



CITY OF FISHERS AGENDA

BOARD/COMMISSION: Redevelopment Commission Meeting

DATE: 2/15/2023, at 5:00 PM

DIRECTIONS: City Services Building - Controller's Conference Room, 3 Municipal Drive, Fishers, IN 46038

In accordance with the Americans with Disabilities Act (ADA), the City of Fishers will, upon request, provide appropriate aid (i.e. interpreters) and/or assistance leading to effective participation for people with disabilities. Anyone who requires such assistance should [email Kelly Lewark](#), Office Manager, no later than 48 hours before the scheduled event or call at (317) 595-3487.

Executive Session:

To conduct interviews and negotiations with industrial and commercial prospects or agents for industrial or commercial prospects under Indiana Code § 5-14-1.5-6.1(b)(4)

1. Executive Session

- a. To conduct interviews and negotiations with industrial or commercial prospects or agents of industrial or commercial prospects under Indiana Code § 5-14-1.5-6.1(b)(4)

2. Call to Order

3. Confirmation of Quorum and Proper Notice of Meeting

4. Election of Officers

- a. President
Vice-President
Secretary

5. Approval of Previous Minutes

- a. 1-9-23

6. Approval of Claims

- a. 2-15-23

7. Public Hearings

- a. FRC 01R021523 – Approval of Contract for Purchase of Property - Maple Del
- b. FRC 02R021523 – Approval of Professional Services Agreement - Browning Day
- c. FRC 03R021523 – Approval of Transfer of property – Roundabout

8. Old Business

9. New Business

10. Meeting Adjournment

CITY OF FISHERS REDEVELOPMENT COMMISSION (FRC) MEETING MINUTES
January 9, 2023

EXECUTIVE SESSION -Executive Session was called to order at 5:00.

REGULAR MEETING:

Mr. Bonacuse called the Regular meeting to order at 5:16 p.m. A quorum was confirmed.

FRC members present: Brad Johnson, Damon Grothe, Dan Canan, Tony Bonacuse and Anderson Schoenrock

Others present: Megan Baumgartner -Community Development Director, Jordan Willy, Lisa Bradford, Kay Prange. Jennifer Messer and Dustin Mills were also on the Teams call.

Proper public notice of the meeting was confirmed.

Meeting minutes from the 12-28-22 meeting were approved by a vote of 5-0.

Claims /Consent Expenses were presented and approved by a vote of 5-0.

PUBLIC HEARING –Declaratory Resolution FRC 01R010923 Maple Del EDA Expansion

Mr. Bonacuse opened a Public Hearing for the Expansion of the Consolidated Fishers/I-69 Economic Development Area. Seeing no one from the Public to speak, he closed the Public Hearing. Dustin Meeks of Barnes and Thornburg presented the Declaratory Resolution to the Commission.

Mr. Bonacuse asked for a Motion. Mr. Grothe made a Motion to approve, seconded by Mr. Canan. The Motion was approved, 5-0.

Old Business- none

New Business – Elections will be held at the next meeting.

A Motion to Adjourn was made. The meeting was adjourned at 5:22 p.m.

**Fishers Redevelopment Commission
Claim Docket 2/5/23**

Voucher #/ (APV#)	Inv. Date	Vendor	Description		Amount
			Professional Services		

Total \$0.00

2/5/2023

President, Redevelopment Commission Date

2/5/2023

Secretary, Redevelopment Commission Date

2/5/2023

Lisa Bradford, City Controller Date

**Fishers Redevelopment Commission
Consent Agenda 2/5/23**

Browning Day Mullins Dierdorf	Life Sciences Signage Work - December	\$	10,020.00
CVK LLC	Meyer Najem 2/23 Rent	\$	35,675.81
OnPoint Hub & Spoke	Hub & Spoke 2/23 Rent	\$	37,592.07
Hageman Investments LLC	Rebar 2/23 Rent	\$	10,500.00
Switch Offices LLC	February 2023 Rent	\$	911.48
Switch Offices LLC	February 2023 Mojo Up Rent Subsidy	\$	293.75
List Biotherapeutics	Pond Work Passthrough	\$	19,349.25

\$	114,342.36
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CONTRACT FOR PURCHASE OF PROPERTY

The CITY OF FISHERS REDEVELOPMENT COMMISSION, a commission of the City of Fishers authorized and existing pursuant to Ind. Code 36-7-14 *et. seq.* ("**Purchaser**"), hereby agrees to purchase from HG ACQUISITION COMPANY, LLC ("**Seller**") that certain real estate located in Fishers, Hamilton County, Indiana, consisting of approximately 9.23 acres, which real estate is generally located at 0 E. 116th Street, Fishers, Indiana 46038, identified as Tax Parcel Nos. 14-14-01-01-03-002.000, 14-14-01-03-011.000, 15-14-01-04-003.000 and 15-14-01-04-002.001 and more particularly described and depicted on **Exhibit A**, attached to and made a part of this Contract (the "**Land**"), together with all of Seller's right, title and interest in and to any and all: (a) buildings and improvements located thereon, attached thereto or used in connection therewith; provided, however, Purchaser acknowledges and agrees that Seller has the right to remove all equipment, fixtures and machinery prior to Closing (after which time Seller's rights, title and interest in such equipment, fixtures and machinery shall transfer in full to Purchaser, without further action of the parties) (the "**Improvements**"); and (b) rights, interests, privileges and easements appurtenant or appertaining thereto (the "**Appurtenances**" and together with the Land and Improvements, the "**Property**") for Four Million, Nine Hundred and One Thousand Three Hundred Seventy-Eight Dollars (\$4,901,378.00) (the "**Purchase Price**"), subject to and upon the terms and conditions set forth in this Contract.

1. **Purchase Price.** On the Closing Date (as defined in Section 2 hereof), Purchaser shall pay Seller the Purchase Price.

2. **Diligence Period and Closing.** For purposes of this Contract, the term "**Diligence Period**" shall mean, the date commencing on February 15, 2023 (the "**Effective Date**") and ending on the February 22, 2033 (the "**Closing Date**"); provided however, the Closing Date may be extended pursuant to Section 6.2, and such later date shall be deemed the "Closing Date". The closing will take place at the office of First American Title Insurance Company (Attn: Gina Longere) ("**Title Insurer**") or such other place as the parties may mutually agree in writing. Purchaser shall pay all title insurance premiums, the cost of recording the Deed (as such term is defined in Section 2 below) the cost of filing the Indiana Sales Disclosure form and all other customary closing costs. Each party hereto shall pay the fees of any attorneys or other consultants hired by such party in connection with the closing.

