

WHITELAND TOWN COUNCIL

RESOLUTION NO. 2021-22

**A RESOLUTION OF THE WHITELAND TOWN COUNCIL APPROVING AN
INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF
GREENWOOD AND THE TOWN OF WHITELAND REGARDING CERTAIN ROAD
IMPROVEMENTS ON SOUTH EMERSON AVENUE**

WHEREAS, Ind. Code § 36-1-3-9(a) provides that municipalities have jurisdiction over the roads within their corporate boundaries and are responsible for the construction, reconstruction, maintenance, and operation of the roads within their respective jurisdictions;

WHEREAS, the City of Greenwood (“City”) and the Town of Whiteland (“Whiteland”) pursuant to Ind. Code §§ 36-7-4-701 and 702 have adopted ordinances regarding subdivision development (hereafter “Ordinance” or “Ordinances”) that specify, among other things, the standards for public ways and improvements within a subdivision and the coordination of those improvements with other public ways;

WHEREAS, the City and Town Ordinances both provide that a developer may be required to construct road improvements necessitated by the impact of the developer’s subdivision on public ways and to dedicate those improvements to the municipality;

WHEREAS, the City approved a primary plat for a single-family subdivision development that requires the developer to construct a passing blister and acceleration and deceleration lanes near the entrance to its subdivision on S. Emerson Avenue within the City’s boundaries and road jurisdiction, which developer will dedicate to the City upon completion (the “Project”);

WHEREAS, a portion of the Project is also located within the corporate boundaries of the Town, and the Town’s Ordinance would have required construction of similar improvements as the Project and the dedication of those improvements to the Town if the subdivision had been developed in the Town;

WHEREAS, pursuant to Ind. Code § 36-1-4-5 and 18, the City may acquire an interest in, and use and exercise its power to use, improve and maintain property within four miles outside its boundaries;

WHEREAS, Ind. Code § 36-1-3-9(c) provides that the City may exercise power to use, improve, and maintain property outside its boundaries and within the boundaries of another municipality only pursuant to an interlocal cooperation agreement under Ind. Code § 36-1-7-1 *et seq.*;

WHEREAS, it is determined that the Project will be of public utility and benefit to the City and the Town, and it is therefore desirable, advantageous, and in the public interest for the City and the Town to enter into an interlocal cooperation agreement to allow the City, through the developer, to undertake and complete, or cause to be undertaken and completed, the Project,

NOW, THEREFORE, BE IT RESOLVED BY THE WHITELAND TOWN COUNCIL,
AS FOLLOWS:

Section 1. The form of the Interlocal Cooperation Agreement ("Agreement") concerning the construction of a portion of road improvements along S. Emerson Avenue located within the Town of Whiteland, between the City of Greenwood and the Town of Whiteland, a copy of which is attached hereto and incorporated herein as Exhibit A, is in all things approved.

Section 2. The Whiteland Town Manager is hereby expressly authorized to enter into said Agreement and to make any reasonable amendments in his discretion that do not increase the Town of Whiteland's duties and obligations, and the Town Manager is expressly authorized to bind the Town to said amendments.

Section 3. A fully-executed Interlocal Agreement shall be recorded in the Office of the Recorder of Johnson County, and two (2) copies of the Interlocal Agreement shall be filed in the office of the Town Clerk of Whiteland, Indiana, and the Common Council directs the Town Clerk to maintain for public inspection two (2) copies of said Agreement in the files of the Town Clerk.

Section 4. The sections, paragraphs, sentences, clauses, phrases and words of this Resolution are separable, and if any word, phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs and sections of this Resolution.

Section 5. This Resolution shall be in full force and effect from and after its passage and approval by the Whiteland Town Council.

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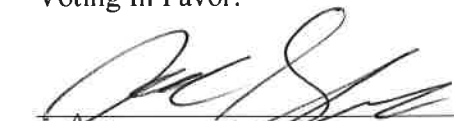
PASSED AND ADOPTED by the Town Council of the Town of Whiteland, Indiana, this
12 day of October, 2021.

