

TOWN OF LOWELL, LAKE COUNTY, INDIANA
STORMWATER BOARD

RESOLUTION No. 2024-_____

A RESOLUTION APPROVING UTILITY INFRASTRUCTURE PROJECT
IN BEVERLY ESTATES SUBDIVISION, PROPOSED UNIT II, PHASES 2 AND 3, AND
PRELIMINARY APPROVAL OF CONTRACT WITH PRIVATE DEVELOPER FOR SHARED
CONSTRUCTION COSTS TO BE PAID FROM THE PUBLIC FUND

WHEREAS, the Stormwater Board of the Town of Lowell, Lake County, Indiana (hereinafter “Board”) is authorized and required, pursuant to I.C. §8-1.5-5-17, to adopt resolutions approving a storm water project upon a finding that the storm water system is insufficient to protect the public health and welfare and safeguard the property, or that it is necessary to construct, rebuild, repair, extend, and improve the stormwater system and equipment.

WHEREAS, the Stormwater Board is authorized, pursuant to I.C. 36-1-12-1(g), to contribute financially to the total construction costs for the extension or installation of utility infrastructure by a private developer of land if:

- 1) the Town will acquire for the Town’s municipally owned utility all of the utility infrastructure that is to be extended or installed,
- 2) not more than 50% of the total construction costs for the utility infrastructure to be extended or installed, including any increased costs that result from any construction specifications that are required by the municipality and that specify a greater service capacity for the utility infrastructure than would otherwise be provided for by the private developer, will be paid for out of a public fund; and,
- 3) The private developer agrees to comply with all local ordinances and engineering standards applicable to the construction, extension, or installation of utility infrastructure.

WHEREAS, the extension or installation of utility infrastructure by a private developer of land, pursuant to I.C. 36-1-12-1(g), is not *public work* as defined by I.C. 36-1-12-2, and therefore is not subject to the Public Construction requirements in I.C. 36-1-12.

WHEREAS, Lifehouse Development LLC, d/b/a Lifehouse Homes, LLC (“Lifehouse”) is the owner and developer of Beverly Estates Unit II, 18306 Clark Rd, Lowell, Indiana (Parcel #45-19-25-276-001.000-008), a 3-phase development on 2.9 acres which primary plat was approved by the Town of Lowell Plan Commission on September 12th, 2019;

WHEREAS, Lifehouse is currently installing infrastructure in Phases 2 and 3 of Beverly Estates Unit II (Parcel #45-19-25-276-001.000-008), including stormwater pipes to service Beverly Estates. The Town desires Lifehouse to replace the existing aged storm pipe located on the south side of Phases 2 and 3 with a new storm pipe to be installed on the northernmost boundary of Phases 2 and 3 and reconfigure and tie-in existing stormwater stubs and manholes

to provide greater service capacity to adjacent developments (hereinafter “the Stormwater Project”).

WHEREAS, the Stormwater Board deems it to be in the best interests of the Town to approve the Stormwater Project.

WHEREAS, the Stormwater Board deems it to be in the best interests of the Town to enter into a contract with Lifehouse to share payment equally for the total construction cost of the Stormwater Project, which Contract is attached hereto as Exhibit “1”.

WHEREAS, the Contract for the Stormwater Project complies with the requirements of applicable Indiana law.

NOW, THEREFORE, BE IT RESOLVED BY THE STORMWATER BOARD OF THE TOWN OF LOWELL, LAKE COUNTY, INDIANA:

1. Upon investigation, the Stormwater Board now finds that it is necessary to construct, extend, and improve the stormwater system and equipment in Phases 2 and 3 of Beverly Estates Unit II, 18306 Clark Rd, Lowell, Indiana, Parcel #45-19-25-276-001.000-008, to serve Beverly Estates subdivision and the surrounding developments.
2. The Stormwater Board now approves the Stormwater Project and:
 - (a) declares that the Stormwater Project is necessary for the protection of the public health and welfare of the inhabitants of the stormwater district and the safeguarding of the property within the district;
 - (b) declares that the Stormwater Project is of public utility and benefit;
 - (c) has prepared maps, plans, specifications, and drawings with full details and descriptions for the proposed work, together with an estimate of the cost, which it now adopts.
3. Notice, in accordance with I.C. 5-3-1, of the adoption of this Resolution and of the fact that plans, specifications, and estimates have been prepared and can be inspected at the Building Department with the Lowell Town Hall shall be published at least ten (10) days before the Public Hearing when the Board will receive and hear remonstrances from persons interested in, or affected by, the Resolution, and when it will determine the public utility and benefit of the project.
4. Final approval and adoption of the Contract between the Town of Lowell Stormwater Board and Lifehouse Development LLC, d/b/a Lifehouse Homes, LLC, which Contract is attached hereto and made a part hereof, shall be determined following the Public Hearing on the Stormwater Project.

