

BILL NO. S-14-05-13

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONTRACT FOR THE CONSTRUCTION AND TRANSFER OF WATER FACILITIES 2014 - W-05, COLDWATER ROAD/GUMP ROAD WATER MAIN between GRANITE RIDGE BUILDERS, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONTRACT FOR THE CONSTRUCTION AND TRANSFER OF WATER FACILITIES 2014 - W-05, COLDWATER ROAD/GUMP ROAD WATER MAIN by and between GRANITE RIDGE BUILDERS, INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for construction of 6,637 lineal feet of 12-inch water main and all necessary appurtenances. This construction will be completed as part of and at the same of the Canyon Bay residential subdivision being completed by Granite Ridge Builders. Through this Agreement, the developer of the residential subdivision is contributing costs equal to the construction of an 8-inch water main for a portion of the offsite water main and will pay the entire cost of the water main within the residential subdivision:

1 involving a total cost not to exceed SEVEN HUNDRED THOUSAND AND
2 00/100 DOLLARS - (\$700,000.00). A copy of said Contract is on file with the
3 Office of the City Clerk and made available for public inspection, according to
4 law.

5
6 **SECTION 2.** That this Ordinance shall be in full force and effect
7 from and after its passage and any and all necessary approval by the Mayor.

8
9
10 _____
11 Council Member

12 APPROVED AS TO FORM AND LEGALITY

13
14
15 _____
16 Carol Helton, City Attorney

**CONTRACT FOR THE CONSTRUCTION AND TRANSFER OF
WATER MAIN FACILITIES 2014-W-05**

COLDWATER ROAD / GUMP ROAD WATER MAIN

Work Order No. 66308

This Contract agreement titled above ("Contract") is made by and between the City of Fort Wayne, Indiana, an Indiana municipal corporation by and through the Fort Wayne Board of Public Works ("City"), and Granite Ridge Builders, Inc., an Indiana corporation (hereinafter referred to as "Investor").

WITNESSETH:

WHEREAS, growth patterns and development trends indicate that substantial community growth can be anticipated in the northern areas of Allen County; and

WHEREAS, for orderly growth to occur, urban services such as sanitary sewer and water facilities must be present to accommodate that growth; and

WHEREAS, the most logical way from an engineering and fiscal perspective to provide water service to the anticipated growth area would be to extend the City's existing water main system a sufficient distance into the area where new land development is anticipated to occur; and

WHEREAS, Investor agrees to facilitate the construction and then transfer to the City an extension of the existing water main system, and City desires to acquire same under certain terms and conditions hereinafter set forth.

NOW THEREFORE in consideration of the mutual covenants herein contained, it is agreed between the parties as follows:

1. FACILITY CONSTRUCTION AND TRANSFER DATE. Investor hereby agrees to cause to be constructed and transferred to the City of Fort Wayne the following:

A. Facility Construction.

- i. Coldwater Road/Gump Road Water Main System ("Water Main"). The installation of approximately 6,637 lineal feet of 12-inch water main, all necessary appurtenances and all required restoration. Water Main to be extended from existing water valve 078 0001 generally located near the intersection of Coldwater Road and Falcon Creek Parkway, north approximately 5,025 lineal feet along Coldwater Road to Gump Road then easterly along Gump Road approximately 1,610 lineal feet as depicted in the attached Exhibit A.