3. **Closing Documents.** At closing, Seller shall deliver to Purchaser or its assignee or designee: (a) a duly executed Limited Warranty Deed (the "**Deed**") conveying merchantable and marketable fee simple title to the Property free of any encumbrance made or suffered by said Seller except the Permitted Encumbrances (as defined in Section 6.2 below); (b) a fully executed vendor's affidavit sufficient to remove all standard title exceptions and in form and substance acceptable to the Title Insurer and Purchaser; (c) a duly executed non-foreign affidavit in form and substance satisfactory to Purchaser and the Title Insurer; (d) a duly executed Indiana Sales Disclosure Form in the form required by Indiana law; and (e) any and all other documents contemplated by this Contract or required by law to consummate the sale of the Property. At closing, Purchaser shall deliver to Seller: (x) a duly executed Indiana Sales Disclosure Form in the form required by Indiana law; (y) the Purchase Price; and (c) all other documents contemplated by this Contract or required by law to consummate the sale of the Property.

4. **Date of Possession.** Possession of the Property shall be delivered on the Closing Date, free and clear of all rights and claims of any other party to the possession, use or control of the Property.

5. **Taxes and Assessments.** Purchaser assumes and agrees to pay (a) both installments of real estate taxes payable during the calendar year in which closing occurs; (b) all assessments for improvements becoming a lien after the Closing Date; and (c) the real estate taxes assessed for and becoming a lien during the calendar year in which closing occurs. Seller shall pay (a) all assessments for improvements not assumed by Purchaser; and (b) all delinquent real estate taxes and assessments (and penalties and interest thereon, if any).

6. **Conditions of Performance.** Purchaser's obligations under this Contract are subject to the timely and complete satisfaction of each of the following conditions, unless waived in writing by Purchaser:

6.1 *Land Acquisition Agreement.* Until expiration of the Diligence Period, Seller shall remain in compliance with that certain (a) Revised Land Acquisition Agreement by and between Purchaser and Seller dated as of July 22, 2019, as amended; and (ii) Land Acquisition Agreement by and between Purchaser and Seller dated as of April 9, 2020, as amended (jointly and as amended, the "LAAs"); and

6.2 *Title Insurance.* On or before the Closing Date, Purchaser shall obtain, at Purchaser's sole cost and expense, a current title insurance commitment for the Property issued by the Title Insurer, in which commitment the Title Insurer shall agree to insure for the full amount of the Purchase Price merchantable and marketable fee simple title to the Property and issue such endorsements as Purchaser may reasonably request, at Purchaser's sole cost and expense (the "**Title Commitment**"). On or before the Closing Date, Purchaser shall notify Seller, and Seller shall remove or cause to be released all mortgages, other security agreements, UCC financing statements, leases and monetary liens ("**Mandatory Cure Items**"). If necessary, the Closing Date shall be extended day by day for the number of days required by Seller to remove the Mandatory Cure Items ("**Mandatory Cure Period**"). During the Mandatory Cure Period, Carry Costs (as such term is defined in the Land Acquisition Agreements) shall not apply or accrue. Notwithstanding anything to the contrary herein, no Mandatory Cure Items shall be deemed a permitted encumbrance. The term "**Permitted Encumbrances**" as used herein includes: (i) real property taxes and assessments for the year in which closing occurs and thereafter, not yet due and payable; and (ii) zoning and other regulatory laws and ordinances affecting the Property.

7. **Conditions of Performance.** Purchaser's obligations under this Contract are subject to the timely and complete satisfaction of each of the following conditions, unless waived in writing by Purchaser:

8. **Litigation and Representations.** As of the Closing Date, no action or proceeding before a court or other governmental agency or officer shall be pending (and to the best of either Seller's or Purchaser's knowledge, no such action or proceeding shall be threatened) that materially impairs the value of the Property or prevents Purchaser from undertaking and completing Purchaser's intended use and development of the Property. As of the Closing Date,

the representations and warranties set forth in Sections 8 and 9 shall be true and accurate in all material respects.

9. Covenants, Representations and Warranties. Seller hereby covenants, represents and warrants to Purchaser (and shall be deemed to covenant, represent and warrant to Purchaser on the Closing Date) that: (a) there is no condemnation or similar proceeding which is pending or, to Seller's knowledge, threatened against the Property or any part thereof, and which has not been disclosed by Seller to Purchaser; (b) Seller has not received any written notification from any governmental agency, authority or instrumentality of any pending or threatened assessments on or against the Property for the cost of improvements to be made with respect to the Property or any part thereof; (c) after the Effective Date, Seller will not create, permit or suffer any lien or other encumbrance to attach to or affect the Property and improvements thereon, except for the lien of nondelinquent real estate taxes and liens and encumbrances which will be fully discharged on or before the Closing Date; (d) to Seller's knowledge there are no claims, actions, suits, proceedings or investigations pending or, threatened with respect to or in any manner affecting the Property or Seller's ownership thereof; (e) no work has been or will be performed, and no materials have been or will be furnished to, the Property or any portion thereof which will result in any mechanics', materialmen's or other liens against the Property or any portion thereof which will not be fully discharged on or before the Closing Date; (f) except the LAAs heretofore mentioned, Seller is the fee simple owner of the Land and Improvements and has not sold, assigned, transferred, leased, subleased, encumbered or conveyed any right, title or interest whatsoever in or to the Property; (g) prior to the closing, Seller shall not sell, assign, transfer, lease, sublease, encumber or convey any right, title or interest whatsoever in or to the Property or any portion thereof without Purchaser's prior written consent, nor shall Seller amend, modify, extend, terminate or alter any currently existing agreement or document relating to the Property without Purchaser's prior written consent; (h) to Seller's knowledge, during the time it has owned the Property, neither the Property nor any portion thereof has been used for the treatment, storage or disposal of any hazardous, special or other wastes, substances, materials, constituents, pollutants or contaminants as defined under applicable federal, state or local laws or regulations promulgated thereunder; (i) to Seller's knowledge, the Property is not located in an area designated as requiring flood insurance as established by the Flood Disaster Act of 1973, as amended; (j) to Seller's knowledge, the Property complies with all local, state and federal laws and regulations in all material respects; and (k) prior to the closing, Seller agrees not to market, sell, advertise or seek proposals to develop or sell the Property or any portion thereof or enter into any agreements for the marketing, sale or development of the Property or any portion thereof to any entity or person other than Purchaser. In addition to the foregoing, Seller represents and warrants to Purchaser that no current leases, licenses and/or occupancy agreements for the Property.

