

WARRICK COUNTY BOARD OF COMMISSIONERS MEETING
REGULAR SESSION
COMMISSIONERS MEETING ROOM
107 W. Locust Street, Suite 303
Boonville, Indiana
June 10, 2024
4:00 P.M.

The Warrick County Commissioners met in regular session with Terry Phillippe, President; Robert Johnson, Vice President; and Dan Saylor, Member.

Attorney Andrew Skinner and Administrator Heather Soberg were in attendance.

Auditor Michael Dietsch, Chief Deputy Barbi Shelton, and Recording Secretary Kristine Georges attended and recorded the minutes.

Commissioner Meetings can be viewed via YouTube: Warrick County Meetings

President Terry Phillippe called the meeting to order at 4:00 PM.

PLEDGE OF ALLEGIANCE

AREA PLAN COMMISSION
REQUEST FOR RELEASE OF SURETY
ALLEN MEDICAL NO. 2 LOT 3C

APC Director Molly Barnhill presented a Request for Release of Surety for Allen Medical No. 2, Lot 3C by Developer/Owner Cedarhurst of Newburgh Real Estate, LLC. The County is holding \$143,080.00 in a letter of credit for drainage construction. The letter of credit expires on August 11, 2024. They have had ten months. It has been inspected and the County Surveyor has signed off on its release. County Engineer Bobby Howard also said it is ready for release. Commissioner Bob Johnson made the motion to release. Commissioner Dan Saylor seconded the motion. The motion carried 3-0.

(Allen Medical Release is located on Page 7 of these Official Minutes)

STREET CONSTRUCTION PLANS
PP-24-05

Ms. Barnhill presented two Street Construction Plans. The first was, PP-24-05, Petitioner/Owner Bill S. and Terany S. Gaddis. It's approximately 4.759 acres located on the west side of Johnson Road approximately 400 feet north of the intersection formed by Johnson Road and Honeysuckle Drive, Lot 25 in Polk Patch Subdivision, Skelton Township, 18-5-7. They are requesting no improvement to Johnson Road. Don Gries with Andy Easley Engineering was present. He said it was a simple split of a lot into two parcels. There will be no new streets for the project. The County Engineer had signed off on the request and recommended approval. Commissioner Dan Saylor made the motion to approve. Commissioner Bob Johnson seconded the motion. The motion carried 3-0.

(PP-24-05 is located on Page 8 of these Official Minutes)

PP-24-06

Next was PP-24-06 by Petitioner/Owner John and Kathy Reinbrecht. It's approximately 5.75 acres located on the south side of Fisherville Road approximately zero feet east of the intersection formed by Fisherville Road and Asbury Cemetery Road. Lot 1 in Deer Ridge Lakes Subdivision, Campbell Township, 16-5-9. They are requesting no improvements to Fisherville Road and Asbury Cemetery Road. The County Engineer has signed off on it. Commissioner Bob Johnson made a motion to approve. Commissioner Dan Saylor seconded the motion. The motion carried 3-0.

(PP-24-06 is located on Pages 8 through 9 of these Official Minutes)

ACTION AGENDA
APPROVAL OF MINUTES
May 29, 2024

Minutes for the May 29, 2024 Regular Session meeting were presented to the Commissioners for approval. Commissioner Dan Saylor made the motion to approve the minutes. Commissioner Bob Johnson seconded the motion. The motion carried 3-0.

**COUNTY ADMINISTRATOR
CONSENT AGENDA**

County Administrator Heather Soberg presented the following items on the Consent Agenda for approval:

- 1. Parks SOP 121906- Weekend Compensatory Time
- 2. Approval of Radon Diagnostic Sub Slab Depressurization
- 3. Clerk Monthly Report - April 2024
- 4. Surplus Declaration of Sheriff's Department Vehicles
 - 2019 Durango VIN# 1C4RDJFG5KC676905
 - 2019 Durango VIN# 1C4RDJFG9KC676907
 - 2020 Durango VIN# 1C4RDJFG0LC369725

There was no discussion on the items presented. There was a brief discussion on whether there was supposed to be another item on the Consent Agenda for a fourth vehicle for the Sheriff to be declared surplus. It will be approved separately. Commissioner Dan Saylor made the motion to approve the items on the Consent Agenda. Commissioner Bob Johnson seconded the motion. The motion carried 3-0.

(Parks SOP is located on File in the Parks Department)

(Radon Depressurization Invoice is located on File in the Auditor's Office)

(Clerk's Report is located on File in the Auditor's Office)

**ANIMAL CONTROL CONTRACTS
VETERINARIAN SERVICES – RABIES CLINIC**

Next, Ms. Soberg presented two contracts for Animal Control. The first was a contract for Dr. Maltby to provide veterinarian services to Animal Control. The Commissioners had already seen and reviewed the contract and given consensus. It now needs formal approval in a meeting. The second was a separate contract for Mr. Maltby that covers his services at the rabies clinics held by Animal Control. Attorney Skinner said that both contracts could be approved subject to legal review. Commissioner Dan Saylor made a motion to approve both contracts pending legal review. Commissioner Bob Johnson seconded the motion. The motion carried 3-0.

(Dr. Maltby Contracts are located on File in the Auditor's Office)

ADDITIONAL SURPLUS DECLARATION OF SHERIFF'S DEPARTMENT VEHICLES

Administrator Soberg asked to add an additional vehicle to declare surplus that was forgotten on the original list. It was for a 2019 Dodge Durango from the Sheriff's Office. Commissioner Bob Johnson made the motion to approve. Commissioner Dan Saylor seconded the motion. The motion carried 3-0.

