

AN ORDINANCE approving SANITARY SEWER DEVELOPER CONTRACT – BELMONT WOODS SUBDIVISION - WORK ORDER #77009 – (\$1,256,264.00) – between North Eastern Development Corp. and the City of Fort Wayne, Indiana, by and through its Board of Public Works.

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

SECTION 1. That the SANITARY SEWER DEVELOPER CONTRACT – BELMONT WOODS SUBDIVISION - WORK ORDER #77009 – between North Eastern Development Corp. and the City of Fort Wayne, Indiana, by and through its 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 INSTALLATION OF 5,370 LF of 12" HDPE FORCE MAIN, 20 LF of 6" DUCTILE IRON PIPE, 529 LF of 2" HDPE FORCE MAIN and 1 LIFT STATION;

involving a total cost of ONE MILLION TWO HUNDRED FIFTY-SIX THOUSAND TWO HUNDRED SIXTY-FOUR and 00/100 DOLLARS - (\$1,256,264.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

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

Council Member

APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney

SANITARY SEWER CONTRACT

Cross Reference Document(s): 86-036007, 960009438, 2021043955 and 2021072215

CONTRACT NO. 2021-S-0472

WORK ORDER NO. 77009

THIS SANITARY SEWER CONTRACT ("Contract") is made and entered into this 31 day of January 2023, by and between North Eastern Development Corp. ("Contributor"), and the City of Fort Wayne Board of Public Works ("City"), for the following and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to wit:

WITNESSETH:

- A. WHEREAS, growth patterns and development trends indicate that substantial community growth has occurred and can be anticipated to continue near the northeastern portion of the City;
- B. WHEREAS, for orderly growth to occur, as well to provide for elimination of existing septic systems, services such as sanitary sewer must be available to accommodate the future development; and
- C. WHEREAS, the most logical way from an engineering and fiscal perspective to provide sanitary sewer service to the anticipated growth area and to eliminate existing septic systems is to partner with the Contributor to extend the City's existing sanitary sewer system a sufficient distance into the area where new land development is anticipated to occur, along with capacity sufficient for the future growth.

NOW THEREFORE, said Contributor and the City for the consideration hereinafter named, agree as follows:

SECTION 1

REGIONAL SANITARY LIFT STATION and 12" FORCE MAIN

&

SANITARY 2" OFFSITE FORCE MAIN ALONG YOUNG ROAD (TO THE SOUTH OF THE LIFT STATION)

1. DESCRIPTION OF SYSTEM: That the City and the Contributor shall proceed dependent upon procurement of materials and labor and with reference to other similar work of said parties, or as approved by the City, to construct a local sanitary sewer system to serve the Belmont Woods Subdivision and surrounding area as follows:

Sanitary Lift Station and 12" Force Main

Beginning by setting a Wet well located 125± feet South and 170± feet East of the Centerline of the Intersection in Elmont Cove in Belmont Woods Section I and the future Jerome Park Place; thence Southwest, 10± L.F. of 2 - 6" D.I. pipe to a Valve vault; thence West and Northwest along the West boundary of Belmont Woods Subdivision 1,360± L.F. of 12" HDPE DR 11 D.I.P pipe to Air release MH 1 at Sta 13+60; thence Northwest 1,011± L.F. to Air

release MH 2 at Sta 23+71; thence Northwest 647± L.F. to Air release MH 3 at Sta 30+18; thence Northwest 1,782± L.F. to Air release MH 4 at Sta 48+00; thence, under the St. Joe River, 570± L.F. and tying into existing Manhole U54 006 and terminating said Sanitary Lift Station / Force Main.

Sanitary 2" Offsite Force Main – Along Young Road to South of Belmont Woods Subdivision

Beginning at the aforementioned Wet well located 125± feet South and 170± feet East of the Centerline of the Intersection in Elmont Cove in Belmont Woods Section I and the future Jerome Park Place; thence Southwest and along the West right-of-way of Young Road, 529± L.F. of 2" HPDE DR 9 force main pipe to a Terminal cleanout and terminating said Sanitary 2" Offsite Force Main.

Summary

Said sewer to include: 529± L.F. of 2" HDPE DR 9 force main pipe and 20± L.F. of 6" D.I. pipe and 5,370± L.F. of 12" HDPE DR 11 D.I.P. pipe; 1 (One) Wet well, 1 (One) Valve vault, 4 (Four) Air release manholes and 1 (One) Terminal cleanout

The foregoing improvements are collectively referred to herein as the "Sanitary Sewer System".