10. Land Acquisition Agreements. Purchaser and Seller acknowledge and agree that on the Closing Date, the Land Acquisition Agreements shall terminate and be of no further force or effect. Moreover, to the extent that the terms and provisions of this Contract conflict with the terms and provisions of the Land Acquisition Agreements, this Contract shall control. Notwithstanding the foregoing or anything included herein to the contrary, Purchaser and Seller further acknowledge and agree that certain costs identified in the Land Acquisition Agreements resulting from Seller's provision of development services related to potential development of the Property, maintenance of the Property, interest carry and demolition costs remain and shall be

paid as follows: (a) One Million Eighty-Two Thousand Four Hundred Sixty-Four (\$1,082,464) by or before December 31, 2023; and (b) One Million One Hundred Fifty-Three and Seventeen (\$1,153,017) by or before December 31, 2024 (the "Development Services and Property Maintenance Expenses"). The Development Services and Property Maintenance Expenses shall continue as an obligation of the Purchaser until paid in full. Upon payment in full of the Development Services and Property Maintenance Expenses, Seller shall deliver all reports, drawings and other documents prepared by Seller related to the development services provided under the terms of the Land Acquisition Agreements to Purchaser.

11. Damage and Condemnation. Seller shall: (a) maintain the Property and, deliver the Property to Purchaser on the Closing Date in the same condition as on the Effective Date, ordinary wear and tear excepted; and (b) comply with all federal, state and local laws, statutes, ordinances, rules and regulations applicable to the Property and the use thereof. If the Property shall be damaged, destroyed or condemned, in whole or in part, or if any notice of condemnation shall be given at any time after the Effective Date, Purchaser, at its sole option, may (a) cancel this Contract, or (b) proceed with closing. If Purchaser elects to proceed with closing, then Purchaser may (a) apply the proceeds of any condemnation award or insurance policy to reduce the Purchase Price, or (b) accept an assignment of such proceeds.

12. Condition of Property. Seller and Purchaser agree Purchaser shall accept possession of the Property "as is, where is, and with all faults," with no right to set off or reduction in the Purchase Price. The sale of the Property shall be without representation or warranty of any kind, expressed or implied, including, without limitation, warranty of income potential, operating expenses, uses, merchantability or fitness for a particular purpose (but specifically excluding the warranty of title to the Land to be given in the Deed at closing and the representations and warranties set forth in Sections 8 and 9 above and in Seller's other closing documents, if any), and Seller hereby disclaims any such representation or warranty. Purchaser specifically acknowledges that Purchaser is not relying on any representations or warranties of any kind whatsoever, expressed or implied, from Seller as to any matter concerning the Property (except for the warranty of title to the Land to be given in the Deed at closing and the representations and warranties set forth in Sections 8 and 9 above and in the Seller's other closing documents, if any).

13. Notices. All notices shall be deemed delivered to Seller when deposited in the U.S. mail, addressed to Seller at City of Fishers Redevelopment Commission, Attn: Kari Adriano, 3 Municipal Drive, Fishers, Indiana 46038 with a copy to Jennifer C. Messer (via email only) at jennifercmesserlaw@gmail.com; and to Purchaser when so deposited and addressed to Purchaser at Hageman Acquisition Company, LLC, Attn.: Tom Dickey, 12321 E. New Market Street, Suite 200, Carmel, Indiana 46032

14. Default. Seller agrees that money damages are not an adequate remedy for breach of this Contract by Seller (including any breach of Seller's representations and warranties), and, in lieu of any other remedies available to Purchaser in the event of a breach by Seller.

15. General. The terms and provisions of this Contract shall be governed and construed in accordance with the laws of the State of Indiana. The captions and section numbers shall not be considered in any way to affect the interpretation of this Contract. This Contract

shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, and personal representatives. This Contract is the final expression of the complete and exclusive agreement between Seller and Purchaser. This Contract shall not be construed with resort to any presumption against the preparer or maker hereof. The term "**Contract**" as used herein means this Contract for Purchase of Property.

16. Authority. Each undersigned person signing on behalf of any party that is a corporation, partnership or other entity certifies that (a) he or she is fully empowered and duly authorized by any and all necessary action or consent required under any applicable articles of incorporation, bylaws, partnership agreement or other agreement to execute and deliver this Contract for and on behalf of said party; (b) that said party has full capacity, power and authority to enter into and carry out its obligations under this Contract; and (c) that this Contract has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

17. Recording. This Contract shall be recorded in the office of the Hamilton County Recorder (the "**Recorder's Office**") by the Title Insurer on the Closing Date. Upon (a) payment in full of the Development Services and Property Maintenance Expenses, and (b) request of Purchaser, Seller shall promptly cause to be recorded a release of this Contract in the Recorder's Office.

18. Brokers. Purchaser and Seller hereby represent and warrant to each other that they have not dealt with any broker in connection with this transaction. Purchaser and Seller hereby further represent and warrant to each other that no fee, commission or similar compensation shall be payable by Seller or Purchaser or any other person as a result of any agreement or action by Seller or Purchaser, respectively.

19. Assignment. On or before the Closing Date, each of Purchaser and Seller shall have the right to assign or transfer all or any portion of its rights under this Contract; provided, however, that Purchaser shall not be released from any liability hereunder.

20. Calculation of Time. If any time period specified herein expires on a Saturday, Sunday or any legal holiday, such time period shall be automatically extended through the close of business on the next regular business day.

21. Counterparts. This Contract may be executed in counterparts (including execution of counterpart signature pages), each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

22. Electronic Signatures. Signatures to this Contract transmitted via pdf or an accepted electronic service shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an executed original of this Contract with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Contract.