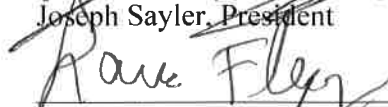
TOWN OF WHITELAND, INDIANA, TOWN COUNCIL

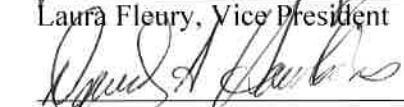



Joseph Sayler, President


Voting In Favor:



Joseph Sayler, President


Laura Fleury, Vice President


David Hawkins


Brad Goedeker


Richard Hill

Voting Opposed:

Joseph Sayler, President

Laura Fleury, Vice President

David Hawkins

Brad Goedeker

Richard Hill

Attest: 

Debra L. Hendrickson, Clerk-Treasurer

Approved as to form:

Lynnette Gray Esq.
Acting Town Counsel

Exhibit A
Form of the Interlocal Cooperation Agreement

[See attached]

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
THE CITY OF GREENWOOD, INDIANA
AND THE TOWN OF WHITELAND, INDIANA
(S. Emerson Avenue Road Improvements)**

This Interlocal Cooperation Agreement (“Agreement”) is entered into by and between the City of Greenwood, Indiana (“City”) and the Town of Whiteland, Indiana (“Town”), related to road improvements on S. Emerson Avenue.

RECITALS

WHEREAS, Ind. Code §§ 36-7-4-701 and 702 provides that a municipality may adopt a subdivision control ordinance specifying, among other things, the standards for public ways and improvements within a subdivision, and the coordination of those improvements with current public ways;

WHEREAS, pursuant to Ind. Code § 36-1-3-9(a), the City and the Town have jurisdiction over the roads within their corporate boundaries, and therefore, each is responsible for the construction, reconstruction, maintenance, and operation of the roads within their respective jurisdictions;

WHEREAS, the City adopted Ordinance No. 20-29, the Unified Development Ordinance, which includes subdivision control standards, and the Greenwood Advisory Plan Commission approved the primary plat submitted by Lennar Development (“Developer”) for Elmwood Estates Section One Subdivision (“Subdivision”) pursuant to the Ordinance;

WHEREAS, the Town adopted a Subdivision Control Ordinance, Ordinance No. 2014-03, including standards for public ways and improvements within subdivisions and coordination of improvements with existing public ways;

WHEREAS, as part of City’s approval of the Subdivision primary plat Developer is required to construct a passing blister along the west side of S. Emerson Avenue across from the Subdivision entrance and a deceleration lane along the east side of S. Emerson Avenue leading to the Subdivision entrance, as shown on Exhibit A attached hereto;

WHEREAS, Developer shall acquire necessary right-of-way, undertake the road construction activities to install the passing blister, the deceleration lane, and dedicate the right-of-way and the road improvements to the City (“Project”);

WHEREAS, portions of S. Emerson Avenue are located within the corporate boundaries of the City and the Town, and as part of the Project, improvements to S. Emerson Avenue must be made within the corporate boundaries of the Town;

WHEREAS, the City and Town, individually and collectively, have determined that the Town Subdivision Control Ordinance would have required similar improvements to S. Emerson Avenue had the Subdivision been developed in the Town;

WHEREAS, pursuant to Ind. Code §§ 36-1-4-5 and 18, City may acquire an interest in, use and exercise its power to use, improve and maintain property within four miles outside its boundaries;

WHEREAS, Ind. Code § 36-1-3-9(c) provides that City may exercise its power to use, improve, and maintain property outside its boundaries and within the boundaries of another municipality only pursuant to an interlocal cooperation agreement under Ind. Code § 36-1-7-1 *et seq.*;

WHEREAS, it is determined that the Project will be of public utility and benefit to the City and the Town, and it is therefore desirable, advantageous, and in the public interest for the City and Town to enter into an interlocal cooperation agreement to allow City, through Developer, to undertake and complete, or cause to be undertaken and completed, the Project;

WHEREAS, accordingly, the City and Town desire to enter into this Agreement pursuant to the authority of Ind. Code §§ 36-1-3-9(c) and 36-1-7-2 to allow City to acquire right-of-way by dedication, to manage and maintain such right-of-way, and to cause to be conducted construction activities within the boundaries of Town as necessary for completion of the Project and the continued operation of S. Emerson Avenue.