2. STANDARDS FOR CONSTRUCTION: The Sanitary Sewer System shall be constructed in accordance with the standards, plans and specifications as approved by City, which are on file in City's Development Services office and are incorporated herein and made a part thereof (the "Approved Plans").
3. APPLICABLE LAWS, ORDINANCES AND REGULATIONS: The City shall accept sewage from the Sanitary Sewer System when complete, in accordance with the 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 shall not accept sewage from any part or parts of the Sanitary Sewer System covered hereunder unless and until the entire Sanitary Sewer System shall have been tested and accepted by said City.
4. COST OF CONSTRUCTION: It is understood and agreed by and between the parties to this Contract, that the Contributor shall furnish and pay for all materials, contractual labor, equipment, permits and/or licenses for the construction of the Sanitary Sewer System through Fox Contractors Corp. at a cost of \$1,256,264.00 (One million two hundred fifty six thousand two hundred sixty four dollars and no cents), that said Contributor shall hold the City harmless from any liability for claims connected therewith.
5. INSPECTION AND TESTING FEES: Contributor shall pay all expenses in connection with necessary inspection, and testing services estimated at a cost of \$5,056.10 (Five thousand fifty six dollars and ten cents). Therefore, the total value of the Sanitary Sewer System is \$1,261,320.10 (One million two hundred sixty one thousand one hundred thirty two dollars and ten cents). This sum constitutes the "Contract Price" herein.
6. REIMBURSEMENT BY CITY FOR LIFT STATION & 12" FORCE MAIN: It is further understood and agreed by and between the parties to this Contract that said Contributor shall bear the cost of the sanitary sewer mains on the basis of 94 ERU's of capacity for the lift station, pump package and 12" force main, including fees, the total cost of which is \$180,106.96 (One hundred eighty thousand one hundred six dollars and ninety six cents). It is further understood and agreed by and between the parties to this Contract that said City shall bear the cost of material, contractual labor and equipment, as supplied by the Contractor for oversizing the lift station, pump package and force main from 94 ERU capacity to a 700 ERU capacity lift station and force main and 515 ERU capacity pump package, is \$1,061,156.44 (One million sixty one thousand one hundred fifty six dollars and forty four cents).
7. REIMBURSEMENT FROM A NEW CUMULATIVE FUND: It is agreed that upon completion and within sixty (60) days after the Acceptance Date (defined below), the City will commence payments to said Contributor according to the terms and schedule described in Sections 6 through 10 for the oversizing cost \$1,061,156.44 (One million sixty one thousand one hundred fifty six dollars and forty four cents). The amount subject to reimbursement hereunder is referred to as the "Balance." The City shall establish a cumulative fund entitled "The Belmont Woods Sanitary Sewer Cumulative Fund" ("Cumulative Fund") from which the City shall pay the Balance. The Cumulative Fund shall be the primary source of payment to said Contributor for the Balance. The Cumulative Fund shall be funded from Area Connection Fees as provided in Paragraph 9 and Capital Surcharge Fees as provided in Paragraph 10 below.

8. REIMBURSEMENT TO CONTRIBUTOR: City shall reimburse said Contributor for the Balance from those monies deposited to the Cumulative Fund on a semi-annual basis until the Balance is paid. The semi-annual payment schedule shall be determined by the City but shall include a first payment within sixty (60) days of the Acceptance Date of \$700,000.00 (Seven hundred thousand dollars and no cents). The City has the option of paying more than the monies deposited to the Cumulative Fund without incurring a penalty. In no instance shall the City be required to make payments exceeding the then current Cumulative Fund balance. The City may continue to direct collections to the Cumulative Fund after such time the Balance is paid in full to said Contributor.
9. PAYMENT OF INTEREST ON UNPAID BALANCE: The City shall pay Contributor interest on the unpaid portion of the Balance in the manner described in this section.

Interest shall commence after all of the following has occurred:

- A. The Sanitary Sewer System has been accepted by the Board of Public Works; and
- B. The Contributor notifies the City, in writing, that interest shall commence.

The initial per annum interest rate shall be the Wells Fargo Bank, Fort Wayne, Indiana (or its assigns) prime lending rate plus one (1) percent (herein referred to as the "Interest Rate"). The Interest Rate shall be annually adjusted on the anniversary of the Acceptance Date for the following year to reflect changes in this prime lending rate. Any discounted interest shall accrue (without additional interest) and shall become payable to the Contributor only after the current Interest Rate is no longer discounted.

Any accrued interest remaining upon full payment of the Balance by the City shall be forfeited by the Contributor.

10. AREA CONNECTION FEE: An Area Connection Fee (ACF) has been previously established for the area to be served by the Sanitary Sewer System. The ACF shall be collected from each sewer service customer connecting to the Sanitary Sewer System and deposited into the Cumulative Fund. This ACF shall not be reduced by the City without the prior written consent of Contributor. For new sewage customers with the area subject to the ACF whose real estate is not included in a contract for development of sewer service, the ACF shall be collected at the time of issuance of a sewer tap permit for sewer service.