**COUNTY AUDITOR
CERTIFIED CLAIMS – PAYROLL**

County Auditor Mike Dietsch presented Claims in the amount of \$6,156,255.18, report date of June 6, 2024. Also presented was Payroll in the amount \$654,089.68, report date Friday, May 31, 2024.

Commissioner Bob Johnson made the motion to approve both claims and payroll. Commissioner Dan Saylor seconded the motion. The motion carried 3-0.

(Claims are located on Pages 5 through 6 of these Official Minutes)

(Payroll is located on Page 6 of these Official Minutes)

**GRANTS DEVELOPMENT DIRECTOR
APPROVAL OF ARPA COMPETITIVE AGREEMENT WITH CHAMBER OF COMMERCE**

Debbie Bennett-Stearnsman presented. The first was the contract for the Chamber of Commerce for \$34,600.00 which had been previously awarded. Commissioner Bob Johnson made the motion to approve. Commissioner Dan Saylor seconded the motion. The motion carried 3-0.

**APPROVAL OF ARPA COMPETITIVE AGREEMENT WITH
ASHTON PRYOR MEMORIAL FUND**

Next was the contract for the Ashton Pryor Memorial Fund, Love First, Love Big, INC, for the previously awarded \$10,000.00. Commissioner Bob Johnson made the motion to approve. Commissioner Dan Saylor seconded the motion. The motion carried 3-0.

**REQUEST FROM JEAN CARTER FOR OPIOID RESTRICTED FUNDS
HOPE FOR WARRICK COUNTY**

Ms. Bennett-Stearsman reviewed this. A new detailed amount has been submitted. Ms. Carter has met with the Health Department to partner with them. Currently, there is \$28,665.39 in the fund and is the amount she is requesting for the non-profit, Hope for Warrick County. Commissioner Phillippe asked that this be administered like the ARPA Competitive and have a contract drawn up. Ms. Carter asked if she would be able to come back to ask for additional funds. Ms. Bennett-Stearsman said she could always ask. They had no other questions for Ms. Carter. Commissioner Dan Saylor approved the requested amount from the Restricted Opioid Funds with administration by the Grants Department. Commissioner Bob Johnson seconded the motion. The motion carried 3-0.

APPROVAL OF CONTRACT WITH MORLEY FOR SCALES LAKE PARK GRANT

Ms. Bennett-Stearsman went over the history of the Scales Lake Improvement Project. This request pays for the engineering work that was done in order to apply for a grant. The Parks Department is ready to apply August 1, 2024, and have a site review. She also reviewed what all this would take care of. The total amount is \$4,800.00 and she asked that it come from ARPA due to the time sensitivity. This will be a \$2,000,000.00 project and they are applying for a \$1,000,000.00 grant. Commissioner Dan Saylor made the motion to approve. Commissioner Bob Johnson seconded the motion. The motion carried 3-0.

(Morley Contract is located on Pages 9 through 10 of these Official Minutes)

(All Other Grant Paperwork is located on File in the Grants Department)

COUNTY ATTORNEY

Attorney Skinner stated that he had nothing for today's meeting.

**COUNTY ENGINEER/HIGHWAY
DISTRICT I BUILDING
FINAL PAY ESTIMATE AND CHANGE ORDER**

This item was tabled from the May 29, 2024 meeting. County Engineer Bobby Howard is still working on this and asked that it be tabled. Commissioner Dan Saylor made the motion to table. Commissioner Bob Johnson seconded the motion. The motion to table carried 3-0.

**JBI PAY ESTIMATE #3
ANDERSON AND VANN ROUNDABOUT**

Mr. Howard said that this will complete everything. The pay app is in the amount of \$86,824.62. There is still a retainage of \$157,872.22. Commissioner Dan Saylor made a motion to approve. Commissioner Bob Johnson seconded the motion. The motion carried 3-0.

(JBI Pay Estimate 3 is located on File in the Auditor's Office)

BRIDGE 200 STATE/LPA AGREEMENT

Mr. Howard stated that this is for construction and part of a grant that they received a couple of years ago. It should let for construction this September. It is a boilerplate agreement for \$1,688,000.00. He recommends it be approved. It will be a DocuSign document that comes to the President of the Commissioner's email. Commissioner Bob Johnson made the motion to approve. Commissioner Dan Saylor seconded the motion. The motion carried 3-0.

Commissioner Saylor asked if the Attorney would be able to look it over before it is signed. Attorney Skinner stated that he has already reviewed it. He did recommend a small change, but the State was not inclined to make it.

BRIDGE 148 BID OPENING

Mr. Howard had a bid opening for the Bridge 148 Project. It is on Stevenson Station Road over Pigeon Creek. He received two sealed bids.

Blankenberger Brothers	\$1,602,770.00
Ragle	\$1,488,918.40

This is also a Community Crossings Matching Grant with a 50% match. There is a time line involved and said the low bidder could be approved subject to a review of the requirements being met if they would like or wait until the next meeting. Attorney Skinner said it could be approved with the contingencies and if there was an issue, Mr. Howard could address it at the next meeting. Commissioner Bob Johnson made the motion to approve the lowest bidder, Ragle, pending review. Commissioner Dan Saylor seconded the motion. The motion carried 3-0.

(Ragle Contract is located on File in the Auditor's Office)

**COMMUNITY CROSSINGS MATCHING GRANT
2024-1 PAVING PROJECTS BID OPENING**

Mr. Howard also had a bid opening for the Community Crossings Matching Grant 2024-1 Paving Projects. He received three sealed bids. The bid price will cover Asbury Cemetery Road, Huffman Road, Mt. Gilead Road, and Decker Road. He read the following into the record:

JH Rudolph	\$1,440,974.75
Metzger Construction	\$1,346,741.00
E&B Paving	\$1,401,288.75

Mr. Howard again recommended that the low bid be approved subject to review. Commissioner Bob Johnson made the motion to approve the lowest bidder, Metzger Construction, pending review. Commissioner Dan Saylor seconded the motion. The motion carried 3-0.