[Remainder of page intentionally left blank; signature pages follow]

SELLER:

HG ACQUISITION COMPANY, LLC, an Indiana
limited liability company

By: _____
Shane Hageman, Manager

PURCHASER:

CITY OF FISHERS REDEVELOPMENT
COMISSION

By: _____
President

Attest: _____
Secretary-Treasurer

EXHIBIT A

LEGAL DESCRIPTION

RESOLUTION NO: FRC 01R021523

**RESOLUTION OF THE CITY OF FISHERS REDEVELOPMENT COMMISSION
APPROVING CONTRACT FOR PURCHASE OF PROPERTY**

WHEREAS, the City of Fishers Redevelopment Commission (the “Commission”) and HG Acquisition Company, LLC (“Seller”) are parties to that certain (a) Revised Land Acquisition Agreement by and between the Commission and Seller dated as of July 22, 2019, as amended; and (ii) Land Acquisition Agreement by and between the Commission and Seller dated as of April 9, 2020, as amended (jointly and as amended, the “LAAs”);

WHEREAS, the Commission entered into the LAAs to promote development within the City of Fishers (the “City”);

WHEREAS, after entertaining and reviewing multiple economic development offers for the Property, the Commission determined that it is in the best interest of the City to acquire the Property and later consider offers concerning the Property;

WHEREAS, since entering into the LAAs, Seller acquired another parcel that is included within the Property that was not subject to the original LAAs but is essential for development (the “Additional Parcel”);

WHEREAS, the purchase agreement attached hereto as Exhibit A (the “Agreement”) replaces the LAAs and allows the Commission to additionally acquire the Additional Parcel;

WHEREAS, the Agreement additionally provides for the Commission’s later acquisition of the studies, economic development work and other investigative work product that Seller caused to be completed for the Property;

WHEREAS, the Commission has satisfied the provisions of Ind. Code 36-7-14 *et. seq.* concerning acquisition of the Property;

WHEREAS, the Commission now desires to enter into an Agreement substantially similar to the Agreement; and

WHEREAS, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Redevelopment Commission meeting in regular session as follows:

Section 1. The Commission hereby approves an agreement substantially similar to the Agreement.

Section 2. The President and Secretary of the Commission are authorized to execute an agreement substantially similar to the Agreement.

Section 3. This Resolution shall be in full force and effect upon passage.

ALL OF WHICH IS RESOLVED by the City of Fishers Redevelopment Commission, Hamilton County, Indiana this 15th day of February, 2023.

**REDEVELOPMENT COMMISSION OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA**

YAY

NAY

	Tony Bonacuse	
	Dan Canan	
	Damon Grothe	
	Brad Johnson	
	Anderson Schoenrock	

This instrument prepared by: Lindsey Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, Three Municipal Drive, Fishers, Indiana, 46038.

RESOLUTION NO: FRC 02R021523

**RESOLUTION OF THE CITY OF FISHERS REDEVELOPMENT COMMISSION
APPROVING PROFESSIONAL SERVICES AGREEMENT (LIFE SCIENCES PARK)**

WHEREAS, the City of Fishers, Hamilton County, Indiana (the “City”) has developed a life sciences park where multiple high-tech, life sciences companies are locating;

WHEREAS, the City of Fishers Redevelopment Commission (the “Commission”) desires to create a gateway entry to the life sciences park; and

WHEREAS, specifically, the Commission desires to retain Browning Day, Inc. pursuant to the professional services agreement attached hereto as **Exhibit A** (the “Agreement”) to serve as the landscape architect for the gateway project.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Redevelopment Commission meeting in regular session as follows:

Section 1. The Commission hereby approves an agreement substantially similar to the Agreement.

Section 2. The President and Secretary of the Commission are authorized to execute an agreement substantially similar to the Agreement.

Section 3. This Resolution shall be in full force and effect upon passage.

ALL OF WHICH IS RESOLVED by the City of Fishers Redevelopment Commission, Hamilton County, Indiana this 15th day of February, 2023.

**REDEVELOPMENT COMMISSION OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA**

YAY

NAY

	Tony Bonacuse	
	Dan Canan	
	Damon Grothe	
	Brad Johnson	
	Anderson Schoenrock	

This instrument prepared by: Lindsey Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, Three Municipal Drive, Fishers, Indiana, 46038.

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this ____ day of February, 2023 (the “Effective Date”) by and between the City of Fishers Redevelopment Commission, a commission of the City of Fishers authorized and existing pursuant to Ind. Code 36-7-14 *et. seq.* (the “Commission”), and Browning Day, Inc., an Indiana professional corporation (the “Landscape Architect” and together with the City, the “Parties”), as follows:

1. PURPOSE OF AGREEMENT/POINT OF CONTACT. The purpose of this Agreement is for the Landscape Architect to provide the design, engineering and consulting services specifically included in the scope of work attached hereto and incorporated herein as **Exhibit A** (the “Scope of Work”) and other services pre-approved in writing by the Commission pursuant to the terms of this Agreement (individually or collectively, the “Services”). The Services shall be provided subject to the Assumptions, Limitations and Clarification attached hereto and incorporated herein as **Exhibit B** (the “Limitations”). Unless otherwise pre-approved by the Commission in writing, Drew Braley shall be the Commission’s point of contact with Landscape Architect (the “POC”).

2. TERM. This Agreement shall be for an approximately ten (10) month term effective from the Effective Date and ending upon the earlier of (a) December 31, 2023; or (b) completion of the Services, unless earlier terminated in accordance with the provisions of this Agreement (the “Term”). In no event shall payments be made for work done or Services performed after expiration of the Term or any Renewal Term (as defined herein below). This Agreement may be extended by written agreement of the Commission and Landscape Architect for additional one (1) year terms on the same or substantially similar terms as provided herein (individually or collectively, “Renewal Term”).

3. EARLY TERMINATION.

A. Termination for Convenience. Either Party may terminate this Agreement by giving thirty (30) days written notice of termination to the other Party.

B. Immediate Termination. The Commission may immediately terminate this agreement upon written notice if (a) Landscape Architect (i) engages in gross misconduct (notwithstanding whether such conduct concerns the subject of this Agreement or Landscape Architect’s contractual relationship with the Commission); or (ii) it becomes generally known that Landscape Architect is insolvent, plans to make a general assignment for the benefit of creditors, is expected to file a voluntary petition of bankruptcy, suffers or permits the appointment of the receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, dissolved or liquidated, voluntarily or otherwise; (b) the Commission’s POC leaves the employment of Landscape Architect or fails to maintain the requisite professional licenses and approvals to perform the Services; or (c) the Landscape Architect or the Commission’s POC breaches a fiduciary duty owed to Commission as a result of performance or non-performance of the Services.

C. Termination for Material Default. In the event of material default, the non-defaulting Party may terminate this Agreement upon three (3) days' written notice which right shall not be subject to the right to cure.