It is understood and agreed that the any new sanitary connections in the Benefited Area that do not result in the decommissioning and elimination of an existing septic system is subject to ACFs at the time of connection in accordance with agreements and/or resolutions on file in the Office of the Board of Public Works of the City. The ACFs shall be paid on or before building sewer connections are made to the City sewer system in accordance with the applicable fees in effect at the time of connection. The ACFs represent the installation and/or oversizing costs expended by the City for downstream collection system and treatment facilities

11. CAPITAL SURCHARGE: The Upper Ely Capital Surcharge ("CSC") shall be applicable in the initial amount of \$20.00 per ERU per month as previously approved by the Board of Public Works and confirmed by the Common Council of the City of Fort Wayne to assist in defraying the cost of the Sanitary Sewer System and off-site facilities. This CSC shall not be reduced by the City without the prior written consent of Contributor. The CSC shall be applied to all monthly sanitary sewer bills for areas serviced through the Belmont Woods Lift Station. Collections from said CSC shall be deposited into the Cumulative Fund. Any increases to the CSC shall be no more than those related to the cost of living.

SECTION 2

SANITARY 2" OFFSITE FORCE MAIN ALONG YOUNG ROAD

1. The 2" sanitary sewer force main system, along Young Road to the south of the Lift Station, will serve the benefited area ("Benefited Area") depicted on Exhibit "A," and legally described as follows:

Benefited Area
St. Joseph Township Section 10, T31N, R13E

Allen County Parcel No. 02-08-10-100-004.002-063:

A tract of land located in the Northwest quarter of Section 10, T31N, R13E, in Allen County, the State of Indiana, more fully described as follows:

Commencing at a Harrison marker situated in the Northeast corner of said Northwest quarter; thence South 02 degrees 58 minutes 08 seconds East (Indiana State Plane Coordinate System East Zone-GPS Grid basis of bearings), a distance of 1738.03 feet along the East line of said Northwest quarter to a marker spike with tag (Firm 0042) in the Southeast corner of the tract of land described in the conveyance to the County of Allen County Document No. 740023087; thence South 02 degrees 58 minutes 08 seconds East, a distance of 161.40 feet along the East line of said Northwest quarter to a marker spike with tag (Firm 0042), the true point of beginning; thence South 87 degrees 01 minutes 52 seconds West, a distance of 325.00 feet to a rebar stake with cap (Firm 0042); thence South 22 degrees 49 minutes 12 seconds West, a distance of 495.00 feet to a rebar stake with cap (Sauer); thence South 75 degrees 15 minutes 48 seconds East, a distance of 489.50 feet along the North line of the tract of land described in the conveyance to the State of Indiana in Allen County Document No. 910049476 to a rebar stake with cap (Sauer); thence North 19 degrees 45 minutes 37 seconds East, a distance of 154.09 feet along the North line of said State of Indiana tract to a rebar stake with cap (Sauer); thence North 87 degrees 01 minutes 52 seconds East, a distance of 14.51 feet to a marker spike with tag (Firm 0042); thence North 02 degrees 58 minutes 08 seconds West, a distance of 452.45 feet along the East line of said Northwest quarter to the point of beginning, said tract said in survey to contain 5.332 acres, more or less. A survey of said tract represented by Plat of Survey #31-13-10-01 as prepared by D.A. Brown Engineering Consultants, Inc.

Parcel address: Young Road, Fort Wayne, In 46835

Current owner of record: James A. Schuler

Allen County Parcel No. 02-08-10-100-004.003-063:

A tract of land located in the Northwest quarter of Section 10, T31N, R13E, in Allen County, the State of Indiana, more fully described as follows:

COMMENCING at a Harrison Marker situated in the Northeast corner of said Northwest quarter; thence South 02 degrees 58 minutes 08 seconds East (Indiana State Plane Coordinate System East Zone-GPS Grid Basis of Bearings), a distance of 1738.08 feet along the East line of said Northwest quarter to a Marker Spike with tag (FIRM 0042) in the Southeast corner of the tract of land described in the conveyance to the County of Allen in Allen County Document No. 740023087, the TRUE POINT OF BEGINNING; thence South 02 degrees 58 minutes 08 seconds East, a distance of 161.40 feet along the East line of said Northwest quarter to a Marker Spike with tag (FIRM 0042); thence South 87 degrees 01 minutes 52 seconds West, a distance of 325.00 feet to a rebar stake with cap (FIRM 0042); thence South 22 degrees 49 minutes 12 seconds West, a distance of 495.00 feet to a rebar stake with cap (Sauer); thence North 63 degrees 00 minutes 31 seconds West, a distance of 164.24 feet along the North line of the tract of land described in the conveyance of the State of Indiana in Allen County Document No. 910049476 to a rebar stake with cap (Sauer); thence North 13 degrees 46 minutes 55 seconds West, a distance of 936.47 feet along the East line of Tract 4 as described in the conveyance to Lois J. Bonjour et al in Allen County Document No. 207026524 to the approximate centerline of the Tiernan Drain; thence continuing along the approximate centerline of the Tiernan Drain with the following courses and distances, South 50 degrees 23 minutes 35 seconds East for 100.00 feet, South 59 degrees 25 minutes 58 seconds East for 85.00 feet, South 26 degrees 32 minutes 54 seconds West for 90.00 feet, South 02 degrees 21 minutes 18 seconds East for 60.00 feet, South 77 degrees 50 minutes 29 seconds East for 120.00 feet, North 80 degrees 24 minutes 22 seconds East for 80.00 feet, South 85 degrees 55 minutes 07 seconds East for 65.00 feet, North 85 degrees 35 minutes 49 seconds East for 240.00 feet, South 86 degrees 18 minutes 55 seconds East for 130.00 feet, and North 88 degrees 35 minutes 10 seconds East for 100.00 feet; thence South 02 degrees 58 minutes 08 seconds East, a distance of 100.00 feet along the West line of the County of Allen tract referenced above to a rebar stake with cap (FIRM 0042) in the Southwest corner thereof; thence North 87 degrees 01 minutes 52 seconds East, a distance of 30.00 feet along the South line of said County of Allen tract to the POINT OF BEGINNING, said tract containing 7.981 Acres, more or less, and being subject to all public road rights-of-way and to all easements of record. A survey of said tract being represented by Plat of Survey

#31-13-10-01 as prepared by D.A. Brown Engineering Consultants, Inc, 5419 County Road 427, Suite C, Auburn, Indiana 46706

Parcel address: 8345 Young Road, Fort Wayne, In 46835

Current owner of record: Alexandria C. Davis & Shan T. Davis

Allen County Parcel No. 02-08-10-200-013.000-063:

Part of the South half of the Northeast quarter of Section 10, Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows, to wit:

Beginning on the West line of said Northeast quarter at a point situated 575.54 feet, North 00 degrees 00 minutes East (deed bearing and is used as the basis for the bearings in this description) from the Southwest corner of said Northeast quarter; thence North 00 degrees 00 minutes East, on and along said West line and within the right-of-way of Young Road, a distance of 354.82 feet to the Southwest corner of a 0.215 acre tract; thence South 86 degrees 27 minutes East, on and along the South line of said 0.215 acre tract, a distance of 120.0 feet to the Southeast corner thereof; thence North 00 degrees 00 minutes East and parallel with said West line, a distance of 95.0 feet to the Northeast corner of said 0.215 acre tract; thence South 86 degrees 27 minutes East, a distance of 789.7 feet; thence South 01 degrees 21 minutes West, a distance of 385.5 feet; thence South 89 degrees 29 minutes West, on and along an existing line of utility poles, a distance of 898.9 feet to the point of beginning, containing 8.402 acres of land, subject to legal right-of-way for Young Road and subject to all easements or record.

Parcel address: 8368 Young Road, Fort Wayne, In 46835

Current owner of record: Kevin D. Snyder & Connie L. Snyder

Allen County Parcel No. 02-08-10-200-011.000-063:

Part of the South half of the Northeast quarter of Section 10, Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows, to-wit:

Beginning on the West line of said Northeast quarter at a point situating 1157.3 feet, North 00 degrees 00 minutes East (assumed bearing) from the Northwest corner of said Northeast quarter, said point being also the Northwest corner of a 0.14 acre tract conveyed for right of way purposed in Document Number 74-26757 in the Office of the Recorder of Allen County, Indiana; thence North 00 degrees 00 minutes, East, on and along said West line, being also the centerline of Young Road, a distance of 143.1 feet to a point situated 50.0 feet, South 00 degrees 00 minutes West of the Northwest corner of said South half said point being also a West corner of a 2.500 acre tract conveyed to Kenneth Barhydt, Jr. and Krista M. Barhydt in Document Number 77-035168 in the Office of said Recorder; thence South 86 degrees 28 minutes East, on and along a South line of said 2.500 acre tract and parallel to the North line of said South half, a distance of 916.2 feet to a Westerly corner of said 2.500 acre tract; thence South 01 degrees 21 minutes West, on and along a West line of said 2.500 acre tract, a distance of 100.0 feet to a Southwesterly corner of said 2.500 acre tract; thence North 86 degrees 27 minutes West, a distance of 881.9 feet to a point on the East line of said 0.14 acre tract; thence North 00 degrees 00 minutes East, on and along the East line of said 0.14 acre tract and parallel to the West line of said Northeast quarter, a distance of 38.8 feet to the Northeast corner of said 0.14 acre tract; thence South 90 degrees 00 minutes West, on and along the North line of said 0.14 acre tract, a distance of 30.0 feet to the point of beginning. Containing 3.746 acres of land.