Mr. Howard said that all paperwork would be open to viewing after the meeting.

(Metzger Contract, Paving Projects, is located on File in the Auditor's Office)

BRIDGE 148 CE AGREEMENT WITH AMERICAN STRUCTUREPOINT

Mr. Howard presented the Bridge CE Agreement with American Structurepoint. There is a not to exceed amount of \$75,405.00. He recommended that it be approved. Attorney Skinner has reviewed it. Commissioner Dan Saylor made a motion to approve. Commissioner Bob Johnson seconded the motion. The motion carried 3-0.

(American Structurepoint Contract, Bridge 148, is located on File in the Auditor's Office)

RAILROAD GRADE CROSSING GRANT

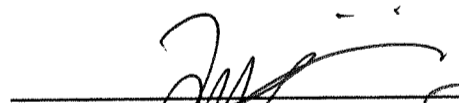
Mr. Howard wants to submit an application for a Railroad Grade Crossing Grant. It's basically signage and striping at intersections. The County could get up to \$50,000.00. He has already sent them the info via email, but it needs to be approved in a board meeting. Commissioner Dan Saylor made a motion to approve moving forward with the grant application. Commissioner Bob Johnson seconded the motion. The motion carried 3-0.

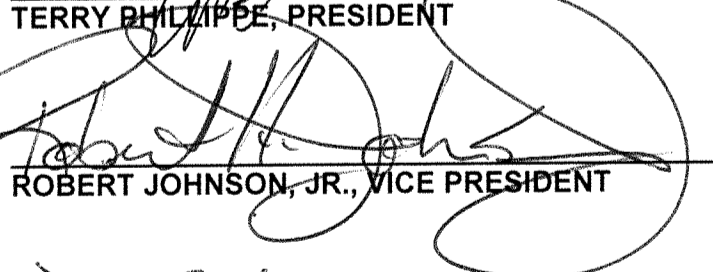
ADJOURNMENT


The next Warrick County Commissioners' meeting will be held on Monday, June 24, 2024 in the Commissioners' meeting room at 4:00 PM. Commissioner Bob Johnson made the motion to adjourn. Commissioner Dan Saylor seconded the motion. The motion carried 3-0.


Meeting adjourned at 4:25 P.M.

WARRICK COUNTY BOARD OF COMMISSIONERS


TERRY PHILIPPE, PRESIDENT


ROBERT JOHNSON, JR., VICE PRESIDENT


DAN SAYLOR, MEMBER

ATTEST:

MICHAEL J. DIETSCH, AUDITOR
WARRICK COUNTY, INDIANA

Minutes Respectfully Submitted by Kristine Georges, Official Recording Secretary

Allen Medical No. 2 Section 1
Request for Release of Surety
June 10, 2024

BOARD OF COMMISSIONERS:

President
Member
Member

ATTEST:

Auditor
Date: 6-10-24

Bartlett & West

1824 S Lone Pine Avenue, Suite F
Springfield, MO 65804
ph (888) 200-8484
www.bartwest.com

May 21, 2024

VIA Email (apc@warrickcounty.gov)
Warrick County Area Plan Commission
107 West Locust Street
Suite 201
Boonville, IN 47601

FILED
MAY 22 2024
WARRICK COUNTY
AREA PLAN COMMISSION

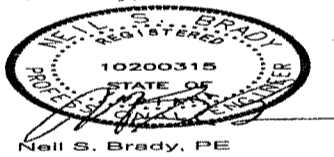
RE: Drainage & Stormwater Improvements at 10144 Warrick Trail, Newburgh, IN 47630

To Whom It May Concern:

The required drainage and stormwater improvements related to the Cedarhurst of Newburgh Assisted Living and Memory Care project located at 10144 Warrick Trail in Newburgh, IN, have been completed per the approved site improvement plans. To begin the release process of the Letter of Credit put in place by the developer and their lender, we would like to request an inspection by the Warrick County Area Plan Commission to approve the work and release the Letter of Credit.

