipol's experienced Professional Services staff will:

- Streamline the process of policy adoption
- Assist your agency in developing a policy manual that meets your unique needs, philosophy and project timeline
- Integrate pre-existing agency content into appropriate sections within the policy manual
- Use a proven structure of policy editing and content merging, which will provide a framework to expedite subsequent policy updates and Daily Training Bulletin administration



ADDENDUM

THIS ADDENDUM is made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2020 by and between \_\_\_\_\_ (hereinafter referred to as "Contractor") and the City of Goshen, Indiana (hereinafter referred to as "City");

WITNESSETH:

WHEREAS Contractor and City are parties to a certain agreement for \_\_\_\_\_ dated \_\_\_\_\_, 2020 ("Agreement");

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

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

1. State Law Provisions.

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

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

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

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

e. Telephone Solicitation Act Compliance. Contractor certifies that, except for *de minimis* and non-systematic violations, it has not violated the terms of I.C. 24-4.7, I.C. 24-5-12, or I.C. 24-5-14 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law, and that Contractor will not violate the terms of I.C. 24-4.7 for the duration of the Agreement, even if I.C. 24-4.7 is preempted by federal law. Contractor further certifies that any affiliate or principal of Contractor and any agent acting on behalf of Contractor or on behalf of any affiliate or principal of Contractor, except for *de minimis* and non-systematic

violations, has not violated the terms of I.C. 24-4.7 in the previous three hundred sixty-five (365) days, even if I.C. 24-4.7 is preempted by federal law, and will not violate the terms of I.C. 24-4.7 for the duration of the Agreement, even if I.C. 24-4.7 is preempted by federal law.

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

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

DATED EFFECTIVE with the effective date of the Agreement.

CITY:

CITY OF GOSHEN, INDIANA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ELKHART COUNTY  
REGIONAL SWAT TEAM  
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is entered by the below-listed “participating agencies” to establish their understanding regarding participation in an Elkhart County Regional Special Weapons and Tactics Team (Team):

- Elkhart County Sheriff’s Department (ECSD),
- Goshen City Police Department (GPD),
- Elkhart City Police Department (EPD)
- Goshen Fire Department (GFD).

The goal is to provide a specially equipped and trained team for response to situations, both active and potential, which might require additional manpower, equipment, skills, or teamwork capabilities outside the regular resources and training of line officers. The participating agencies anticipate that the Team will function in accordance with the protocols below.

**OPERATIONAL PROTOCOLS**

**A. COMPOSITION AND COMMAND**

The Team will be comprised of specially trained operators, negotiators, paramedics, marksmen, K-9 support officers, team leaders, assistant team leaders, tactical resource officer, an assistant team commander, and a Team Commander. The Team Commander will be agreed upon by the Joint SWAT oversight committee, which consists of the Sheriff, the Chief of Elkhart City Police, the Chief of Goshen City Police, the Chief of the Goshen Fire Department, and/or the designee of each. The Team Commander or his/her designee will command the Team and will direct designated SWAT operations until concluded or until scenes are released.

The Team Commander will maintain a cohesive communication network between command staffs of each participating agency. Meetings to review specific incidents, call-outs, investigations, or other specific concerns can be called by any participating agency’s command staff or supervisor.

Each participating law enforcement agency anticipates assigning at least eight officers (except when agency staffing shortages prevent such) to the Team to serve as operators, negotiators, snipers, or team leaders. The Goshen Fire Department anticipates assigning three paramedics (except when agency staffing shortages prevent such) to the Team to serve in a paramedic capacity. This count does not include Team Command personnel.

Individual personnel from each participating agency that want to join the Team must have written approval of their respective Chief or Sheriff to participate in the formal selection process. Formal selection and dismissal of personnel from the Team will be conducted per standard operating procedures. Each participating agency may change its personnel assigned to the Team at any time.

#### **B. POLICIES, PROCEDURES, AND DIRECTION**

The policies, standard operating procedures, and direction of the Team will be set forth by the Joint SWAT oversight committee. Team officers will understand and comply with such while performing their duties. The participating agencies understand that Team activity will be joint to the extent possible, with no participating agency acting independently of the other participating agencies.

#### **C. SCENE SUPERVISION**

Initial command of a situation will be the responsibility of the on-scene commander from the jurisdiction where the event occurs or is occurring. Upon arrival, the Team Commander may assume command over the operation or tactical aspects thereof, as he/she deems necessary. While the Team Commander retains command of the Team, the law enforcement agency in whose jurisdiction the incident occurs retains authority to terminate the SWAT operation or request additional support.

Due to the dynamics of large situations, SWAT supervisors will not be tasked with commanding aspects of situations not directly related to the mission of the Team. As proper focus must be maintained for successful tactical resolution, command of the Team and its resources rests with the Team Commander.