- ii. The Water Main shall be constructed and completed in accordance with the City Utilities previously approved plans and specifications as prepared by DA Brown & Associates.
 - iii. It is intended by the parties that the Water Main to be installed shall be wholly located within dedicated right-of-way and that all construction work shall be within dedicated right-of-way. In the event it is necessary to secure easements to install any of the Water Main outside of governmental right-of-way or secure temporary construction easements, the City shall secure, at its sole cost and expense, all such easements.
 - B. The transfer date of the Water Main from the Investor to the City through its Board of Public Works shall be designated the "Acceptance Date." It is anticipated by the parties of this Agreement that transfer of ownership from Investor to the City will occur on or before July 1, 2014. The City agrees that it will not unreasonably withhold or delay its acceptance of the Water Main.
 - C. City shall furnish water through said system, when complete, in accordance with rules and regulations of said City and the laws, ordinances and regulations, applicable thereto, now in force, or that may hereafter be adopted; however, it is understood and agreed that the City will not furnish water through any part or parts of the water main covered hereunder unless and until the entire system shall have been tested, disinfected, placed in-service, and accepted by said City.
2. ENGINEERING, CONSTRUCTION MANAGEMENT & INSPECTION AND EASEMENTS. The City shall reimburse the Investor for all engineering and engineering-related services associated with the design, bidding and installation of the Water Main. City shall perform, at its sole cost and expense, necessary construction management and inspection services for the construction of the Water Main.
3. COST OF WATER MAIN FACILITY CONSTRUCTION. The cost of the Water Main for the purpose of this Agreement shall be paid by the Investor. The Investor or the Investor's contractors shall furnish and pay for all material, contractual labor, equipment, permits, restoration, fees, charges and or licenses required for construction of the Water Main ("Construction Costs") and shall hold City harmless from any liability for claims for the Construction Costs. At completion of the Water Main, Investor or its contractors shall file a Completion Affidavit and a Maintenance Bond with the Board of Works of the City. The Maintenance Bond shall run for a minimum of one year from the Acceptance Date of the Water Main and shall be in the minimum amount of 25% (twenty-five percent) of the construction, restoration and change orders of the Water Main.
4. ADMINISTRATION/INTEREST COSTS. City shall reimburse Investor actual costs of loan origination costs and processing fees and legal fees associated with preparation and negotiation of this Contract and the Water Main. Administration Costs shall not exceed 4% (four percent) of the Construction Costs.

5. REIMBURSEMENT BY CITY TO INVESTOR. The eligible reimbursement to be paid by the City to the Investor for the purposes of this Contract, shall be called the "Total Reimbursement Cost."

It is agreed that eligible reimbursement of costs by the City to the Investor for the Water Main shall be as follows:

- A. Except as provided in this Contract, the total amount of cost eligible for reimbursement from the City shall not exceed \$700,000 (seven hundred thousand dollars), hereinafter referred to as the "Reimbursement Cap" and shall be limited to the qualifications listed in this paragraph.
1. Administration and Interest Costs as described in Section 4.
 2. Construction Costs. The eligible construction costs shall be no more than the lowest of at least three competitive bids with bid openings witnessed by the City and accompanied by non-collusion affidavit; and
 3. City shall reimburse the Investor the total Construction Cost of the approximately 4,678 lineal feet of 12-inch water main from the point of extension north plus the lowest bid cost difference between the installation of the remaining approximately 1,959 lineal feet of 8-inch water main versus approximately 1,959 lineal feet of 12-inch water main ("Oversizing Amount"). The actual lineal feet for calculation of the Oversizing Amount shall be based upon the actual lineal feet of 12-inch water main installed as represented on attached Exhibit A as "Canyon Bay Responsible for 8" Length."
- B. In the event the Eligible Costs of the Water Main exceeds the Reimbursement Cap, the Investor may either: (i) terminate this Agreement by written notice to the City, or (ii) submit an addendum to the City increasing the Reimbursement Cap or reducing the scope of work to be completed in connection with the Water Main. In no case shall the Investor be expected to ultimately pay costs for the Water Main that exceeds the Reimbursement Cap. The City shall not unreasonably withhold or delay its approval of any reasonably necessary change orders, which approved change orders shall be added to and automatically increase the Reimbursement Cap.

6. PAYMENT TO INVESTOR BY CITY. The City shall pay Investor the actual Total Reimbursement Cost based on the following schedule:

- A. Administration and Interest Costs shall be reimbursed by City to Investor within 10 business days of receipt of invoices and supporting documentation from Investor.
- B. Payment #1 for Construction Costs shall be an amount equal to the cost of the purchase and delivery of materials to the site. Costs will be reimbursed within 10 business days of receipt of invoice and supporting documentation.

