

CONTRACT FOR PROFESSIONAL SERVICES

This Contract for Professional Services is made and entered into as of the 17th day of November 2011, by and between City of Westfield (“Contracting Party”) and Meyer Najem Corporation (“Consultant”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of Contracting Party and Consultant, intending to be legally bound, hereby agree as follows:

A. **Basic Terms.** This Contract is on the following basic terms and conditions:

- (a) Professional services provided by Consultant: Meyer Najem (See Exhibit B attached hereto and made a part hereof).
- (b) Location: Westfield Family Sports Campus; 380-Acre site, Westfield, Indiana 46074 (the “City Property”)
- (c) Date by which the Services shall be completed: May 01, 2013 (the “Completion Date”)
- (d) Purchase Price: Five Hundred Forty Thousand Dollars and 00/100, \$540,000.00 (see Proposal revised 11.02.11- Exhibit B) Payments per approved invoiced amount and payable within forty-five (45) days following Contracting Party’s receipt of an invoice at the address specified below.

(e) Addresses:

If to Contracting Party (other than Invoices): Invoice Address:

City of Westfield
Attn: Neil VanTrees
2728 East 171st Street
Westfield, Indiana 46074

ap@westfield.in.gov
or
City of Westfield
Attn: Accounts Payable
2728 East 171st Street
Westfield, Indiana 46074

If to Consultant:
Meyer Najem
Corporation Attn: Sam Mishelow
13099 Parkside Drive
Fishers, IN 46038

B. **Contract Terms and Conditions.** This Contract for Professional Services is subject to the Contract Terms and Conditions set forth in paragraphs 1-28 attached hereto and made a part hereof, the Project Changes, Attachment 1, and Exhibits A, B, C and D attached hereto and made a part hereof. Parties stipulate that this agreement supersedes any and all other contracts, agreements or understandings between the Parties related to the subject matter herein.

C. **Amendment.** No alteration, addition, deletion or modification of the Contract shall be valid or binding unless made in accordance with the provisions of paragraph 23 hereof.

D. **Project Changes to the Contract documents.** Project-specific changes to this Contract are set forth in Attachment 1 to this Contract. The project-specific changes modify, add to and delete from the language of this Contract. Where any language of this Contract conflicts or is inconsistent with the project-specific changes, the project-specific changes shall control.

CONTRACT TERMS AND CONDITIONS

1. **ACKNOWLEDGMENT, ACCEPTANCE:** Consultant has read and understands this Contract, and agrees that Consultant's written acceptance or commencement of any work or service under this Contract shall constitute Consultant's acceptance of these terms and conditions.

2. **PERFORMANCE:** Consultant hereby agrees to provide all services necessary to perform the requirements of this Contract and to execute its responsibilities hereunder by following and applying at all times the Degree of skill and care exercised by similar professionals currently performing similar services under similar conditions. Contracting Party reserves the right at any time to direct changes, or cause Consultant to make changes in the services or to otherwise change the scope of the services covered by this Contract with a signed Change Order executed by both parties, and Consultant agrees to make such changes promptly. Any difference in price or time for performance resulting from such changes shall be equitably adjusted by Contracting Party after receipt of documentation in such form and detail as Contracting Party may reasonably require.

3. **TIME AND PERFORMANCE:** The professional services under this Contract shall be completed no later than the Completion Date. The Consultant shall submit for Contracting Party's approval a detailed schedule for the performance of the services which shall include allowances for periods of time required for Contracting Party's review and approval of submission by Consultant. Time limits established by this detailed schedule shall be consistent with the Completion Date. Time is of the essence for this Contract.

4. **PRICE TERMS:** All of the prices, terms and representations by Consultant herein are at least as favorable to Contracting Party as those offered by Consultant to other customers purchasing similar professional services under the same material term and conditions.

5. **DISCLOSURE, WARNINGS AND INSTRUCTIONS:** Consultant shall maintain at the job site all Material Safety Data Sheets (MSDS) for all products used by the contractors on the job site. Such MSDS sheets shall be available for inspection upon request.

6. **FORCE MAJEURE:** Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, or court injunction; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) days after discovery of the cause of

such delay. During the period of such delay or failure to perform by Consultant, Contracting Party, at its option, may purchase goods or services from other sources and reduce its schedules to Consultant by such quantities, without liability to Consultant, or have Consultant provide the goods from other sources in quantities and at times requested by Contracting Party at the price set forth in this Contract.

