

**AGREEMENT FOR IMPACT FEE CREDIT; ENCLAVE
AT DEER CROSSING**

THIS AGREEMENT FOR IMPACT FEE CREDIT; ENCLAVE AT DEER CROSSING ("Agreement") is made and entered into as of the 8th day of August, 2023 (the "Agreement Date"), by and among the Town of McCordsville, Hancock County, Indiana, an Indiana municipal corporation ("McCordsville"), and Henderson Investments, LLC ("Henderson"), as follows:

WHEREAS, McCordsville desires to foster the development and improvement of its parks and trail amenities through cooperative efforts with the development community;

WHEREAS, the development community desires to assist McCordsville in its effort to improve McCordsville's trail system;

WHEREAS, Henderson owns a certain residential development located at or about 8603 N CR 700W, McCordsville, Indiana 46055 and commonly known as Enclave at Deer Crossing ("Development");

WHEREAS, the Development includes a trail and an off-site trail extension of approximately 95 feet, depicted on Exhibit A attached hereto and incorporated herein;

WHEREAS, the trail extension is not a development requirement of the Town's Zoning Ordinance and will be made available to the public free-of-charge;

WHEREAS, McCordsville has adopted a Recreation Impact Fee Ordinance;

WHEREAS, Henderson and McCordsville desire to cause the construction of the trail extension on certain real property located within existing Town owned public right-of-way, as depicted on construction plans approved by McCordsville;

WHEREAS, Henderson and McCordsville anticipate that it will cost approximately Nine Thousand Six Hundred Seventy One (\$9,671.00) dollars to construct the trail extension;

WHEREAS, Henderson is obligated to pay recreation impact fees to McCordsville in accordance with Ordinance No. 081418, as amended;

WHEREAS, McCordsville desires to issue Henderson a certain impact fee credit in consideration for Henderson constructing the trail extension;

WHEREAS, Henderson and McCordsville agree it is beneficial for McCordsville's residents to have the increased connectivity provided by the trail extension; and

WHEREAS, pursuant to Ordinance No. 081418, Section 5, a fee payer, such as Henderson is eligible to receive a credit against the Recreation Impact Fee under certain conditions for infrastructure improvements constructed or furnished in accordance with Indiana Code 36-7-4-1313, and 36-7-4-1355.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

ARTICLE I. RECITALS

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article I.

ARTICLE II. MUTUAL ASSISTANCE

The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

ARTICLE III. TRAIL EXTENSION

3.01. Construction of Trail Extension. Pursuant to and consistent with the Construction Agreement and applicable law governing public bidding, Henderson shall cause the trail extension to be constructed by or before December 31, 2023, subject to *force majeure*. For the purposes of this Agreement, "**Force Majeure**" shall mean adverse weather conditions or conditions outside of Henderson's control preventing Henderson from fulfilling any of its obligations as set forth in this Agreement. Henderson understand that time is of the essence regarding the completion of the trail extension and will use all due diligence to complete the same.

3.02. Cost of Trail Extension. McCordsville and Henderson acknowledge and agree that, consistent with the Construction Agreement, Henderson shall incur the cost to construct the trail extension in accordance with the specifications set forth in the approved construction plans for such trail extension. The trail extension shall be 10 feet wide and consist of asphalt 3 inches +/- inches on top of a rock base of 6 inches +/- in depth. Upon completion and acceptance by McCordsville, the trail extension will be dedicated to McCordsville and McCordsville will be responsible for the repair and maintenance of the trail extension after completion, acceptance and dedication.

ARTICLE IV. SUCCESSORS AND ASSIGNS

Henderson specifically acknowledges and agrees that its respective obligations pursuant to this Agreement shall inure to the benefit of and be binding upon and enforceable against its respective heirs, executors, administrators, successors and assigns. In any merger, acquisition or assignment of Henderson's assets, this Agreement shall continue and shall be disclosed as a binding obligation and liability of Henderson and any successors in interest. Notwithstanding the foregoing, Henderson may assign its rights or a portion of its rights under this Agreement to any other affiliate of Henderson.

ARTICLE V. AUTHORITY

5.01. McCordsville's Authority. McCordsville represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform its obligations under this Agreement upon proper approval by the McCordsville Town Council.

5.02. Henderson's Authority. Henderson represents and warrants to McCordsville that: (i) Henderson is an Indiana limited liability company duly existing and validly formed under the laws of the State of Indiana; (ii) Henderson shall not enter into any Agreements or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) Henderson has the authority to: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) Henderson duly has been authorized by proper action: (A) to execute and deliver this Agreement; and (B) to perform its obligations hereunder; and (v) this Agreement is the legal, valid, and binding obligation of Henderson.

ARTICLE VI. GENERAL PROVISIONS

6.01. No Joint Venture or Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between McCordsville and Henderson or any affiliate thereof.