- C. Subsequent Payments for Construction Costs will be paid in the amount equal to work actually performed and completed, less 5% (five percent) and shall be submitted to City by Investor no more than twice monthly.
 - D. Final Payment of the remaining balance of the Construction Costs and any other amounts due pursuant to this Agreement, including Section 2 and 4, will be paid to Investor by City within 30 calendar days of the Acceptance Date.
7. WATER MAIN FACILITY TRANSFER OF OWNERSHIP AND MAINTENANCE. Upon the Acceptance Date, the City shall receive ownership of the Water Main from Investor and thereafter said Water Main shall be maintained under the control and supervision of City; provided, however, restoration of the disturbed areas shall be the responsibility of Investor during the Maintenance Bond term as identified in Paragraph 3.
8. SERVICE CONNECTIONS TO WATER MAIN. It is further understood and agreed by and between the parties to this Contract that should any additional party wish to have a service connection tap made into this Water Main within a period of fifteen (15) years from the above date and become a permanent customer of water on the real estate described in the attached Exhibit B-1 Reimbursement Area Exhibit B-2 Reimbursement Area, said customer shall apply to City for a permit to tap the Water Main and shall be required to pay said City a pro rata share of the installation cost of the Water Main ("Reimbursement Amount") in addition to the regular tapping fee. The Reimbursement Amount will be based on the total actual cost of the Water Main divided by the total front lineal footage of the Reimbursement Areas ("Total Assessable Footage"). The specific amount of this cost will be identified and agreed upon via separate agreement between Investor and City once the bid prices and actual total costs are known. The Reimbursement Amount for Investor shall be calculated on a lineal foot basis for properties abutting or having direct access from Gump Road and the Reimbursement Amount for the City shall be calculated on a lineal foot basis for properties abutting or having direct access from Coldwater Road and Gump Road and shall be set forth in the definitive Reimbursement Agreement. The amount so collected will be distributed as follows:
- A. Investor shall receive a pro rata amount from each service connection serving the real estate identified in Exhibit B-1 Reimbursement Area based on the awarded contractor's bid amount for approximately 1,959 lineal feet of 8-inch water main along a portion of Coldwater Road and along Gump Road.
 - B. City shall receive a pro rata amount from each service connection serving the real estate identified in Exhibits B-1 and B-2 based on an amount equal to or less than the actual amount spent by the City for the Water Main. The City may waive the collection of the City's pro rata share of the Reimbursement Amounts for any reason but in no case shall the City waive the collection of the Investor's Reimbursement Amount described above.
 - C. In no case shall the Investor or the City collect Reimbursement Amounts that exceed the total cost spent, respectively, for the Water Main.

9. EXTENSION FROM WATER MAIN. The City may approve the extension of additional public water mains from the Water Main(s) covered in this contract without incurring any financial obligations to the Investor under this Contract.
10. COMPLIANCE WITH LAW. All actions associated with and in support of this Agreement will be done in compliance with Federal, State, and Local law.
11. INDEMNIFICATION. To the extent permitted by law, the City agrees to indemnify, defend, and hold harmless Investor, its agents, officers, and employees from all claims and suits by reason of injury or death to persons or damage to tangible property, including costs, attorney's fees, and other expenses caused by any negligent act or negligent omission by the City and/or its contractors and/or its subcontractors, if any, arising out of the construction or construction management, except for financial claims as described in Section 3.
12. JURISDICTION. It is agreed that this Contract shall be governed by, construed, and enforced in accordance with the laws of the State of Indiana, and proper venue for any dispute arising under this Contract shall be in any federal or state court of competent jurisdiction located in Allen County, Indiana.
13. MODIFICATION. Any modification of this Contract or additional obligation assumed by either party in connection with this Contract shall be binding only if evidenced in writing and executed by each party or an authorized representative of each party.
14. WAIVER. The failure of either party to this Contract to insist upon the performance of any of the terms and conditions of this Contract, or the waiver of any breach of any of the terms and conditions of this Contract, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
15. SAVINGS CLAUSE. The invalidity of any portion of this Contract will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision; provided, however, that if in the reasonable opinion of City, the Contract fails of its essential purpose as a result of the severed provision(s), the City shall have the right to terminate the Agreement.
16. ATTORNEY FEES. In the event that any action is filed in relation to compliance with this Agreement, or any form of alternative dispute resolution is pursued, the unsuccessful party shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorneys' fees, court costs, and costs of litigation.