7. **LIENS**: Consultant shall not cause or permit the filing of any lien related to its services. In the event any such lien is filed and Consultant fails to remove such lien of record within thirty (30) days after the filing thereof, by payment or bonding, Contracting Party shall have the right to pay such lien or obtain such bond, all at Consultant's sole cost and expense. Consultant shall indemnify and hold harmless Contracting Party from and against any and all liability, loss, judgments, costs and expenses, including reasonable attorneys' fees, incurred by Contracting Party in connection with any such lien.

8. **DEFAULT**: In the event Consultant commits any of the following (each, a "Default"): (a) repudiates or breaches any of the terms of this Contract, including, without limitation, Consultant's representations; (b) fails to perform services as specified by Contracting Party; (c) fails to make progress for reasons within the Consultants control so as to endanger timely and proper completion of services, and does not correct such failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Contracting Party specifying such failure or breach; or (d) becomes insolvent, files, or has filed against it, a petition in bankruptcy, for receivership or other insolvency proceeding, makes a general assignment for the benefit of credits or (if Consultant is a partnership or corporation) dissolves, Contracting Party shall have the right (1) to terminate all or any part of this Contract, without liability to Consultant; (2) to perform or obtain, upon such terms and in such manner as it deems appropriate in its sole discretion, the services which were to be provided by Consultant and Consultant shall be liable to Contracting Party for any reasonable and immitigable excess costs above the costs of this contract incurred by Contracting Party in performing or obtaining such similar services; and (3) to exercise any other right or remedy available to Contracting Party at law or in equity and except to the extent of any betterment realized by the Contracting Party.

9. **LIMITATION OF CONTRACTING PARTY'S LIABILITY**: Consultant agrees that Consultant shall look solely to Contracting Party's interest in and to the City property, including, without limitation, any management fee, if applicable, subject to prior rights of any mortgagee or ground lessee of the City property, for collection of any judgment (or other judicial process) requiring payment of money by Contracting Party in the event of default or breach by Contracting Party of any of the covenants, terms or conditions of this Contract to be observed or performed by Contracting Party, and that no other assets of Contracting Party shall be subject to levy, execution or other process for satisfaction of Consultant's remedies. Consultant shall not be liable to the mortgage or ground lessee for any claims under this contract.

10. **REQUIRED INSURANCE AND INDEMNIFICATION:**

- (a) Consultant shall purchase and maintain the following insurance, with the following limits, in connection with any claims that may arise out of or result from Consultant's operations, whether performed by Consultant or anyone for whose acts Consultant may be liable:

Worker's Compensation	Required.
Employer's Liability	\$2,000,000 each accident, \$2,000,000 disease each employee, and \$2,000,000 disease policy limits.
Commercial General Liability (CG0001) , including Personal Injury, Premises Operations, including explosion, collapse or underground property damage hazards, including costs to repair or replace damaged work. (The Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy).	\$5,000,000 Per Occurrence and \$5,000,000 General Aggregate.
Commercial Automobile Liability , including Owned, Non-Owned and Hired Car coverages.	\$5,000,000 Combined Single Limit for Bodily Injury and Property Damage.

- (b) The insurance shall be procured from companies authorized to do business in the state in which the Contracting Party's property is located. Except as otherwise expressly set forth herein, coverage shall be on an occurrence basis. All insurance procured or maintained by Consultant on which the Contracting Party is an additional insured, shall be primary. Any insurance maintained by Contracting Party shall be considered excess and non-contributory. Consultant shall permit Contracting Party to examine the actual policies upon request at the Consultant's offices where the policy is stored.
- (c) A Certificate of Insurance acceptable to Contracting Party shall be submitted to Contracting Party prior to commencement of any work hereunder, including, without limitation, a certificate issued by the Industrial Board or other appropriate agency in the state where the City property is located showing that the Worker's Compensation and other employee benefit insurance is in full force and effect. Each insurer shall possess an A.M. Best's rating of no less than A-VIII as of inception of this Contract. The Certificate of Insurance shall contain a provision that coverage shall not be canceled unless at least thirty (30) days' prior written notice has been given to Contracting Party. The Certificate of Insurance shall name the Contracting Party as an additional insured with respect to all but the Worker's Compensation, Employee Liability, and Professional

Liability coverage. The additional insured endorsement shall state that coverage is afforded the additional insured as primary and non-contributory. In addition, each Certificate of Insurance shall provide that the Certificate Holder is the Contracting Party, c/o City of Westfield. Consultant shall not have earned any fees nor be due any payments hereunder unless and until such Certificate of Insurance is received by Contracting Party.