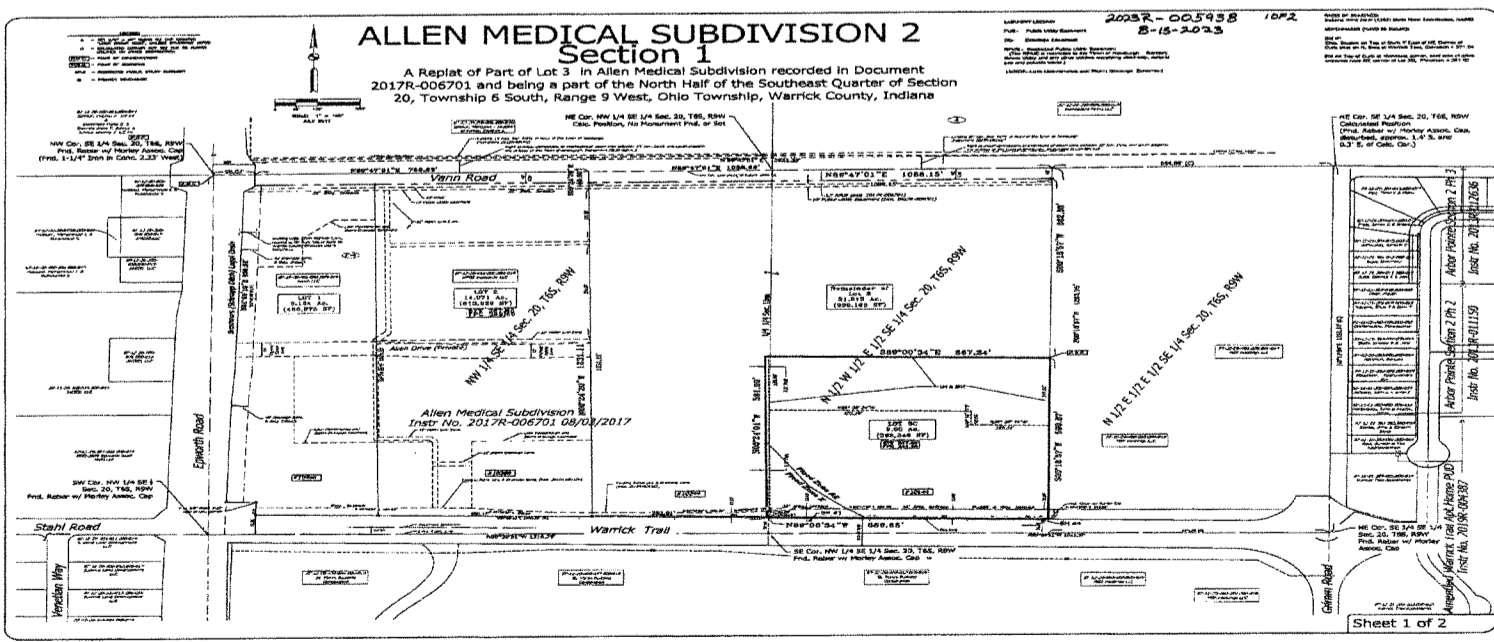
Please let us know if you have any questions or if you require any more information from us to start this process.

Sincerely,



Phillip H. Boyer
6-4-2024

& Driving Community and Industry Forward, Together.





ANDY EASLEY ENGINEERING, INC.
 1133 WEST MILL ROAD, SUITE 205
 EVANSVILLE, INDIANA 47710
 TELEPHONE: (812) 424-2481
 FACSIMILE: (812) 425-3493
 www.easleyengineering.com

CIVIL ENGINEERS
 LAND SURVEYORS

E. Easley

June 03, 2024

Robert B. Howard
 107 W. Locust Street
 Room 205 Courthouse
 Boonville, IN 47301

Greetings,

In regard to the Polk Patch #2 Subdivision, no street improvements are planned for this development nor will any new streets be installed. We request your approval for the Subdivision at the meeting to be held on June 10, 2024. If you have any comments or concerns regarding the development please contact me.

Sincerely,

Andy Easley, Engineering, Inc.

Donald E. Gries
 Donald E. Gries, PS
 President

FILED

JUN 01 2024

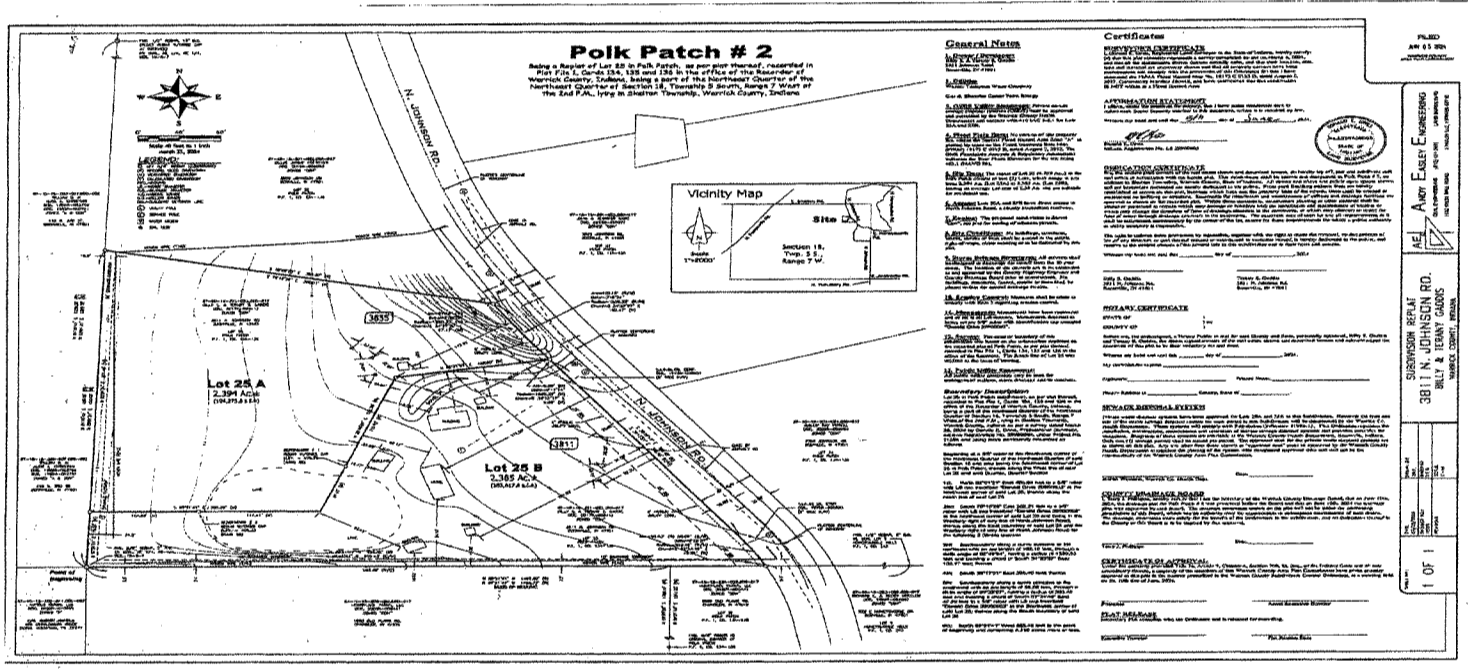
WARRICK COUNTY
 AREA PLAN COMMISSION

BOARD OF COMMISSIONERS:

President: *Robert B. Howard*
 Member: *John H. Jones*
 Member: *Dan Saylor*

ATTEST:

Auditor: *[Signature]*
 Date: 6-10-24



Kiesel-Wagner Survey LLC
 Land Surveying & Consulting
 1000 Saint Johns Rd
 Chandler, IN 47610

Cell Phone: (812) 305-6256

Email: joe@kws-llc.com

To: Warrick County Area Planning Commission
 Warrick County Engineer

Site Location: 3466 Asbury-Cemetery Rd., Elberfeld IN, 47613

Kiesel Wagner Survey is requesting on behalf of the Client, John and Kathy Reinbrecht, that the Major Subdivision Street requirements for the replat of Lot 1 of Deer Ridge Lakes, to be known as **R&R Ranch**, be waived. The proposed Lot 1 has Road frontage on Asbury-Cemetery Road and Fisherville Road. Lot 2 has frontage on Fisherville Road.

Respectfully submitted,

Joseph R. Kiesel
 Joseph R. Kiesel, PS
 Co-Owner of Kiesel-Wagner Survey LLC

R. Kiesel

Date: May 17th, 2024

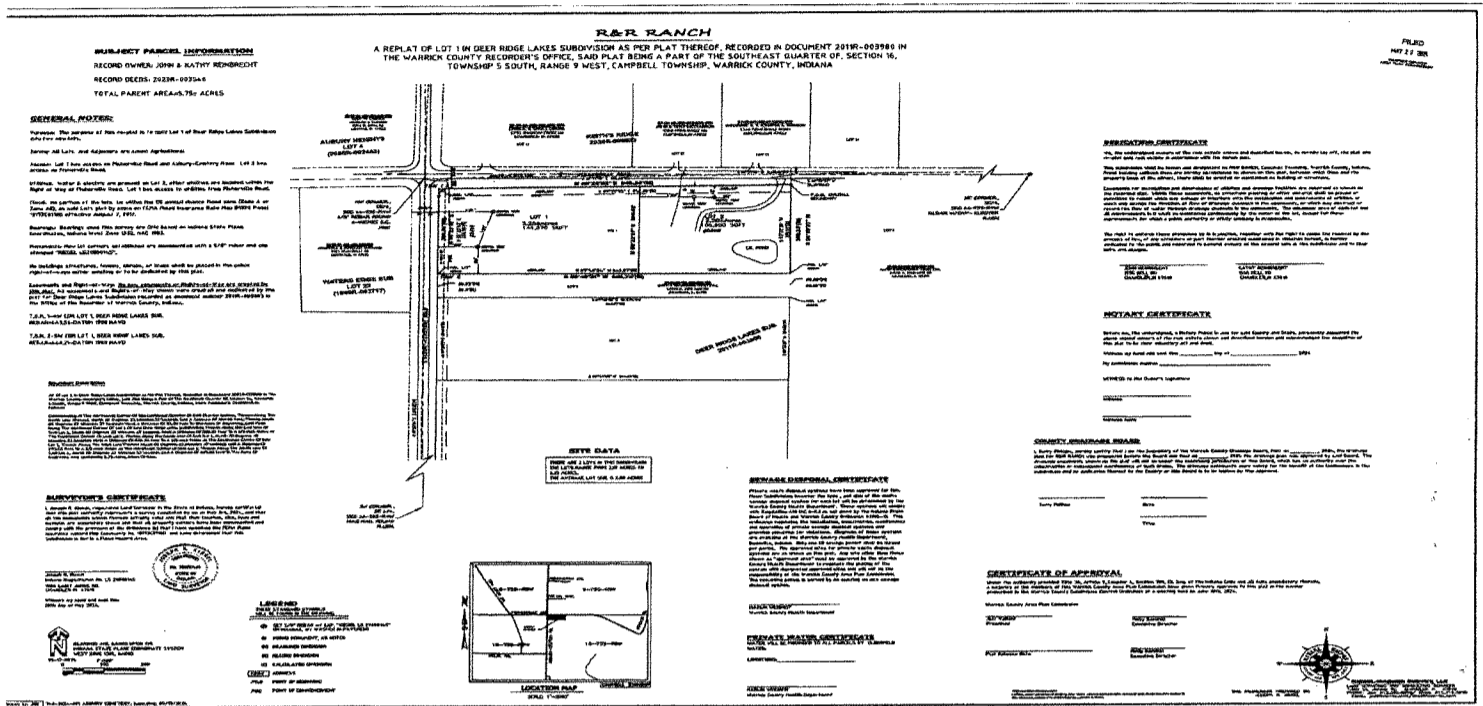
From: Joe Kiesel, PS

BOARD OF COMMISSIONERS:

President: *Robert B. Howard*
 Member: *John H. Jones*
 Member: *Dan Saylor*

ATTEST:

Auditor: *[Signature]*
 Date: 6-10-24



Scales Lake
+ ARPA
APPROVED JUN 10 2024

ORIGINAL Auditor



> 812.464.9585 office 812.464.2514 fax
> 4800 Rosebud Ln., Newburgh, IN 47630
> morleycorp.com

FILED
JUN 14 2024
Michael R. Deibel
WARRICK CO. AUDITOR

July 13, 2023
Warrick County Parks Board
Attn: Debbie Bennett-Stearnsman
800 W Tennyson Road
Boonville, IN 47601
Sent via email: dbennett-stearnsman@warrickcounty.gov