D. Survival. Any provisions which, by their nature, are intended to apply after termination of this Agreement shall survive termination of this Agreement, including provisions for payment of amounts owed for work performed under this Agreement during the Term.

4. **[Intentionally Omitted]**

5. **CONFIDENTIALITY.** Landscape Architect acknowledges that it may be provided certain confidential nonpublic trade secrets, ideas, samples, models, processes, techniques, methods, drafts, know-how, business information, financial information, research, developmental information, client lists, prospect lists, marketing plans and other similar types of information (individually or collectively, "Confidential Information"). Landscape Architect shall exclusively use Confidential Information for the purpose of performing, and assisting in the performance of, the Services. Landscape Architect shall keep all Confidential Information and not disclose any of the same, or any details thereof, or any information relating thereto or derived or developed therefrom, to any third party, without the Commission's prior written consent. Upon conclusion of the Term, Landscape Architect shall return to Commission all Confidential Information. This provision shall survive termination of this Agreement.

6. **CONSIDERATION.** For and in consideration of and as a material inducement for Landscape Architect fully satisfying its obligations included herein, Landscape Architect shall be compensated in an amount not to exceed Thirty-One Thousand, Four Hundred Eleven and no/100 Dollars (\$31,411.00), unless additional services are (a) requested by the Commission, and (b) such additional requested services are not included in the Services described herein (the "Fees"). The cost of performing the Services described in this Agreement shall be paid by Commission in response to monthly invoices submitted by Landscape Architect to Commission by or before the first (1st) day of each month for the portion of Services rendered during the preceding thirty (30). Upon Commission's receipt of an invoice, the Commission shall, within thirty (30) days, cause to be disbursed a corresponding amount of proceeds for Services completed to the Commission's commercially reasonable satisfaction.

7. **INTELLECTUAL PROPERTY.** Upon payment by the Commission pursuant to Section 6, all materials, work product, deliverables and intellectual property and portions and components thereof created pursuant to this Agreement (individually or collectively, the "Work Product") shall become the unrestricted, exclusive property of the Commission. In the event this Agreement is terminated, and the Commission uses, modifies or provides to any third party any Work Product, the Commission releases the Landscape Architect and any subcontractors of the Landscape Architect from all Claims arising in connection therewith. For purposes of this Agreement, "Claims" shall mean claims, liabilities, damages, injuries, losses, liens, costs, and/or expenses (including, without limitation, reasonable attorneys' fees).

Notwithstanding the transfer of ownership set forth in this Section 7, it is agreed and acknowledged that certain construction documents prepared by the Landscape Architect will

contain design details and typical specifications (“Standard Details/Specifications”) which, collectively, form a part of the design for the Project but which, separately, are not Project specific, are related to function as compared to design form, are repetitive in nature and were not specifically developed for or identifiable with the Project. Accordingly, Landscape Architect shall be entitled to ownership of such Standard Details/Specification and use of such Standard Details/Specifications on other projects, in other contexts and/or for other clients, so long as they are not collectively used in a manner which replicates the overall design of the Project; provided, however, such ownership and use shall not affect the Commission’s ownership and use of the Work Product.

8. PLAN REFINEMENT PROCESS. Although Landscape Architect and Commission acknowledge and agree that Landscape Architect is not independently responsible for completing the totality of the following plan refinement obligations, Landscape Architect shall perform those portions of its Scope of Work that relate to each of the plan refinement steps included in **Exhibit C** attached hereto and incorporated herein (the “Schedule”) within the timeframes provided for each plan refinement step as specifically set forth in the Schedule.

If, at any stage of the Plan Refinement Processes, the Commission, rather than approving any drawings, documents, schedules, budgets or other documents instead rejects the foregoing then, within ten (10) days after from Commission provides notice that it has rejected any such document (individually or collectively, “Rejected Documents”), Contractor shall within fourteen (14) days provided such changes do not, as a result of the type(s) of change, require additional time, in which instance, Landscape Architect shall advise Commission and provide a commercially reasonable timeline, to: (i) revise the Rejected Documents; and (ii) resubmit the foregoing to Commission. Within ten (10) days after Commission receives submitted or resubmitted Site Drawings, Final Documents, Budget, Construction Schedule or portions thereof, Commission shall deliver to Contractor written notice that it approves or rejects the foregoing; provided that, if Commission rejects all or any part of the foregoing, then such notice shall: (i) specify the part(s) that Commission is rejecting; and (ii) include the specific basis for such rejection; and Contractor shall revise and resubmit the rejected Site Drawings, Final Documents, Budget, Construction Schedule or portions thereof in accordance with the preceding sentence until such submissions are approved. For the avoidance of doubt, Contractor shall only be responsible for delivering those services within its Scope of Work.

9. COMPLIANCE WITH LAWS. During the Term and any Renewal Term, Landscape Architect and the Commission’s POC shall fully comply with the Laws while delivering the Services. For purposes of this **Section 9**, “Laws” shall mean all applicable laws, statutes, and/or ordinances, and any applicable governmental or judicial rules, regulations, guidelines, judgments, orders, and/or decrees, including without limitation the Commission’s Unified Development Ordinance, as amended and those rules and guidelines promulgated and/or enforced by the U.S. Army Corps of Engineers or the Indiana Department of Natural Resources,

10. INSURANCE. At all times during the Term and any Renewal Term, Landscape Architect shall maintain the insurance included on **Exhibit D**. Within five (5) business days of the Effective Date, Landscape Architect shall provide Commission a certificate of insurance which policy shall name Commission as an additional insured for general commercial liability. It

shall be a material default under this Agreement for Landscape Architect to (a) fail to maintain the required insurance; or (b) change the required insurance without at least ten (10) days' written notice to Commission.

11. AUTHORITY. Each undersigned person executing this Agreement on behalf of Commission and Landscape Architect represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Commission and Landscape Architect, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement have been duly authorized by Commission and Landscape Architect, respectively; provided, however, Commission's ability to perform under this Agreement is subject to completion of certain procedures required by Laws which Commission agrees to undertake with diligence and in good faith.

