



Board of Park Commissioners Project Summary

Mason Drive Park Allen County Easement Agreement Contract
Project No: n/a

Project Approval Request

Scope of Work:

This easement agreement is a request from The County of Allen, State of Indiana to grant the right-of-way and easement commencing as of the Effective Date and ending on March 31, 2023 (the "Temporary Construction Period"), for the right to trim and cut back trees which interfere with the path located on the Access Easement to permit Construction Equipment to access the Drainage Ditch located south of Mason Drive Park. Details of the exact location can be found in the Exhibits in the attached Access Easement Agreement. There is no transfer of funds associated with this agreement.

Board Approval:

Therefore, the **City of Fort Wayne, Board of Park Commissioners**, does hereby grant and convey to **The County of Allen, State of Indiana** a right-of-way and easement for temporary construction, within the designated areas as described in the attached Access Easement Agreement document.

At this time, I would like to request approval of this temporary easement with The County of Allen, State of Indiana. Please see the attached easement document and maps for details.

The Fort Wayne Parks and Recreation and the Board of Park Commissioners met to host their regularly scheduled monthly Board meeting on **December 8, 2022**, to approve the above-referenced project and contract.

We The Board of Park Commissioners, on the date, stated, do ATTEST, sign to the above-referenced and attached document, and approve as presented.

William Zielke, President

Justin Shurley, Vice President

Corey Miller, Commissioner

Rick Briley, Commissioner

Steve McDaniel, Director/Board Secretary

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (“**Agreement**”) is made and entered into as of the date of the last Party to sign this Agreement which shall be the “Effective “Date”, by and between the City of Fort Wayne, Indiana by and through the Fort Wayne Board of Park Commissioners (“Grantor”) and the County of Allen, Indiana (“Grantee”); Grantor and Grantee are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, Grantor is the owner of that certain parcel of land located in the City of Fort Wayne, County of Allen, State of Indiana, legally described in **Exhibit A** attached hereto and made a part hereof (the “Grantor Property”);

WHEREAS, Grantee is legally responsible for the maintenance and repair of that certain drainage ditch located in the City of Fort Wayne, County of Allen, State of Indiana and depicted in **Exhibit B** attached hereto and made a part hereof (the “Drainage Ditch”);

WHEREAS, Grantee desires to acquire an access easement over a portion of the Grantor Property to access the Drainage Ditch and Grantor is willing to provide such access easement subject to and in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, the Parties, for and in consideration of their respective undertakings hereby covenant and agree as follows:

ARTICLE ONE EASEMENT

1.02 Recitals. The Parties hereby affirm the above Recitals as true and are hereby incorporated into this Agreement by reference.

1.02 Grant of Access Easement. Subject to all matters of record and the terms and conditions contained in this Agreement, i) Grantor hereby grants to Grantee a non-exclusive access easement over that portion of the Grantor Property depicted in **Exhibit C** attached hereto and made a part hereof to permit the ingress and egress of certain construction equipment and vehicular traffic consisting of a large excavation, skid loader, backhoe, tiger mower, brick chipper and trucks (collectively, the “Construction Equipment” to and from the Drainage Ditch (the “Access Easement”).

1.03 Use of the Access Easement. The use of the Access Easement by the Grantee shall be limited to ingressing and egressing the Drainage Ditch with the Construction Equipment for the purpose of maintaining and repairing the Drainage Ditch.

ARTICLE TWO
CONSTRUCTION AND MAINTENANCE OF ACCESS DRIVE

2.01. Improvements to Access Easement. Commencing as of the Effective Date and ending on March 31, 2023 (the “Temporary Construction Period”), Grantee may elect to improve the Access Easement by trimming and cutting back trees and undergrowth which interfere with the path located on the Access Easement in order to permit the Construction Equipment to access the Drainage Ditch. Any extension of the Temporary Construction Period following the expiration thereof shall require Grantor’s prior written consent.

2.01.01 Restoration of Grantor Property. Grantee shall repair any damage occurring to the Grantor Property as a result of Grantee’s improvements to the Access Easement following Grantee’s completion of such improvements but no later than _____, 2023; provided that Grantee shall repair any damage to the parking lot located on the Grantor Property immediately following the occurrence of such damage. All such repairs by the Grantee shall restore the Grantor Property to the same or better condition than existed prior to Grantee’s making such improvements and shall be subject to Grantor’s prior written approval.