Re: Grant Application Services
Scales Lake DNR LWCF Grant Checklist
Morley PR21.0.029

Debbie,
Morley is pleased to submit this proposal to provide professional services relating to the above referenced project. Based on our preliminary discussions and review of the information received to date, following are the services to be provided by Morley for the referenced project:

- Cost Breakdown**
- Prepare a detailed cost estimate showing the total cost of every scope item for the project. This estimate shall be in the form required for the application, as indicated in the sample cost breakdown provided by DNR.
 - Information regarding potential match funding sources and amounts shall be supplied by others.
- Project Narrative**
- Assist with the grant team in preparation of a project description required for the application. The description shall include acreage for existing property and mention all features/amenities the grant will cover.
 - Perform a desktop analysis using publicly available data sources to provide a written summary of natural features and resources present on the specific project area, and a summary of known historical, archaeological, and architectural information.
- Location Map and LWCF Map**
- Prepare a Location Map and LWCF Map as described in the grant application requirements. Mapping shall be created from publicly available data. No field survey is included in this proposal.
 - Perform a site visit to collect color photos showing the general features of the project keyed to a site map.
- IDNR Early Coordination/Environmental Review Report**



PR21.0.029_ScalesLake_DNR_LWCF.docx
July 13, 2023

Compensation
Morley proposes to provide the services described above as follows:
Fixed Fee = \$4,800 + Reimbursables
In addition to the fee listed above there will also be reimbursable expenses for such items as digital photographs, copies, newspaper fees, filing fees, etc. Reimbursable expenses will be billed for the actual number of expendable items used.

Summary
This proposal and the attached Standard Provisions of Agreement constitute the contract and conditions and services to be provided by Morley on the project described above. This proposal is offered for a period of 30 days after which, if said proposal has not been executed, said proposal should no longer be valid.
If this proposal is acceptable, please sign and date the Authorization below and return one copy to our office via fax at (812) 464-2514 or by email.
We look forward to working with you on this project. If you have any questions, or require additional information, please feel free to call me at (812) 464-9585.

Sincerely,
[Signature]
Jeremy Elrod, PE
Managing Engineer
Authorization

Client Company Name: Warrick Co.
Mailing Address: _____
Email Address: _____
Phone: _____

Signature: [Signature]
Authorized by (printed): [Signature]
Title: Commissioner
Date: 6/10/24

Encl: Standard Provisions of Agreement
cc: Accounting, File
J:\Proposals & Promotional\2021\PR210029\IDNR Grant Proposal\PR21.0.029_ScalesLake_DNR_LWCF.docx