DULY PASSED, RESOLVED, AND ADOPTED by the Lowell Stormwater Board of the Town of Lowell, Lake County, Indiana, this _____ day of _____, 2024, by a vote of _____ ayes and _____ nays.

**TOWN OF LOWELL, LAKE COUNTY, INDIANA
STORMWATER BOARD:**

Philip Kuiper, President

Courtney Anderson, Vice President

Rich Oman, Secretary

ATTEST:

Secretary

Approved by the Executive this _____ day of _____, 2024.

Philip Kuiper, President

ATTEST:

Secretary

EXHIBIT "1"

AGREEMENT TO INSTALL UTILITY INFRASTRUCTURE IN BEVERLY ESTATES UNIT II BETWEEN THE TOWN OF LOWELL STORMWATER BOARD AND LIFEHOUSE DEVELOPMENT LLC

THIS AGREEMENT, entered into on the ____ day of _____ 2024 by and between the **TOWN OF LOWELL STORMWATER BOARD**, Lake County, Indiana 501 East Main St., P.O. Box 157, Lowell, Indiana 46356, a utility board (hereinafter the "Town") and **LIFEHOUSE DEVELOPMENT LLC, D/B/A LIFEHOUSE HOMES, LLC**, P.O. Box 352, Lowell, Lake County, Indiana 46356 (hereinafter "Developer") for the shared payment of costs incurred by the Developer for the installation of utility infrastructure, including any increased costs that result from any construction specifications that are required by the municipality and that specify a greater service capacity for the utility infrastructure than would otherwise be provided for by the private developer.

WHEREAS, the Town has requested the installation of a stormwater main and other public improvements as a condition precedent to the approval of Developer's requests for final platting of Beverly Estates Unit II, Phase 2 and Beverly Estates Unit II, Phase 3, located at 18306 Clark Rd, Lowell, Lake County, Indiana, Parcel #45-19-25-276-001.000-008 (hereinafter "Beverly Estates"); and

WHEREAS, the Town finds that the public improvements to be installed by Developer will benefit Beverly Estates and other property adjacent to Beverly Estates and the owners thereof; and

WHEREAS, the Town further finds the public improvements are necessary for the protection of the public health and welfare of the inhabitants of the stormwater district and the safeguarding of the property within the district.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth herein, and pursuant to I.C. 8-1.5-5, et. seq., and I.C. 36-1-12-1, the parties now agree, as follows:

- 1) LEGAL REQUIREMENT: Pursuant to I.C. 36-1-12-1(g), the Town is authorized to contribute financially to the total construction costs for the extension or installation of utility infrastructure by a private developer of land if:
 - (a) the Town will acquire for the Town's municipally owned utility all of the utility infrastructure that is to be extended or installed,
 - (b) not more than 50% of the total construction costs for the utility infrastructure to be extended or installed, including any increased costs that result from any construction specifications that are required by the municipality and that specify a greater service capacity for the utility infrastructure than would otherwise be provided for by the private developer, will be paid for out of a public fund; and,
 - (c) The private developer agrees to comply with all local ordinances and engineering standards applicable to the construction, extension, or installation of utility infrastructure.

Failure to comply with I.C. 36-1-12-1 will cause this Agreement to be void, require this public improvement project to comply with the Public Construction requirements of I.C. 36-1-12, and subject both parties to legal action.

- 2) PUBLIC IMPROVEMENT PROJECT: The Developer shall construct, or cause to be constructed, certain Public Improvements, namely: construction and installation of a

stormwater main, and related infrastructure in accordance with the approved documents of the Town, on the northernmost boundary line of Beverly Estates Unit II, Phases 2 and 3, located at 18306 Clark Rd, Lowell, Lake County, Indiana, Parcel #45-19-25-276-001.000-008, and legally described as follows:

SE ¼ of NE ¼ of section 25, township 33N, range 9 west of 2nd principle meridian, Lake County, IN, excepting therefrom, the following described parcel (recorded as W.D. #311572). That part of the SE quarter of the NE quarter of section 25, township 33N, range 9 west of the 2nd principle meridian, commencing 250.00 feet north of the SE corner of said SE Quarter of the NE quarter on the East line of said section: thence north 125.00 feet on said East line. Thence West perpendicular to the East line of said section, a distance of 425.00 feet: thence south 125.00 feet parallel to said east line: thence east perpendicular to the east line of said section, a distance of 425.00 feet to the place of commencement.