12. FORCE MAJEURE. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice to the other party as soon as practical; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period. For purposes hereof, "Force Majeure" means an event or circumstance beyond the reasonable control of the claiming party, and not substantially caused by the other party, and includes, but is not limited to, acts of God (including hurricane or tropical storm), war, riot, fire, explosion, accident, flood, sabotage, lack of adequate fuel, power, raw materials, labor, facility malfunctions caused by circumstances beyond the reasonable control of the claiming party and not resulting from improper maintenance, pandemics, epidemics, or any other event beyond the reasonable control of the claiming party that prevents the completion, commencement of operations, or operation of the Landscape Architect's services hereunder. Inability to pay money when due, for whatever reason, or financial insolvency or incapacity to perform, are expressly excluded from Force Majeure.

13. ASSIGNMENT. The rights and obligations contained in this Agreement may not be assigned by Contractor without the express prior written consent of Commission, which consent may be withheld in the Commission's sole discretion.

14. NOTICE. Any notice required or permitted to be given by any party to this Agreement shall be in writing, and shall be given (and deemed to have been given) when: (a) delivered in person to the other party; (b) three (3) days after being sent by U.S. Certified Mail, Return Receipt Requested; or (c) the following business day after being sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Commission at 1 Municipal Drive, Fishers, Indiana 46038, Attn: Scott Fadness, Mayor, with copies to: Kari Adriano, 3 Municipal Drive, Fishers, Indiana 46038 and Jennifer Messer (via email) at jennifercmesserlaw@gmail.com; and to Landscape Architect at 626 North Illinois Street, Indianapolis, Indiana 46204, with copies to: Drew Braley, PLA. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

15. LANDSCAPE ARCHITECT'S AUTHORITY. Landscape Architect shall have authority to act on behalf of the Commission only to the extent provided in the Scope of Work. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques or for safety precautions and programs in connection with work outside its Scope of Work. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of any other persons or entities performing portions of the work outside of Landscape Architect's Scope of Work.

16. MERGER. All prior agreements, understandings, and commitments are hereby superseded, terminated, and merged herein, and shall be of no further force or effect.

17. NO DISCRIMINATION. In connection with the performance of work under this Agreement, Landscape Architect shall not refuse to hire, discharge, refuse to promote or demote, or to discriminate in matters of compensation against, any Person otherwise qualified, solely because of race, color, religion, gender, age, national origin, military status, sexual orientation, marital status or physical or mental disability.

18. E-VERIFY. All terms defined in Ind. Code § 22-5-1.7 *et seq.* are adopted and incorporated into this Section 18. Pursuant to Ind. Code § 22-5-1.7 *et seq.*, Landscape Architect covenants to enroll in and verify the work eligibility status of its employees using the E-Verify program, if it has not already done so as of the Effective Date. Within ten (10) days after the Effective Date, Landscape Architect shall execute an affidavit affirming that: (i) it is enrolled and is participating in the E-Verify program, and (ii) it does not knowingly employ any unauthorized aliens. In support of the affidavit, Landscape Architect shall provide the Commission with documentation that it has enrolled and is participating in the E-Verify program. This Agreement shall not take effect until said affidavit is signed by Landscape Architect and delivered to the Commission.

19. MISCELLANEOUS. Subject to Section 13, this Agreement shall inure to the benefit of, and be binding upon, Commission and Landscape Architect, and their respective successors and assigns. This Agreement may be signed in one or more counterparts, each of which shall constitute one and the same instrument. This Agreement shall be governed by, and 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 Hamilton County, Indiana, or the federal courts with venue that includes Hamilton County, Indiana. Landscape Architect waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right Landscape Architect may have to: (i) assert the doctrine of "forum non conveniency"; or (ii) object to venue. This Agreement may be modified only by a written agreement signed by Commission and Landscape Architect. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not

be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Commission and Landscape Architect or their successors in interest. The parties acknowledge and agree that Landscape Architect is an independent contractor and is not a principal, agent, officer shareholder or employee of the Commission. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Site is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

[signatures on following page]

City of Fishers Redevelopment Commission

Browning Day, Inc.

By: _____
President

Vice-President

By: _____

Its: _____

EXHIBIT A

SCOPE OF WORK/SERVICES

Overview of Project: Create a signature gateway entrance to the City of Fishers' Life Science Park – specifically within the roundabout at the intersection of 126th Street and Parkside Drive based on the Concept Plan attached as Exhibit A-2.

Landscape Architect Services: Landscape Architect shall cause to be completed the following:

- A. General:
 - 1. Design Development
 - 2. Construction Documents
 - 3. Bidding
 - 4. Limited Construction Phase Services
- B. Design Development Phase
 - 1. Refinement of concept design
 - 2. Materials research and coordination of details with vendors or manufacturers
 - 3. Coordination meetings with project team
 - 4. Plans and details, including but not limited to:
 - a) Preliminary site materials plan
 - b) Preliminary site layout plan
 - c) Preliminary site grading plan
 - d) Preliminary site planting plan
 - e) Preliminary site lighting/photometric plan
 - f) Preliminary sections and details as appropriate for the scope of work
- C. Construction Documents Phase
 - 1. Final plans and details, including but not limited to:
 - a) Site materials plan
 - b) Site layout plan
 - c) Site grading plan
 - d) Site planting plan
 - e) Site lighting/photometric plan/schedule
 - f) Sections and details as appropriate for the scope of work
 - g) Specifications (technical sections only – City to provide front-end documents/Divisions 00-01)
- D. Bidding / Procurement Phase
 - 1. Per discussion with the City, the intent is to bid this project out in two (2) packages:
 - a) Bid Package #1 – Hardscape (concrete walls, signage, electrical)
 - b) Bid Package #2 – Softscape (earthwork, planting, rock mulch, stone walls)
 - 2. Landscape Architect will provide Commission with documents for bidding.
 - 3. Landscape Architect will hold pre-bid meeting if/as required and issue meeting notes to bidders.
 - 4. Landscape Architect will review and answer RFI responses during the bidding process.
 - 5. Landscape Architect will issue addenda if/as required during the bidding process.

