

**AGREEMENT FOR IMPACT FEE CREDIT;  
SUMMERTON**

THIS AGREEMENT FOR IMPACT FEE CREDIT; SUMMERTON ("Agreement") is made and entered into as of the 12th day of September, 2023 (the "Agreement Date"), by and among the Town of McCordsville, Hancock County, Indiana, an Indiana municipal corporation ("McCordsville"), and Lennar Homes of Indiana, LLC, a Delaware limited liability company ("Lennar"), 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, Lennar owns a certain residential development generally located at the northwest corner of CR 900N and CR 500W ("Subject Parcel") and commonly known as Summerton ("Development");

WHEREAS, the Development includes a trail and Lennar wishes, in conjunction with the development of the Subject Parcel, to construct an off-site trail extension of approximately 605 feet, within public rights-of-way adjacent to Parcel Number 30-01-13-300-063.000-018 (the "Trail Extension"), as 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, Lennar and McCordsville desire to cause the construction of the Trail Extension pursuant to certain plans approved by McCordsville (the "Construction Plans) which are attached hereto as Exhibit B;

WHEREAS, Lennar and McCordsville anticipate that it will cost approximately ninety-nine thousand, three hundred and fifty-four dollars (\$99,354.00) to construct the Trail Extension (the "Trail Extension Costs"), based upon the construction estimate attached hereto as Exhibit C;

WHEREAS, McCordsville has adopted a Recreation Impact Fee Ordinance requiring developers to pay certain fees (the "Recreation Impact Fee");

WHEREAS, as a condition to constructing the Development, Lennar is obligated to pay a Recreation Impact Fee to McCordsville in accordance with Ordinance No. 081418; and

WHEREAS, McCordsville desires to issue Lennar a certain Recreation Impact Fee credit in consideration for Lennar constructing the Trail Extension;

WHEREAS, Lennar 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 Lennar, 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 Plans and applicable law governing public bidding, Lennar 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 Lennar’s control preventing Lennar from fulfilling any of its obligations as set forth in this Agreement. Lennar understands 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 Lennar acknowledge and agree that, Lennar shall pay the Trail Extension Costs to construct the Trail Extension in accordance with the specifications set forth in the Construction Plan. The Trail Extension shall be 8 feet wide and consist of asphalt 3 inches +/- in depth 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. Upon the acceptance and dedication of the Trail Extension, McCordsville shall issue to Lennar for the Development a Recreation Impact Fee credit in the amount of the Trail Extensions Costs.

#### **ARTICLE IV. SUCCESSORS AND ASSIGNS**

Lennar 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 Lennar’s assets, this Agreement shall continue and shall be disclosed as a binding obligation and liability of Lennar and any successors in interest. Notwithstanding the foregoing, Lennar may assign its rights or a portion of its rights under this Agreement to any other affiliate of Lennar.

#### **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. Lennar's Authority. Lennar represents and warrants to McCordsville that: (i) Lennar is a Delaware limited liability company duly existing and validly formed under the laws of the State of Delaware; (ii) Lennar shall not enter into any Agreements or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (iii) Lennar has the authority to: (A) to enter into this Agreement; and (B) to perform its obligations hereunder, (iv) Lennar 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 Lennar.

## 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 Lennar 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:

Town of McCordsville  
Attn: 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 Lennar:

Lennar Homes of Indiana, LLC \_\_\_\_\_  
11555 N. Meridian Street, Suite 400  
Carmel, IN 46032  
Attn: Keith Lash  
Phone: 317-659-3231  
Email: Keith.Lash@lennar.com

With a copy to:

Lennar Homes of Indiana, LLC \_\_\_\_\_  
11555 N. Meridian Street, Suite 400  
Carmel, IN 46032  
Attn: Craig Jensen  
Phone: 317-659-3200  
Email: Craig.Jensen@lennar.com

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 Lennar 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]