- 3) COSTS: The total costs for the public improvements are set forth in the *North Side Storm Sewer Break Down*, attached hereto as Exhibit "A", in 1 page, and are as follows:

- (a) *Phase 1 option (Existing East to YD # 3)* – applicable to Beverly Estates Unit II, Phase 2:

<i>Material Cost:</i>	\$ 45,633.00
<i>Labor Cost:</i>	\$ 42,317.00
<i>Total Cost:</i>	\$ 87,950.00

- (b) *Phase 2 option (YD # 3 to Existing West)* – applicable to Beverly Estates Unit II, Phase 3:

<i>Material Cost:</i>	\$ 48,930.00
<i>Labor Cost:</i>	\$ 52,570.00
<i>Total Cost:</i>	\$ 101,500.00

4) COST SHARING:

- (a) In accordance with I.C. 36-1-12-1, and paragraph 1 of this Agreement, under no circumstances shall the Town pay more than 50% of the total construction costs for this Public Improvement Project. Specifically, the Town shall be responsible for no more than \$ 43,975.00 of the total set forth in Paragraph 3(a) of this Agreement, and no more than \$ 50,750.00 of the total set forth in Paragraph 3(b) of this Agreement.
- (i) Any change order proposed by developer's contractor to Developer must be approved by the Town at a public meeting of the Board;
- (ii) Under no circumstances shall the Town pay more than 50% of any change order approved by the Town and the Developer.
- (b) The Town shall make payment to the Developer directly for the Town's 50% share of the construction cost for the applicable phases of this Public Improvement Project, as set forth in Paragraph 3 of this Agreement, within 30 days of the following:

- (i) completion of work in the applicable phase;
- (ii) passage of all Town inspections in the applicable phase; and,
- (iii) presentation to the Town of a request for payment and final invoice showing all costs for the Public Improvement Project for the applicable phase

(c) The Developer shall be responsible for all payments to the contractor for this Public Improvement Project. The Developer shall defend and hold harmless the Town, its successors, assigns, agents, representatives, employees, and independent contractors against any and all claims, actions, liabilities, judgments, debts, demands, or damages, arising out of the Developer's non-payment to the contractor for any reason.

- 5) LIEN RIGHTS: The Developer reserves the right to pay its 50% share of the total construction costs for the portion of this Public Improvement Project applicable to Beverly Estates Unit II, Phase 3, prior to final platting of Phase 3 instead of when this Public Improvement Project in Phase 3 is completed. As a result, at the time that this Public Improvement Project is completed in Unit II, Phase 3 in accordance with this Agreement, and upon the Developer's execution of a lien to the Town in the amount of the Developer's 50% share for this Project in Unit II, Phase 3, and recording of the same with the Office of the Lake County Recorder, the Town shall advance the cost of the Developer's 50% share to the Developer for payment to the Contractor. The lien in favor of the Town on Beverly Estates Unit II, Phase 3 shall be a priority lien over all other liens, and the Developer agrees to execute any documentation required to effectuate the same. The Town shall not approve a final plat, in full or in part, for Phase 3 of Beverly Estates Unit II, nor shall the Town release the lien until the Developer has made reimbursement in full to the Town.
- 6) DEVELOPER GUARANTEE/BOND: The Developer agrees to timely begin and complete construction of the Public Improvements in a workmanlike manner pursuant to the plans and specifications approved by the Town. At the time of final plat approvals for Unit II, Phase 2 and Unit II, Phase 3 of Beverly Estates, the Developer agrees to and shall post bond in amounts and forms approved by the Town. The Town and Developer agree, however, that the Developer's Bond amounts shall be calculated based on the Developer's proportionate responsibility under this Agreement and shall not include the Town's 50% obligation.
- 7) OTHER FEES and CHARGES: All building or permit fees, water tap-on fees, sewer connection fees, and/or any or all other fees required to be paid by the owner of any other property pursuant to the ordinances of the Town of Lowell, other local regulations, and/or the statutes of the State of Indiana and any fee so collected shall remain the sole and separate property of the Town.
- 8) RECORDING: This Agreement shall be executed by the parties in triplicate, and one such original copy shall be filed with the Office of the Recorder of Lake County, Indiana to serve as additional notice to persons interested in Beverly Estates Unit II, Phase 3 with notice of the terms and conditions of this Agreement.
- 9) HOLD HARMLESS: The Developer shall reimburse the Town for all damages, costs and legal fees paid by it in conjunction with or in any way arising out of the Public Improvements provided for under this Agreement and hereafter shall defend and hold harmless the Town, its successors, assigns, agents, representatives, employees, and independent contractors

against any and all claims, actions, liabilities, judgments, debts, demands, or damages, arising out of or in connection with Developer's negligence, or the negligence of its subcontractors or employees.