Parcel address: 8420 Young Road, Fort Wayne, In 46835

Current owner of record: Karin E. Hutsell

2. TIME LIMIT FOR REIMBURSEMENT FROM BENEFITED AREA FOR CONNECTIONS TO 2" OFFSITE FORCE MAIN: In the event any present or future owners of said Benefited Area shall at any time within 15 years after the date of this Contract desire to use said sewer by direct tap to serve such land, the City through its duly constituted authorities, before permitting such use, shall require by contract or assessment, as may be appropriate, that such owner or owners of said benefited areas pay to the City, a fee for connecting to the local sewer serving said property. Said fee shall be in addition to the cost of standard tap-in and inspection fees, and monthly sewage treatment charges as are customarily charged by the City. The properties affected and the full amounts due per parcel are shown on attached Exhibit "A". The amounts so collected shall be refunded to said Contributor as partial reimbursement for amounts expended to extend local sewers until such time as one of the following events occur; a period of 15 years has passed from the date of this Contract or the said Contributor has been reimbursed for the total amount subject to reimbursement, whichever event comes first. Thereafter, no reimbursements will be collected or paid.

3. AREA CONNECTION FEES: It is understood and agreed that the any new sanitary connections in the Benefited Area that do not result in the decommissioning and elimination of an existing septic system is subject to ACFs at the time of connection in accordance with agreements and/or resolutions on file in the Office of the Board of Public Works of the City. The ACFs shall be paid on or before building sewer connections are made to the City sewer system in accordance with the applicable fees in effect at the time of connection. The ACFs represent the installation and/or oversizing costs expended by the City for downstream collection system and treatment facilities

It is understood and agreed that the ACFs for the following properties will be waived pursuant to the City of Fort Wayne Septic Elimination Policy -- Resolution # 96-12-02-09-03 so long as the following are connected to the City sewer within 90 (Ninety) days from acceptance of the sewer by the City:

8358 Young Road
8420 Young Road

SECTION 3

ADDITIONAL TERMS OF THE AGREEMENT

1. ANNEXATION WAIVER: Any owner or owners of land which now or hereafter is located outside the corporate limits of City who connect into the Sanitary Sewer System constructed hereunder shall be deemed to thereby waive his, her, their, or its rights to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by the City of such land or of the territory which it is located or of the area served by said Sanitary Sewer System (I.C. 36-9-22-2).
2. ADDITIONAL EXTENSIONS: The City may approve the extension of additional sanitary sewer lines from the Sanitary Sewer System covered in this Contract without incurring financial obligations to the Contributor under this Contract.
3. PROHIBITION AGAINST NON-SANITARY FLOWS: The Sanitary Sewer System shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors or assigns or any future owner of any land serviced by said sewer shall, at any time, discharge or permit to be discharged or to flow into the Sanitary Sewer System any water runoff caused by natural precipitation, or anything other than sanitary sewage in accordance with the Fort Wayne Code of Ordinances.
4. NOTIFICATION OF START OF WORK: Contributor shall notify the City at least forty-eight (48) hours prior to commencement of work in order to allow City to assemble an inspection team to monitor the construction of the Sanitary Sewer System. The City shall be entitled to recover any and all costs incurred as a result of Contributor's failure to comply with this Section.
5. TIMELINE TO BEGIN WORK: Construction of the Sanitary Sewer System shall begin within twelve (12) months following approval of the utility plan submittal(s). If construction does not begin within twelve (12) months, or if construction begins and then remains idle for a period exceeding twelve (12) months, a new submittal shall be required and approved prior to commencement or recommencement of construction, as the case may be.
6. DOCUMENTS REQUIRED FOR FINAL ACCEPTANCE: Upon completion of the Sanitary Sewer System, the Contributor or its contractor shall submit all required project closeout documents, including, without limitation, an as-built survey, Completion Affidavit, Certified Record Drawings, the most recent plat, all necessary easement agreements, and CADD files in Contributor's standard format (collectively, the "Closeout Documents") to the City and shall take such action as is necessary to transfer all rights, titles, and interest in said Sanitary Sewer System and easement agreements to the City. Failure to provide all required Closeout Documents within sixty (60) days after completion of the Sewer Improvements will delay acceptance of the Sewer Improvements. Contributor may not make use of any Sewer Improvements prior to acceptance by the City.