E. Limited Construction Phase Services:

1. General Construction Phase Services Notes and Contractor Responsibilities: The following provisions will be included in the Commission-Construction Manager or Contractor agreement to be coordinated with the subcontractors:

a) Browning Day, and its consultants, will not review or act on any shop drawings that have not been first reviewed and signed off by the Contractor. The Contractor will review to check that the shop drawings' information is complete, that they have been coordinated with the other contractors and/or suppliers, and that they conform to the subcontractor agreement.

b) Shop drawings will be submitted with the following information:

- The Contractor is to submit for approval to the Landscape Architect a submittal schedule for all the shop drawings. The shop drawings submittals are to be sent in a logical construction sequence as determined by the Contractor.
- All shop drawings and affected drawings will be submitted electronically. If submission does not follow the basis of design or does not conform with the drawings and specifications, more time and fee may be requested. All the submissions will include a copy of the appropriate specification section and corresponding drawings. Should any part of the submission fail to conform with the specification or basis of design, the specification and drawings that do not comply will be highlighted by the submitter. A written explanation will also be provided as to why and how the proposed product meets or exceeds the specification. Lack of a highlighted specification and drawings will be grounds for rejection of the submission.
- RFIs (Requests for Information) will be submitted electronically. These requests will be sent to the Landscape Architect after the Contractor has reviewed the documents and RFI and verified the Landscape Architect needs to provide an answer. The RFI will include a suggested no-cost solution if one is known.
- The Contractor will be responsible for all construction meetings, agendas, meeting notes, and project schedules.

c) The following allowances have been established for CA. We have assumed that the project can be constructed in six to eight (6-8) weeks.

- Project General Coordination: 10 hours
- Bi-Monthly Meetings (2 hours): 16 hours
- Allowance for On-Call Service: 16 hours

Note: Construction Phase Services in its entirety has 38 hours set aside for its completion. If more time is required, Browning Day will contact the Commission and let them know the number of budgeted hours will be exceeded and that we will be charging by the hour to complete the project. An estimated cost will be included in the notice.

F. Meetings: We anticipate the following meetings:

1. Design Development Phase 1 meeting
2. Construction Documents Phase 2 meetings

3. Bidding Phase 1 meeting
4. Construction Phase 6 meetings

EXHIBIT A-2
CONCEPT PLAN

EXHIBIT B
LIMITATIONS

- A. Fees are based on two (2) bid packages. If the Commission elects to add more bid packages or project phases, the fee will be adjusted as required to cover this additional work.
- B. Landscape Architect will coordinate with the Commission's consultants, if/as required, upon Commission's approval.
- C. The Commission's consultants shall provide all plans in AutoCAD format to be released with our documents. Specifications shall be provided by the Commission's consultants in Masterspec format.
- D. The Landscape Architect, and the Landscape Architect's consultants, shall be deemed the original authors and Commissions respectively of any materials produced under this Agreement and shall retain all common law, statutory and other reserved rights, including copyrights.
- E. The project will follow sustainable practices but will not seek certification as a LEED or other third-party "green" project or be filed with the USGBC/GBCI.
- F. The Landscape Architect will not provide as-built documents, based on contractor-supplied markups.
- G. Any unplanned modifications caused by coordination issues with the Commission's consultants will be made on an hourly basis, as additional services.
- H. The Landscape Architect shall not control, or be liable for, construction means, methods, techniques, sequences, safety procedures or safety precautions, since these are solely the responsibility of the Contractor.

EXHIBIT C **SCHEDULE**

Begin work within ten (10) business days of the Effective Date and complete each of the following within the estimated time period provided from the Effective Date.

- o Design Development Phase: 4 weeks
- o Construction Documents Phase: 4-5 weeks
- o Bidding Phase: 3-4 weeks
- o Construction Phase: 6-8 weeks

EXHIBIT D
INSURANCE

1.	Workers Compensation insurance coverage in accordance with statutory requirements.
2.	Employers Liability Insurance with limits of not less than \$1,000,000.00 each accident; \$1,000,000.00 Disease- each employee; and \$1,000,000.00 Disease Policy Limit.
3.	Commercial General Liability Insurance on ISO form GC0001 10 01 (or a substitute form providing equivalent coverage) and Offeror shall provide the City with Certificate of Insurance and Additional Insured Endorsement on ISO form GC2010 11 85 (or a substitute form providing equivalent coverage) and CG2037 10 01 (or substitute forms providing equivalent coverage) naming the City of Fishers Redevelopment Commission as an Additional Insured thereunder. Additional insured coverage shall apply as primary insurance with respect to any other insurance afforded the City of Fishers Redevelopment Commission per the follows: (i) \$1,000,000.00 Each Occurrence (BI & PD Combined Single Limit); (ii) \$2,000,000.00 General Occurrence (subject to per project general aggregate provision); and (iii) \$1,000,000.00 Personal Injury Liability to include coverage for employee-related claims.
4.	Business Automobile Liability Insurance: Written in the amount of not less than \$1,000,000.00 each accident to include the City of Fishers Redevelopment Commission as an additional insured.
5.	Umbrella Liability: \$5,000,000.00.
6.	Professional Liability: If the Contract is the subject of any professional services or design work, Developer will use commercially reasonable efforts to cause the party rendering those services to maintain Professional Liability insurance covering errors and omissions arising out of the work or services performed for a minimum limit of \$2,000,000.00.

RESOLUTION NO: FRC _____

**RESOLUTION OF THE CITY OF FISHERS REDEVELOPMENT COMMISSION
TRANSFERRING REAL PROPERTY (ROUNDBOUT PROJECT)**

WHEREAS, the City of Fishers, Hamilton County, Indiana (the “City”) has designed and is preparing to construct a roundabout at 116th Street and Allisonville Road (the “RAB Project”);

WHEREAS, the City of Fishers Redevelopment Commission (the “Commission”) owns certain real property needed for the RAB Project; and

WHEREAS, the Commission desires to quitclaim the property described and depicted in **Exhibit A** attached hereto (the “Property”) to the City for the RAB Project.

NOW, THEREFORE, BE IT RESOLVED by the City of Fishers Redevelopment Commission meeting in regular session as follows:

Section 1. The Commission hereby approves transferring the Property to the City pursuant to a quitclaim deed.

Section 2. The President and Secretary of the Commission are authorized to execute a quitclaim deed transferring the Property to the City.

Section 3. This Resolution shall be in full force and effect upon passage.

ALL OF WHICH IS RESOLVED by the City of Fishers Redevelopment Commission, Hamilton County, Indiana this _____th day of February 2023.

**REDEVELOPMENT COMMISSION OF THE CITY OF FISHERS,
HAMILTON COUNTY, INDIANA**

YAY

NAY

	Tony Bonacuse	
	Dan Canan	
	Damon Grothe	
	Brad Johnson	
	Anderson Schoenrock	

This instrument prepared by: Lindsey Bennett, City Attorney, City of Fishers, Hamilton County, Indiana, Three Municipal Drive, Fishers, Indiana, 46038.

