

**BOARD OF PUBLIC WORKS AND SAFETY  
CITY OF NOBLESVILLE**

DATE:           MAY 30, 2017          

PREVIOUSLY DISCUSSED ITEMS   

NEW ITEMS FOR DISCUSSION   XXX  

MISCELLANEOUS                           

ITEM#           #2          

SOURCE:

DOCUMENTS PREPARED BY:   MICHAEL HOWARD  

VERBAL:   

INFORMATION ATTACHED:   XXX  

NO PAPERWORK AT TIME OF PACKETS:   

BRING PAPERWORK FROM PREVIOUS COUNCIL MEETING:

COVENANT NOT TO APPEAL PROPERTY TAX ASSESSMENTS

Document Cross Reference Number \_\_\_\_\_

THIS COVENANT (“the Covenant”) entered into and effective on the dates set out below, by and among BorgWarner, Inc. (“the Company”); GLC Noblesville - Olio, LLC (“the Lessor”); the City of Noblesville, by and through its Board of Public Works and Safety of the City of Noblesville, Hamilton County, Indiana, (“the City”).

WITNESS THAT:

WHEREAS, the Noblesville Redevelopment Commission is in the process of establishing the Bergen-Tegler Economic Development Area (“the Area”) located within, and contiguous to, the City, which includes as part of its allocation area the Real Estate described in the attached Exhibit A; also known as Hamilton County Tax Parcel No. 13-11-24-00-00-032.000; and generally shown as the “BorgWarner Real Estate” on Exhibit B (“the Real Estate”); and,

WHEREAS, the Company, the Lessor, the City, the Noblesville Economic Development Commission, and the Noblesville Redevelopment Commission have entered into a Development Agreement dated as of the 9<sup>th</sup> day of May, 2017, (“the Development Agreement”), regarding the development of the Real Estate located within the Area to be used for the construction of a new

one hundred thousand (100,000) square foot technology center (“the BorgWarner Building”) at an anticipated cost of Fifteen Million Dollars (\$15,000,000) and Company’s purchase of new Depreciable Personal Property within five (5) years to be installed in the BorgWarner Building at an estimated cost of Thirteen Million Dollars (\$13,000,000); and,

WHEREAS, the Development Agreement provides for the City, or the Noblesville Economic Development Commission, acting on the City’s behalf, to reimburse the Company, the Lessor, or their designee part of the costs of the BorgWarner Building (“the Reimbursement Payments”); and,

WHEREAS, the proceeds of the City’s Bonds will partially be used to fund the Reimbursement Payments to the Company or the Lessor as described in the Development Agreement; and,

WHEREAS, the tax increment generated from the BorgWarner Real Estate and the tax increment from the Depreciable Personal Property installed in the BorgWarner Building, will be used by the City to pay part of debt service on the Bonds issued by the City; and,

WHEREAS, the Development Agreement provides for the execution and recording of this Covenant contemporaneously with the conveyance of the BorgWarner Real Estate to the Company, the Lessor, or their designee; and,

WHEREAS, the City Council by its Development Agreement, adopted on May 9, 2017, resolved to use tax increment generated from the BorgWarner Project, to pay part of the City’s debt service payments for the Bonds to be issued by the City; and,

WHEREAS, in partial consideration of the agreement of the City to pay Reimbursement Payments for part of the costs of construction of the BorgWarner Building, the Company and the Lessor have agreed to enter into this Covenant; and,

WHEREAS, the Parties agree this Covenant shall be binding upon the Company, the Lessor, their respective designees, mortgagees, and/or successors in title to the BorgWarner Real Estate; and,

WHEREAS, the Covenant of the Company is permitted by Indiana law to be a commitment which runs with the real estate.

IT IS THEREFORE AGREED by and between the Parties as follows:

SECTION I. DEFINITIONS.

The following definitions apply to this Covenant:

a. “Company” means BorgWarner, Inc., and/or any related partnership, or corporation, or other entity which may be created or designated by the Company to construct the BorgWarner Project; to acquire title to the BorgWarner Real Estate on behalf of the Company; or to lease the BorgWarner Real Estate and improvements comprising the Borg Warner Project.

b. “BorgWarner Commitments” means the representations made by the Company in the Development Agreement to induce the City to enter into the Development Agreement, including the investment in the BorgWarner Building; the purchase and installation of the Depreciable Personal Property; and creation of jobs within the City.

c. “BorgWarner Project” means the construction of the BorgWarner Building; all site development of the BorgWarner Real Estate; the acquisition and installation of Depreciable