NOW THEREFORE, in consideration of the foregoing premises and the terms and conditions contained herein, City and Town agree as follows:

1. Representations. Each party represents to the other party that:

- (a) It will submit this Agreement to the party's fiscal body for approval as required by Ind. Code § 36-1-7-4;
- (b) Subject to approval by the party's fiscal body, it has all requisite power, authority and legal right to enter into and carry out the obligations set forth in this Agreement;
- (c) Subject to approval by the party's fiscal body, it will execute the Agreement by an authorized representative, upon which execution this Agreement will constitute a valid, legally binding obligation of the party, enforceable by its terms, and the party estopped from making a claim based upon the unenforceability of this Agreement.

2. Obligations of City of Greenwood. City shall be the lead agency on the Project and shall have the following obligations hereunder:

- (a) Appoint a representative to act as liaison with Town.

- (b) Submit to the Town liaison the Developer's design and construction plans and specifications for the Project for Town's review, and to cooperate with Town with regard to any comments it may have regarding the plans and specifications.
- (c) Perform all activities necessary to cause construction of the Project, including but not limited to ensuring that the Developer complies with construction requirements of the City (to include design, engineering, environmental due diligence, testing and remediation, utility relocations, construction, and construction inspections,) including those portions of the Project within the boundaries of Town, at City's sole cost and expense.
- (d) Acquire all right-of-way required to construct the Project, including within the boundaries of Town, through dedication by the Developer or by whatever means it deems necessary and appropriate, including the exercise of eminent domain, at City's sole cost and expense. Any such property interests acquired by City shall be held in City's name.
- (e) Maintain the Project improvements, at its sole cost and expense.
- (f) Regulate, by ordinance, rule, regulation or other legal means, all uses of the right-of-way acquired for the Project, including within the boundaries of Town.
- (g) Within ___ days of full approval and execution of this Agreement, record this Agreement in the Office of the Johnson County Recorder as required by Ind. Code § 36-1-7-6.
- (h) Within sixty (60) days of the Effective Date of this Agreement (as defined in Section 6, below), file a copy of this Agreement with the Indiana State Board of Accounts as required by Ind. Code § 36-1-7-6.

3. Obligations of Town of Whiteland. The Town of Whiteland shall have the following obligations hereunder:

- (a) Appoint a representative to act as liaison with City.
- (b) Cooperate with City in the review of the Developer's design and construction plans and specifications for the Project. Town shall respond with its comments on the plans and specifications within 21 days of submittal by City.
- (c) Consent to the acquisition of right-of-way by City as required to construct the Project within the boundaries of Town. Town, by entering into this Agreement, does hereby acknowledge and consent to the acquisition of such right-of-way by City.
- (d) Cooperate with City and its contractor(s) in obtaining any required permits for the Project.

- (e) Consent to the regulation of uses of the right-of-way acquired for the Project within the boundaries of Town by City. Town, by entering into this Agreement, does hereby acknowledge and consents to City regulating the use of such right-of-way through ordinances, rules, regulations or other legal means.

Notwithstanding any provision in this Agreement to the contrary, Town shall not be financially responsible for any cost associated with the Project, its only cost being those costs necessary to comply with its obligations under this Agreement.

4. No Joint Undertaking. The Parties hereby acknowledge and agree that the purpose and intent of this Agreement is not to undertake the joint exercise of power within the meaning of Ind. Code § 36-1-7-2(a), and, therefore, this Agreement need not address other matters related to the financing, staffing, budget, administration through a joint board or separate legal entity, or the manner of acquiring, holding and disposing of real and personal property of a joint undertaking. There will be no jointly held property under this Agreement.

5. Dispute Resolution. Any disputes that may arise under this Agreement shall be resolved by the parties' respective executive officers, or their designees. Failing resolution by the executive officers, either party may institute suit in a court of law as provided for in Section 12 hereof.

6. Effective Date. This Agreement shall be effective upon the latest date of: (i) adoption of appropriate resolutions or ordinances approving this Agreement by the fiscal body of each party; (ii) execution by the parties; or (iii) recordation of this Agreement with the Recorder of Johnson County.

7. Term.

- (a) This Agreement shall be in effect until the later of: (i) completion of the Project; or (ii) _____ (____) years from the Effective Date; unless this Agreement has been otherwise terminated or the term hereof extended by written agreement of the parties. If the Project is not finally completed within the above-stated _____ (____) year period, the parties will cooperate to extend the term hereof.