- (d) Consultant shall indemnify and hold harmless Contracting Party, and its employees from and against any and all liability, claim, damage, loss or expense (including, without limitation, court costs and reasonable attorneys' fees) to the extent caused by any negligence of the Consultant, its employees or sub consultants, in the performance of the services under this contract, but not to the extent arising directly out of the negligence of Contracting Party. This subparagraph (d) shall survive the expiration or termination of this Contract.
- (e) Without limiting anything set forth in this paragraph 10, the following additional insurance coverage limits are required for the professional services: \$2,000,000 per claim and \$5,000,000 general aggregate professional liability, with retroactive coverage to the earlier of date of execution of Contract and commencement of any work and coverage for a minimum period of two (2) years after professional services completion.
- (f) If Consultant fails to maintain the insurance as set forth herein, Contracting Party may terminate this Contract immediately or, at the option of Contracting Party, Contracting Party may obtain insurance on the Consultant's behalf and offset the cost of insurance related to the contracted services against any payments due Consultant.

11. **SAFETY**: Consultant shall, related to the services hereunder, fully observe any and all known federal, state and local safety performance standards and all additional applicable laws, ordinances, rules, regulations and orders of public authorities having jurisdiction over the work area. Without limiting the foregoing, Consultant shall also comply with Contracting Party's Rules of Conduct, a copy of which is attached hereto as Exhibit A and made a part hereof. Compliance with such standards, laws, ordinances, rules, regulations and orders shall be at the sole cost of Consultant. Violations can and/or will result in immediate corrective and disciplinary actions being taken, including, without limitation, termination of this Contract. If this Contract is terminated pursuant to this paragraph 11, Contracting Party shall not be required to make any further payments to Consultant except for conforming services rendered prior to such termination. A safety representative employed by Contracting Party or an insurer may, from time to time, conduct safety inspections and submit safety findings. Consultant shall, at its expense, implement any reasonable abatement procedures recommended by such safety representative or insurer related to the contracted services.

12. **SETOFF**: In addition to any right of setoff provided by law, all amounts due Consultant shall be considered net of indebtedness of Consultant to Contracting Party, and Contracting Party may deduct any amounts due or to become due specific to the services provided for the project from Consultant to Contracting Party and its affiliates and subsidiaries except those covered under the indemnification obligation from any sums due or to become due from Contracting Party to Consultant.

13. **CONSTRUCTION PHASE SERVICES:** Should the Contracting Party authorize construction installation based on the plans provided under this Contract without project observation, review of Contractor's performance, and/or construction phase services by the Consultant, the Contracting Party assumes all responsibility for interpretation of these documents and for construction observation, and waives any claims against the Consultant that may be in any way connected thereto.

14. **OWNERSHIP OF DOCUMENTS:** It is understood by and between the parties to this Contract that all Drawings, Specifications and other work or products of the Consultant for this Project shall remain the property of the Consultant and are instruments of service for this Project only and shall apply to this particular Project only for the specific purpose intended. Any reuse of the instruments of service of the Consultant by the Contracting Party for any extensions of the Project or for any other project without the written permission of the Consultant shall be prohibited.

15. **OPINION OF CONSTRUCTION COSTS:** Any opinion of construction cost prepared by the Consultant represents his judgment as a construction professional and is supplied for the general guidance of the Contracting Party. Since the Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, the Consultant does not guarantee the accuracy of such opinions as compared to Contractor bids or actual cost to the Contracting Party.

16. **DISPUTE RESOLUTION:** all claims, counterclaims disputes and other matters in question between the parties hereto arising out of or relating to this Contract, or breach thereof, shall be presented to non-binding mediation, subject to the parties agreeing on a mediator.

17. **ADVERTISING, PUBLICITY AND PUBLIC RELATIONS:** Consultant shall not, without first obtaining the express written consent of Contracting Party, in any manner advertise or publish the fact that Consultant has contracted to furnish Contracting Party the services herein contracted, or use any trademarks or tradenames of the City's advertising, promotional materials or web sites. In the event of Consultant's breach of this provision, Contracting Party shall have the right to terminate the undelivered portion of any services covered by this Contract and shall not be required to make further payments except for conforming services rendered prior to cancellation.