Personal Property at an approximate cost of Thirteen Million Dollars (\$13,000,000) within five (5) years of initial occupancy of the BorgWarner Building; the transfer of over three hundred (300) jobs into the City; and creation of over twenty (20) additional jobs within five (5) years; all to be located near the intersections of 141<sup>st</sup> and Olio Road within the City.

d. “BorgWarner Real Estate” means the rectangular, ten (10) acres parcel of land near the intersection of Olio Road and 141<sup>st</sup> Street as described in Exhibit A and shown on Exhibit B.

e. “Depreciable Personal Property” means personal property to be located or installed at the BorgWarner Building, which includes manufacturing equipment as defined in Indiana Code 6-1.1-12.1-1(3); research and development equipment as described in Indiana Code 6-1.1-12.1-1(12); logistical distribution equipment as described in Indiana Code 6-1.1-12.1-1(13); and new information and technology equipment as described in Indiana Code 6-1.1-12.1-1(14).

f. “Lessor” means GLC Noblesville - Olio, LLC and its successors and assigns, which shall acquire title to the BorgWarner Real Estate, construct the BorgWarner Building, and lease the BorgWarner Real Estate and improvements thereon to the Company, its successor, or designee.

g. “Parties” means the Company, the Lessor, and all future successors or assigns in title to the BorgWarner Real Estate or the BorgWarner Project; the City of Noblesville; the Noblesville Economic Development Commission; and the Noblesville Redevelopment Commission, as their interests are set out in the Development Agreement and this Covenant.

h. “Real Estate Taxes” means all real property taxes assessed and payable against the BorgWarner Real Estate and improvements located thereon.

i. “The Statute” means Indiana Code 36-7-25-6, as of July 1, 2016. If the Statute is amended or repealed during the term of the Development Agreement, the rights and duties of the Company, the City, and the Redevelopment Commission shall be construed consistent with the terms of the Statute on July 1, 2016, which reads as follows:

IC 36-7-25-6

Subject to section 6.5 of this chapter, a commission may enter into an agreement with a taxpayer in an allocation area that limits the taxpayer’s rights to challenge the taxpayer’s assessment or property taxes or that guarantees, enhances, or otherwise further secures bonds or lease obligations of the commission. The obligation to make payments under a taxpayer agreement that guarantee, enhance, or otherwise further secure bonds or lease obligations of the commission under this section shall be treated in the same manner as property taxes for purposes of IC 6-1.1-22-13, if, and to the extent that, the taxpayer agreement provides for a property tax lien.

SECTION II. CONSIDERATION.

The Company, the Lessor, and the City, acting through its Economic Development Commission, and Redevelopment Commission, agree to perform all of the acts described in the Development Agreement and agree the mutual covenants and commitments contained in the Development Agreement are full and adequate consideration for the Company’s and the Lessor’s agreement to the terms contained in this Covenant.

SECTION III. TERM OF THIS COVENANT NOT TO APPEAL.

This Covenant shall be binding upon the Company, the Lessor, its mortgage holders, lien holders, and successors in title to the BorgWarner Real Estate. The Lessor and Company each agree and covenant that for the period beginning with the 2019 assessment for taxes payable in

2020 through taxes assessed in 2034 payable in 2035, that none of the above entities shall file any appeal of real property tax assessment or Depreciable Personal Property assessment review, or other challenge of the property tax assessments made for the BorgWarner Real Estate or the Depreciable Personal Property installed and located therein unless:

- a. The assessment for the land and improvements on the BorgWarner Real Estate is in excess of the cost of the land and improvements; or,
- b. A trending assessment or reassessment increases the assessment for the BorgWarner Real Estate by more than five percent (5%) for any year-to-year change or more than an average of ten percent (10%) per year over two or more years;

in which case the appeal shall not reduce the assessed values below the amount described in (a) and (b) above. Notwithstanding the foregoing, Lessor shall not be restricted by the foregoing covenant if and in the event Company's leasehold interest in the BorgWarner Project ceases due to a default by Company under its lease and/or Company elects to terminate the lease upon the 12<sup>th</sup> lease year and Company is no longer in possession of the BorgWarner Real Estate (the "Lessor Exception").

For the assessment of the Depreciable Personal Property, the Company agrees not to appeal the assessed value for: a) used Depreciable Personal Property installed in the BorgWarner Building; or b) the first Thirteen Million Dollars (\$13,000,000) of new Depreciable Personal Property located in the BorgWarner Building. This provision shall not apply to an assessed value in excess of the cost of said personal property, less accumulated depreciation.