- (b) Section 7 (a) notwithstanding, the following Sections shall survive termination or expiration of this Agreement, unless otherwise specifically terminated by written agreement of the parties:

- i. Section 2.(h) (maintenance of the Project improvements);
- ii. Section 2. (i) (City regulation of right-of-way)
- iii. Section 3.(e) (Town's consent to regulation of right-of-way);
- iv. Section 5. (dispute resolution)
- v. Section 9.(a). (indemnification of Town); and
- vi. Section 12 (applicable law, suit).

8. Notice.

- (a) With regard to routine communications concerning the Project and communications regarding review of Project plans and specifications under Sections 2.b and 3.b., the parties' respective authorized representatives, _____ and Kevin McGinnis, may communicate directly by whatever means they deem most efficient and effective.
- (b) Any other type of formal notice required to be provided under this Agreement shall be sent by internationally recognized overnight courier, certified mail, or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To City of Greenwood:

To Town of Whiteland:
c/o Town Manager
549 N. Main St.
Whiteland, IN 46184

With copy to:

City of Greenwood Legal Dept.
300 S. Madison Avenue
Greenwood, IN 46142

Lynnette Gray
63 E. Court Street
Franklin, IN 46131

9. Indemnification. City agrees to indemnify and hold harmless Town and its officers, employees and agents, from and against claims, including reasonable attorneys' fees, which result or arise from any negligent acts or omissions of City or those for whom City is responsible, including its officers, employees and agents, arising from or connected with the performance of any of the duties or responsibilities of City under this Agreement; provided that, the City's liability shall be limited to its insurance coverage. City shall purchase and maintain commercial general liability insurance for protection from claims related to the project in an amount not less than Two Million Dollars (\$2,000,000.00) and Town shall be named as an additional insured on City's insurance. City shall file with Town a certificate of such insurance, acceptable to Town, and the certificate shall contain a provision that the coverage afforded under the policy will not be canceled or materially changed. The Town shall cooperate with City's insurance carrier in defense of any claims governed by this Indemnification provision.

10. Modification. The parties may alter, change or amend the terms and conditions of this Agreement only by mutual written agreement approved by the fiscal body of each party.

11. Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties with respect to its subject matter, supersedes any prior discussions, negotiations, and understandings between them, and cannot be altered, changed or amended except as provided in Section 10 hereof. The parties acknowledge that neither City or Town, nor any of

their respective officers, employees, or agents have made any representations relied upon by any other party other than the agreements contained herein.

12. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Indiana. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency. Suit, if any, shall be brought in Johnson County, Indiana.

13. Interpretation. The parties hereby acknowledge and agree that this Agreement is the result of negotiations between the parties and their respective legal counsel, and no party shall be deemed to be the drafter of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against either party.

14. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates specified below.

CITY OF GREENWOOD, INDIANA

By: _____
Mark W. Myers, Mayor

Date: _____

As Approved and Authorized by the City of Greenwood Board of Public Works and Safety at a public meeting on _____

Approved by the Greenwood Common Council by resolution adopted _____, 2021.

ATTEST:

APPROVED AS TO LEGAL FORM:

By: _____
Jeannine Myers, City Clerk

By: _____
Shawna Koons, City Attorney

STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Before me, the undersigned Notary Public in and for said County and State, personally appeared Mark W. Myers, the Mayor of the City of Greenwood, Indiana, and Jeannine Myers, Clerk of the City of Greenwood, Indiana, who acknowledged the execution of the foregoing Interlocal Cooperation Agreement for and on behalf of the City of Greenwood, Indiana.

Witness my hand and Notarial Seal this ____ day of _____, 20__.

Commission Expiration Date

Notary Public Signature

County of Residence

Printed Name

TOWN OF WHITELAND, INDIANA

By: *Kevin McGinnis*
Town Manager
Kevin McGinnis
Town of Whiteland

Date: 10/13/21

As Approved and Authorized by _____ at a public meeting on _____.

Approved by the Whiteland Town Council by resolution adopted October, 12, 2021.