- 10) AUTHORITY: The Developer and Town do hereby certify they have full authority to enter into this agreement, that they are not barred from entering into this Agreement as a result of the violation of any federal or state statute, law, rule or regulation and that all signatories for the Developer to this Agreement have full and unconditional authority to bind themselves and their principals to the terms and conditions contained herein.
- 11) GOVERNING LAW INVALIDITY AND SEVERABILITY. This Agreement shall be governed and enforced by the Laws of the State of Indiana, and it is agreed that Indiana Courts shall have exclusive jurisdiction of any dispute under this Agreement. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law or, if invalid under such law, said provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all of the terms and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner or adverse to any party hereto.
- 12) PUBLIC ACTION. It is expressly acknowledged and stated that this Agreement is entered into by the Town after action at a Public Meeting of the Stormwater Board of the Town on the _____ day of _____ 2024, by a vote of ____ in favor and _____ against, and whereby the President of the Stormwater Board and the Secretary of the Stormwater Board, respectively, were directed to execute and attest the same, and deliver the Agreement herein.

IN WITNESS WHEREOF, the undersigned have entered the above and foregoing agreement and affixed their hands the day and year first written above.

**TOWN OF LOWELL, LAKE COUNTY, INDIANA
STORMWATER BOARD**

Philip Kuiper, President

Dated

ATTEST:

Secretary

**LIFEHOUSE DEVELOPMENT LLC,
D/B/A LIFEHOUSE HOMES, LLC**

Todd Harbrecht, President

Dated

STATE OF INDIANA)
) SS.
COUNTY OF _____)

BE IT REMEMBERED that on this ____ day of _____, 2024, before me, a Notary Public in and for said county and state aforesaid, personally appeared **Todd Harbrecht**, who acknowledged the execution of the foregoing *Agreement to Install Utility Infrastructure*, and who, having been duly sworn, stated that any representations contained herein are true.

WITNESS my hand and notarial seal the day and year first above written.

Sign Name _____

Print Name _____ (SEAL)

Notary Public

My Commission Expires _____

My Commission No.: _____

A Resident of _____ County, Indiana

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

This instrument prepared by: Nicole A. Bennett, Esq. (#20538-45); Westland & Bennett PC
2929 Carlson Dr. Suite 300, Hammond, IN 46323; Phone: 219.440.7550



ZIESE & SONS EXCAVATING, INC.

6929 W. 109th Avenue
Crown Point, IN 46307-8843
(219) 663-2625 Office
(219) 663-1620 Fax

PROPOSAL (PH-3)

North Side Storm Sewer Break Down:

- (1) 8 hour day allowance to run sewer camera down existing storm line to check for any sewer tie-ins/services.
- (1) 8 hour day of sewer crew to tie-in any existing storm sewer stubs into the new main. \$ 5,920.00 for labor and \$ 1,000.00 for material. If not needed, a credit can be applied.
- Tie-in to (2) existing storm manholes.
- Install 1,237 linear feet of 24" RCP for storm sewer drainage.
- Install (7) 4' diameter storm yard drain structures with 6489N ditch grates. (No Sumps)
- Pipe will be bedded with IN #8 limestone.
- Backfill all trenches with existing spoils.
- Install (7) silt baskets for structures.
- Price based on all excess spoils will be hauled off site to Belshaw Road Town Dumpsite.
- Grade for rear yard drainage easements where storm sewer is installed.
- Per Section 402.5 of Lowell Specs -Labor to clean and televise all stormwater infrastructure prior to acceptance.
- Per Section 402.5 of Lowell Specs -Provide a digital copy of the inspection to Lowell Public Works.
- No permits or permit fees included.
- No fine grade, seeding or netting included. By General Contractor or Town.

Total for Phase 1 Option (Existing East to YD # 3): \$ 87,950.00

Phase 1 Material Cost: \$ 45,633.00

Phase 1 Labor Cost: \$ 42,317.00

Total for Phase 2 Option (YD # 3 to Existing West): \$ 101,500.00

Phase 2 Material Cost: \$ 48,930.00

Phase 2 Labor Cost: \$ 52,570.00

Note: Existing storm sewer line will be abandoned in place. No removals, flowable fill or manhole abandonment included.

Note: Price based on yard drain # 66 having a rim grade of +/-680.00 and not 687.80 as shown on plan. 687.80 does not work with grading plan, assuming it's a typo.

Note: No tree removal included. By General Contractor or Town.

Note: If phase 1 option chosen, temp HDPE pipe tie/connection will be made into YD # 3 until future phase is done.

Exhibit "A"