17. HEADINGS. The titles to the paragraphs of this Contract are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.
18. NOTICES. Any notice provided for or concerning this Contract shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement, or at any subsequent address either party may designate to the other in writing.
19. UNFORESEEN PROBLEMS. Neither party to this Contract shall be liable to the other for any loss, cost or damage arising out of, or resulting from, any failure to perform in accordance with the terms of this Contract where such failure shall be beyond the reasonable control of such party, which, as employed herein, shall be deemed to mean, but not limited to, acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockages, insurrections, riots, governmental actions, explosions, fire, floods, or any other cause not within the reasonable control of either party.
20. ENTIRE AGREEMENT. This Contract sets forth the entire agreement and understanding between the parties, and supersedes all prior discussions or agreements (written or oral) between them. Neither party shall be bound by any conditions, definitions, warranties, understandings or representations other than as expressly provided herein, or as duly set forth on or subsequent to the date hereof in writing and signed by a proper and duly authorized officer or representative of the party to be bound thereby.
21. E-VERIFY AFFIDAVIT. Pursuant to Indiana Code 22-5-1.7, Contributor agrees and shall enroll in and verify the work eligibility status of all newly hired employees of the Contributor through the E-Verify program. E-Verify means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s.403(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603). Contributor is not required to verify the work eligibility status of all newly hired employees of Contributor through the E-verify program if the E-Verify program no longer exists.
22. EFFECTIVE DATE. This Contract shall effective upon approval by the Common Council of the City of Fort Wayne as required by I.C. 36-9-23-6(b). The City shall notify Investor in writing within two (2) days after Common Council approval is obtained.
23. INVESTOR RIGHT OF ASSIGNMENT. Investor may assign any portion or all of its rights in this Agreement including for reimbursement or its allocation rights.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each party to this Contract has caused it to be executed at Fort Wayne, Indiana, on the date indicated below.

Dated this 7th day of May, 2014.

"CITY"

CITY OF FORT WAYNE, INDIANA
an Indiana municipal corporation and
through the Fort Wayne Board of Public Works

By: 
Robert P. Kennedy, Chair

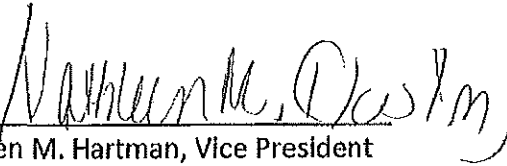
By: 
Kumar Menon, Member

By: _____
Mike Avila, Member

Attest: 
Victoria Edwards, Clerk

"INVESTOR"

GRANITE RIDGE BUILDERS, INC.
an Indiana corporation

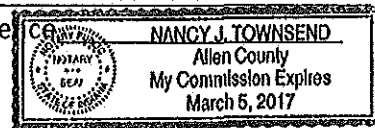
By: 
Kathleen M. Hartman, Vice President

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this 6th day of May, 2014, personally appeared Granite Ridge Builders, Inc. by Kathleen M. Hartman, Its Vice President (Investor), who acknowledged the execution of the foregoing instrument for and on behalf of said Investor. Witness my hand and notarial seal.

My Commission Expires:

Nancy J. Townsend
Notary Public
Printed
County of Residence



STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this 7th day of May, 2014, personally appeared Robert P. Kennedy, Chair, and Kumar Menon and Mike Avila, Members, Fort Wayne Board of Public Works (City) who acknowledged the execution of the foregoing instrument for and on behalf of the Board of Public Works of the City of Fort Wayne. Witness my hand and notarial seal.