Standard Provisions of Agreement

1. Unless otherwise stated, the Consultant and its sub consultants will have access to the Project site (the "Site") for activities necessary for the performance of the Services. The Consultant will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage and will not be responsible for any damage unless caused by Consultant's own gross negligence.
2. The Consultant is not responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accident or acts of God; or the failure of Client to furnish timely information or to approve or disapprove Consultant's work promptly; or delay or faulty performance by Client, other contractors, or governmental agencies; or any other delays beyond Consultant's reasonable control.
3. Consultant shall not be liable for damage resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits; and Consultant shall only act as an adviser in all governmental relations if such governmental relations are part of the Services.
4. Generally speaking, Consultant's final work product is embodied in finished Mylar or other hard copy drawings (the final hard copy Mylar or other hard copy signed and sealed and approved by Consultant are referred to herein as the "Originals"). While Consultant may be willing, on a case by case basis, to provide electronic files, Consultant is unwilling to undertake any liability in relation to such electronic files or their use, and Consultant is under no obligation to deliver any electronic files. An electronic file provided by Consultant, whether in AutoCAD format or otherwise (the "Files") are provided "AS IS" "WHERE IS" and "WITH ALL FAULTS". CONSULTANT MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE IN LAW OR IN FACT WITH RESPECT TO THE FILES OR ANY INFORMATION CONTAINED THEREIN. ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY ARE SPECIFICALLY DISCLAIMED. Without limiting the foregoing, Client understands and agrees that differences may exist between these Files and corresponding Originals. In the event that a conflict arises between the Originals and the Files, the Originals shall govern. Client is responsible for determining if any conflict exists. Further, Consultant may change the Originals and/or the Files at any time and from time to time. After completion of the Services, Consultant is under no obligation to advise Client of any changes to the Originals or Files or send modified Files.
5. Copyright to and all other statutory and common law rights in the Originals, the Files and all drawings, specifications and other documents including, without limitation, those in electronic form (the "Instruments of Service") shall vest and remain in Consultant. Consultant reserves the right to remove all indicia of ownership and/or involvement from each File and electronic display; however, Client nonetheless agrees that copyright in and all other rights to the Files remains with Consultant. Provided that Client observes the terms of this Agreement, Client, and only to the extent necessary to complete the Project, Client's construction contractor and related professionals are granted a limited, non-exclusive, non-transferable license for the duration of the Project for Client's use in relation to the Project and for no other purpose to: (1) view and print the Instruments of Service delivered to Client by Consultant, if any; and (2) retain and use a set of the Instruments of Service. Any disclosure, copying, distribution, transfer of any of the Instruments of Service or the taking of any action in reliance on the content of the Files is strictly prohibited. Under no circumstances shall delivery of the Instruments of Service for use by Client or payment of Consultant's fees or charges or cost of reproduction charges be deemed a sale by Consultant. Further, neither the submitting of any of the Instruments of Service to regulatory officials for approval or similar purposes nor the recording of any of the Instruments of Service shall act as a derogation or waiver of any rights of Consultant granted in this paragraph. Consultant may charge a separate fee for copying Originals or providing Files or other Instruments of Service, which Client shall pay before delivery of the same.
6. Services provided pursuant to this Agreement are for the exclusive use of the Client for the Project only and may not be reused or used for any other purpose.
7. The Client acknowledges that Boundary Surveying services do not determine land ownership and the Professional Land Surveyor provides only an opinion of previously described boundary lines which may or may not be upheld by a court of law.
8. The Consultant makes no representation concerning the estimated quantities and cost figures made in connection with maps, plans, specifications, or drawings other than that all such figures are estimates only and the Consultant shall not be responsible for fluctuations in cost factors.
9. Consultant has no responsibility or liability for and does not guarantee the completion or quality of performance of contract(s) by the construction contractor or contractors, or other third parties, nor is it responsible for their acts or omissions.
10. CONSULTANT MAKES NO WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE AS TO ITS SERVICES OR ANY FINDINGS, RECOMMENDATIONS, SPECIFICATIONS, OR PROFESSIONAL ADVICE EXCEPT THAT THE SERVICES WILL BE PERFORMED PURSUANT TO GENERALLY ACCEPTED STANDARDS OF PRACTICE FOR SIMILAR SERVICES IN EFFECT AT THE TIME OF PERFORMANCE.
11. As used herein, the phrase "Project Documents" means all plans, specifications, surveys, studies, data and drawings relating to the Project, whether prepared by or for Client, and all other contracts and agreements relating to the Project. In the event that any changes are made in the Project Documents by the Client or persons other than the Consultant, which affects the Consultant's Services, any and all liability arising out of such changes is waived against the Consultant and the Client assumes full responsibility for such changes. The Consultant is not responsible, and liability is waived by Client as against Consultant, for use by Client or any other person of any Project Documents not signed by Consultant.
12. The Client agrees that in accordance with generally accepted construction practices, the construction contractor and not Consultant will be required to assume sole and complete responsibility for job site conditions and the Site during the course of construction of the Project, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours. Client shall procure or cause to be procured and maintained at its sole expense, for the duration of this Contract, the insurance policy described below. Client shall carry "all risk" and "builders risk" property insurance on the Project and Project in progress, on all of its buildings and facilities located on the Project Site, and on all of its buildings and facilities that are adjacent to the Project Site to the full insurable value thereof. Client shall provide Consultant a certificate of insurance evidencing this insurance coverage prior to Consultant commencing any Services on the Project Site, and Client shall name Consultant as an additional insured on this "all risk" and "builders risk" policy. This certificate of insurance shall, upon request of Consultant, provide that the insurer shall give thirty (30) days advance written notice to Consultant prior to change or cancellation of this policy. Client hereby releases Consultant and its employees and agents from any and all claims or liability for any loss of or damage to any of Client's property including, without limitation, the Project and the buildings and facilities located on or adjacent to the Project Site, by reason of causality or any other risk or cause which is or which is required to be insured against under this Agreement, regardless of cause, including the negligence of Consultant and its employees and agents, and Client agrees that such "all risk" and "builders risk" insurance shall contain a clause whereby the insurer waives its right of subrogation against Consultant, its employees and agents. Client shall give its insurance company notice of this provision and have such insurance policy endorsed, if necessary, to prevent the invalidation of such insurance by reason of the provisions of this paragraph and 12.
13. Client shall require in its contract with its construction contractor that each carefully study the Instruments of Service provided to such contractor, to compare the Instruments of Service to the Project Documents, to take field measurements of any existing conditions related to the Services and observe conditions at the Site affecting the Project; and to promptly report in writing to Consultant any errors, omissions or any inconsistencies discovered by the contractor or Client.
14. In the event that the Project Documents are changed, the Project requires any Services by Consultant not anticipated by Consultant at the time of this Agreement, and/or any governmental agency requires any Services not anticipated by Consultant at the time of this Agreement, the fees and costs in relation to additional office and/or field work shall be paid for by Client based on Consultant's hours or part thereof spent by Consultant in

relation thereto at the Hourly Rate Schedule in effect at the time for all time so spent as extra work, even if this Agreement is on a Fixed Fee or not-to-exceed basis.