EXHIBIT A
PROPERTY

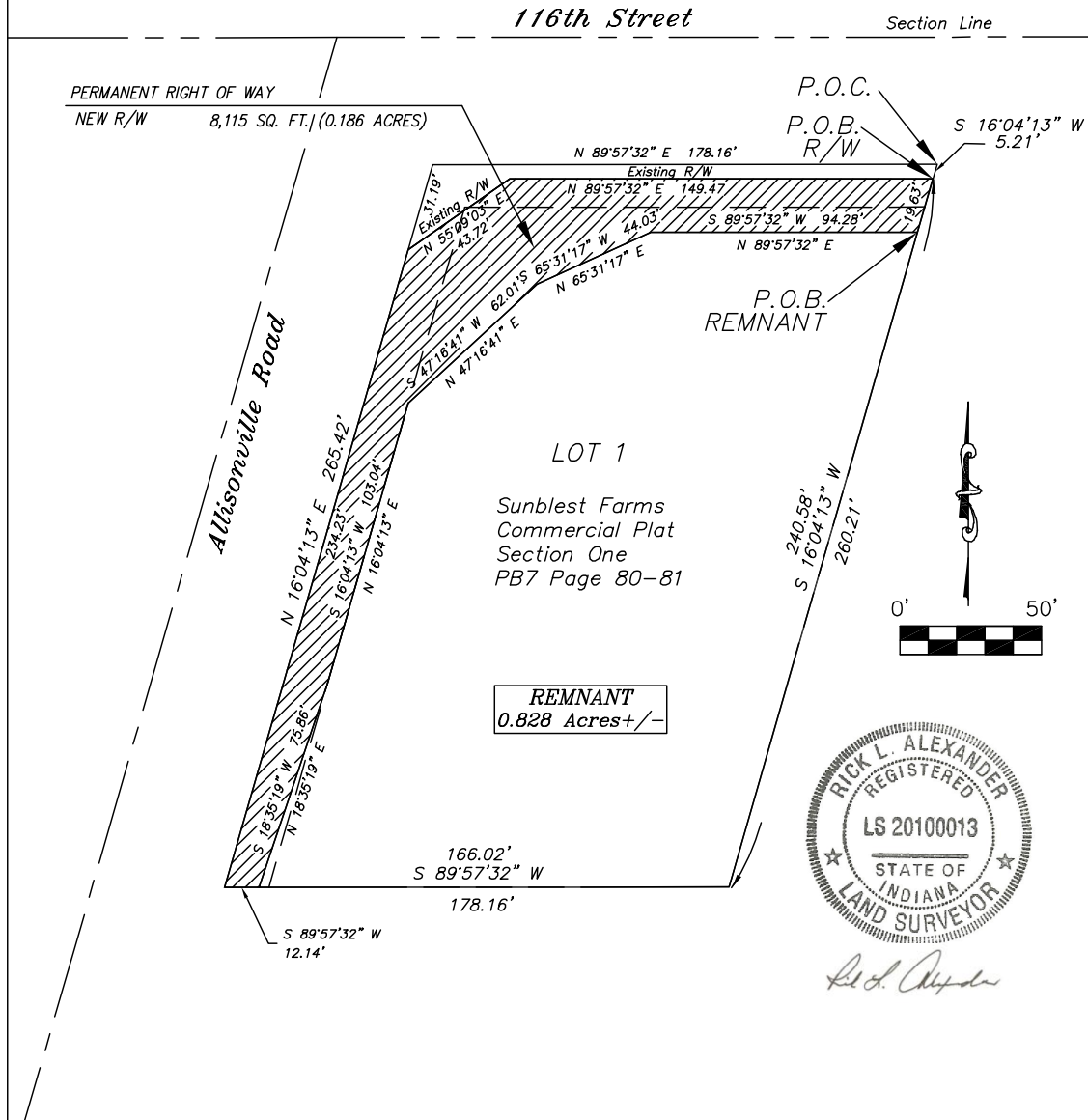
[included on following pages]

PARCEL: 1
 CODE:
 PROJECT NO.
 ROAD: East 116th Street
 COUNTY: HAMILTON
 SECTION: 2
 TOWNSHIP: 17 N
 RANGE: 4 E

OWNER: City of Fishers Redevelopment Commission
 INSTRUMENT NO.: 2021-033445
 RECORD NO. BOOK:
 PAGE NO.
 DATED: 05-04-2021

SHEET 1 OF 1
 DRAWN: RLA
 DATE: 04-19-2022
 CHECKED: RLA
 DATE: 06-16-2022

 HATCHED AREA IS
 APPROXIMATE TAKING



E. 116th Street
Hamilton County
Lot 1, Sunblest Farms Commercial Plat

Part of Lot 1, in Sunblest Farms Commercial Shops, Section 1, as recorded in Plat Book 7, Pages 80-81 in the Office of the Recorder of Hamilton County, Indiana, and being a part of a parcel of land as described in Instrument No. 2021-033445, in said office, described as follows:

Commencing at the Northeast corner of said Lot 1; thence South 16 minutes 04 minutes 13 seconds West (Plat Bearing), along the East line, 5.21 feet to the POINT OF BEGINNING of this description; thence continue along said line South 16 degrees 04 minutes 13 seconds West 19.63 feet; thence South 89 degrees 57 minutes 32 seconds West 94.28 feet; thence South 65 degrees 31 minutes 17 seconds West 44.03 feet; thence South 47 degrees 16 minutes 41 seconds West 62.01 feet; thence South 16 degrees 04 minutes 13 seconds West 103.04 feet; thence South 18 degrees 35 minutes 19 seconds West 75.86 feet to the South Line of said Lot 1; thence South 89 degrees 57 minutes 32 seconds West 12.14 feet to the Southwest Corner thereof; thence North 16 degrees 04 minutes 14 seconds East, along the West line of said lot, 234.23 feet to the Southerly Line of the "EXCEPT" in above stated Instrument; (the following courses along the Southerly line of said "EXCEPT"); thence North 55 degrees 09 minutes 03 seconds East 43.72 feet; thence North 89 degrees 57 minutes 32 seconds East 149.47 feet to the point of beginning, containing 8,115 square feet, 0.186 acres, more or less.

Given under my hand and seal June 16, 2022
Date



Rick L. Alexander
Registered Land Surveyor
No. 20100013
State of Indiana