7. PROCESS FOR FINAL ACCEPTANCE: Upon receipt of all required Closeout Documents, the City will make final inspection of the Sanitary Sewer System. Upon finding the Sanitary Sewer System to be acceptable and in full compliance with the Approved Plans, the City shall issue its Letter of Acceptance to the Contributor. Upon issuance of the Letter of Acceptance, and in accordance with the terms of said letter, the Sanitary Sewer System shall form and become and be a part of the City's public sanitary sewerage system, and all right, title, and interest whatsoever in said Sanitary Sewer System shall pass to and remain in the City of Fort Wayne, Indiana. The date reflected on the Letter of Acceptance is the "Acceptance Date".
8. CHANGES TO PLAT: If Contributor makes any changes to the plat after the Sanitary Sewer System is accepted, Contributor shall provide City with copies of all documents reflecting the changes, including, without limitation, the updated plat, as-built survey(s), and other similar documents with fifteen (15) days after the date such changes are made.
9. It is further understood and agreed that, upon completion of the sanitary sewer system, said Contributor or its contractor shall file a Completion Affidavit, a Maintenance Bond and Certified Record Drawings with the Board of Public Works of the City, and shall take such action as is necessary to transfer all rights, titles and interest in said system to the City. The Maintenance Bond shall run for a minimum period of one (1) year from date of acceptance of the said system by the City and shall be in the minimum amount of \$314,066.00 (Three hundred fourteen thousand sixty six dollars and no cents).
10. NOTICE OF ACCEPTANCE: Upon receipt of the Completion Affidavit, Maintenance Bond and Certified Record Drawings, and being provided with proof of dedicated easements or recorded easements, the City will make final inspection of the project. Upon finding the project to be acceptable and in full compliance with the Standards and Specifications of the Water Resources Department and the Board of Public Works, the City through its Board of Public Works shall issue a Letter of Acceptance of the project to Fox Contractors Corp. and to said Contributor. Upon issuance of the Letter of Acceptance, and in accordance with the terms of said letter, the sanitary sewer installed under this Contract shall form and be a part of the City sewerage system, and all rights, title and interest whatsoever in said sanitary sewer system shall pass to and remain in the City of Fort Wayne, Indiana.
11. DEADLINE: It is further understood and agreed that if the work described above is not initiated within twelve (12) months after the date of this Contract, said Contract shall be null and void.
12. E-VERIFY AFFIDAVIT: Pursuant to Indiana Code 22-5-1.7, said Contributor agrees and shall enroll in and verify the work eligibility status of all newly hired employees of said 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). Said Contributor is not required to verify the work eligibility status of all newly hired employees of said Contributor through the E-Verify program if the E-Verify program no longer exists.
13. The undersigned, on behalf of said Contributor, being first duly sworn, deposes and states that said Contributor does not knowingly employ an unauthorized alien.
14. JURISDICTION: It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Indiana.
15. MODIFICATION: Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing and executed by each party or an authorized representative of each party.
16. WAIVER: The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, 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.

17. SAVINGS CLAUSE: The invalidity of any portion of this Agreement 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 Agreement fails of its essential purpose as a result of the severed provision(s), the City shall have the right to terminate the Agreement.
18. ATTORNEY FEES: In the event that any action is filed in relation to compliance with this Agreement, the unsuccessful party in the action 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.
19. HEADINGS: The titles to the paragraphs of this Agreement 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.
20. NOTICES: Any notice provided for or concerning this Agreement 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 on the signature page of this Contract
21. UNFORESEEN PROBLEMS: Neither party to this Agreement shall be liable to the other for any loss cost or damage arising out of, or resulting from, any failure to performance in accordance with the terms of this Agreement 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.
22. ENTIRE AGREEMENT: This Agreement 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.
23. EFFECTIVE DATE: This Agreement shall not be effective until approved by the Common Council of the City of Fort Wayne as required by I.C. 36-9-23-6(b).
24. CONTRIBUTOR RIGHT OF ASSIGNMENT: Contributor may assign any portion or all of its rights in this agreement including for reimbursement or its allocation rights.

END OF AGREEMENT

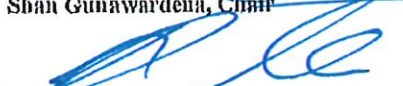
IN WITNESS WHEREOF, the parties have subscribed to the instrument the day and year first above written.

CITY OF FORT WAYNE, INDIANA
BOARD OF PUBLIC WORKS

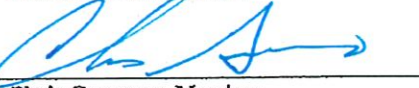
By


Shan Gunawardena, Chair

By


Kumar Menon, Member

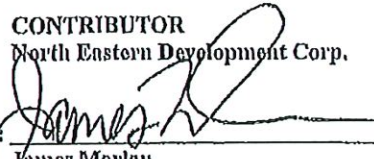
By


Chris Guerrero, Member

CONTRIBUTOR

North Eastern Development Corp.

By:


James Morlan
Member
(260) 489-7095

Address for Notice Purposes:
North Eastern Development Corp.
10808 La Cabreah Lane
Fort Wayne, IN 46845
Attn: Joseph Zehr.