ATTEST:

APPROVED AS TO LEGAL FORM:

By: *Debra L. Hendrickson*
Debra L. Hendrickson
Whiteland Town Clerk-Treasurer

By: _____
Lynnette Gray
Acting Town Counsel

STATE OF INDIANA)
) SS:
COUNTY OF JOHNSON)

Before me, the undersigned Notary Public in and for said County and State, personally appeared Kevin McGinnis, the Town Manager of the Town of Whiteland, Indiana, and _____ of the Town of Whiteland, Indiana, who acknowledged the execution of the foregoing Interlocal Cooperation Agreement for and on behalf of the Town of Whiteland, Indiana.

Witness my hand and Notarial Seal this 12 day of October, 2021.

October 20, 2028
Commission Expiration Date

Jacquelyn M Withem
Notary Public Signature

Johnson
County of Residence

Jacquelyn M Withem
Printed Name

This document was prepared by Shawna Koons, Greenwood City Attorney, and Lynnette Gray, counsel for Town of Whiteland.

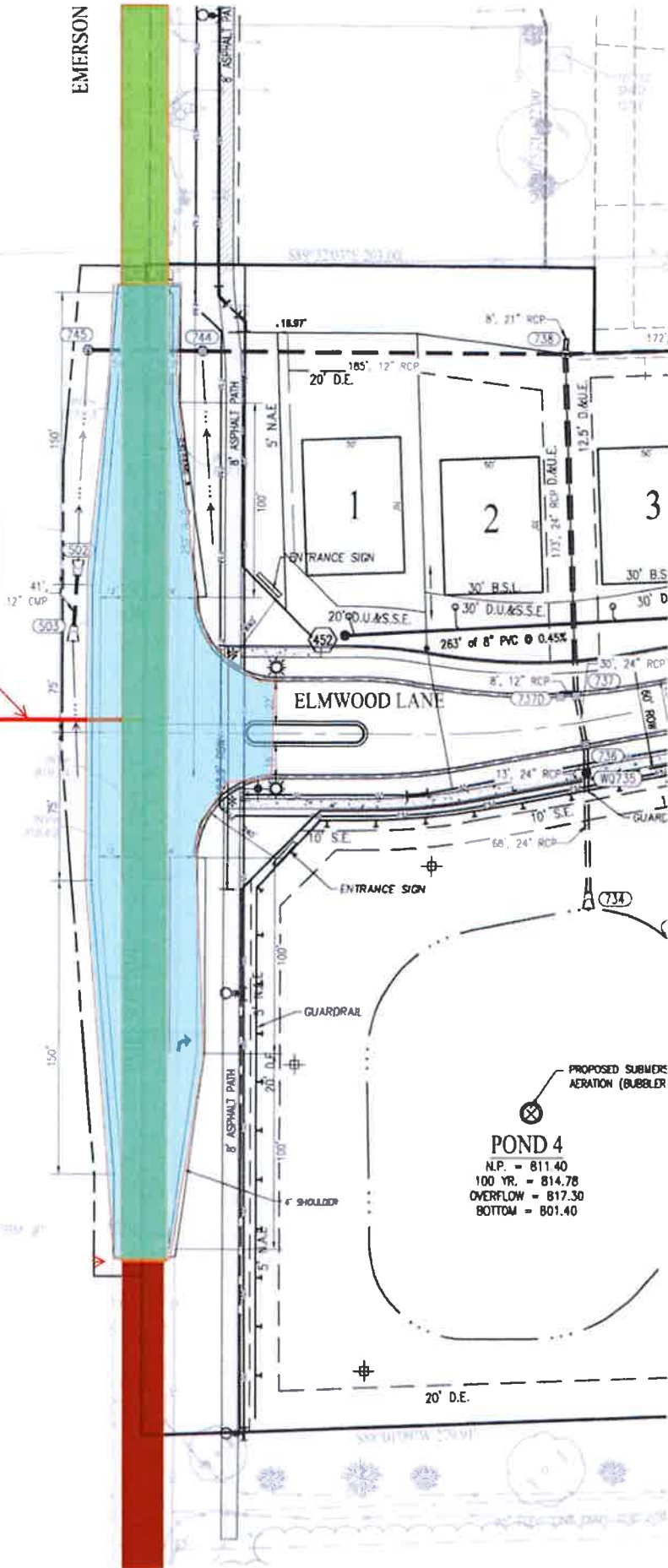
We affirm, under the penalties or perjury, that we have taken reasonable care to redact each Social Security Number in this document, unless required by law. /s/ Shawna Koons and /s/ Lynnette Gray.