15. Changes in the Services may be agreed upon from time to time in writing by and between Client and Consultant provided that, however, that no such change in the Services shall invalidate this Agreement.
16. In the event Client fails to pay Consultant within sixty days (60) days after the date of any invoice is rendered or breaches any other term of this Agreement, Client agrees that Consultant shall have the right to consider said default a total breach of this Agreement, and upon WRITTEN NOTICE, Consultant may declare a Termination. Client may declare a Termination for any reason or no reason upon written notice.
17. In the event all or any portion of the Services prepared or partially prepared by the Consultant be suspended, abandoned, or terminated before completion of the Project for any reason or no reason (a "Termination"), the Client shall pay the Consultant for all fees, charges, and services performed prior to the receipt of notice of Termination, not to exceed any contract limit specified herein. NOTICE OF ANY TERMINATION SHALL BE IN WRITING. In the event of a Termination: a) Client hereby completely releases and forever discharges Consultant from and against any and all past, present or future claims, demands, obligations, actions, causes of actions, damages, costs, expenses, and compensation relating to the Project and/or Services, whether based in tort, contract or any other theory of recovery which Client then has, jointly or separately, or which may hereafter accrue or otherwise be acquired, whether known or unknown, in which have arisen or may arise from or are in any way connected with any act or omission occurring prior to or upon the date of the Termination; (b) Client acknowledges and agrees that this is a release of known and unknown claims, and Client expressly waives and assumes the risk of any and all claims or damages which exist as of this date or in the future exist, but of which they do not know or expect to exist whether through ignorance, oversight, error, negligence, or otherwise, and which if known would materially affect Client's decision to enter into this Agreement; (c) Consultant shall be under no obligation to deliver any Instruments of Service or perform any additional work or Services, and Client shall have no right or license to use any Instruments of Service in its possession until Consultant is paid all sums due to Consultant from Client, whether pursuant to this Agreement or otherwise; and (d) Client shall, at its own expense, promptly undertake all commercially reasonable actions to remove Consultant from all permits and applications and obligations under permits or applications to any governmental, quasi governmental or similar body or contractor therefore in relation to the Project.
18. All fees and other charges will be billed monthly and shall be due at the time of billing unless otherwise specified in this Agreement. All of Consultant's fees, expenses and charges shall be paid within thirty (30) days of the date of the invoice, and without setoff, reduction or deduction of any kind. A late payment finance charge will be computed at the periodic rate of 1.12% per month, or the highest rate allowed by law, whichever is less, which is an annual percentage rate of 13%, and will be applied to any unpaid balance commencing 30 days after the date of the original invoice.
19. The Client shall pay all costs of collection and all costs in relation to any dispute in any way relating to this Agreement, the Services and/or the Project, including, without limitation, Consultant's internal and external costs. In addition, in the event that: (a) Consultant is consulted by Client in relation to any dispute or problem with the Project, (b) Consultant is subpoenaed by any person or entity in any way related to the Project, and/or (c) Consultant is made a party to any dispute or litigation in any way related to the Project, whether or not any litigation is filed (any of the foregoing in items a-c a "Dispute"), by any person or entity, then Client shall pay to Consultant on demand fees based on Consultant's hours or part thereof spent by Consultant in relation thereto at the Hourly Rate Schedule in effect at the time for all time so spent, whether for investigation, consultation, internal or external preparation, attendance at deposition or trial or answering interrogatories, requests for admission, requests for production or other discovery or informal information requests. Further, in the event that Consultant, in its sole and absolute discretion, consults with or engages legal counsel of its choosing in relation to any of the foregoing, Client shall, upon demand, reimburse Consultant any and all reasonable attorneys' fees, paralegal fees, deposition charges, appraiser's fees and investigation charges incurred by Consultant.
20. Client hereby agrees to indemnify, defend and hold harmless Consultant, its present and future officers, directors, shareholders, employees, agents, subcontractors and affiliates from and against all claims, losses, liability, penalties, fines, demands, suits, expenses and other detriments of every nature and description (including reasonable attorneys' fees, consultant fees and remedial costs), arising out of or related to: (a) the performance of Services or the Project unless caused by Consultant's own negligence or willful misconduct; (b) use or modification of the Files; (c) any obligation of Consultant to any governmental, quasi governmental or similar body or contractor therefore in relation to the Project, including, without limitation, all liability under permits, applications and plans in relation to the Project; (d) a Dispute; and/or (e) a violation by Client of any term of this Agreement. Except in the event of a Termination, such indemnification obligation specifically includes, without limitation, claims arising out of or related to the negligence or alleged negligence of Consultant and/or its present and future officers, directors, shareholders, employees, agents and/or subcontractors.
21. The Client shall pay the costs of checking and site observation fees, zoning and annexation application fees, assessment fees, soil engineering fees, soil testing fees, aerial photography fees, all fees paid to any authority for approval of the Project, and all other fees, permits bond premiums, title company charges, blueprints and reproductions, renderings, models and mock-ups, postage, handling, copy charges, and all other reasonable expenses incurred by Consultant and not specifically covered by the terms of this Agreement.
22. Limitation of Liability: The Client agrees, to the fullest extent permitted by law, that the total aggregate liability of Consultant, its present and future officers, directors, shareholders, employees, agents and subcontractors on all claims, whether in contract, warranty, tort, strict liability, indemnity or otherwise, arising out of or in any way related to this Agreement, the Project and/or the Services, shall not exceed the greater of (a) the fees actually paid by Client and received by Consultant for the Services, (b) in the event that Client initials here, indicating that Client desires Consultant to purchase additional insurance in relation to the Project, and Client reimburses Consultant for such additional insurance within ten (10) days of the date of this Agreement, then up to the full amount of insurance coverage actually provided and paid by the carrier(s) for damages to Client under the policies of insurance obtained by Consultant. NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN TO THE CONTRARY, IN NO EVENT SHALL CONSULTANT BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, PUNITIVE, OR REMOTE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL OR MONEY, AND DOWNTIME COSTS.
23. No Fiduciary Responsibility: The Client confirms that neither the Consultant nor any of the Consultant's sub consultants or subcontractors have offered any fiduciary service to the Client and no fiduciary responsibility shall be owed to the Client by the Consultant or any of the Consultant's sub consultants or subcontractors.
24. The parties agree that this Agreement shall be interpreted under the laws of the state of Indiana. In the event of any dispute between the parties, the jurisdiction shall be Indiana and each party agrees that the Courts located in Warrick County, Indiana shall be exclusive forum for such disputes, and each party submits to the exclusive jurisdiction of such Courts and waives any claim of improper venue or inconvenient forum for such Courts. Any claims or disputes made during design, construction or post-construction between the Client and Consultant shall be submitted to non-binding mediation.
25. There are no understandings or agreements except as herein expressly stated.
26. All representations, warranties, covenants, releases and agreements of each of the parties to this Agreement shall survive the consummation of the transactions contemplated by this Agreement and shall not be affected by an investigation or on behalf of the other party to this Agreement. Without limiting the foregoing, the rights and obligations under paragraphs 4-8, 10, 12, and 15-26 shall survive the termination or expiration of this Agreement.