My Commission Expires:

12/02/2020

Lindsay K. Haggerty
Notary Public
Printed Lindsay K. Haggerty
County of Residence Allen

This Instrument prepared by:
Nancy Townsend, City of Fort Wayne City Utilities, Development Services

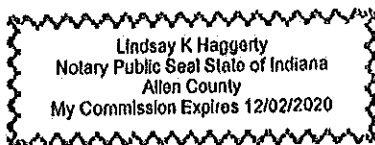
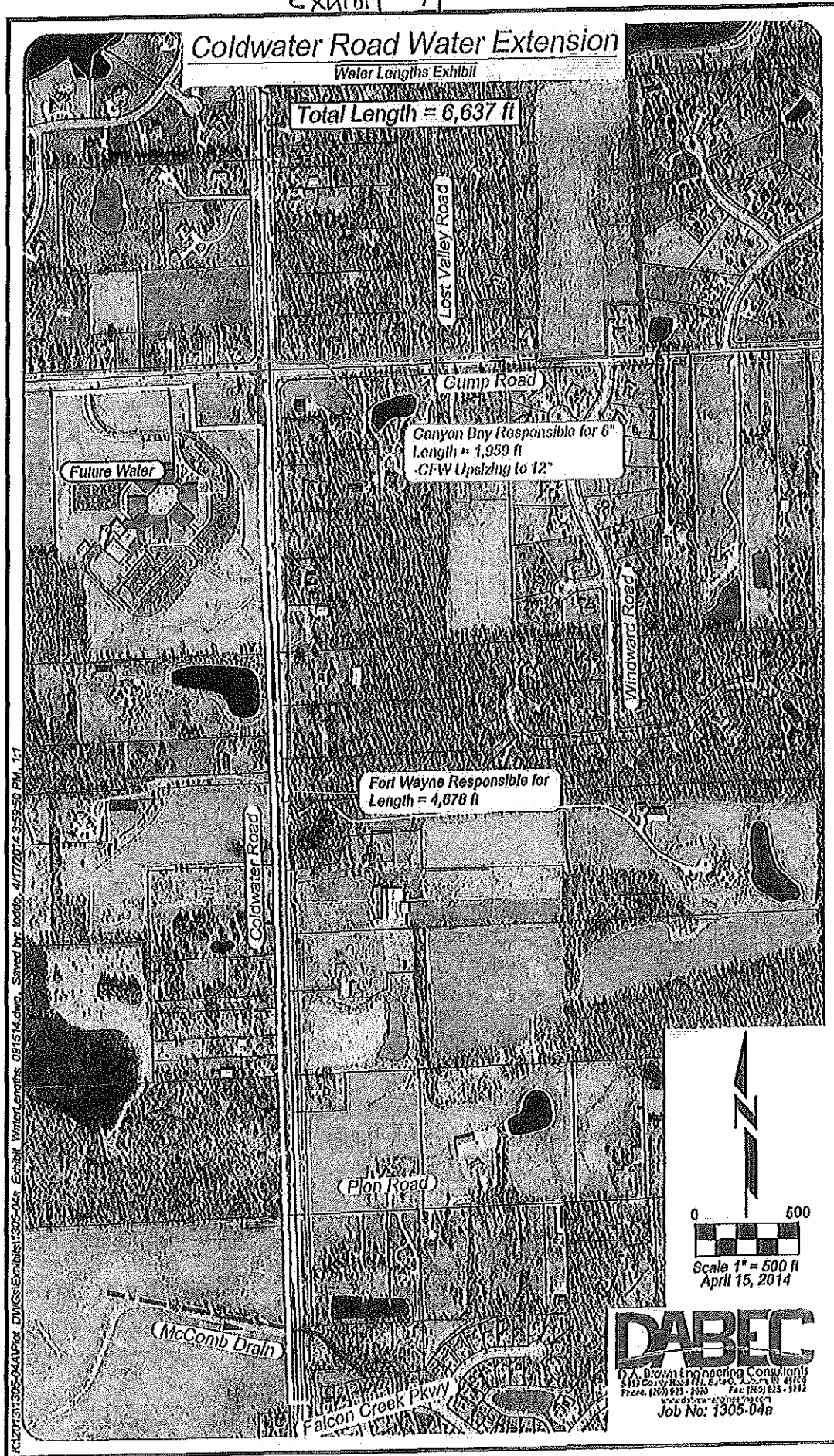
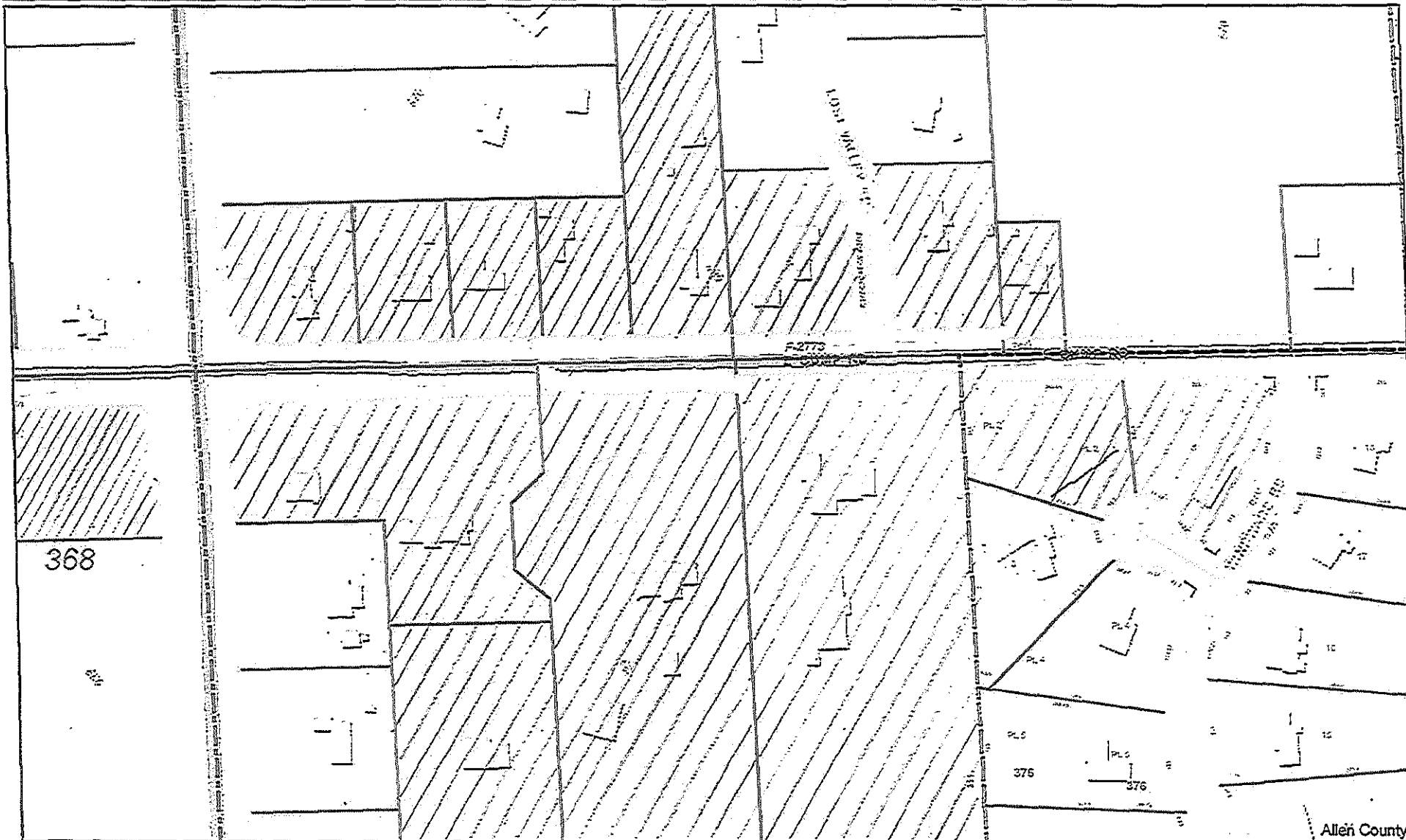


exhibit A





B-1
Exhibit "B" Contributor Reimbursement Area Map



Allen County

Although strict accuracy standards have been employed in the compilation of this map, Allen County does not warrant or guarantee the accuracy of the information contained herein and disclaims any and all liability resulting from any error or omission in this map.