Except for a Lessor Exception applicable to Lessor, only, this Covenant shall remain in full force and effect and apply to the assessment of Real Estate Taxes and Depreciable Personal Property taxes through the tax year being assessed on January 1, 2034, and payable through November 1, 2035. Beginning with the assessment on January 1, 2035, for taxes payable in 2036, the terms of this Covenant shall terminate and the BorgWarner Real Estate and Depreciable Personal Property shall be assessed, and may be appealed, pursuant to Indiana law.

#### SECTION IV. DEFAULT.

In the event the Company or the Lessor files an appeal of the assessment of the BorgWarner Real Estate or Depreciable Personal Property in violation of this Covenant, the City may file a recorded copy of this Covenant with the Hamilton County Assessor, in which event, the Company, the Lessor and their respective successors in title consent to the Hamilton County Assessor denying the appeal and assessing any property described in this Covenant at the values described in Section III.

Other events of default are:

- a. The failure to pay or caused to be paid any property taxes assessed against the BorgWarner Real Estate or the Depreciable Personal Property.
- b. The foreclosure of any lien against the BorgWarner Real Estate or the Depreciable Personal Property.
- c. The initiation of any bankruptcy petition against the Company, its Lessor, and/or successors, assigns or affiliates which have title to the BorgWarner Real Estate or the BorgWarner Project, or any other action seeking appointment of receiver or other allegation of insolvency against the owner of the BorgWarner Real Estate or the Company.



Upon occurrence of any of the above events of default, the City, the Economic Development Commission, and/or the Redevelopment Commission, may immediately take any and all acts to protect the City's interests, including perfecting a lien against the BorgWarner Real Estate for the amount of unpaid property tax payments, penalties, reasonable attorneys fees and costs of collection as authorized by Indiana Code 6-1.1-22-13(d). For purposes of this Section, an event of a failure to timely pay, or caused to be paid any property tax, no event of default will be deemed to have occurred if the late payment, including penalties, is made within sixty (60) days of the due date. This Covenant shall remain in full force and effect through taxes assessed January 1, 2034, as provided by Section III above.

#### SECTION V. BINDING EFFECT.

The rights, duties, and obligations of the Company and the Lessor shall be binding against each of them, and any successors in title to the BorgWarner Real Estate and the Depreciable Personal Property installed in the BorgWarner Building.

#### SECTION VI. MISCELLANEOUS TERMS.

a. Severability. The invalidity or unenforceability of any term, provision, clause or portion thereof, of this Agreement shall in no way impair or affect the validity or enforceability of any other provision in this Agreement.

b. Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of any provision or a waiver of the provision itself for any other provision.

c. Presumption. This Covenant or any section thereof shall not be construed against either party due to the fact that said Covenant or any section thereof was drafted by said party.

d. Governing Law and Venue. This Covenant shall be construed according to the laws of the State of Indiana. Any legal Action concerning this Covenant, in law or equity, shall be brought in the exclusive jurisdiction and venue of Hamilton County, Indiana.

e. Entire Covenant. This Covenant and the Development Agreement contain the entire understanding between and among the Parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Covenant. No modification of this Covenant is enforceable unless in writing and signed by both Parties.

#### SECTION VII. NOTICES.

All notices, certificates, approvals, consents or other communications desired or required to be given under this Covenant shall be in writing and shall be sufficiently given on the day of personal delivery by messenger or courier service, or on the second business day following the day on which the same shall have been mailed by registered or certified mail, postage and fees prepaid, return receipt requested addressed as follows. The Parties shall notify the other of any change of address within thirty (30) days.

If to the City:

City of Noblesville, Indiana  
c/o Mayor  
16 South 10<sup>th</sup> Street  
Noblesville, IN 46060

With copies to:

Michael A. Howard, Esq.  
Attorney at Law  
694 Logan Street  
Noblesville, IN 46060

and

City of Noblesville, Indiana  
c/o Controller  
16 South 10<sup>th</sup> Street  
Noblesville, IN 46060

If to the Company prior to Building Construction:

BORGWARNER INC.  
600 Corporation Drive  
Pendleton, IN 46064  
Attn: Jerry Anway

If to the Company following Building Construction:

BORGWARNER INC.  
13975 BorgWarner Drive  
Noblesville, IN 46060  
Attn: Jerry Anway

With a copy to:

BORGWARNER INC.  
3850 Hamlin Road  
Auburn Hills, MI 48326  
Attn: Legal Department

If to the Lessor:

GLC Noblesville-Olio, LLC  
112 West Jefferson Blvd., Suite 200  
South Bend, Indiana 46601  
Attn: Ryan C. Rans

SECTION VIII. BINDING UPON SUCCESSORS.