ATTEST:


~~Michelle Fulk-Vondran, Clerk~~
Tania Schwarz, Acting Clerk

Address for Notice Purposes:
City of Fort Wayne, Indiana
200 E. Berry St., Ste. 250
Fort Wayne, IN 46802
Attn: Development Services Department

ACKNOWLEDGEMENT
CONTRIBUTOR

STATE OF Indiana)
COUNTY OF Allen) SS

Before me, a Notary Public in and for said State and County personally appeared James Morlan as Member for North Eastern Development Corp., and acknowledged the execution of the foregoing Contract as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 17th day of January 2023.

My Commission Expires: _____

Laura Marie Sievers
Notary Public Signature

Resident of _____ County

Printed Name



LAURA MARIE SIEVERS, Notary Public
Allen County, State of Indiana
My Commission Expires July 30, 2025
Commission #: 763353

ACKNOWLEDGEMENT
CITY

STATE OF INDIANA)
COUNTY OF ALLEN) SS

Before me, a Notary Public in and for said State and County personally appeared Shan Gunawardena, Kumar Menon and Chris Guerrero as Members of the Board of Public Works, and Michelle Fulk-Vondran, Clerk of the Board, and acknowledged the execution of the foregoing Contract as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 31st day of January 2023.

My Commission Expires: _____



Resident of _____ County

Michelle R. Nelson
Notary Public Signature

Michelle R. Nelson
Printed Name

I affirm, under penalties for perjury that I have taken reasonable care to redact each Social Security number in this document, unless required by law. DeWayne J. Nodine.
This instrument prepared by DeWayne J. Nodine, Fort Wayne City Utilities,
Form date March 26, 2019.

Exhibit "A" (page 1 of 2)
Offsite 2" Force Main Sanitary Along Young Road
Reimbursement to Contributor

1. The construction cost for 529± L.F. of 2" pipe by Fox Contractors Corp. is: \$17,438.00.
- Total served by the 529± L.F. of 2" sanitary sewer is 4 parcels.
2. The inspection and testing cost by the City of Fort Wayne is: \$314.70.
3. The total cost for the 2" local sewer construction is: \$17,752.70.
4. Therefore, the total assessment for the benefited area per Parcel is:
 $\$17,752.70 / 4 = \$4,438.17$ per Parcel

*City, in accordance with the Board of Works approved policies, will contribute \$3,200 per property for septic elimination upon connection.

Benefited Area
St. Joseph Township Section 10, T31N, R13E

Allen County Parcel No. 02-08-10-100-004.002-063:

5.332 ac tr SE Cor NW ¼ Sec 10 N of I469
Parcel address: Young Road, Fort Wayne, In 46835
Current owner of record: James A. Schuhler
Mailing address: 5118 Lahmeyer Road, Fort Wayne, In 46835

1 Parcel *WAIVED* by Contributor = \$4,438.18
Area connection fee = Due
Tap fee = Due

Allen County Parcel No. 02-08-10-100-004.003-063:

7.981 ac tr E pt NW ¼ S of Tiernan Drain & N of I469 Sec 1
Parcel address: 8345 Young Road, Fort Wayne, In 46835
Current owner of record: Alexandria C. & Shan T. Davis
Mailing address: 3702 Blue Ridge Lane, Fort Wayne, In 46815

1 Parcel *WAIVED* by Contributor = \$4,438.18
Area connection fee = Due
Tap fee = Due

Allen County Parcel No. 02-08-10-200-013.000-063:

Frl N 354.82 of S 929.82 of Frl W 898.9 Ft S ½ NE ¼ Sec 10
Parcel address: 8368 Young Road, Fort Wayne, In 46835
Current owner of record: Kevin D. & Connie L. Snyder
Mailing address: 8368 Young Road, Fort Wayne, In 46835