© 2004, Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East

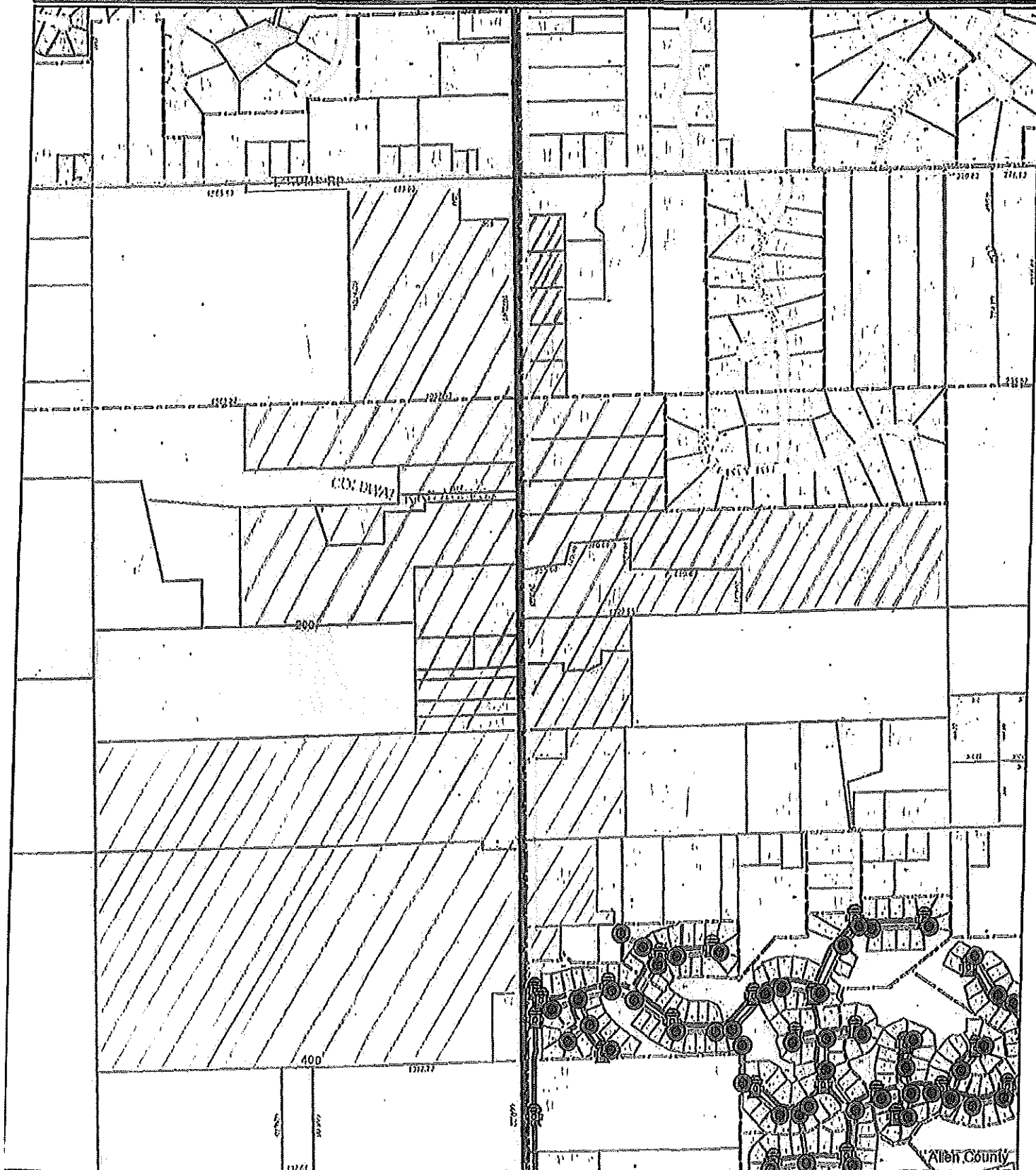
Reimbursement Area Red Hash Marked



Date: 5/5/2014 1" = 200'



Exhibit "A" Utility Reimbursement Area Map



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© 2004 Board of Commissioners of the County of Allen
North American Datum 1983
State Plane Coordinate System, Indiana East

Reimbursement Area Red Hash Marked



Date: 5/5/2014 1" = 779'

DIGEST SHEET

Department: City Utilities, Utility Administration & Development Services

Resolution Number: Board of Works Contract 2014-W-05

Title of Ordinance: Contract for the Construction and Transfer of Water Facilities 2014 – W – 05, Coldwater Road / Gump Road Water Main.

Awarded To: Granite Ridge Builders, Inc.

Amount of Contract: (Not To Exceed) \$700,000

Number of Bidders: In compliance with State purchasing requirements, the developer is required to obtain competitive bids from at least three qualified contractors; Non Collusion Affidavits must accompany each of the bid submittals.

Description of Project (Be Specific):

This Agreement calls for the construction of 6,637 lineal feet of 12-inch water main and all necessary appurtenances. This construction will be completed as part of and at the same of the Canyon Bay residential subdivision being completed by Granite Ridge Builders. Through this Agreement, the developer of the residential subdivision is contributing costs equal to the construction of an 8-inch water main for a portion of the offsite water main and will pay the entire cost of the water main within the residential subdivision. City Utilities cost is based on the difference between that "base system" and the actual cost of the 12-inch water main.

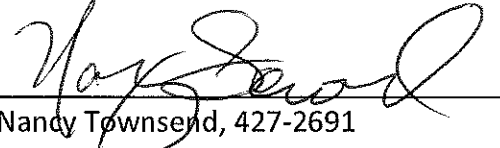
What Are The Implications If Not Approved:

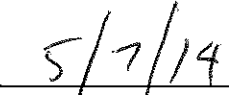