18. **GOVERNMENT COMPLIANCE:** Consultant agrees to comply with all present federal, state and local laws, orders, rules, regulations, codes and ordinances which may be applicable to Consultant's performance of its obligations under this Contract, and all provisions required thereby to be included herein, are hereby incorporated by reference. Consultant agrees to indemnify and hold harmless Contracting Party from and against any loss, damage, liability, cost or expense (including, without limitation, attorneys' fees) resulting from any violation of such laws, orders, rules, regulations, codes or ordinances by Consultant.

19. **NO IMPLIED WAIVER:** The failure of either party at any time to require performance by the other party of any provision of this Contract shall in no way affect the right to require such performance by any time thereafter, nor shall the waiver of either party of a breach of any provision of this Contract constitute a waiver of any succeeding breach of the same or any other provision.

20. **NON-ASSIGNMENT**: Consultant shall not assign or pledge this Contract whether as collateral for a loan or otherwise and shall not delegate its obligations under this Contract without Contracting Party's express written consent.

21. **RELATIONSHIP OF PARTIES**: Consultant and Contracting Party are independent contracting parties and not agents, employees, partners, joint ventures or associates of one another, and nothing in this Contract shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Consultant shall pay all wages and appropriate expenses of its employees, including, without limitation, all federal, state and local taxes, social security taxes and other employment or personnel taxes or assessments. Contracting Party shall not be liable for any injury (including death) to any persons, or any damages to any property incurred in connection with the performance of this Contract, to the extent caused by Consultant's fault or negligence.

22. **GOVERNING LAW**: This Contract is to be construed in accordance with and governed by the laws of the state where the City property is located.

23. **SEVERABILITY**: If any term of this Contract is invalid or unenforceable under any statute, regulation, ordinance, or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, contract or rule, and the remaining provisions of this Contract shall remain in full force and effect.

24. **NOTICE**: Any notice provided for in this Contract will be sufficient if given by certified mail return receipt requested, or by reputable overnight courier service, to the party to be notified at the address specified in the Contract. If sent by overnight courier, the notice shall be deemed to have been given one (1) day after sending. If mailed, the notice shall be deemed to have been given on the date that is three (3) business days following mailing. Either party may change its address by giving written notice thereof to the other party.

25. **TERMINATION**: Contracting Party may terminate this Contract (a) immediately, in the event of a Default by Consultant, or (b) at any time without cause upon seven (7) days' prior written notice to Consultant. In the event of such termination, Consultant shall be entitled to receive only payment for conforming instruments of service delivered as of the date of termination and compensation for services which have been accrued pro rata as of the date of termination, after deduction of all of Contracting Party's costs and expenses, including, without limitation, attorneys' fees, incurred in connection with any Default by Consultant.

26. **ENTIRE AGREEMENT**: This Contract, together with any attachments, exhibits, or supplements, specifically referenced in this Contract, constitutes the entire agreement between Consultant and Contracting Party with respect to the matters contained herein and supersedes all prior oral or written representations and agreements. This Contract may only be modified by a written instrument executed by both parties. Each signatory that executes this Agreement on behalf of the Contracting Party stipulates that they have executed this Agreement with the proper authority duly granted to bind that respective Contracting Party.

27. **OFAC COMPLIANCE**: The Office of Foreign Assets Control (OFAC) prohibits US persons from entering into transactions with individuals, groups, and entities, such as terrorists,

narcotics traffickers and those engage in activities related to the proliferation of weapons of mass destruction, collectively referred to as Specially Designated Nationals (“SDN”). If the name of Consultant or any individual in a management position with Consultant is discovered on the SDN list, published by OFAC, such discovery shall constitute a material breach of this Contract. Contracting Party shall promptly notify Consultant, which shall have three (3) days in which to provide to Contracting Party clear and convincing evidence that (a) neither Consultant nor any individual in a management position with Consultant is an SDN, (b) the transaction is authorized by OFAC or (c) a statutory exemption exists that permits Contracting Party to do business with Consultant. Should Consultant fail to do so, then Contracting Party shall terminate this Contract for cause without further notice or grace period.