2.02. Maintenance. Grantee shall keep and maintain the Access Easement in good order, condition, and repair during the term of this Agreement (collectively, the “Maintenance”). The cost of Maintenance shall be borne by Grantee. Grantor shall have no obligation to maintain or repair the Access Easement during the term of this Agreement. Upon the termination of this Agreement by either Party, for any reason, Grantee shall restore the Access Easement to the same or better condition than existed prior to the grant of the Access Easement hereunder, reasonable wear and tear excepted.

ARTICLE THREE
INSURANCE

3.01. Insurance. At all times Grantee shall maintain in full force and effect and require its contractor(s) to obtain and thereafter maintain at least the minimum insurance coverage set forth below:

3.01.01. Workers’ compensation and employer’s liability insurance:

- i. Worker’s compensation insurance as required by all applicable Laws; and,
- ii. Employer’s liability insurance in the amount of \$250,000 for each accident for bodily injury, \$500,000 policy limit for bodily injury by disease, and \$250,000 for each employee for bodily injury by disease.

3.01.02. Commercial general liability insurance covering all operations by or on behalf of Grantee, which shall include the following minimum limits of liability:

- i. \$1,000,000 for each occurrence (for bodily injury and property damage);
- ii. \$1,000,000 for Personal Injury Liability;
- iii. \$2,000,000 general aggregate applying separately to this project.

3.01.03. Automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles with limits of liability which shall be not less than \$1,000,000 combined single limit for each accident for bodily injury and property damage combined.

ARTICLE FOUR MISCELLANEOUS

4.01 Covenants Running with the Land. All of the provisions of this Agreement are intended to be and shall be construed as, covenants running with the land and shall be binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their respective lessees, transferees, successors and assigns.

4.02 Except as to the rights herein expressly granted to Grantee, Grantor shall have full ownership, use, and control of the Grantor Property, including the Access Easement.

4.03 No Joint Venture. Nothing contained in this Agreement shall be construed to make the Parties hereto, or their successors and assigns, partners, or joining ventures, or to render any of said parties liable for the debts or obligations of the other, except as in this Agreement expressly provided.

4.04 Waiver. No delay or omission by any of the Parties, or their successors and assigns, to exercise any right or power accruing upon any non-compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the Parties, or their successors or assigns, of any of the covenants, conditions, or agreements hereof to be performed by any other party hereto shall not be construed to be a waiver of any succeeding breach thereof or any other covenant, condition or agreement contained herein.

4.05 Headings. The section and any subsection headings herein are for convenience and reference only and in no way define or limit the scope and content of this Agreement or in any way affect its provisions.

4.06 Severability. If any provisions or portions thereof of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of the such provision, or portion thereof, to any other persons or circumstances shall be valid and enforceable to the fullest extent permitted by law.

4.07 Amendments to be in Writing. No amendment shall be effective to add to, change, modify, waive or discharge this Agreement, in whole or in part, unless such amendment is in writing and signed by the party to be bound.

4.08 Indemnification. Grantee hereby forever releases, discharges and acquits, and covenants and agrees to defend, indemnify and hold Grantor, its members, officers, employees, agents, representatives, successors, and assigns, (the "**Indemnified Parties**"), to the extent permitted by law, from and against any and all claims, suits, actions, loss, cost, expense (including reasonable attorney's fees),

liability or claim of liability that arises out of the following: (i) any default by Grantee under this Agreement; (ii) Grantee's exercise or failure to exercise Grantee's rights and/or performance or failure to perform any of Grantee's obligations hereunder; or (iii) the negligent or intentional conduct of Grantee and/or the employees, agents, contractors, licensees, and invitees of Grantee in, on or about the Access Easement or the Grantor's Property. Grantee's agreement of release and indemnification obligation under this Section 4.08 shall not apply to the extent such damage, loss, or liability is the direct result of the gross negligence or intentional misconduct by Grantor. Grantee's covenants of release and indemnification under this Section 4.08 shall survive the expiration or termination of this Agreement for any reason by either Party.

4.09 Termination for Cause. In the event of a default by Grantee under this Agreement and Grantee's failure to cure such default within thirty (30) days following written notice thereof by Grantor, this Agreement may be terminated by Grantor upon ten (10) days written notice to Grantee whereupon all rights and interests of Grantee in the Access Easement and this Agreement shall thereupon extinguish.

4.10 Termination for Convenience. Either Grantor or Grantee may terminate this Agreement and all rights and obligations of the Parties hereunder without cause upon sixty (60) days written notice to the non-terminating Party.