- The current opportunity to efficiently install the water main in the most cost effective manner and to meet the development schedules would be missed.

If Prior Approval Is Being Requested, Justify:

Not Applicable.

Additional Comments: This system will provide public water service opportunity to properties, both developed and undeveloped, within expansive Coldwater Rd/Gump Rd area. The funding source for this project is Water Utility funds.


Nandy Townsend, 427-2691


Date

Interoffice Memo

Date: May 8, 2014
To: Common Council Members
From: Kumar Menon, Director of City Utilities
RE: Coldwater Road / Gump Road Water Main Contract # 2014 – W – 05

On May 7, 2014, the Board of Public Works entered into an agreement with Granite Ridge Builders, Inc. for the construction of approximately 6,637 lineal feet of 12-inch water main as part of the Canyon Bay Residential Subdivision being constructed by Granite Ridge Builders, Inc. This development and water main system will be located along Coldwater Road and Pion Road, north to Gump Road and will be designed and constructed to distribute domestic water and provide hydrants for public fire protection to the proposed residential development and the surrounding area. This installation coincides with the construction of the residential subdivision and takes advantage of the economies of completing the overlapping work at the same time. The Board's participation in this project calls for the reimbursement of up to \$700,000 for the construction costs for these improvements; funds for project will come from the Water Utility.

The Board of Works and City Utilities seeks the Council's concurrence with the Board's action so that we may proceed with this significant system improvement and economic development opportunity.

Please contact Nancy Townsend at 427-2691 or at nancy.townsend@cityoffortwayne.org if you have any questions.

CC: Diane Brown
Molly McCray