28. **IRCA COMPLIANCE:** The Immigration Reform and Compliance Act of 1986 (IRCA) prohibits the employment of unauthorized aliens and requires all employers to: (1) not knowingly hire or continue to employ any person not authorized to work in the United States, (2) verify the employment eligibility of every new employee (whether the employee is a U.S. citizen or an alien), and (3) not engage in discrimination against qualified workers. The Consultant shall comply with IRCA and all other applicable federal, state and local immigration laws, regulations, Executive Orders (“other immigration laws”) and by executing this Agreement, warrants that it is in full compliance with all applicable immigration laws including, but not limited to, IRCA. Consultant shall immediately remove any employee known to be an unauthorized alien. Failure to comply with IRCA or other immigration laws shall constitute a material breach of this Agreement. The Consultant shall indemnify the City of Westfield against all damages, losses and expenses, including attorneys’ fees, incurred or sustained by the City of Westfield as a result of the Consultant’s failure to comply with IRCA or other immigration law. Consultant shall include this provision in any subcontracts or subordinate agreements it enters into with respect to this Agreement.

EXECUTED this _____ day of _____, 2011.

Contracting Party:
 City of Westfield
 2728 East 171st Street
 Westfield, Indiana 46074

Consultant:
 Meyer Najem
 13099 Parkside Drive
 Fishers, IN 46038

 Signature

 Signature

 Printed Name

 Printed Name

 Title

 Title

 Date

 Date

EXHIBIT A
Rules of Conduct

In an effort to have COMPLETE CUSTOMER SATISFACTION, we have prepared the following Rules of Conduct. Your personnel's compliance with these rules will help us collectively acquire COMPLETE CUSTOMER SATISFACTION.

- ❑ Conduct yourselves in a professional manner in all areas of the City. Radios or audio equipment, other than communication, are strictly **prohibited**.
- ❑ **No** Graffiti.
- ❑ Be neat, clean and **QUIET** while in or **NEAR** occupied City spaces. Protect hallway and entries with temporary carpet runners.
- ❑ **No** vehicles shall be brought or parked in the buildings, or are to be parked in parking spaces outside allotted for handicapped parking.
- ❑ Proper work attire shall be required at all times.
- ❑ Only authorized personnel shall be permitted in work areas. Identification or uniforms may be required.
- ❑ **Always check in with appropriate City officials prior to beginning work in a new work area.**
- ❑ **Do not use City equipment.**
- ❑ Housekeeping is paramount. Remove all dirt and debris created by your activity. Project to be broom swept and trash removed on a daily basis and as needed by each applicable trade.
- ❑ **Smoking and the use of smokeless tobacco are prohibited on City properties.**
- ❑ Loud and/or foul language is prohibited.
- ❑ Food and drink shall **not** be permitted in carpeted City spaces.
- ❑ Material storage and/or debris shall not be left in unsecured areas.
- ❑ Exits and entrances shall be maintained clear and unobstructed. Securing of the work area is the responsibility of the Consultant and shall be locked at night.
- ❑ Thermostats shall not be adjusted unless the City has granted permission.
- ❑ Loading and unloading shall be in permitted area of the work site only.
- ❑ When dealing with citizens, be courteous at all times, keep all negative comments to yourself or discuss them with the City personnel.
- ❑ Special care shall be taken at all times to protect the surroundings of the work area. Dust, fumes and vapors controls shall be employed.
- ❑ **City officials shall be made aware of work that creates noxious odors. Any odiferous work is to be coordinated with the City to allow for proper advanced notification with the affected citizens.**
- ❑ **Any work that will compromise the existing utilities shall be coordinated with the City. Arrangements shall be made with the City if special access is required.**
- ❑ **No use of power actuated tools or hammer drills is permitted at an occupied City building between the hours of 7:00 AM and 5:00 PM, or as directed by City officials.**
- ❑ Only designated freight elevators that are properly protected shall be used by the contractors and Consultants.
- ❑ Safe working practices shall be observed at **all times**. The safety of your employees, the buildings and the work site is considered to be paramount. All work shall be conducted and completed by the guidelines set forth by the Federal, Local and State Authorities.
- ❑ Fall protection shall be worn, observed or employed when working in articulating boom lifts, scissors lifts, ladders, scaffolding and any other activity where workers are exposed to a fall and shall compile with the provisions of OSHA and IOSHA.
- ❑ Any and all "Hot Work" shall have an appropriate fire extinguisher immediately accessible and be pre-approved by the City officials.
- ❑ **All electrical service shall be properly protected with a GFCI, including the use of extension cords on permanent power.**
- ❑ **Eye protection shall be worn at all times when cutting, grinding, chipping, drilling or using power actuated tools.**

Non-compliance with the foregoing Rules of Conduct shall result in disciplinary procedures up to and including removal from the project.

EXHIBIT B

EXHIBIT A

See attached Proposal dated revised 11.02.11

In an effort to have COMPLETE CUSTOMER SATISFACTION, we have prepared the following Rules of Conduct. Your personnel's compliance with these rules will help us collectively secure COMPLETE CUSTOMER SATISFACTION.