All covenants and agreements herein contained shall inure to and be binding upon the Parties and all successors in title, lessees, assignees, and lien holders to the BorgWarner Real Estate and the BorgWarner Building.

SECTION X. AUTHORITY.

The Company and its Lessor represents and warrants that the approval of this Covenant has been duly authorized by the appropriate action of the Board of Directors or the other duly authorized representatives of the entities owing and/or leasing the BorgWarner Real Estate and the Depreciable Personal Property.

ALL OF WHICH IS AGREED by BorgWarner, Inc.; GLC Noblesville-Olio, LLC; and the City of Noblesville on the date set below.

“COMPANY”

BorgWarner, Inc.

Dated: \_\_\_\_\_

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

Charles H. Polzin, Vice President,  
Deputy General Counsel and  
Assistant Secretary

STATE OF MICHIGAN     )  
  )SS:  
COUNTY OF                    )

Subscribed and sworn to before me, a Notary Public, this \_\_\_\_ day of May, 2017, personally appeared the within named Charles H. Polzin, Vice President, Deputy General Counsel and Assistant Secretary of BorgWarner, Inc., and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public,  
Residing in \_\_\_\_\_ County, Michigan

“LESSOR”

GLC Noblesville-Olio, LLC

Dated: \_\_\_\_\_

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

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

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

ATTEST:

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

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

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

STATE OF INDIANA        )  
  )SS:  
COUNTY OF                )

Subscribed and sworn to before me, a Notary Public, this \_\_\_\_ day of May, 2017, personally appeared the within named \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_ of GLC Noblesville-Olio, LLC, and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public,  
Residing in \_\_\_\_\_ County, Indiana

ALL OF WHICH IS AGREED by the Board of Public Works and Safety of the City of  
Noblesville, Indiana, this \_\_\_\_ day of May, 2017.

BOARD OF PUBLIC WORKS AND  
SAFETY OF THE CITY OF  
NOBLESVILLE

---

John Ditslear, Member

---

Lawrence Stork, Member

---

Jack Martin, Member

ATTEST:

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Evelyn L. Lees, Clerk  
City of Noblesville, Indiana

STATE OF INDIANA            )  
  )SS:  
COUNTY OF HAMILTON    )

Subscribed and sworn to before me, a Notary Public this \_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared the within named John Ditslear, Lawrence Stork, and Jack Martin as members of the Board of Public Works and Safety of the City of Noblesville and Evelyn L. Lees, Clerk for the City of Noblesville and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public,  
Residing in \_\_\_\_\_ County, IN

My Commission Expires:

\_\_\_\_\_

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each social security number in the document.

Michael A. Howard

This instrument prepared by: Michael A. Howard, HOWARD & ASSOCIATES, 694 Logan Street, Noblesville, Indiana 46060, (317) 773-4212.