6.02. Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

6.03. Breach. Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

6.04. Amendment. This Agreement may be amended only by the mutual consent of the parties, by the adoption of an ordinance or resolution of McCordsville approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

6.05. No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

6.06. Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

6.07. Indiana Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Indiana. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Hancock County, Indiana, or the federal courts with venue that includes Hancock County, Indiana.

6.08. Notice. Any notice, statement, demand, or other communication required or permitted to be given, rendered or made shall be addressed as indicated below:

If to McCordsville:

If to Town:

Town of McCordsville
Attn: Tim Gropp, Town Manager
6280 W 800N
McCordsville, IN 46055

With a copy to:

Brand & Morelock 6 W. South Street
Greenfield, IN 46140 Attn: Gregg Morelock

If to Henderson:

Henderson Investments, LLC
11691 Fall Creek Road, Suite 210
Indianapolis, IN 46256

6.09. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

6.10. Assignment. Except as otherwise provided for in this Agreement, the rights and obligations contained in this Agreement may not be assigned by Henderson or any affiliate thereof without the express prior written consent of McCordsville.

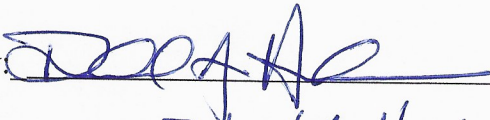
6.11. No Third Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

6.12. Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and McCordsville has approved or ratified this Agreement as required by law.

[Signature Page Follows]

Henderson Investments, LLC

Town of McCordsville, Hancock County, Indiana

By: 