1. Customer personnel in a professional manner in all areas of the City. Ladies in public equipment, other than common attire, are strictly prohibited.
2. No smoking.
3. No use of profanity or foul language. Profanity, vulgar language and similar will be considered unacceptable.
4. No use of profanity or foul language in public areas of the building, as well as in public parking spaces outside the building.
5. Proper work attire shall be required at all times.
6. No unauthorized personnel shall be permitted in work areas. Identification of visitors may be required.
7. Always check in with appropriate City officials prior to beginning work in a new work area.
8. Do not use City equipment.
9. Housekeeping is paramount. Remove all dirt and debris created by your activity. Project to be brown sweep and resurfaced on a daily basis and as needed by each applicable trade.
10. Smoking and the use of smokers tobacco are prohibited on City properties.
11. No use of profanity or foul language is prohibited.
12. Cell and other mobile devices shall not be permitted in assigned City spaces.
13. Material storage and/or debris shall not be left in assigned areas.
14. State and contract shall be maintained, clear and unobstructed. Securing of the work area is the responsibility of the Contractor and shall be locked at night.
15. Personnel shall not be adjusted unless the City has granted permission.
16. Loading and unloading shall be in permitted area of the work site only.
17. When dealing with citizens, be courteous in all times, keep all negative comments to yourself or discuss them with the Contractor.
18. Special care shall be taken at all times to protect the surroundings of the work area. Dust, fumes and vapors control shall be employed.
19. City officials shall be made aware of work that creates noxious odors. Any odorous work is to be coordinated with the City to allow for proper advanced notification with the affected citizens.
20. Any work that will compromise the existing utilities shall be coordinated with the City. Arrangements shall be made with the City if special access is required.
21. The use of power, electrical tools or equipment shall be permitted at an occupied City building between the hours of 7:00 AM and 5:00 PM, unless otherwise directed by City officials.
22. Only designated traffic diversion lanes are permitted. Protected shall be used by the contractor and Consultant.
23. Safe working practices shall be observed at all times. The safety of your employees, the building and the work area shall be paramount. All work shall be conducted and completed by the guidelines set forth by the Federal, Local and State Authorities.
24. Fall protection shall be worn, observed or engaged when working in situations where fall protection is required, including but not limited to other activities where workers are exposed to a fall and shall comply with the provisions of OSHA and IBC/IA.
25. Any and all "Hot Work" shall have an appropriate fire extinguisher immediately accessible and be pre-approved by the City of San Jose.
26. All electrical service shall be properly protected with a GFCI, including the use of extension cords on permanent power.
27. Fire protection shall be worn at all times when cutting, grinding, chipping, drilling or using power actuated tools.

Non-compliance with the foregoing Rules of Conduct shall result in disciplinary procedures up to and including removal from the project.



MEYER NAJEM

13099 Parkside Drive Fishers, IN 46038
Tel: 317.577.0007 Fax: 317.577.0286
www.meyer-najem.com

City of Westfield
Proposal for Services as Construction Manager as Advisor
Grand Park Sports Campus, Phase I and II
September 16, 2011 (revised 9/21/11)

Phase I Services—Site Utilities and Drainage w/ an alternate for water and sewer installation.

Narration: Phase one has already been bid, and the scope of services for phase one as a result are more streamlined. Identified below is the **primary** list of services offered in phase one by *Meyer Najem*. The agreement would be a standard AIA document. This is an agreement between the Owner and the Construction Manager.

- >Assist with final contractor selection and approval as required
- >Prepare contractor agreement(s) for City approval and issuance
- >Ensure compliance with all public-bidding requirements
- >Manage all phase one work (construction schedule, budget, change orders, etc.)
- >Weekly reporting of schedule and budget to city administration, or as required.
- >Serve as an advocate for the City of Westfield, representing the City as requested.
- >Maintain strict budget control
- >Eliminate cost overruns, minimizing risk for the City of Westfield
- >QA/QC oversight

Staffing Proposed:

Senior Project Manager/site manager dedicated in the field to the project. Initially, this would be a part-time person until phase two begins.

Phase II Services—Vertical building construction (maintenance facility, concession and press box, restrooms, ticket booth, infrastructure, lighting, grandstands, etc. as specified in phase II documents). Proposed bid date for phase two is mid-October.

Narration: Phase two would be the delivery of the **same services as phase I**, with the addition of some key additional services.