4.11 Notices. Any notice shall be in writing and sent by electronic delivery, US Mail, certified mail, return receipt requested, or by a national overnight courier providing evidence of delivery for next business day delivery (such as FedEx or UPS) to the following addresses:

If to Grantor:

City of Fort Wayne Board of Park Commissioners
Attn: Christopher Carmichael, Property Manager
City of Fort Wayne
200 East Berry Street, Suite 470
Fort Wayne, IN 46802

If to Grantee:

4.12 No Conflicting Agreements. Each Party represents and warrants that, as of the date of this agreement, it has full authority to enter into this Agreement, and that this Agreement does not violate any other contract or commitment of the such party to any other entity.

4.13 Authority. Each person executing this Agreement represents and warrants that he or she is fully authorized to execute and deliver this Agreement as a binding obligation of the party for whom he or she is executing this Agreement

[Signatures on Following Pages]

ACCESS EASEMENT AGREEMENT

[Signature Page 1 of 2]

In witness whereof, the undersigned has caused this Access Easement Agreement to be executed as of the date set forth above.

Dated: _____, 2022

**CITY OF FORT WAYNE, INDIANA BY
BOARD OF PARK COMMISSIONERS**

PRESIDENT, WILLIAM ZIELKE

VICE-PRESIDENT, JUSTIN SHURLEY

COMMISSIONER, CORY D. MILLER

COMMISSIONER, RICHARD BRILEY

SECRETARY/Director, Steve McDaniel

ATTEST:

STATE OF INDIANA)
)SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this _____ day of _____, 2022 personally appeared William Zielke, Justin Shurley, Cory Miller, and Richard Briley, Members, and Steve McDaniel, Secretary, of the City of Fort Wayne Board of Park Commissioners, who signed above and acknowledged the execution of the foregoing to be their voluntary act and deed, for the uses and purposes therein set forth.

WITNESS my hand and notary seal.

Notary Public

Printed Name

My Commission Expires: _____

County of Residence _____

ACCESS EASEMENT AGREEMENT

[Signature Page 2 of 2]

Dated: _____, 2022

COUNTY OF ALLEN, INDIANA

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2022, before me a Notary Public in and for the County and State aforesaid, personally appeared _____, _____ of _____, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, and who acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Notary Public _____ County,

My Commission: _____

THIS INSTRUMENT DRAFTED BY AND WHEN RECORDED RETURN TO:
Lawrence E. Shine, Associate City Attorney
City of Fort Wayne, Indiana
200 E. Berry Street, Rm. 430, Fort Wayne, IN 46802

EXHIBIT A

Grantor Property

A parcel of land located in the Southwest One Quarter of the Southeast One Quarter of Section 21, Township 30 North, Range 12 East, and in the Northwest One Quarter of the Northeast One Quarter of Section 28, Township 30 North, Range 12 East, Allen County, Indiana.

Commencing at the North One Quarter corner of Section 28, Township 30 North, Range 12 East, Allen County, Indiana; thence East a distance of 22.7 feet along the North line of said Section 28 to the East Right-of-Way line of the Lake Erie and Western Railroad, thence North a distance of 60.0 feet along the said East Right-of-Way line to the point of beginning:

Beginning at the above described point; thence by a deflection right of 90 degrees 00 minutes a distance of 599.3 feet to the centerline of Mason Drive; thence by a deflection right of 88 degrees 48 minutes a distance of 688.5 feet to a point on the Westerly Right-of-way line of the Indiana Service Corporation Easement; thence by a deflection right of 26 degrees 45 minutes a distance of 117.0 feet along the said Westerly Right-of-Way line to a point on the North Right-of-Way line of Elmhurst Drive; thence by a deflection right of 64 degrees 27 minutes a distance of 563.2 feet along the North Right-of-Way line of Elmhurst Drive to a point on the East Right-of-Way line of the Lake Erie and Western Railroad; thence by a deflection right of 90 degrees 00 minutes a distance of 794.0 feet along the East Right-of-Way of the Lake Erie and Western Railroad to the point of beginning, containing 11.00 Acres of land more or less. Subject to the dedication of Belle Vista Boulevard as shown by instrument recorded March 9, 1965 in Deed Record 650, pages 396-397.

EXHIBIT B

Grantee Property

Parcel Details

Owner Information

Deed Owner: France Stone Company The

Mailing Address: Po Box 278
Sylvania, OH 43560

Property Address: 2924 Pinewood Dr (beh)
Fort Wayne, IN 46809

Township:

Municipality:

Click for detailed tax info

If record not found, please click here for search
<https://lowtaxinfo.com/allencounty>

Map labels: Pinewood Dr, Broadripple Dr, WAYNE DALE GARDEN, Orchard Hill, Belle Vista Blvd, Kimberley Rd, Allendale Dr.

EXHIBIT C

Access Easement