Lennar Homes of Indiana, LLC

Town of McCordsville, Hancock County, Indiana

By: \_\_\_\_\_

By: \_\_\_\_\_  
Greg Brewer, Town Council President

Printed Name: \_\_\_\_\_

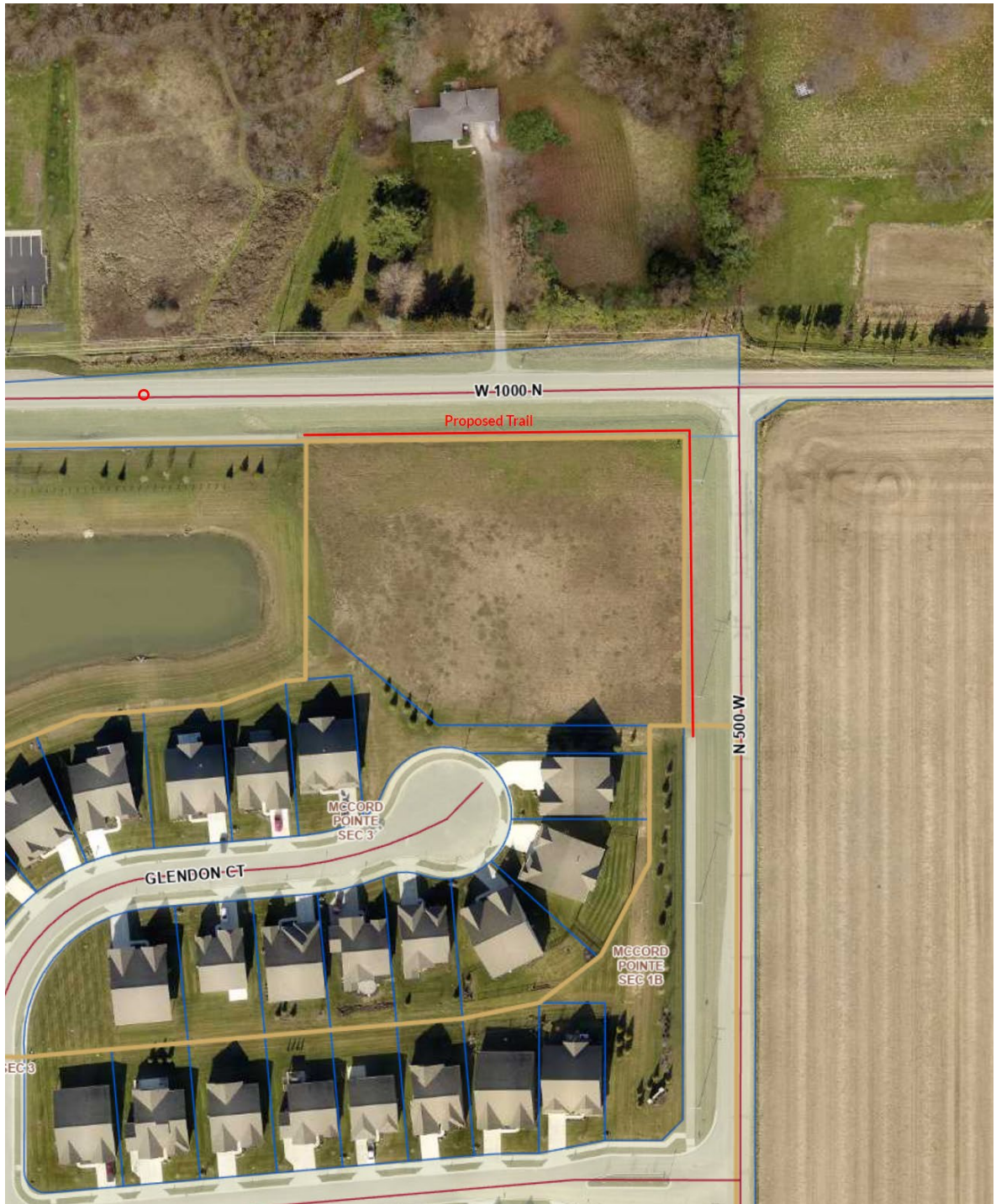
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A