- >Pre-Construction—provide design assistance in collaboration with architect to create the most cost-effective design that meets the proposed budget. This could provide additional savings of 1% to 2% after value engineering and documents review. (There is no additional cost for pre-construction).
- >Eliminate the mark-up on sub contractor bids since all bid packages will be multi-prime, creating savings to the project. This should save the project between 4 to 6% in total construction costs.

- > *Meyer Najem*, not the General Contractor, will provide full-time field supervision. This is an important distinction. If the project bids to a general contractor, the City would have no advocate (or oversight) during construction, nor anyone negotiating in behalf of the City regarding change orders or other cost issues impacting the budget. Since there is no General Contractor, Meyer Najem provides construction field supervision as an advocate for the City of Westfield.
- > Scope all bid packages to ensure there is no duplication of trades, subs will commit to a strict schedule adherence as part of their sub agreement.

CM Price Proposal:

Phase One: Fee of 1.5% of phase one construction costs, plus monthly staffing costs of \$6,250 This represents a project manager/field manager two and one-half days per week providing oversight. When the project moves into phase two, oversight staff will move to full-time. Specific reimbursable costs and items such as insurance, jobsite trailer etc will be finalized prior to execution of the agreement as specified by the AIA132 agreement. This represents a total cost of 2.28% of the overall project cost.

**Phase One pricing proposal is based upon the following assumptions.

- > Construction duration of approximately 12 months for phase one
- > Construction budget of approximately \$9.5M

Phase Two: Fee of 2.5% of phase two construction costs, plus monthly staffing costs of \$12,500 per month. This monthly staffing includes a full-time dedicated field superintendent like we had on Westfield #83, plus a supporting project manager one day/week. Again, specific general condition costs will be finalized prior to execution of the agreement. Also, any additional staffing must be authorized by the City of Westfield.

The assumption is that phase one would be complete PRIOR to the commencement of phase two construction. If phase one **should** overlap phase two construction, only the phase two monthly staffing charge would be assessed. This represents a total cost of 3.62% of the total project cost.

**Phase two pricing proposal is based upon the following assumptions:

- > Construction duration of approximately 18 months
- > Construction budget of approximately \$20M

Amended Fee Proposal-Grand Park—October 14, 2011

In an effort to both simplify the interpretation of our proposal that would allow Meyer Najem to serve as the **Construction Manager for Westfield's Grand Park**, please find the following proposal.

A comprehensive fee of 2.25% of overall construction for both phase 1 and phase 2. **The \$12,000/month staffing cost is eliminated (\$216,000 based upon eighteen months duration).**

Also, all general conditions such as jobsite trailer, insurance, temporary power, port-o-let, phone, and jobsite safety is also **included** in our fee (\$50K). These are costs to the project and are typically reimbursed by the Owner. Our comprehensive fee therefore includes all supervisory staff and field management, as well as all general conditions costs associated with both phase 1 and phase 2.

This based upon the anticipated construction volume of \$30M. Phase one of \$10M, and phase two of approximately \$20M.

**Westfield "Grand Park" Construction Management Proposal
-Amended October 30, 2011**

Proposal One: (This is the original proposal as described on the previous page.)

Phase One: \$10M

Phase Two: Approximately \$20M

Total Project: \$30M (approximate)

Fee: 2.25% of construction costs, with Meyer Najem covering all staff and approximately \$50K of general condition costs (trailer, temporary power to trailer, insurance, etc). Again, this is the same proposal on the previous page.

Changes to our proposed fee structure submitted on 11/2/11

***As we discussed the above fee structure was based on the assumption of only two phases coming in succession, totaling approximately \$30M. Meyer Najem can still hold our 2.25% fee as long as the following occurs, even though the volume of phase 1 and 2 is decreased.*

Given the total of Phase 1 and Phase 2 **is at least \$24M** over a construction duration of not to exceed **18 months**, the 2.25% fee structure as described above will still be valid.

Should the total of construction for Phase 1 and Phase 2 be **less than the \$24M** threshold over a **duration of 18 months**, then the fee structure will increase to 3.25%.

Also, the total duration of the entire Grand Park Project could not exceed 22 months. Should this occur, Meyer Najem reserves the opportunity to increase our fee to cover the additional duration beyond 22 months.

Our recommendation is that we agree to re-evaluate the existing fee structure at the end of the initial twelve (12) months. The timing, funding, and roll-out of phase 2 and 3 is not specifically known at this time, and this will create an opportunity to look at this twelve months from the initial start of phase 1.