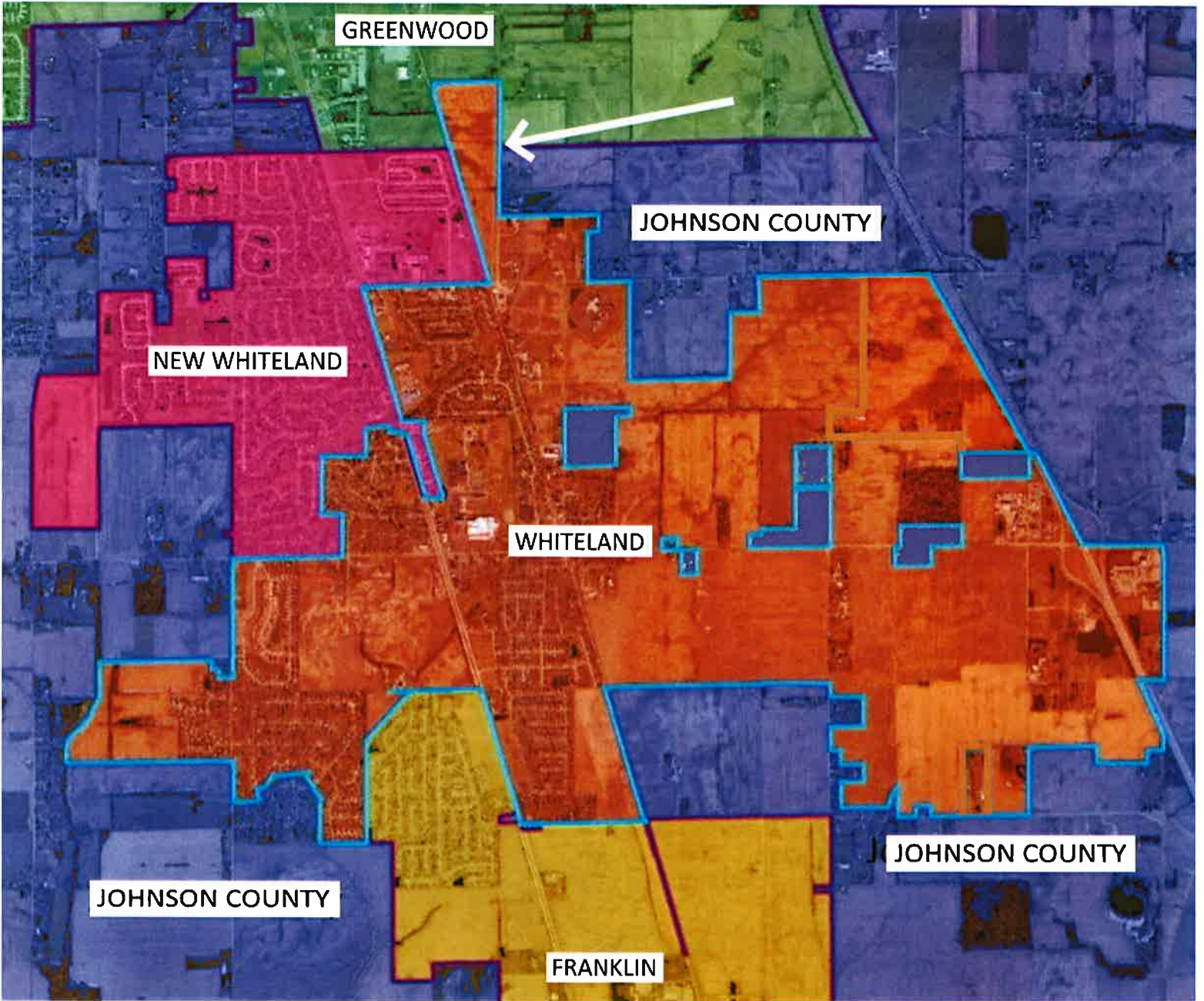
EMERSON

Approximate Greenwood City Limit line

GREENWOOD
WHITELAND



POND 4
N.P. = 811.40
100 YR. = 814.78
OVERFLOW = 817.30
BOTTOM = 801.40



GREENWOOD

JOHNSON COUNTY

NEW WHITELAND

WHITELAND

JOHNSON COUNTY

JOHNSON COUNTY

FRANKLIN