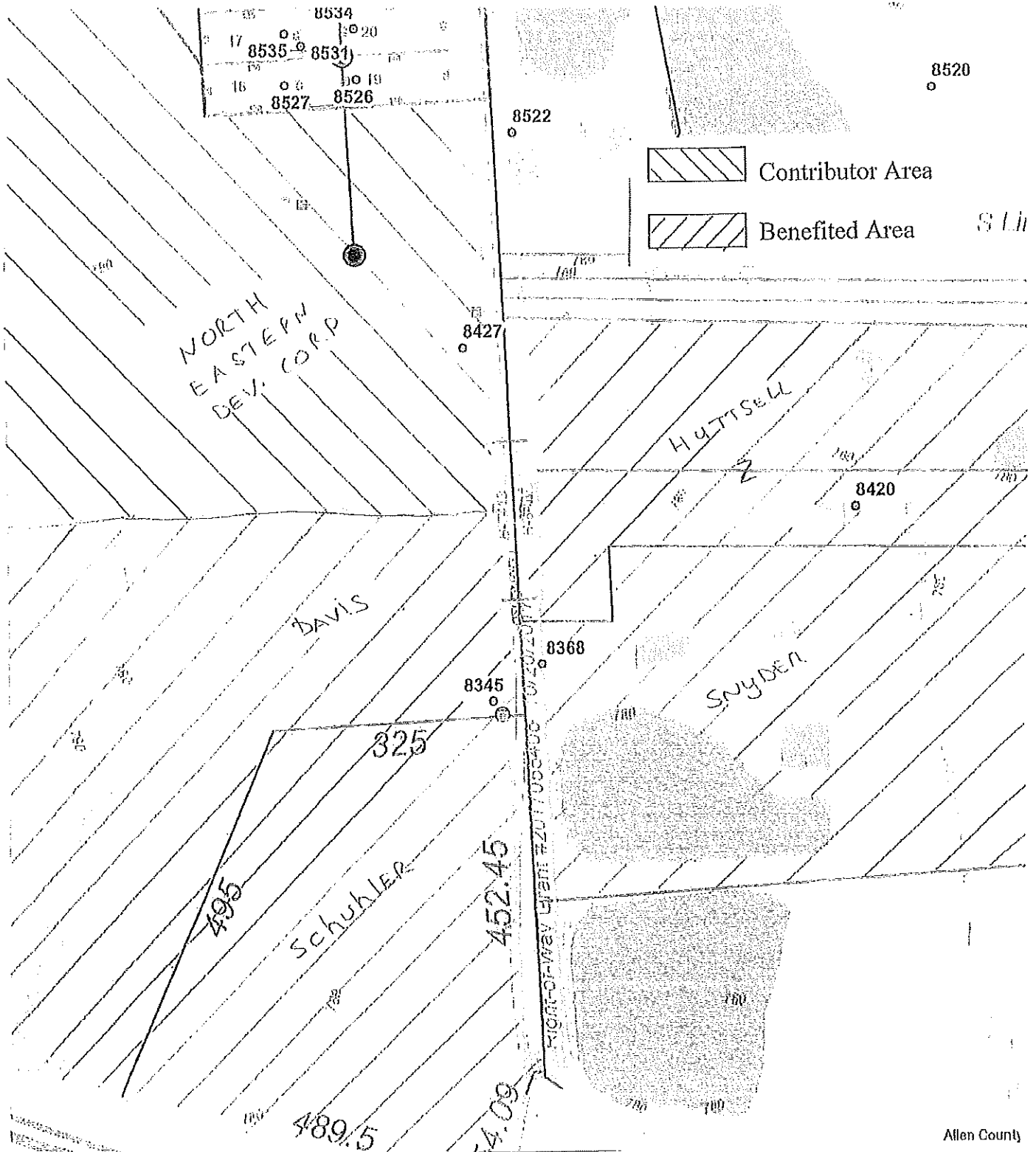
1 Parcel to Contributor = \$4,438.17
Area connection fee = Waived
Tap fee = Due

Allen County Parcel No. 02-08-10-200-011.000-063:

N 143.1 of S 1300.4 of W 916.2 S ½ NE ¼ Ex W 30 of S 38.8 Ft
to County Sec 10
Parcel address: 8420 Young Road, Fort Wayne, In 46835
Current owner of record: Karin E. Hutsell
Mailing address: 8420 Young Road, Fort Wayne, In 46835

1 Parcel to Contributor = \$4,438.17
Area connection fee = Waived
Tap fee = Due

Exhibit "A" (page 2 of 2)
Offsite 2" Force Main Sanitary Along Young Road
Map of Benefited Area



Interoffice Memo

Date: February 7, 2023
To: Common Council Members
From: Michael Kiester, Manager, City Utilities Engineering
RE: Belmont Woods Regional Lift Station & Offsite Force Main
Work Order 77009

Council District - NE

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: Installation of 5,370 LF of 12" HDPE Force Main, 20 LF of 6" Ductile Iron Pipe, 529 LF of 2" HDPE Force Main and 1 Lift Station.

Implications of not being approved: The installation and oversizing of the Force Main and Lift Station will provide Sanitary Sewer Service to the Belmont Woods Subdivision as well as providing for current and future growth in the area surrounding the St Joe, Flutter, and Wheelock Roads area.

If Prior Approval is being Requested, Justify: N/A

The Sanitary Sewer Developer Contract for Work Order 77009 with North Eastern Development Corp. provides for the installation of 5,370 LF of 12" HDPE Force Main, 20 LF of 6" Ductile Iron Pipe, 529 LF of 2" HDPE Force Main and 1 Lift Station in and around the area of Belmont Woods Subdivision at a cost of \$1,256,264.00. Included in the Contract is upsizing the Force Main and Lift Station to accommodate an additional 606 ERU's of capacity to serve future growth in the area. Force Main and Lift Station Oversizing costs are \$1,061,156.44.

The cost of said project funded Sewer Revenue.

Council Introduction Date: 2/14/2023

CC: Matthew Wirtz
Jill Helfrich
File