*Site Plan*



# Exhibit B

NO.	REVISION	BY

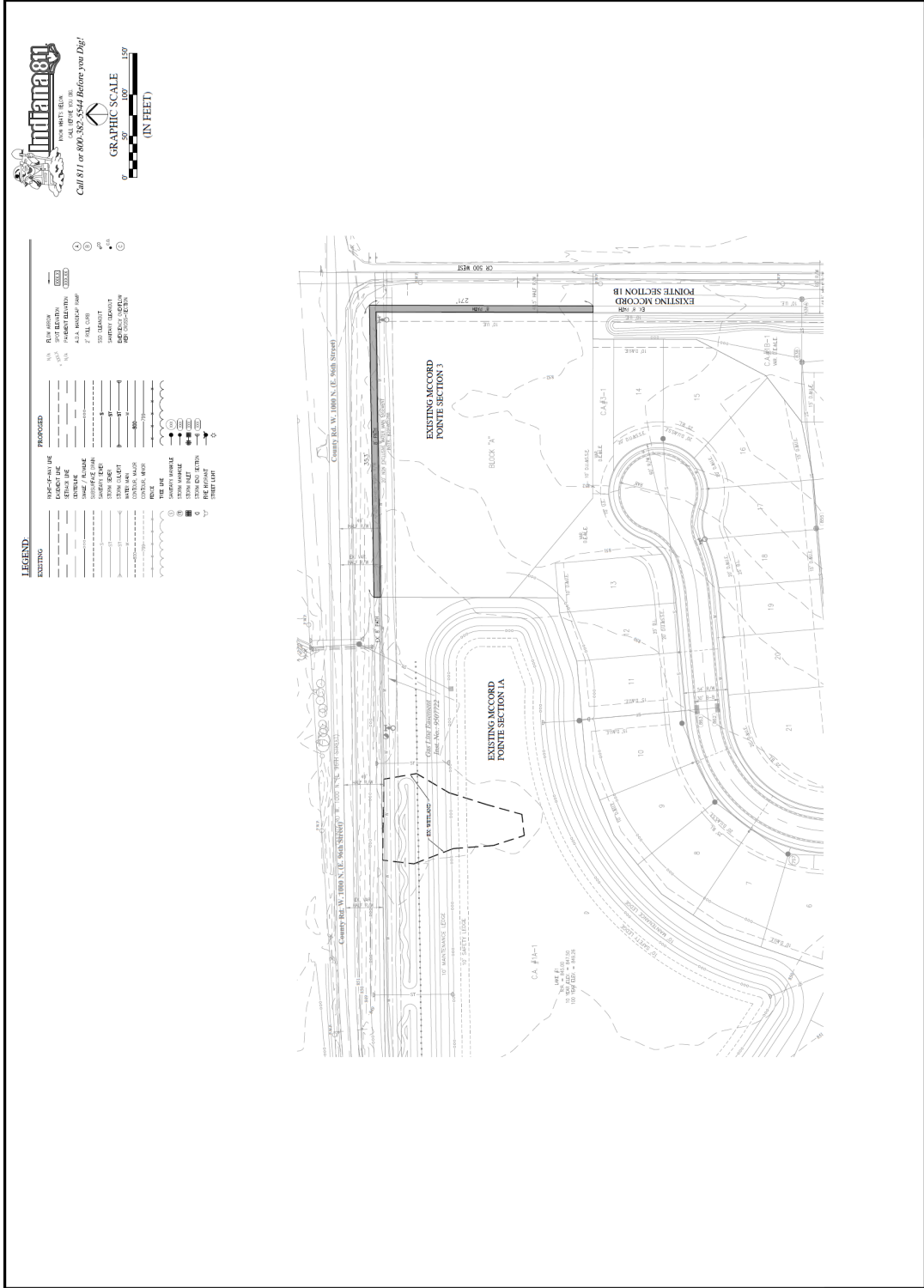


**MCCORD POINTE 3 PATH EXTENSION  
DEVELOPMENT PLAN**



DESIGNED BY:  
**Michael K. Sullivan**  
DATE: **SEPTEMBER 28, 2023**  
SHEET: **1** OF **1**

**C1.1**  
DEVELOPMENT PLAN  
© 2023



14745 N. STATE AVENUE, SUITE 100, CLAYTON, IN 46039  
 TEL: (317) 438-1100 FAX: (317) 438-1101  
 WWW.HWC-ENGINEERING.COM



Exhibit C

*Construction Estimate*



**E&B PAVING, LLC**

**PROPOSAL**

Date	8.8.2023	Project	McCorde Pointe Path
Owner	Lennar	Location	
Address	11555 N. Meridian St Suite 400	City	McCordsville, IN
City/State/Zip	Carmel, IN	Bid Date	6.16.2022
Attn	Dan Shelton	Engineer	NONE. SEE ATTACHED
Phone		Plan Date	NONE. SEE ATTACHED
Fax		Revisions	
Email		Addendum	

**E & B Paving would like to submit price quotations for the following items:**

100	8FT PATH 19MM INTERMEDIATE 2IN	80.000	TON	\$132.60	\$10,608.00
120	8 FT PATH 9.5MM SURF 1IN	40.000	TON	\$229.45	\$9,178.00
140	#53 STONE BASE	260.000	TON	\$56.20	\$14,612.00
150	MOT	1.000	LSUM	\$1,870.00	\$1,870.00
160	CONSTRUCTION ENGINEERING	1.000	LSUM	\$1,470.00	\$1,470.00
170	EROSION CONTROL	1.000	LSUM	\$8,430.00	\$8,430.00
180	COMMON EXCAVATION	180.000	CYS	\$70.70	\$12,726.00
190	SUBGRADE TREATMENT 1 BC	850.000	SYS	\$47.60	\$40,460.00
Bid Total:					<b>\$99,354.00</b>