#### **D. SCENE PROCESSING**

After the Team has responded and secured an incident, the agency with jurisdiction will be responsible for processing the crime scene. The Team will assist when requested to the extent possible and appropriate.

#### **E. CALL-OUT PROCEDURES**

Any participating agency that believes a situation exists requiring the response of the SWAT Team will follow this procedure:

1. Unless not possible due to the urgency of an active event, top leadership of the requesting agency, or their designee, will give their authorization before a formal request is made to activate the Team.
2. A formal request for the Team must be made by the requesting

agency to the Team Commander.

3. For purposes of officer safety and public safety, the Team Commander, upon request, should consider activation of the Team immediately. Undue delay in activating the Team will be avoided.

4. Once authorized, the requesting agency's on-scene supervisor will be put in contact with the Team Commander as soon as possible.

5. Once authorized for activation, all Team members will be paged with their orders via Elkhart City, Elkhart County Dispatch or Active911.

#### **F. TYPES OF TEAM-RESPONSE INCIDENTS ANTICIPATED**

The Team may be authorized, at the ultimate discretion of the Team Commander or his designee, for use in these incidents:

- Barricaded Subjects
- Hostage Situations
- High Risk Warrant Service
- Suicidal Subjects
- Dignitary (VIP) Protection
- Special Events
- Coverage of Disasters
- Coverage of Civil Defense Disorders
- Other events deemed necessary by a participating agency

#### **G. OPERATIONAL PROBLEMS**

Operational problems will be mutually addressed and resolved by the participants from each agency. Resolution of operational problems will be conducted at the lowest level possible. Problems not resolved at lower levels will be referred to the Joint SWAT oversight committee.

#### **H. FIREARMS, VEHICLES, AND OTHER EQUIPMENT**

Handguns, rifles, and ammunition carried by Team members during a SWAT tactical

operation will comply with standard operating procedures. Team members will use the equipment and vehicles of their own participating agency employer.

#### **I. TRAINING**

Each Team member will attend a weeklong SWAT Officers Immersion School as a new member. Each Team member must also attend all monthly Team trainings unless excused by the Team Commander or a team leader. Monthly training is generally conducted two times per month, 4-6 hours each day. Each participating agency will be responsible for costs of its own Team members' training.

#### **J. PERSONNEL MATTERS**

Each participating agency remains responsible for the conduct of its own personnel; for their medical expenses; for their benefits and wages, including overtime; and for worker's compensation. Each participating agency will determine whether to authorize or require its own personnel to work overtime hours. Each participating agency will be responsible for personnel actions related to its own personnel.

#### **K. PRESS RELEASES**

Regarding press releases for Team responses to situations:

- For events that take place in the City of Elkhart, EPD will make press releases.
- For events that take place in the City of Goshen, GPD will make press releases.
- For events that take place elsewhere within Elkhart County, ECSD will make press releases.
- For events that take place outside of Elkhart County, the participating agencies will jointly decide which participating agency will issue a press release on a case-by-case basis.

For all press releases regarding the Team's response to situations or otherwise regarding the Team, all participating agencies will approve the press release before the issuing participating agency issues it.

Nothing in this section alters the rules applicable to the participating agencies under Public Records and Public Meetings Laws of Indiana Code 5-14.

#### **L. NON-PARTICIPATING-AGENCY REQUESTS**

If non-participating law enforcement agencies request assistance from a participating agency, the above call-out procedures apply. If the decision is made to assist a non-

participating agency, the Team Commander or his/her designee will provide notice to the non-participating agency about the operational protocols under which the Team would be operating, and the non-participating agency must acknowledge and agree to such protocols.

When the Team operates within another law enforcement agency's jurisdiction, the head of the non-participating agency may designate a command-level officer to participate in the Team Command process. The Team Commander has final authority for command decisions.

**M. TEAM EVALUATION**

The Team will be evaluated on an annual basis by supervisors from the participating agencies who may make recommendations for improving Team performance.

**N. TERM**

This MOU will remain in effect until jointly terminated by the participating agencies or, as to each participating agency, until that participating agency has withdrawn. Each participating agency may withdraw from this MOU at any time and for any reason. If a participating agency elects to withdraw from participation, that agency will deliver written notice of withdrawal, effective immediately, to the other participating agencies.

**SIGNATURES**

This MOU is effective on the date last signed below:

\_\_\_\_\_ Date: \_\_\_\_\_  
Jeff Siegel, Sheriff  
Elkhart County Sheriff's Department

\_\_\_\_\_ Date: \_\_\_\_\_  
Jose Miller, Chief  
City of Goshen Police Department

\_\_\_\_\_, Chief  
City of Elkhart Police Department

Date: \_\_\_\_\_

\_\_\_\_\_, Chief  
City of Goshen Fire Department

Date: \_\_\_\_\_