Printed Name: Richard A. Henderson

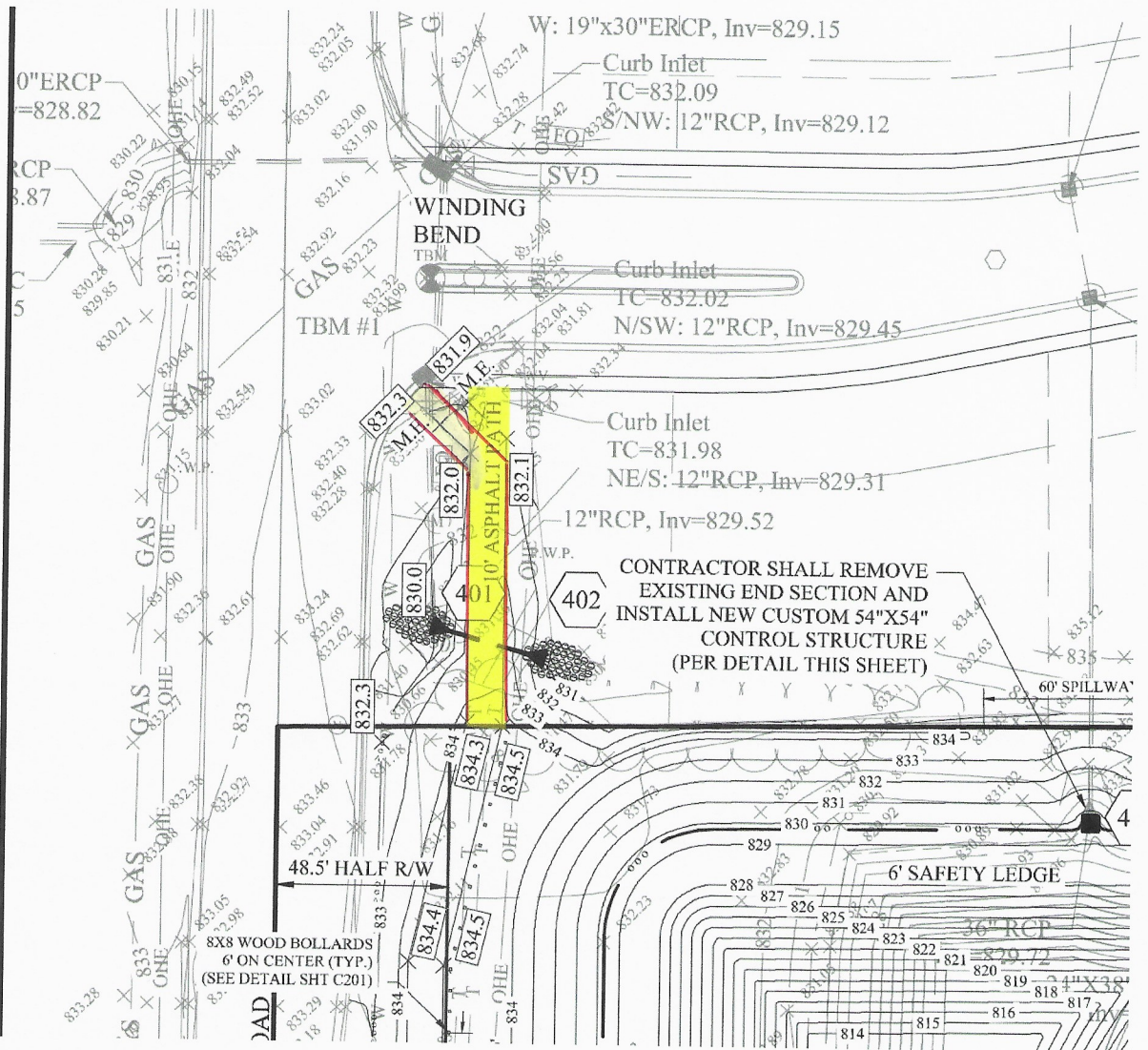
Title: Member

Date: 8/4/2023

By: _____
Greg Brewer, Town Council President

Date: _____

Exhibit A





Change Order

Number 1

Job Name Enclave Deer Crossing

Date 8/4/2023

Quantity	Description	Unit Price	Amount
3290	SF of 10' Concrete Path	\$ 6.52	\$ 21,450.80
1050	SF of 10' Concrete Path for City Excavation by Others	\$ 6.52	\$ 6,846.00
10	LF of Truncated Domes for City	\$ 145.00	\$ 1,450.00
20	LF of Remove and Replace Curb		\$ 950.00
		Total	\$ 30,696.80

Original Contract Sum \$ 51,378.50
Previous Change Orders \$ -
\$ 51,378.50
Current Change Order \$ 30,696.80
New Contract Amount \$ 82,075.30

Authorized Signature Chase Henderson

Date 8/4/2023



Otto's Streetscape Solutions
2449 E. Main St.
Greenwood, IN 46143
Phone: 317-886-4400
www.ostreetscape.com

Proposal

Date:	Proposal #:
07/28/2023	424263

Customer: Henderson Investments
Jobsite: Deer Crossing
Estimator: Raychel Gates

TOTAL: Based on Options Chosen

TERMS & CONDITIONS

1. Proposal/Pricing

- The proposal may be withdrawn by us if not accepted within 30 days.
- Any alterations from the above specifications involving extra costs will be executed upon written change orders and become an extra charge above and beyond the original proposal.
- Please verify the above address is 100% accurate. If the mailbox is produced with incorrect information, an additional charge of \$50.00 (plus installation, if applicable) will incur to reproduce the mailbox.
- Customer is responsible for notifying Otto's at time of order for mailbox relocation.
- Otto's is not responsible for damage to irrigation systems and invisible fence systems not accurately marked by others prior to our installation.
- Any orders canceled after payment has been processed are subject to a 25% restocking fee.

2. Payment

- Payment is due upon order approval.
- Credit card payments may display as Otto-Meyer, Inc. on credit card statements.

3. Materials

- Otto's uses rough sawn Western cedar for our wood posts. The natural grain of the wood will be visible after painting.
- Otto's uses paintable caulk on our painted wood posts to seal the joints and knots.

4. Installation

- Customer agrees to remove any vegetation that may interfere with installation prior to our arrival.
- Customer agrees to remove all materials from existing unit they wish to keep prior to our arrival. Plastic newspaper holders and invisible fence signs will automatically transfer to the new post unless otherwise specified with your estimator prior to installation.

5. Warranty

- All workmanship is guaranteed for 1 year from substantial completion under normal conditions, unless otherwise noted. Standard mailboxes have a 1 year manufacturer's warranty and Address Art mailboxes have a 2 year manufacturer's warranty.
- Otto's is not responsible for the natural cracking of cedar posts.
- All warranties are void if the product has been modified in any way.
- Otto's does not cover damage due to accidents or vandalism.

6. Insurance

- All agreements contingent upon strikes, accidents or delays beyond our control. Customer agrees to carry all applicable property, liability, and other insurance for work performed. Otto's shall carry applicable liability and workers compensation coverage.

7. Marketing /Advertising

- Otto's reserves the right to use photographs taken at the jobsite for marketing and advertising without compensation to the customer. Otto's will make every effort to not disclose any property or business information in the materials.

ACCEPTANCE OF PROPOSAL

Purchaser agrees that by its act of accepting this proposal that Otto-Meyer, Inc. d/b/a Streetscape Solutions does not owe any ongoing duty of care to third parties for risk of injury resulting from any planned/agreed work. Otto's Meyer, Inc. disclaims and limits any implied or expressed warranties for any planned/agreed work to the fullest extent allowed by law and all work shall be accepted "as is". The purchaser guarantees that they and their insurer(s) will insure, indemnify, defend, and hold harmless Otto-Meyer, Inc. regardless of any fault Otto-Meyer, Inc. may have for any claims of personal injury or property damage made by either the purchaser or any third party. Otto-Meyer, Inc. shall be entitled to recover its reasonable legal costs, expenses, and attorney's fees incurred in enforcing any covenant, term, or condition of the contract created by acceptance of this proposal.

The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.

Signature: Chase Henderson
Printed Chase Henderson

Title: Member
Date: 7/28/2023