Since Meyer Najem has agreed to cover the general conditions cost and staff, the key factors are construction volume over the length of time we are staffing the project, and paying general conditions cost. Typically this information is known prior to the project start. We are hopeful that this flexible fee structure will allow us to move forward knowing that phase 2 and phase 3, as well as the construction duration may change beyond our early assumptions.

Sam Mishelow November 2, 2011

EXHIBIT "C"
Fee Schedule

This fee schedule is consistent with the "purchase price" listed in Section "A" basic terms (d). Purchase price is \$540,000 and is paid over a maximum of eighteen (18) months as noted on the following schedule. Payment 1 should occur in December 2011, and conclude in May 2013 based upon a maximum duration of eighteen months (18), based upon the Contracting Party's payment approval process.

Payment 1	December, 2011	\$30,000	
Payment 2	January, 2012	\$30,000	
Payment 3	February, 2012	\$30,000	
Payment 4	March, 2012	\$30,000	
Payment 5	April, 2012	\$30,000	
Payment 6	May, 2012	\$30,000	
Payment 7	June, 2012	\$30,000	
Payment 8	July, 2012	\$30,000	
Payment 9	August, 2012	\$30,000	
Payment 10	September, 2012	\$30,000	
Payment 11	October, 2012	\$30,000	**Fee schedule review after twelve months per Exhibit "B."
Payment 12	November, 2012	\$30,000	
Payment 13	December, 2012	\$30,000	
Payment 14	January, 2013	\$30,000	
Payment 15	February, 2013	\$30,000	
Payment 16	March, 2013	\$30,000	
Payment 17	April, 2013	\$30,000	
Payment 18	May, 2013	<u>\$30,000</u>	
		\$540,000	

Meyer Najem reserves the opportunity to seek additional fees for service provided beyond the eighteen-month (18) duration, should this be necessary. Correspondingly, should the project conclude prior to the eighteen-month duration, the balance of the unpaid purchase price of \$540,000 would be due upon project completion.

EXHIBIT "D"
Summary of Services

Phase I

- Prepare contractor agreement(s) for City approval and issuance
- Ensure compliance with all public-bidding requirements
- Manage all Phase I work (construction schedule, budget, change orders, etc.)
- Weekly reporting of schedule and budget to City Administration, or as required
- Serve as an advocate for the City of Westfield, representing the City as required
- Maintain strict budget control
- Goals to eliminate cost overruns, minimizing risk for the City of Westfield
- Project site QA/QC oversight
- Maintain all documents in digital form – upload documents to “Spitfire” project management system as needed.

Staffing Proposed:

- Senior Project Manager/Site Manager dedicated in the field to the project.
 - Initially, this would be a part-time person until Phase II begins.

The City will inspect and approve street & city owned infrastructure;

- Inspect construction of all water, sanitary, storm, and street/parking lot/paths infrastructure and sediment and erosion control practices.
- Inspection and oversight of all contractor provided testing of water and sanitary and televising of sanitary and storm systems.
- Will collect all water samples and send them in for Bac-t analysis.
- Provide oversight and direction for needed changes to SWPPP plan.
- Provide reports to Meyer-Najem Site Supervisor to be incorporated into Grand Park weekly report.

Phase II / III

- Provide design assistance in collaboration with Architect/Engineer to create the most cost-effective design that meets the proposed budget.
 - Possible 1% to 2% additional savings after value engineering and document review
- Develop multi-prime bid packages
 - This could eliminate sub-contractor mark-ups saving 4 to 6%
- Assist with final contractor selection and approval as required
- Prepare contractor agreement(s) for City approval and issuance
- Ensure compliance with all public-bidding requirements
- Manage all Phase II / III work (construction schedule, budget, change orders, etc.)
- Weekly reporting of schedule and budget to City Administration, or as required
- Serve as an advocate for the City of Westfield, representing the City as required
- Maintain strict budget control

- Goal to eliminate cost overruns, minimizing risk for the City of Westfield
- Project site QA/QC oversight Maintain all documents in digital form – upload documents to “Spitfire” project management system as needed.

Staffing Proposed:

- Senior Project Manager / Full-time field supervision

The City will inspect and approve street & city owned infrastructure;

- Inspect construction of all streets, parking lots, & paths
- Provide reports to Meyer-Najem Site Supervisor to be incorporated into Grand Park weekly report.

Attachment 1

No Project changes at this time