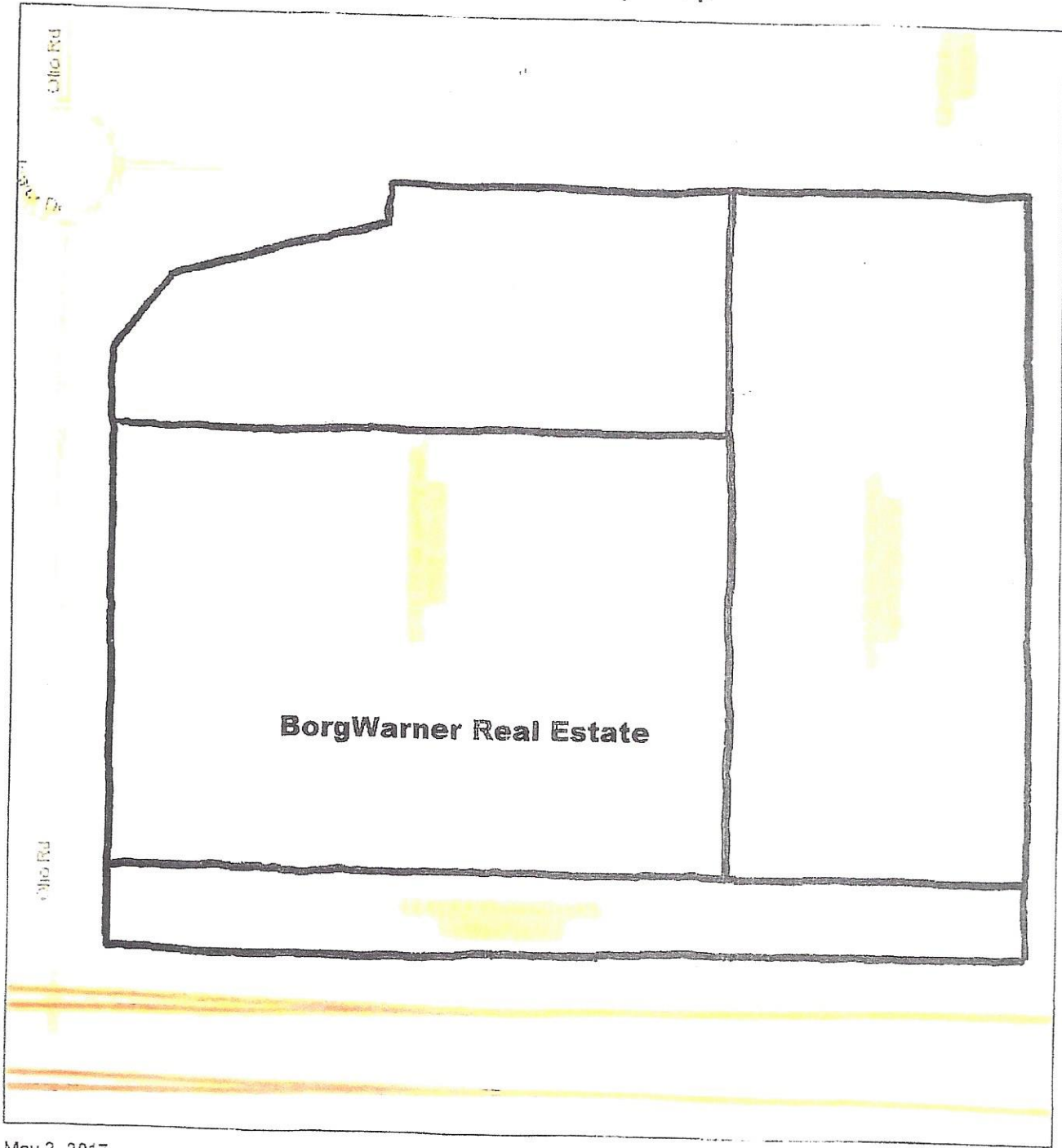


10.5 Acre Parcel Land Description

A part of the West Half of the Southwest Quarter of Section 24, Township 18 North, Range 5 East, Hamilton County, Indiana, being more particularly described as follows:

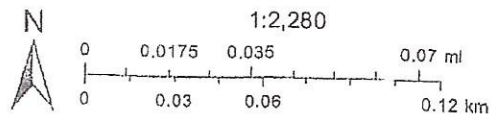
Commencing at the Northeast Corner of said West Half; thence North 89 degrees 52 minutes 36 seconds East along the North line thereof a distance of 447.29 feet; thence South 00 degrees 00 minutes 59 seconds East a distance of 60.00 feet to the South line of 141 st Street; thence South 89 degrees 52 minutes 36 seconds West along the South line thereof a distance of 224.75 feet; thence South 58 degrees 53 minutes 16 seconds West along the Southwesterly line of thereof a distance of 116.53 feet; thence South 21 degrees 58 minutes 27 seconds West continuing along the Southwesterly line thereof a distance of 139.52 feet to the East line of Ohio Road, as described in a deed to the City of Noblesville and recorded as Instrument Number 2009-40286; thence South 00 degrees 07 minutes 02 seconds East along the East line thereof a distance of 162.50 feet to the Point of Beginning; thence continuing South 00 degrees 07 minutes 02 seconds East along the East line thereof a distance of 547.09 feet to the South line of property as described in Instrument Number 2012-81000 in the Office of the Recorder of Hamilton County, Indiana; thence North 89 degrees 52 minutes 36 seconds East along the South line thereof a distance of 838.16 feet to the East line thereof; thence North 00 degrees 16 minutes 17 seconds West along the East line thereof a distance of 545.15 feet; thence North 89 degrees 59 minutes 27 seconds West a distance of 836.70 feet to the Point of Beginning, containing 10.5 acres, more or less.

# Hamilton County Map



May 3, 2017

- Parcels
- Parcel Labels
- Bridges



Basemap information here