\*\*\*We would need engineered drawings if awarded.\*\*\*

\*\*\* Includes seeding.\*\*\*



# E&B PAVING, LLC

**Please note the following:**

- |    |  |                 |      |
|----|--|-----------------|------|
| 1  | This quote may be withdrawn by E & B Paving if not accepted within 15 days.  |                 |      |
| 2  | Indiana State Sales Taxes  | <b>EXCLUDED</b> |      |
| 3  | Number of mobilizations included   | 1               | each |
| 4  | Additional mobilizations   | \$ 5,000.00     | each |
| 5  | The above work is based upon being completed on weekdays and in the 2022 construction season.  |                 |      |
| 6  | All E&B work areas shall be made available at the same time for continuous and uninterrupted construction work.  |                 |      |
| 7  | Weekend work will require additional charges and is not included in the above pricing unless otherwise noted.  |                 |      |
| 8  | Any work carried over to the next construction season may be subject to a price increase for labor & materials.  |                 |      |
| 9  | All agreements contingent upon strikes, accidents, or delays beyond our control.   |                 |      |
| 10 | Any changes from above quoted work, including extra work, will not be performed without a signed change order  |                 |      |
| 11 | E&B Paving requires access to the site with loaded tri-axle trucks and heavy equipment. We will not be responsible for any damage to existing roadways and access points |                 |      |
| 12 | Field engineering, testing, bonds or permits are not included unless otherwise noted.  |                 |      |
| 13 | Engineered staking, to be provided by others, is required at 25' on center maximum, at grade breaks, and radius points around perimeter of pavement areas.               |                 |      |
| 14 | E&B Paving cannot provide positive drainage if the pavement design or existing pavement has less than 1% fall  |                 |      |
| 15 | Prices quoted are subject to existing drainage conditions.   |                 |      |
| 16 | A properly prepared and compacted sub grade to +/- .05 foot is required before our work can begin.   |                 |      |
| 17 | The sub grade will be proof rolled with a loaded tri-axle truck prior to stone placement   |                 |      |
| 18 | Any failed sub grade areas will be repaired by others before any stone is placed.  |                 |      |
| 19 | If the stone base is used before the asphalt is placed, any repairs of the stone base will be paid for by others   |                 |      |
| 20 | If the surface course is installed later, additional charges such as cleaning and repairs may be incurred.   |                 |      |
| 21 | All materials and workmanship will comply with the 2022 INDOT Specifications, Section 402.   |                 |      |
| 22 | Prime, herbicide, parking bumpers, seal coating, color coating, and/or striping are not included unless noted.   |                 |      |
| 23 | Winter weather protection for concrete work is not included in the above prices.   |                 |      |
| 24 | All excavation, sub-grade preparation, saw cutting, and restoration will be by others unless otherwise noted.  |                 |      |
| 25 | The project owner is responsible for all utility locates not covered under Indiana Underground's 811 service.  |                 |      |
| 26 | A signed quote or contract is necessary before E & B Paving can begin work   |                 |      |
| 27 | Proposal acceptance is subject to having an approved credit application on file.   |                 |      |
| 28 | Retainage from payments to E & B paving, Inc. shall be withheld based upon the same retainage percentage withheld by the Owner under the Prime Agreement.                |                 |      |

*Due to the recent volatility in the oil market, it is necessary to attach an Escalator / De-Escalator clause to our proposal.*

*This escalator / de-escalator clause only pertains to liquid asphalt products. All other materials and supplies are not affected, unless otherwise noted in our proposal. Any increase or decrease in our cost for liquid asphalt materials after 15 days from the date of this proposal, shall be invoiced accordingly. Proper documents verifying original bid cost and purchase price will be provided.*

*A 1-1/2% monthly finance charge may be applied to all past due accounts. This computes to an annual rate of 18%. If any amount due for services or materials provided by E & B Paving, LLC. is not fully paid within 30 days from the date such services or materials were provided, it is agreed and understood that all costs, including but not limited to attorney fees, incurred by E & B Paving, LLC. related to the collection of such amounts will be recoverable by E & B Paving, LLC.*

**Thank you for the opportunity to submit price quotation(s) for your project. Please contact our office if you have any questions or if we can be of any further assistance.**

Submitted By:

**Ryan DeFries**

Sales / Project Manager

E & B Paving, LLC - Noblesville

17042 Middletown Rd. • Noblesville, IN 46060

Phone: 317.773.4132 • Fax: 317.773.4137

Ryan.defries@ebpaving.com

Cell: 317-315-6920

Accepted By:

\_\_\_\_\_

Printed Name:

Title:

Date: