



CITY OF WESTFIELD, IN
Board of Public Works Meeting Agenda_10_23_2019

Wednesday, October 23, 2019 at 01:00 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Wednesday, October 23, 2019 at 01:00 PM

MEETING PLACE: Westfield Public Works- Large Conference Room

THE FOLLOWING AGENDA IS SUBJECT TO CHANGE AT THE DISCRETION OF THE BOARD OF PUBLIC WORKS AND SAFETY

AGENDA ITEMS

Meeting Minutes Consideration for Approval

Action Item #1: Minutes - September 25, 2019

Documents: [September 25, 2019 Minutes](#)

Contracts/Agreements

Action Item #2:

161st Street & Oak Road Roundabout - City of Westfield & INDOT - Local Public Agency Contract

Documents: [161st St & Oak Road RAB LPA](#)

Action Item #3:

161st Street & Union Street Roundabout - City of Westfield & INDOT Local Public Agency Contract

Documents: [161st Street & Union RAB LPA](#)

Action Item #4:

City of Westfield - US 31 Corridor - Invasive Species Management - Year 2020 Maintenance Services

Documents: [Williams Creek Invasive Species Management](#)

Action Item #5:

City of Westfield - Woodmont Land Company - Road Impact Fee Installment Agreement

Documents: [Chatham Commons Blvd. Agreement](#)

Action Item #6:

City of Westfield - Midland Atlantic Development Company & Edgerock Development -

Road Impact Fee Credit Agreement

Documents: [Road Impact Fee Credit Agreement](#)

Action Item #7:

196th Street & Grassy Branch Improvements - Signing Authority

Documents: [Signing Authority](#)

Action Item #8:

Monon Trail Under 161st Street Professional Engineering Services Contract

Documents: [Monon Trail Under 161st Proposal](#)

Action Item #9:

Westfield Boulevard Connector Professional Engineering Supplement #3

Documents: [Supplemental #3 - Westfield Blvd. Connector](#)

Action Item #10:

City of Westfield & Shelby Gravel - Second Development Agreement

Documents: [Shelby Gravel 2nd Dev Agreement](#)

Memorandum of Understanding (MOU)

NONE

Bid Approval

NONE

Change Orders

Action Item #11:

151st & Towne Road Intersection Improvement Project - Change Order #1

Documents: [Change Order #1 - 151st & Towne Road](#)

Permit Approval

Action Item #12:

Encroachment Permit Application - Frontier Communications, 161st Street Between Springmill & Ditch Roads

Documents: [Encroachment Application](#)

Action Item #13:

Encroachment Permit Application - Duke Energy - 1839 W. 166th Street

Documents: [Duke Energy Encroachment Permit Application](#)

Consent Agenda

Quit Claim Deed - City of Westfield & Dahm No. 49, LLC

Documents: [COW & Dahm Quit Claim Deed](#)

Quit Claim Deed - City of Westfield & West 32, LLC

Documents: [COW & West 32 Quit Claim Deed](#)

Quit Claim Deed - City of Westfield & Edgerock Development

Documents: [COW & Edgerock Dev Quit Claim Deed](#)

Quit Claim Deed - City of Westfield & ZPS Westfield, LLC

Documents: [COW & ZPS Westfield Quit Claim Deed](#)

**Burger King at Monon Crossing Road Impact Fee Payment Installment Agreement -
Signing Authority**

Documents: [Burger King - Signing Authority](#)

October Bond Information

Documents: [Bond Information - October](#)

Department Reports

Fire

Documents: [WFD September Report](#)

Police

Documents: [WPD September Report](#)

Public Works

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY September 25, 2019

The Westfield Board of Public Works and Safety met on September 25, 2019 at the Westfield Public Works Conference Room. Present were, Randy Graham, Mayor Cook, Kim Strang Records Manager, and Scott Fandre, representing legal counsel.

Randy Graham called the meeting to order at 1:01 PM

AGENDA ITEMS:

Action Item #1: Meeting Minutes Consideration for Approval:

Mayor Cook made the motion to approve the August 28, 2019 meeting minutes as presented. Randy Graham seconded. Vote: Yes-2; No-0. Motion carried.

CONTRACTS/AGREEMENTS

Action Item #2: Dedication of Public Right of Way-Towne Road

Jeremy Lollar presented stating that the Westfield School Corp. is dedicating a small parcel in order to continue the Midland Trace Trail through the Westgate Subdivision.

Mayor Cook made the motion to approve action item #2 as presented. Randy Graham seconded. Vote: Yes-2; No-0. Motion carried.

Action Item #3: 151st Street & Towne Road Roundabout Project Right of Way-City of Westfield & INDOT, Local Public Agency Contract

Michael Pearce presented stating this is the process that would allow the City to use federal funds to acquire right of way for the roundabout project (80-20 match).

Mayor Cook made the motion to approve the contract. Randy Graham seconded. Vote: Yes-2; No-0. Motion carried.

Action Item #4: Westgate Park Impact Fee Credit Agreement

Jeremy Lollar stating this would give Park Impact Fee Credit to Westgate to cover construction costs of a portion of the Midland Trace Trail through their development.

Mayor Cook made the motion to approve the agreement. Randy Graham seconded. Vote: Yes-2; No-0. Motion carried

**Action Item #5: 169th & Spring Mill Roundabout-City of Westfield & INDOT
-Local Public Agency Contract**

Johnathon Nail presented stating this contract with INDOT is for an 80-20 match for construction of a new roundabout at the intersection of 169th and Spring Mill Rd.

Mayor Cook made the motion to approve the contract. Randy Graham seconded.
Vote: Yes-2; No-0. Motion carried.

Action Item# 6: Spring Mill Station Southwest Corner Road Impact Fee Credit Agreement

Johnathon Nail presented giving the details of the agreement.

Mayor Cook made the motion to approve the agreement. Randy Graham seconded.
Vote: Yes-2; No-0. Motion carried.

Action Item #7: GAI On-Call Task Order #2

Johnathon Nail presented stating this is the 2nd task order (Master Service Agree. with GAI) to perform preliminary design of proposed right-of-way acquisitions and design for a roundabout on aerial display for 193rd Street and Casey Road.

Mayor Cook made the motion to approve action item #7. Randy Graham seconded.
Vote: Yes-2; No-0. Motion carried.

Action Item #8: Birdie's Path Joint Use Maintenance Agreement

Johnathon Nail presented stating this would allow the city to install a trail running along the north side of State Road 32 east of Wheeler Rd. The city has agreed to pay for all construction costs, installation and maintenance of the trail.

Mayor Cook made the motion to approve the agreement. Randy Graham seconded.
Vote: Yes-2; No-0. Motion carried.

LEASES

Action Item #9: Approval of Ground Lease with Westfield Economic Development Foundation for the Westfield Playhouse

Jeremy Lollar presented stating this lease would allow the Westfield Economic Development Foundation to lease property from the city for the Westfield Playhouse to be built.
Ground breaking to be October 22, 2019.

Mayor Cook made the motion to approve the lease. Randy Graham seconded.
Vote: Yes-2; No-0. Motion carried.

CONSENT AGENDA:

September Bond Information

Mayor Cook made the motion to approve the consent agenda. Randy Graham seconded.
Vote: Yes-2; No-0. Motion carried.

DEPARTMENT REPORTS:

Fire-

Police-

Public Works-

With no further business Mayor Cook made the motion to adjourn Randy Graham seconded.
The meeting was adjourned at 2:00 PM

Deputy Clerk-Treasurer

Board of Public Works and Safety

**INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY
PROJECT COORDINATION CONTRACT**

EDS #: A249-19-L190080

Des. No.: 1801433

CFDA No.: 20.205

This Contract is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Contract, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and the **City of Westfield**, a local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

- A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA and Grant Administration
Attention: Director of LPA and Grant Administration
100 North Senate Avenue, Room N955-LPA
Indianapolis, Indiana 46204

With a copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204

- B. Notices to INDOT regarding project management shall be sent to respective District Office:

Greenfield District Office
32 South Broadway
Greenfield, Indiana 46140

- C. Notices to the LPA shall be sent to:

City of Westfield
133 Penn Street
Westfield, Indiana 46074

RECITALS

WHEREAS, the LPA has applied to INDOT, and INDOT has approved the LPA's application to receive federal funds for the Project described in Attachment A, and

WHEREAS, the LPA agrees to pay its share of the Project cost as stated in this Contract, and

WHEREAS, the PARTIES desire to contract on certain project description, scheduling, and funding allocation, and

WHEREAS, the PARTIES have determined the Project, is in the best interests of the citizens of the State of Indiana, and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations, and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all Federal requirements and fiscally manage the Project, and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

The "Recitals" and "Notice to PARTIES" above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I **PROJECT DESCRIPTION.** INDOT and the LPA enter into this Contract to complete the project described in Attachment A (the "Project"), herein attached to and made an integral part of this Contract.

SECTION II **LPA RESPONSIBILITIES.** The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in Attachment B (LPA's Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives.

SECTION III **INDOT RESPONSIBILITIES.** INDOT will provide the information and services as set out in Attachment C (INDOT's Rights and Duties), herein attached to and made an integral part of this Contract.

SECTION IV **PROJECT FUNDS.** INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with Attachment D (Project Funds), which is herein attached to and made an integral part of this Contract.

SECTION V **TERM AND SCHEDULE.**

- A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract), between **July 1, 2022 and June 30, 2023**, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible, and provided the federal funds shown in section I.B. of Attachment D are available.

- B. In the event that federal funds for the Project are not obligated during the time listed in section V.A, but the LPA has the plans, special provisions, and cost estimate for the Project ready such that federal funds can be obligated between **July 1, 2023 and June 30, 2025**, INDOT will schedule the contract for letting, provided the Project is eligible, and provided the federal funds shown in section I.B. of Attachment D are available.
- C. In the event that federal funds for the Project are not obligated during the period listed in section V.A. or section V.B, the federal funds allocated to the Project may be obligated in the fiscal year chosen by INDOT or the federal funds allocated to the Project will lapse.
- D. If the Program shown on Attachment A is Group I or Group II, Sections V.A, V.B and V.C do not apply, but will be obligated according to the fiscal year programmed in the most current MPO TIP, provided the MPO funding is within their fiscal year allocation or within the agreed upon use of the MPO's prior year balances.

SECTION VI **GENERAL PROVISIONS**

- A. **Access to Records.** The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
- B. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- C. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the LPA to be a "sub-recipient" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract.

For audits conducted pursuant to Indiana Code 5-11-1, and audited by the Indiana State Board of Accounts on the time schedule set forth by the Indiana State Board of Accounts, the LPA shall provide to the Indiana State Board of Accounts, all requested documentation necessary to audit the Local Public Agency in its entirety.

If the audit is conducted by an independent public or certified public account and not the Indiana State Board of Accounts, the LPA shall submit the completed audit to the Indiana State Board of Accounts within 10 (ten) days of the completion of the audit.

The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State.

D. Authority to Bind LPA. The signatory for the LPA represents that he/she has been duly authorized to execute this Contract on behalf of the LPA, and has obtained all necessary or applicable approvals to make this Contract fully binding upon the LPA when his/her signature is affixed and accepted by the State.

E. Certification for Federal-Aid Contracts Lobbying Activities. The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the LPA, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreement, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.
3. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all contractor agreements including lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

F. Compliance with Laws.

1. The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.

2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."
4. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the LPA has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the LPA shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Contract.** If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the LPA or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
5. The LPA warrants that the LPA and its contractors shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this Contract. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
6. As required by IC §5-22-3-7:
 - (1) The LPA and any principals of the LPA certify that:
 - (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
 - i. IC §24-4.7 [Telephone Solicitation Of Consumers];
 - ii. IC §24-5-12 [Telephone Solicitations]; or
 - iii. IC §24-5-14 [Regulation of Automatic Dialing Machines];
 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the LPA will not violate the terms of IC §24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.
 - (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

G. Debarment and Suspension.

1. The LPA certifies by entering into this Contract that neither it nor its principals nor any of its contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the LPA.
2. The LPA certifies that it will verify the state and federal suspension and debarment status for all contractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor. The LPA shall immediately notify INDOT if any contractor becomes debarred or suspended, and shall, at INDOT's request, take all steps required by INDOT to terminate its contractual relationship with the contractor for work to be performed under this Contract.

H. Disadvantaged Business Enterprise Program. Notice is hereby given to the LPA or a LPA Contractor that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

I. Disputes.

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.
3. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10)

working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

4. The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
5. INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.

- J. **Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the LPA hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The LPA will give written notice to the State within ten (10) days after receiving actual notice that the LPA, or an employee of the LPA in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the LPA certifies and agrees that it will provide a drug-free workplace by:

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the LPA's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the LPA's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
3. Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;

5. Within thirty (30) days after receiving notice under subdivision (3)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.

K. Employment Eligibility Verification.

The LPA affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien. The LPA further agrees that:

1. The LPA shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The LPA is not required to participate should the E-Verify program cease to exist. Additionally, the LPA is not required to participate if the LPA is self-employed and do not employee any employees.
2. The LPA shall not knowingly employ or contract with an unauthorized alien. The LPA shall not retain an employee or contract with a person that the LPA subsequently learns is an unauthorized alien.
3. The LPA shall require its subcontractors, who perform work under this Contract, to certify to the LPA that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The LPA agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the LPA fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

- L. Force Majeure.** In the event that any Party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected Party (hereinafter referred to as a “Force Majeure Event”), the Party who has been so affected shall immediately or as soon is reasonably possible under the circumstances give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

- M. Funding Cancellation Clause.** As required by Financial Management Circular 2007-1 and IC 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

N. **Governing Laws.** This Contract shall be governed, construed and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

O. **Indemnification.** The LPA agrees to indemnify, defend, exculpate, and hold harmless the State of Indiana, and INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:

- (a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
- (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract.

P. **Merger & Modification.** This Contract constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

Q. **Non-Discrimination.**

1. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the LPA covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The LPA certifies compliance with applicable federal laws, regulations and executive orders prohibiting

discrimination based on the Protected Characteristics in the provision of services. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any subcontractor.

2. INDOT is a recipient of federal funds, and therefore, where applicable, the LPA and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

The LPA agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, limited English proficiency, or status as a veteran).

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
 - a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - b. Nondiscrimination: The LPA, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
 - c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin,

religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

- d. **Information and Reports:** The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Agreement until the LPA complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- f. **Incorporation of Provisions:** The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

- R. **Payment.** All payments (if any) shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.
- S. **Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

- T. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:
 - 1. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant

- to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
 3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.
- U. **Severability.** The invalidity of any section, subsection, clause or provision of the Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Agreement.
- V. **Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204-2249

- W. **Termination for Convenience.** This Contract may be terminated, in whole or in part, by INDOT whenever, for any reason, INDOT determines that such termination is in its best interest. Termination shall be effected by delivery to the LPA of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective.
- X. **General.** This Contract represents the entire understanding between the PARTIES relating to the subject matter, and supersedes any and all prior oral and/or written communications, understandings or agreements relating to the subject matter. Any amendment or modification to this Contract must be in writing, reference this Section 2.20 and be signed by duly authorized representatives of the PARTIES (and by all necessary approving State agencies or parties). Neither this Contract nor any portions of it may be assigned, licensed or otherwise transferred by the LPA without the prior written consent of INDOT. This Contract will be binding upon the PARTIES and their permitted successors or assigns. Failure of either Party to enforce any provision of this Contract will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Contract.

The remainder of this page is intentionally left blank.

Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Contract, the Party attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

In Witness Whereof, LPA and the State of Indiana have, through duly authorized representatives, entered into this Contract. The PARTIES having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

LPA: City of Westfield

Print or type name and title

Signature and date

Print or type name and title

Signature and date

Print or type name and title

Signature and date

LPA DUNS # _____

Attest

Auditor or Clerk Treasurer

This instrument prepared by:

Autumn Castro
July 19, 2019

STATE OF INDIANA
Department of Transportation

Recommended for approval by:

Steven Duncan, Director
Contract Administration Division

Date: _____

Executed by:

(FOR)
Joseph McGuinness, Commissioner

Date: _____

Department of Administration

Lesley A. Crane, Commissioner

Date: _____

State Budget Agency

Zachary Q. Jackson, Director

Date: _____

Approved as to Form and Legality:

(FOR)
Curtis T. Hill, Jr., Attorney General of Indiana

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: **1801433**
Program: **Group I**
Type of Project: **Intersection Improvement, Roundabout**
Location: **Intersection of 161th Street and Oak Road - roundabout**

A general scope/description of the Project is as follows:

A project for construction of a new roundabout at the intersection at 161th Street and Oak Road in the City of Westfield, Indiana.

ATTACHMENT B

LPA'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Contract, the following are the LPA's rights and duties under this Contract for the Project.

1. The LPA has requested and intends to use federal funds to partially pay for the Project. The LPA asserts that the LPA has completed or will complete the Project in accordance with INDOT's Design Manual (See http://www.in.gov/indot/design_manual/) and all pertinent state and federal laws, regulations, policies and guidance. The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/2523.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/2493.htm>).
2. The LPA acknowledges that in order for the cost of consultant services to be eligible for federal funds or federal credits, the consultant selection must be accordance with INDOT's consultant selection procedure.
3. REQUIREMENTS FOR ADDITIONAL CONTRACTS
 - A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:
 1. use the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/2833.htm> and is incorporated by reference; or
 2. use a form of agreement that has been reviewed and approved by INDOT.
4. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.
5. The LPA agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
6. At least ninety to one hundred twenty (90 to 120) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in Attachment D.

7. If the LPA has failed to meet any of the requirements of sections 1, 2, 4, 5, or 6 above, INDOT will not let the construction project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
8. The LPA shall pay the cost of the invoice of the construction, utility, and/or railroad work within thirty (30) calendar days from the date of INDOT's award of the construction contract.
9. The LPA understands time is of the essence regarding the Project timeline and payment of costs by the LPA. Delays in payment may cause substantial time delays and/or increased costs for the Project. If the LPA has not paid the full amount of the amount billed by INDOT, in accordance with Attachment D, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this contract including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
10. The LPA shall also be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.
11. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
 - A. If project inspection will be provided by full-time LPA employees:

The personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal-aid shall be submitted to the District office, referenced on Page 1, for payment.

or
 - B. If project inspection will be provided by the LPA's consultant:

INDOT must approve, in writing, the consultant personnel prior to their assignment to the project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's Ready for Contracts date for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All claims for federal-aid shall be submitted to the District office, referenced on page 1, for payment.

12. The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.
13. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2389.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
14. If FHWA or INDOT invokes sanctions per Section VI.D.2. of the General Provisions of this contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
 - a. In the case of correctable noncompliance, the LPA shall make the corrections, to the satisfaction of FHWA and INDOT, in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.
 - b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA and INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, this paragraph shall apply and adjustments shall be made as follows:
 1. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation that have been paid by INDOT to the LPA.
 2. If no right-of-way costs have as yet been paid by INDOT to the LPA or to others, INDOT will not pay any right-of-way claim or billing that is subject to FHWA citation.
 3. The LPA agrees that it is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
 - c. If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with right-of-way requirements, and construction work was or is in progress, the following shall apply:
 1. INDOT may elect to terminate, suspend, or continue construction work in accord with the provisions of the construction contract.
 2. INDOT may elect to pay its obligations under the provisions of the construction contract.
 3. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.

4. In case the noncompliance is not correctable, or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA or INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA agrees to reimburse INDOT the full amount it paid for said construction work, less the amount of federal funds allowed by FHWA.
- d. In any case, the LPA shall reimburse INDOT the total cost of the Project, not eligible for federal participation.
- e. If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within forty-five (45) days after receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law or regulations or described elsewhere in this Contract, the following are INDOT's rights and duties under the Contract:

1. INDOT shall have full authority and access to inspect and approve all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.
2. INDOT shall complete all railroad coordination for the Project on behalf of the LPA.
3. After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.
4. If the LPA owes INDOT money which is more than 60 days past due, INDOT will not open the construction bids for the Project.
5. Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of Attachment D, and fulfillment of all other pre-letting obligations of this contract, INDOT shall, in accordance with applicable laws and rules (including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11), conduct a scheduled letting.
6. Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.
7. Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.
8. If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA share of the construction cost.
9. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.
10. In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.
11. After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's bill, make final payment to INDOT pursuant to Attachment D or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

ATTACHMENT D**PROJECT FUNDS****I. Project Costs.**

A. This contract is just for the one (1) phase checked below:

_____	Preliminary Engineering or
_____	Right-of-Way or
<u> X </u>	Construction;

Otherwise, this contract covers all phases.

B. If the Program shown on Attachment A is receiving **Group I** federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP, or any increase or decrease in the funding from a prior year, authorized by the MPO that may not be reflected in the current TIP, are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay **80 %** of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is dependent upon the current TIP allocation. As of this date, **July 19, 2019**, the maximum amount according to the TIP dated **August 22, 2018** is \$ **1,254,400.00**. The most current MPO TIP page, or MPO authorization, is uploaded into INDOT's Scheduling Project Management System (SPMS).

OR

- C. Federal-aid Funds made available to the LPA by INDOT will be used to pay _____% of the eligible Project costs. The maximum amount of federal funds allocated to the project is \$_____.
- D. The LPA understands and agrees that in accordance with I.C. 8-23-2-14, INDOT retains 2.5% of the final construction costs for oversight of construction inspection and the testing of construction materials.
- E. The LPA understands and agrees that it is INDOT's policy to only allow non-discretionary changes to a Project scope after bidding. Changes to the Project scope after bidding that are by the choice of the LPA and are not required to complete the Project will not be eligible for federal-aid funds and must be funded 100% locally.
- F. The LPA understands and agrees that the federal-aid funds allocated to the Project are intended to accomplish the original scope of the Project as designed. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the Local Program.
- G. If the Program shown on Attachment A is Group I or Group II, Section E. does not apply. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the MPO.
- H. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.

I. Costs will be eligible for FHWA participation provided that the costs:

- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
- (2) Are verifiable from INDOT's or the LPA's records;
- (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR section 18.22;
- (4) Are included in the approved budget, or amendment thereto; and
- (5) Were not incurred prior to FHWA authorization.

II. Billings.

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.
2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.
3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

B. Other Costs:

1. The LPA shall pay INDOT for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement.

III. Repayment Provisions.

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.

**INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY
PROJECT COORDINATION CONTRACT**

EDS #: A249-19-L190075

Des. No.: 1700729

CFDA No.: 20.205

This Contract is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Contract, by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as INDOT), and the **City of Westfield**, a local public agency in the State of Indiana (hereinafter referred to as the LPA), and collectively referred to as the PARTIES.

NOTICE TO PARTIES

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

- A. Notice to INDOT, regarding contract provisions shall be sent to:

Office of LPA and Grant Administration
Attention: Director of LPA and Grant Administration
100 North Senate Avenue, Room N955-LPA
Indianapolis, Indiana 46204

With a copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204

- B. Notices to INDOT regarding project management shall be sent to respective District Office:

Greenfield District Office
32 South Broadway
Greenfield, Indiana 46140

- C. Notices to the LPA shall be sent to:

City of Westfield
133 Penn Street
Westfield, Indiana 46074

RECITALS

WHEREAS, the LPA has applied to INDOT, and INDOT has approved the LPA's application to receive federal funds for the Project described in Attachment A, and

WHEREAS, the LPA agrees to pay its share of the Project cost as stated in this Contract, and

WHEREAS, the PARTIES desire to contract on certain project description, scheduling, and funding allocation, and

WHEREAS, the PARTIES have determined the Project, is in the best interests of the citizens of the State of Indiana, and

WHEREAS, the PARTIES execute this Contract pursuant to Indiana Code §§ 8-23-2-5, 8-23-2-6, 8-23-4-7, 36-1-4-7, and 36-1-7-3, and Titles 23 and 49 of the United States Code and Titles 23 and 49 of the Code of Federal Regulations, and

WHEREAS, the LPA desires to expedite delivery of the Project, comply with all Federal requirements and fiscally manage the Project, and

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the LPA and INDOT agree as follows:

The "Recitals" and "Notice to PARTIES" above are hereby made an integral part and specifically incorporated into this Contract.

SECTION I **PROJECT DESCRIPTION.** INDOT and the LPA enter into this Contract to complete the project described in Attachment A (the "Project"), herein attached to and made an integral part of this Contract.

SECTION II **LPA RESPONSIBILITIES.** The LPA will provide the information and services, or shall cause the information and services to be provided, as set out in Attachment B (LPA's Rights and Duties), herein attached to and made an integral part of this Contract. The LPA will follow all applicable INDOT procedures, guidelines, manuals, standards, specifications and directives.

SECTION III **INDOT RESPONSIBILITIES.** INDOT will provide the information and services as set out in Attachment C (INDOT's Rights and Duties), herein attached to and made an integral part of this Contract.

SECTION IV **PROJECT FUNDS.** INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with Attachment D (Project Funds), which is herein attached to and made an integral part of this Contract.

SECTION V **TERM AND SCHEDULE.**

- A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract), between **July 1, 2021 and June 30, 2022**, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible, and provided the federal funds shown in section I.B. of Attachment D are available.

- B. In the event that federal funds for the Project are not obligated during the time listed in section V.A, but the LPA has the plans, special provisions, and cost estimate for the Project ready such that federal funds can be obligated between **July 1, 2022 and June 30, 2024**, INDOT will schedule the contract for letting, provided the Project is eligible, and provided the federal funds shown in section I.B. of Attachment D are available.
- C. In the event that federal funds for the Project are not obligated during the period listed in section V.A. or section V.B, the federal funds allocated to the Project may be obligated in the fiscal year chosen by INDOT or the federal funds allocated to the Project will lapse.
- D. If the Program shown on Attachment A is Group I or Group II, Sections V.A, V.B and V.C do not apply, but will be obligated according to the fiscal year programmed in the most current MPO TIP, provided the MPO funding is within their fiscal year allocation or within the agreed upon use of the MPO's prior year balances.

SECTION VI **GENERAL PROVISIONS**

- A. **Access to Records.** The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
- B. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- C. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the LPA to be a "sub-recipient" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract.

For audits conducted pursuant to Indiana Code 5-11-1, and audited by the Indiana State Board of Accounts on the time schedule set forth by the Indiana State Board of Accounts, the LPA shall provide to the Indiana State Board of Accounts, all requested documentation necessary to audit the Local Public Agency in its entirety.

If the audit is conducted by an independent public or certified public account and not the Indiana State Board of Accounts, the LPA shall submit the completed audit to the Indiana State Board of Accounts within 10 (ten) days of the completion of the audit.

The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State.

D. Authority to Bind LPA. The signatory for the LPA represents that he/she has been duly authorized to execute this Contract on behalf of the LPA, and has obtained all necessary or applicable approvals to make this Contract fully binding upon the LPA when his/her signature is affixed and accepted by the State.

E. Certification for Federal-Aid Contracts Lobbying Activities. The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the LPA, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreement, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.
3. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all contractor agreements including lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

F. Compliance with Laws.

1. The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.

2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled “Withholding Federal Participation” which is herewith quoted in part as follows: “Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total.”
4. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the LPA has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the LPA shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Contract.** If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General’s website at <http://www.in.gov/ig/>. If the LPA or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
5. The LPA warrants that the LPA and its contractors shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this Contract. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
6. As required by IC §5-22-3-7:
 - (1) The LPA and any principals of the LPA certify that:
 - (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
 - i. IC §24-4.7 [Telephone Solicitation Of Consumers];
 - ii. IC §24-5-12 [Telephone Solicitations]; or
 - iii. IC §24-5-14 [Regulation of Automatic Dialing Machines];
 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the LPA will not violate the terms of IC §24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.
 - (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

G. Debarment and Suspension.

1. The LPA certifies by entering into this Contract that neither it nor its principals nor any of its contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the LPA.
2. The LPA certifies that it will verify the state and federal suspension and debarment status for all contractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor. The LPA shall immediately notify INDOT if any contractor becomes debarred or suspended, and shall, at INDOT's request, take all steps required by INDOT to terminate its contractual relationship with the contractor for work to be performed under this Contract.

H. Disadvantaged Business Enterprise Program. Notice is hereby given to the LPA or a LPA Contractor that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification, may result in termination of this Contract or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent contracts between the LPA and any contractors, vendors or suppliers:

The LPA shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The LPA shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the LPA to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the LPA's equal opportunity affirmative action program, it is required that the LPA shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise contractors, vendors or suppliers.

I. Disputes.

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.
3. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10)

working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

4. The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
5. INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.

- J. Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the LPA hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The LPA will give written notice to the State within ten (10) days after receiving actual notice that the LPA, or an employee of the LPA in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the LPA certifies and agrees that it will provide a drug-free workplace by:

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the LPA's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the LPA's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
3. Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;

5. Within thirty (30) days after receiving notice under subdivision (3)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.

K. Employment Eligibility Verification.

The LPA affirms under the penalties of perjury that they do not knowingly employ an unauthorized alien. The LPA further agrees that:

1. The LPA shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The LPA is not required to participate should the E-Verify program cease to exist. Additionally, the LPA is not required to participate if the LPA is self-employed and do not employee any employees.
2. The LPA shall not knowingly employ or contract with an unauthorized alien. The LPA shall not retain an employee or contract with a person that the LPA subsequently learns is an unauthorized alien.
3. The LPA shall require its subcontractors, who perform work under this Contract, to certify to the LPA that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The LPA agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the LPA fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

- L. Force Majeure.** In the event that any Party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected Party (hereinafter referred to as a “Force Majeure Event”), the Party who has been so affected shall immediately or as soon is reasonably possible under the circumstances give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

- M. Funding Cancellation Clause.** As required by Financial Management Circular 2007-1 and IC 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

N. **Governing Laws.** This Contract shall be governed, construed and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

O. **Indemnification.** The LPA agrees to indemnify, defend, exculpate, and hold harmless the State of Indiana, and INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:

- (a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
- (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in connection herewith in the event that the LPA shall default under the provisions of this section.

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract.

P. **Merger & Modification.** This Contract constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

Q. **Non-Discrimination.**

1. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the LPA covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The LPA certifies compliance with applicable federal laws, regulations and executive orders prohibiting

discrimination based on the Protected Characteristics in the provision of services. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any subcontractor.

2. INDOT is a recipient of federal funds, and therefore, where applicable, the LPA and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

The LPA agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, limited English proficiency, or status as a veteran).

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
 - a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - b. Nondiscrimination: The LPA, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
 - c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin,

religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

- d. **Information and Reports:** The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Agreement until the LPA complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- f. **Incorporation of Provisions:** The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

- R. **Payment.** All payments (if any) shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.
- S. **Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

- T. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:
 - 1. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant

- to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
 3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.
- U. **Severability.** The invalidity of any section, subsection, clause or provision of the Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Agreement.
- V. **Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

Chief Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, Indiana 46204-2249

- W. **Termination for Convenience.** This Contract may be terminated, in whole or in part, by INDOT whenever, for any reason, INDOT determines that such termination is in its best interest. Termination shall be effected by delivery to the LPA of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective.
- X. **General.** This Contract represents the entire understanding between the PARTIES relating to the subject matter, and supersedes any and all prior oral and/or written communications, understandings or agreements relating to the subject matter. Any amendment or modification to this Contract must be in writing, reference this Section 2.20 and be signed by duly authorized representatives of the PARTIES (and by all necessary approving State agencies or parties). Neither this Contract nor any portions of it may be assigned, licensed or otherwise transferred by the LPA without the prior written consent of INDOT. This Contract will be binding upon the PARTIES and their permitted successors or assigns. Failure of either Party to enforce any provision of this Contract will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Contract.

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Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the LPA, or that he/she is the properly authorized representative, agent, member or officer of the LPA, that he/she has not, nor has any other member, employee, representative, agent or officer of the LPA, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the Contract, the Party attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

In Witness Whereof, LPA and the State of Indiana have, through duly authorized representatives, entered into this Contract. The PARTIES having read and understand the forgoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

LPA: City of Westfield

Print or type name and title

Signature and date

Print or type name and title

Signature and date

Print or type name and title

Signature and date

LPA DUNS # _____

Attest

Auditor or Clerk Treasurer

This instrument prepared by:

Autumn Castro
July 19, 2019

STATE OF INDIANA
Department of Transportation

Recommended for approval by:

Steven Duncan, Director
Contract Administration Division

Date: _____

Executed by:

Joseph McGuinness, Commissioner (FOR)

Date: _____

Department of Administration

Lesley A. Crane, Commissioner

Date: _____

State Budget Agency

Zachary Q. Jackson, Director

Date: _____

Approved as to Form and Legality:

Curtis T. Hill, Jr., Attorney General of Indiana (FOR)

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: **1700729**
Program: **Group I CMAQ**
Type of Project: **Intersection Improvement, Roundabout**
Location: **Intersection of 161th Street and Union Street - roundabout**

A general scope/description of the Project is as follows:

A project for construction of a new roundabout at the intersection at 161th Street and Union Street in the City of Westfield, Indiana.

ATTACHMENT B

LPA'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law, regulations, rules, policies or procedures, or described elsewhere in this Contract, the following are the LPA's rights and duties under this Contract for the Project.

1. The LPA has requested and intends to use federal funds to partially pay for the Project. The LPA asserts that the LPA has completed or will complete the Project in accordance with INDOT's Design Manual (See http://www.in.gov/indot/design_manual/) and all pertinent state and federal laws, regulations, policies and guidance. The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/2523.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/2493.htm>).
2. The LPA acknowledges that in order for the cost of consultant services to be eligible for federal funds or federal credits, the consultant selection must be accordance with INDOT's consultant selection procedure.
3. REQUIREMENTS FOR ADDITIONAL CONTRACTS
 - A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:
 1. use the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/2833.htm> and is incorporated by reference; or
 2. use a form of agreement that has been reviewed and approved by INDOT.
4. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.
5. The LPA agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
6. At least ninety to one hundred twenty (90 to 120) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in Attachment D.

7. If the LPA has failed to meet any of the requirements of sections 1, 2, 4, 5, or 6 above, INDOT will not let the construction project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
8. The LPA shall pay the cost of the invoice of the construction, utility, and/or railroad work within thirty (30) calendar days from the date of INDOT's award of the construction contract.
9. The LPA understands time is of the essence regarding the Project timeline and payment of costs by the LPA. Delays in payment may cause substantial time delays and/or increased costs for the Project. If the LPA has not paid the full amount of the amount billed by INDOT, in accordance with Attachment D, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this contract including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
10. The LPA shall also be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.
11. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this section are deemed to be incompetent or inadequate or are otherwise insufficient or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
 - A. If project inspection will be provided by full-time LPA employees:

The personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal-aid shall be submitted to the District office, referenced on Page 1, for payment.

or
 - B. If project inspection will be provided by the LPA's consultant:

INDOT must approve, in writing, the consultant personnel prior to their assignment to the project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's Ready for Contracts date for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All claims for federal-aid shall be submitted to the District office, referenced on page 1, for payment.

12. The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.
13. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2389.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
14. If FHWA or INDOT invokes sanctions per Section VI.D.2. of the General Provisions of this contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
 - a. In the case of correctable noncompliance, the LPA shall make the corrections, to the satisfaction of FHWA and INDOT, in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.
 - b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA and INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, this paragraph shall apply and adjustments shall be made as follows:
 1. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation that have been paid by INDOT to the LPA.
 2. If no right-of-way costs have as yet been paid by INDOT to the LPA or to others, INDOT will not pay any right-of-way claim or billing that is subject to FHWA citation.
 3. The LPA agrees that it is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
 - c. If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with right-of-way requirements, and construction work was or is in progress, the following shall apply:
 1. INDOT may elect to terminate, suspend, or continue construction work in accord with the provisions of the construction contract.
 2. INDOT may elect to pay its obligations under the provisions of the construction contract.
 3. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.

4. In case the noncompliance is not correctable, or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA or INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA agrees to reimburse INDOT the full amount it paid for said construction work, less the amount of federal funds allowed by FHWA.
- d. In any case, the LPA shall reimburse INDOT the total cost of the Project, not eligible for federal participation.
- e. If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within forty-five (45) days after receipt of a billing from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

In addition to any other rights and duties required by Indiana or federal law or regulations or described elsewhere in this Contract, the following are INDOT's rights and duties under the Contract:

1. INDOT shall have full authority and access to inspect and approve all plans, specifications and special provisions for the Project regardless of when those plans, specifications, special provisions or other such Project documents were created.
2. INDOT shall complete all railroad coordination for the Project on behalf of the LPA.
3. After the LPA has submitted and INDOT has accepted and/or approved all pre-letting documents, INDOT will prepare the Engineer's Estimate for construction of the Project.
4. If the LPA owes INDOT money which is more than 60 days past due, INDOT will not open the construction bids for the Project.
5. Not later than sixty (60) calendar days after receipt by INDOT of a certified copy of a resolution from the LPA's fiscal body authorizing the LPA to make payment to INDOT according to the terms of Attachment D, and fulfillment of all other pre-letting obligations of this contract, INDOT shall, in accordance with applicable laws and rules (including I.C. 8-23-9, I.C. 8-23-10, and 105 I.A.C. 11), conduct a scheduled letting.
6. Subject to the LPA's written approval, INDOT shall award the construction contract for the Project according to applicable laws and rules.
7. Not later than seven (7) calendar days after INDOT awards the construction contract described above, INDOT shall invoice the LPA for the LPA's share of the construction cost.
8. If INDOT has received the LPA's share of the Project construction cost and if the lowest qualified bidder has not otherwise been disqualified, INDOT shall issue notice to proceed for the Project to the contractor within fourteen (14) calendar days of its receipt of the LPA share of the construction cost.
9. INDOT shall have the right and opportunity to inspect any construction under this Contract to determine whether the construction is in conformance with the plans and specifications for the Project.
10. In the event the engineering, testing, and inspection services provided by the LPA, in the opinion of INDOT, are deemed to be incompetent or inadequate or are otherwise insufficient or a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the engineering, testing, and inspection force or to replace engineers or inspectors employed in such work at the expense of the LPA. INDOT's engineers shall control the work the same as on other federal aid construction contracts.
11. After the final Project audit is approved by INDOT, the LPA shall, within forty-five (45) days after receipt of INDOT's bill, make final payment to INDOT pursuant to Attachment D or INDOT shall, within forty-five (45) days after approval of the audit, refund any Project overpayment to the LPA.

ATTACHMENT D**PROJECT FUNDS****I. Project Costs.**

A. This contract is just for the one (1) phase checked below:

_____	Preliminary Engineering or
_____	Right-of-Way or
<u> X </u>	Construction;

Otherwise, this contract covers all phases.

B. If the Program shown on Attachment A is receiving **Group I CMAQ** federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP, or any increase or decrease in the funding from a prior year, authorized by the MPO that may not be reflected in the current TIP, are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay **80** % of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is dependent upon the current TIP allocation. As of this date, **July 19, 2019**, the maximum amount according to the TIP dated **August 22, 2018** is \$ **2,268,000.00**. The most current MPO TIP page, or MPO authorization, is uploaded into INDOT's Scheduling Project Management System (SPMS).

OR

- C. Federal-aid Funds made available to the LPA by INDOT will be used to pay _____% of the eligible Project costs. The maximum amount of federal funds allocated to the project is \$_____.
- D. The LPA understands and agrees that in accordance with I.C. 8-23-2-14, INDOT retains 2.5% of the final construction costs for oversight of construction inspection and the testing of construction materials.
- E. The LPA understands and agrees that it is INDOT's policy to only allow non-discretionary changes to a Project scope after bidding. Changes to the Project scope after bidding that are by the choice of the LPA and are not required to complete the Project will not be eligible for federal-aid funds and must be funded 100% locally.
- F. The LPA understands and agrees that the federal-aid funds allocated to the Project are intended to accomplish the original scope of the Project as designed. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the Local Program.
- G. If the Program shown on Attachment A is Group I or Group II, Section E. does not apply. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the MPO.
- H. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.

I. Costs will be eligible for FHWA participation provided that the costs:

- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
- (2) Are verifiable from INDOT's or the LPA's records;
- (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR section 18.22;
- (4) Are included in the approved budget, or amendment thereto; and
- (5) Were not incurred prior to FHWA authorization.

II. Billings.

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.
2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.
3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of Attachment D and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.

B. Other Costs:

1. The LPA shall pay INDOT for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement.

III. Repayment Provisions.

If for any reason, INDOT is required to repay to FHWA the sum or sums of federal funds paid to the LPA or on behalf of the LPA under the terms of this Contract, then the LPA shall repay to INDOT such sum or sums within thirty (30) days after receipt of a billing from INDOT. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT may proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds for the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account until the amount due has been repaid.



**WILLIAMS CREEK
MANAGEMENT**

Headquarters
4620 S County Road 600 E, Plainfield, Indiana 46168
+1 317-838-9810 LOCAL +1-877-935-6609 TOLL FREE williamscreekmgt.com

10 September 2019

Mr. Christopher McConnell
Parks and Recreation Superintendent
Public Works – City of Westfield
2728 East 171st Street
Westfield, Indiana 46074

**Re: City of Westfield – US 31 Corridor – Invasive Species Management – Year 2020
Maintenance Services
Westfield, Hamilton County, Indiana**

Dear Mr. McConnell:

Williams Creek Management Corporation (WILLIAMS CREEK) appreciates the opportunity to provide our professional bid for **Maintenance Services** to the City of Westfield (OWNER) for invasive species management along the US 31 corridor from 151st Street to State Road 38 for the Year 2020 growing season (PROJECT) to be completed in Hamilton County, Indiana.

PROJECT Base Bid: Schedule of Values

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
Invasive Species Management - EVENT 1 (May)	1	LS	\$16,060.00	\$16,060.00
Invasive Species Management - EVENT 2 (July)	1	LS	\$10,900.00	\$10,900.00
Invasive Species Management - EVENT 3 (August)	1	LS	\$8,380.00	\$8,380.00
TOTAL ESTIMATED COST				\$35,340.00

ALTERNATE #1 - City of Westfield Assistance (Deduct)

Owner provided truck with arrow board and driver	1	LS	(\$4,310.00)	(\$4,310.00)
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Bid Based: OWNER discussions and site visit conducted August 14, 2019

Stipulations of WILLIAMS CREEK's Bid:

1. This estimate will expire 30 days from the date listed above.
2. Only items specifically referenced above are included. If items are not referenced, OWNER should request clarification as to inclusion in the project.
3. OWNER will provide towable arrow board for use by WILLIAMS CREEK during maintenance services.
4. OWNER will complete mowing and/or trimming of targeted invasive species prior to mobilization by WILLIAMS CREEK.
5. OWNER will provide water for use by WILLIAMS CREEK staff during maintenance services for this PROJECT.
6. Maintenance services during the 2020 growing season to be completed in the months of May, July and August.
7. Invasive species management will specifically target the following species: *Typha spp.* (cattail), *Lythrum salicaria* (purple loosestrife) and *Phragmites australis* (common reed).
8. Bid does not include prevailing or common construction wage rates.
9. Bid does not include any bonds or permits.

This estimate is for completing the job as described above. It is based on WILLIAMS CREEK's evaluation and does not include material price increases or additional labor and materials which may be required should unforeseen or adverse weather conditions occur after the work has started. Acceptance of this bid shall constitute a valid notice of WILLIAMS CREEK to proceed with the Work schedule. WILLIAMS CREEK's actual Work performance is subject to the Finalized Contract Documents and approved General Terms and Conditions.

Submitted by:  _____ Date: 09/10/2019
Aaron Lasley
Vice President

Accepted by: _____ Date: _____

ROAD IMPACT FEE INSTALLMENT AGREEMENT

Cross Referenced to Instrument No. 2018010265

The Woodmont Land Company (the “Property Owner”) makes the following commitments (the “Commitments”) to the City of Westfield, Hamilton County, Indiana (“City”) regarding the installment payments for the Road Impact Fees properly assessed on the following described real estate (the “Real Estate”) located in Hamilton County, Indiana:

Section 1. **Description of Real Estate:** See attached **Exhibit A** (the “Real Estate”).

Address: 1324 Chatham Commons Boulevard, Westfield, Indiana 46074
Parcel No: 08-05-25-00-01-006.000

Section 2. **Improvement Location Permit No.:** 19-C-011-435 (the “ILP”).

Builder/Contractor: Woodmont Land Company

Section 3. **Statement of Terms:**

- A. As part of the development of the Real Estate, road impact fees are required to be paid to the City by the Property Owner. In accordance with City Ordinance 12-13, the City assessed a road impact fee of **\$153,193** on August 30, 2019, attached hereto as **Exhibit B** (19-RIFA-05) (the “Assessed Road Impact Fee”), as part of the Property Owner’s filed ILP for the Real Estate.
- B. Pursuant to I.C. 36-7-4-1324 the City agrees to installment payments of the Assessed Road Impact Fees as set forth herein.
- C. Prior to the issuance of the ILP, the Property Owner agrees to tender five-thousand dollars (\$5,000.00) or five percent (5%), whichever is greater.
- D. Pursuant to I.C. 36-7-4-1324 the City will charge 3% interest on the portion of the impact fee that is outstanding.
- E. The Property Owner agrees to make installment payments to the City for the remaining Assessed Road Impact Fee on or before the dates set forth below. The remaining amounts shall be due in equal payments beginning September 1, 2020, and every year thereafter, in accordance with the following:

Issuance of ILP:	\$7,659.65
September 1, 2020:	\$29,106.67
September 1, 2021:	\$29,106.67
September 1, 2022:	\$29,106.67
September 1, 2023:	\$29,106.67
September 1, 2024:	\$29,106.67
Total Road Impact Fee:	\$153,193

F. The Property Owner is aware and agrees that a lien is placed upon the Real Estate pursuant to I.C. 36-7-4-1325 and the City reserves all rights of collection thereunder.

Section 4. **Binding on Successors and Assigns:**

This Agreement is binding upon each subsequent owner of the Real Estate, each other person acquiring an interest in the Real Estate, and each user of the Real Estate, unless modified or terminated by the City.

Section 5. **Effective Date:**

This Agreement is effective upon the issuance of the ILP and shall continue in effect until the Assessed Road Impact Fees are paid in full or unless modified or terminated in writing by the City.

Section 6. **Recording:**

The undersigned hereby authorizes the Westfield Economic and Community Development Department to record this Agreement in the Office of the Recorder of Hamilton County, Indiana, if desired by the City.

Section 7. **Enforcement:**

This Agreement may be enforced by the City of Westfield, and the only proper venue shall be the Hamilton Circuit or Superior Courts in Hamilton County, Indiana.

[Remainder of page intentionally left blank;
Signature page follows.]

The Woodmont Land Company (the “Property Owner”)

By: _____

Printed Name: _____

Title: _____

Date: _____

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above party, who having been duly sworn acknowledged the execution of the foregoing instrument.

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

Subscribed and Sworn before me this _____ day of _____, 20__.

Printed Name of Notary Public _____

My Commission Expires _____

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law: Caleb Ernest

Prepared by: Caleb Ernest
2728 East 171st Street
Westfield, IN 46074

EXHIBIT A
REAL ESTATE

DRAFT

EXHIBIT B

ASSESSED ROAD IMPACT FEE

ROAD IMPACT FEE ESTIMATE

Estimate Request #: 19-RIFA-15
 Assessment Date: 8/30/2019
 Calculations Performed by: Caleb Ernest
 (I.C. 36-7-4-1321 and City Ordinance No. 12-13)



Property Information:

Property Description:

Parcel:
 Address: Chatham Commons 191st Street Westfield, IN

Applicant:

Name: The Woodmont Land Company
 Address: 2100 W 7th Street Ft. Worth, TX 76107

Development Information:

Existing: non-developed lot

Proposed:

10,643 square feet - daycare with 8,000 sft playground
 30 employees
 185 children

Zoning: General Business

Road Impact Fee Calculation:

In accordance with I.C. 36-7-4-1321 and the City's adopted impact fee ordinance, road impact fees are calculated based on the number of twenty-four-hour trips taken from the latest version of the *Trip Generation Manual*, a study published by the Institute of Transportation Engineers (the following were developed based on the guidelines set forth in the 10th Edition).

Land Use Code:	Day Care Center (565)		
Independent Variable:	1,000	Sq. Ft	
Weighted Trip Average:	47.62	per	1,000 Sq. Ft (average weekday 24-hour trip rate)

Trips:

A "trip" is a single or one-direction vehicle movement exiting or entering the site. For trip generation purposes, the total trips for a 24-hour period are the total of all trips entering plus all trips exiting a site during this period (e.g., one vehicle in and out of site equals two trips).

Pass-by Trips:

A pass-by trip is a trip made as an intermediate stop from an origin to a primary destination, and is generally a trip attracted from traffic already passing the site on an adjacent street. Trip generation estimates may be able to be reduced, subject to the land use, its context and available data from the Trip Generation Manual. If appropriate, the calculation below takes pass-by trips into consideration.

Redevelopment:

If this development includes the demolition of an existing structure (e.g., redevelopment, relocation), then the calculation below takes into consideration the appropriate credits that may be eligible for this development, based on the demolition of the existing structure.

Calculation:

	Sq. Ft	Variable	Trip Average		
Trips:	10,643	/ 1,000	x 47.62	=	506.82 24-hour trips
Pass-by Trips:	Average pass-by trip percentage:		0%		pass-by trip reduction % (destination land use)
					0.00 pass-by trips
Credits:	No structure demolition is proposed		9.44		structure demolition credits
	Total net trips:		497.38		24-hour trips

Road Impact Fee: \$ 308 per trip

Road Impact Fee Assessment:						Road Impact Fee Due:
24-hour trips	fee per trip	road impact fee	pass-by trip discount	redevelopment credits		
506.82	x \$ 308	= \$ 156,100	- 0.00	- 2,907.52	=	\$ 153,193

X	This is being provided as an assessment of the road impact fees due for the development. Road impact fees are due by the applicant upon the City's issuance of an improvement location permit for this development. Please provide a copy of this assessment with any Improvement Location Permit application made with the City regarding this property.
	This is being provided as an estimate for informational purposes only at the request of the applicant and is not binding upon the applicant or the City. The actual assessment of road impact fees for this development is subject to change.



ENGINEERING

ENVIRONMENTAL

INSPECTION

LAND SURVEYING

LAND ACQUISITION

PLANNING

WATER &
WASTEWATER

SINCE 1965

OFFICERS

William E. Hall, PE

Dave Richter, PE, PLS

Steven W. Jones

Christopher R. Pope, PE

B. Keith Bryant, PE

Michael Rowe, PE

PROFESSIONAL STAFF

Andrew T. Wolka, PE

Devin L. Stettler, AICP

Michael S. Oliphant, AICP

E. Rachelle Pemberton, PE

Timothy J. Coomes, PLS

Jon E. Clodfelter, PE

Steven R. Passey, PE

Brian J. Pierson, PE

Christopher L. Hammond, PE

Paul D. Glotzbach, PE

Brian S. Frederick, PE

Jay N. Ridens, PE

Christopher J. Dyer, PE

Matthew R. Lee, PE

Jeromy A. Richardson, PE

Heather E. Kilgour, PE

Adam J. Greulich, PLS

Caleb C. Ross, PE

Dann C. Barrett, PE

Scott G. Minnich, PE

Michael D. Farrell, CPA

Jim R. Lesh, PE

Nicholas J. Kocher, PE

Kelton S. Cunningham, PE

Braun S. Rodgers, PE

Chris J. Andrzejewski, PE

Greg J. Broz, PE

Joshua D. Gonya, PE

Brian S. Haefliger, PE

Ian A.R. Scott, PE

Rob B. Iversen, PE

Jeffrey E. Lazzell, PE

www.ucindy.com

(317) 895-2585

8440 Allison Pointe Blvd., Suite 200, Indianapolis, IN 46250

October 15, 2019

Mr. Jeremy Lollar
Director of Public Works
City of Westfield
2706 E 171st Street
Westfield, IN 46074

RE: REVISED Contracts
Monon Trail Pedestrian Underpass at 161st Street

Dear Mr. Lollar:

We have revised our scope and fee for the above referenced project based on the discussion we had with you and Johnathan Nail during our scope review meeting on October 4, 2019.

The following is summary of the scope that was revised in the contract and serves as an addendum to the Engineer's Report prepared August, 2019:

Project Design and Plan Development

- 1) The total lighting applications has been reduced from three to two. The City will provide direction on the fixture and luminaire to use in each lighting application in lieu of United Consulting providing three options for each lighting application.
- 2) Westfield will direct United Consulting on the location of the conduit, junction boxes and handholes for the security cameras to be installed by the City after construction has been completed.
- 3) The tunnel design will be developed as a rehabilitation and widening of the existing structure previously constructed in 2013 (Phase I). Design and details for the top slab of the tunnel and pile cap will be verified to be in compliance with the design standards that governed the 2013 design rather than updating the design to meet current design standards.

Enclosed are two Engineering Services Agreements for this work and an updated Project Development Cost Summary for the Engineer's Report. We will begin work on the project immediately upon receipt of a signed copy of the Agreement.

If you have any questions or comments, please contact me anytime. My cell number is 317-696-2439.

Sincerely,

UNITED CONSULTING ^{CRP}

Jon Clodfelter, P.E.
Bridge Department Manager

enclosures

c: Johnathan Nail – Westfield City Engineer | Jeff Larrison – UNITED | File (Pending)

City of Westfield
Monon Trail at 161st Street

Project Development Cost Estimate

Field Survey	\$22,500
Geotechnical Investigation/Engineering	\$27,000
Regulatory Permits (Rule 5, HC Outlet Permit)	\$7,000
Utility Coordination	\$35,600
Subsurface Utility Engineering	\$19,200
Project Design and Plan Development	\$298,800
Project Renderings	\$9,500
Post Bid Design Services	\$10,800
TOTAL DESIGN ENGINEERING	\$430,400

Right-of-Way Engineering (3 Parcels)	
Title Work (\$550 Ea. x 3 Searches)	\$1,650
Right-of-Way Engineering (\$2,500 Ea. x 3 Parcels)	\$7,500
Right-of-Way Staking (\$550 Ea. x 3 Parcels)	\$1,650
Land Acquisition Services (3 Parcels)	
R/W Management (\$1,450 Ea. x 3 Parcels)	\$4,350
Value Appraisal (\$1,830 Ea. x 2 Parcels)	\$3,660
Short Form Appraisal (\$2,690 Ea. x 1 Parcels)	\$2,690
Buying (\$1,930 Ea. x 3 Parcels)	\$5,790
Condemnation Support	\$2,500
Land Costs (3 Parcels)	\$114,190 (1)
TOTAL LAND ACQUISITION	\$143,980

Reimbursable Utility Relocations	\$60,000 (1)
Construction Cost (Year 2021)	\$4,800,000
Construction Inspection (12% for budget puposes)	\$576,000 (1)
TOTAL CONSTRUCTION	\$5,376,000

TOTAL PROJECT DEVELOPMENT COST	\$6,010,380
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(1) Estimated at this time.

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made by and between **City of Westfield, Indiana** by and through the Board of Public Works and Safety, ("CLIENT") and **UNITED CONSULTING**, an Indiana corporation ("UNITED CONSULTING").

WITNESSETH



WHEREAS, UNITED CONSULTING desires to provide, and CLIENT desires for UNITED CONSULTING to provide, certain professional services to be performed with respect to **Monon Trail Underpass at 161st Street Project** ("Project"), subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the promises, the mutual covenants and undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section I – Services by UNITED CONSULTING

The engineering services to be performed by UNITED CONSULTING are described in Appendix "A" attached hereto, and made a part hereof, and are referred to herein as the "Services".

Section II – Information and Services to be furnished by CLIENT

The information and services to be furnished by the CLIENT are as set out in Appendix "B", which is attached to this Agreement, and incorporated herein by reference.

Section III – Commencement of Services and Schedule

UNITED CONSULTING shall commence performance under this Agreement upon execution by the parties and shall provide the Services hereunder in accordance with the Schedule contained in Appendix "C", which is attached to this Agreement, and incorporated herein by reference.

Section IV - Compensation

For all Services rendered by UNITED CONSULTING under this Agreement, CLIENT agrees to pay UNITED CONSULTING on the basis of fees and charges established in Appendix "D", which is attached to this Agreement, and incorporated herein by reference.

Section V – Term and Termination

1. Term

This Agreement shall commence upon execution by the parties and shall continue until completion of the Services and deliverables as set forth in Appendix "C" or unless terminated as set forth below.

2. Termination

CLIENT reserves the right to terminate or suspend this Agreement upon five days advance written notice to UNITED CONSULTING. Upon termination of this Agreement, UNITED CONSULTING shall deliver all Work Product (as defined herein) to CLIENT. The dollar amount for any earned but unpaid Services performed by UNITED CONSULTING shall be based upon an estimate of the portions of the total Services completed by UNITED CONSULTING through the effective date of termination, which estimate shall be as made by CLIENT in the exercise of its honest and reasonable judgment for all Services to be paid for on a lump sum basis and shall be based upon an audit by CLIENT of those Services to be paid for on a cost basis or a cost plus fixed fee basis as described in Section IV hereof.

Section VI - General Provisions

1. Subcontracting

It is recognized that UNITED CONSULTING may engage subcontractors to perform a portion of the work under this Agreement. The engagement of subcontractors by UNITED CONSULTING shall not relieve UNITED CONSULTING of any responsibility for the fulfillment of this Agreement. No subcontractor shall subcontract any portion of its work under this Agreement.

UNITED CONSULTING will include a term requiring compliance with all applicable Code of Ethics and Conflict of Interest Policies of the CLIENT in any agreement with a subcontractor for the fulfillment of work under this Agreement.

2. Ownership of Documents

All reproducible materials prepared by UNITED CONSULTING or its subcontractors in connection with this Agreement, alone or in combination with others, on any and all media, in whole or in part, and all copies thereof, whether created before, during, or after the term of this Agreement (collectively, the "Work Product") will be the property of CLIENT.

UNITED CONSULTING shall be allowed to retain copies of all documents included in the Work Product, unless prohibited for reasons of security and as mutually agreed by both parties.

UNITED CONSULTING agrees that written agreements with any and all subcontractors used by UNITED CONSULTING to fulfill UNITED CONSULTING's obligations hereunder shall contain language substantially similar to that of this Subsection to assign to CLIENT all Work Product by such subcontractors, and to require cooperation with UNITED CONSULTING on the same terms and conditions as set forth herein.

The provisions of this Subsection shall survive the expiration, suspension, abandonment, termination, or completion of this Agreement.

3. Access to Records

Full access to the work during the progress of the Services shall be available to the CLIENT. UNITED CONSULTING and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred under this Agreement and shall make such materials available at its respective offices at all reasonable times during the period of this Agreement and for three (3) years from the date of final payment for Services is made by the CLIENT to UNITED CONSULTING.

4. Liability for Damages

UNITED CONSULTING assumes all risk of loss, damage or destruction to the work product, to all of its materials, tools, appliances and property of every description, and for injury to or deaths of its employees or agents arising out of or in connection with the performance of this Agreement, excluding that which occurs due to the acts or failure to act of any third party, and excluding that which is caused by the CLIENT.

5. General Liability Insurance

- a. Amounts and Coverage. UNITED CONSULTING shall procure and maintain at its expense insurance of the kind and in the amounts set forth in Appendix "E" by companies authorized to do such business in the State of Indiana covering all Services and related activities performed by UNITED CONSULTING.
- b. Evidence of Insurance. Before commencing its Services, UNITED CONSULTING shall furnish to CLIENT a certificate, or certificates, showing that it has complied with this Section VI.5.b, which certificate or certificates, shall also designate CLIENT as an additional named insured. The policies shall not be changed or canceled unless thirty (30) days prior written notice has been given to CLIENT.

6. Workmen's Compensation

UNITED CONSULTING shall be responsible for providing all necessary unemployment and Worker's Compensation Insurance for its employees. UNITED CONSULTING shall provide the CLIENT with a certificate of insurance indicating that it has complied with this requirement.

7. Changes in Work

- a. Prior Approval. UNITED CONSULTING shall not commence any additional services or change of scope until authorized by the CLIENT.
- b. Additional Services. Additional services may include, but not be limited to:
 - i. Services associated with significant changes in the scope, extent, or character of the portions of the Project required by, but not limited to, changes in scope, complexity or schedule and revisions required by changes in applicable laws and regulations or due to any other causes beyond UNITED CONSULTING's control.
 - ii. Preparing to serve or serving as a consultant or witness for CLIENT in any litigation or other dispute resolution process related to the Project that does not involve a claim against UNITED CONSULTING or a claim that is based on an alleged act of negligence or breach of contract by UNITED CONSULTING.
 - iii. Subject to other provisions of this Agreement, additional or extended services during the Project made necessary by (1) emergencies or Acts of God endangering the Project site, (2) an occurrence of a hazardous environmental condition, (3)

damages to CLIENT facilities caused by fire, flood or other cause, (4) acceleration or deceleration of the Project Schedule involving services beyond normal working hours, (5) significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages, and (6) default or failure to perform by other consultants.

8. Non-Discrimination and Code of Ethics

UNITED CONSULTING and its subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of the Services under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, handicap, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement.

UNITED CONSULTING shall comply with all applicable Code of Ethics and Conflict of Interest Policies of the CLIENT.

9. Safety

- a. Responsibility. UNITED CONSULTING shall be directly responsible for the safety requirements and programs applicable to its own employees, its subcontractors and other parties with whom it has contracted to perform Services with respect to the Project.
- b. Compliance. UNITED CONSULTING's safety program shall comply with applicable federal, state and local statutes, rules, regulations and ordinances. UNITED CONSULTING shall report to CLIENT, in writing, any injury or accident at the Project site involving its employees, its subcontractors or other parties for which it is responsible, within forty-eight (48) hours or a shorter period of time if required by law.
- c. Notification. UNITED CONSULTING shall not be responsible for the safety requirements or programs applicable to any other person or entity involved with the Project other than UNITED CONSULTING and its subcontractors.

10. Independent Contractor

CLIENT and UNITED CONSULTING are acting in an individual capacity in the performance of this Agreement and will not act as agents, employees, partners, joint venturers or associates of one another. 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. Neither party will assume any liability for any injury (including death) to any persons, nor damage to any property, arising out of the acts or omissions of the agents, employees, or subcontractors of the other party. UNITED CONSULTING shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.

11. Indemnification

UNITED CONSULTING agrees to indemnify the CLIENT for all claims and liability due to the negligent acts of UNITED CONSULTING or its subcontractors, agents or employees.

12. Notification

All written notices required by this Agreement shall be sent to the parties at the following addresses by Certified Mail, Return Receipt.

CLIENT:

*Mr. Jeremy Lollar
Director of Public Works
City of Westfield
2706 East 171st Street
Westfield, Indiana 46074*

UNITED CONSULTING:

*United Consulting
Dave Richter, PE, PLS
President
8440 Allison Pointe Boulevard, Suite 200
Indianapolis, Indiana 46250*

13. Authority to Bind United Consulting

As used in this Agreement, UNITED CONSULTING refers to United Consulting Engineers, Inc. d/b/a UNITED CONSULTING. Further, the signatory for UNITED CONSULTING represents that he/she has been duly authorized to execute this Agreement on behalf of UNITED CONSULTING and has obtained all necessary or applicable approvals to make this Agreement fully binding upon UNITED CONSULTING when his/her signature is affixed hereto.

14. Successors and Assignees

This Agreement is binding upon and shall inure to the benefit of CLIENT and UNITED CONSULTING and their respective successors and permitted assigns. UNITED CONSULTING shall not assign this Agreement without the written consent of CLIENT.

15. Entire Agreement; Amendments

This Agreement and its Appendices, each of which is incorporated herein by reference and made a part of this Agreement, constitutes the entire Agreement of the parties with regard to the subject matter hereof and supersedes all prior discussions or agreements concerning any subject matter related hereto. This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without giving effect to principles respecting conflicts of laws. Subject to Section 19, any action pursuant to this Agreement shall be brought and tried in a court of competent jurisdiction in Marion County, Indiana, and each party hereby irrevocably consents to the personal and subject matter jurisdiction of any such court and waives any objection to such jurisdiction and venue.

17. Non-Waiver

It is agreed and acknowledged that no action or failure to act by CLIENT or UNITED CONSULTING as to a breach, act or omission of the other shall constitute a waiver of any right or duty afforded either of them under this Agreement, as to any subsequent breach, act or omission of the other nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereof, except as may be specifically agreed in writing. No right conferred on either party under

this Agreement shall be deemed waived and no breach of this Agreement excused unless such a waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

18. Invalid Provisions

If any part of this Agreement is later found to be contrary to, prohibited by or invalid under applicable law, rules or regulations, that provision shall not apply and shall be omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement shall not be invalidated and shall be given full force and effect insofar as possible.

19. Dispute Resolution

Any dispute arising out of this Agreement that cannot be resolved through informal discussions between the parties, shall be subject to this Section.

- a. The parties agree that the existence of a dispute notwithstanding, the parties shall continue without delay to carry out all of their respective responsibilities under this Agreement.
- b. Should any dispute arise with respect to this Agreement that cannot be resolved through informal discussions between the parties, a party shall serve written notice to the other party outlining the details of the dispute and demanding mediation. No later than twenty (20) days from the date of the notice demanding mediation, the parties shall confer to discuss the selection of the mediator and agree upon other mediation procedures.
- c. Submission of a dispute under this Agreement to a mediation procedure shall be a condition precedent to filing litigation. No litigation shall be initiated by either party unless the mediation has been completed (unsuccessfully) or a party has failed to participate in a mediation procedure.

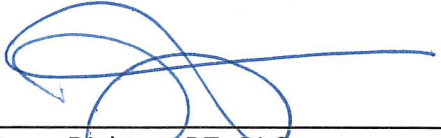
[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.



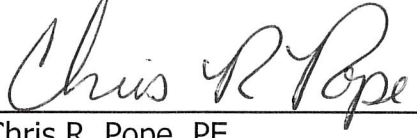
UNITED CONSULTING

CLIENT
City of Westfield – Board of Public
Works and Safety

BY: 

Dave Richter, PE, PLS
President

BY: _____
Jeremy Lollar, Director of Public Works

BY: 

Chris R. Pope, PE
Vice President

BY: _____

DATE: October 15, 2019

BY: _____

DATE: _____

ATTEST: _____

Appendices

- Appendix A** - Services by UNITED CONSULTING
- Appendix B** - Information and Services to be provided by CLIENT
- Appendix C** - Project Schedule
- Appendix D** - Compensation
- Appendix E** - Insurance

Services by UNITED CONSULTING

A. FIELD SURVEY

1. UNITED CONSULTING shall provide the field survey required for preparation of design plans in conformance with the requirements of the "INDOT Design Manual, Part III, Location Surveys", a copy of which is on file with Indiana Department of Transportation and same is incorporated herein by reference and is made part hereof.
2. The Field Survey shall be integrated with the United States Public Land System and physical monumentation as necessary in accordance with Title 865 IAC 1-12 et sequentia.

B. GEOTECHNICAL INVESTIGATION & ENGINEERING

1. UNITED CONSULTING shall make or cause to be made a geotechnical investigation necessary for the design of the proposed project.
2. Borings shall extend sufficiently in depth to obtain characteristic data for proper design of the retaining walls and structure foundation. UNITED CONSULTING shall backfill bore hole or cause to be backfilled in accordance with current industry standards.
3. The geotechnical recommendations shall include retaining wall design for cut wall and fill wall applications.
4. In the event more extensive borings, samplings, or testing are determined to be necessary by UNITED CONSULTING'S Geotechnical Engineer while

exercising reasonable engineering judgment and the cost of the work performed will exceed Geotechnical Investigation Fee specified in Appendix "D" of this Agreement, the work to provide such additional service shall be considered a major change in the scope of work.

C. REGULATORY PERMITS

1. Regulatory Permits

- a. UNITED CONSULTING shall prepare a Rule 5 permit for the Indiana Department of Environmental Management (IDEM).
- b. UNITED CONSULTING shall prepare an outlet permit for the Hamilton County Surveyors Office.

2. Additional Environmental Services

If UNITED CONSULTING is required to provide additional Environmental Services not listed above, the work to provide such additional service shall be considered a major change in the scope of work.

D. UTILITY COORDINATION

1. UNITED CONSULTING shall coordinate with the utility companies located within or adjacent to the right-of-way in accordance with 105 IAC 13 and the Indiana Design Manual.

E. SUBSURFACE UTILITY ENGINEERING

1. Industry Standard of Care- All aspects of the Subsurface Utility Engineering (SUE) performed under this contract will be in accordance with ASCE Standard 38-02 "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" and industry standards as of the date this

scope is approved.

2. Surface geophysical method will be utilized to interpret the presence of subsurface utilities and use electromagnetic equipment to detect and designate the selected subsurface utilities.
3. Ground Penetrating Radar (GPR) will be performed in an attempt to locate any utilities or features that are conductive and non-conductive in nature.
4. Paint markings or flags will be provided to show the approximate horizontal position of the desired utilities. CARDNO will prepare and provide field sketches depicting approximate locations of the utilities to the surveyors for field collection. The field sketches will also be accompanied by a SUE point sheet, depicting each utility line designated in the field along with the number of points (flags) that are to be collected on each line.
5. Air/Vacuum Subsurface Utility Locating – Quality Level A (QLA) will be performed. The following operations are included:
 - a. Coordinate test hole operations with individual utility companies as required.
 - b. Excavate a maximum of fifteen (15) test holes to expose the selected utility at a specific conflict point.
 - c. Excavate test holes by vacuum excavation or hand digging as to prevent damage to wrappings, coatings, or other protective coverings.
 - d. Follow ASCE Standards for Collection and Depiction of Existing Subsurface Utility Data.
 - e. Back fill and compact test holes in 6" lifts with excavated material.
 - f. Restore pavement cuts with replacement of high-performance asphalt patch to a minimum thickness of the existing pavement. In the event the test hole is excavated in a grassy area, the area disturbed will be restored to the condition prior to excavation.
 - g. Provide cleanup of work site to equal or better condition before excavation.

F. PROJECT DESIGN AND PLAN DEVELOPMENT

1. UNITED CONSULTING shall be responsible for the design and plans for the roadway and bridge project development. UNITED CONSULTING shall prepare Contract Plans, Special Provisions to the Standard Specifications and Cost Estimates for the construction of the project, which shall be in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the plans or reports are submitted: American Association of State Highway and Transportation Officials, "A Policy on Geometric Design of Highways and Streets", Indiana Department of Transportation Standard Specifications, Road and Bridge Memoranda, and Road and Bridge Design Manuals except as modified by Supplemental Specifications and Special Provisions, if any. The Cost Estimates shall be prepared according to the current practices of the Indiana Department of Transportation and shall include all types of work required for the complete construction of the project, including all temporary work necessary in connection therewith.
2. UNITED CONSULTING shall complete a constructability review at the preliminary plan and the final plan stages of the design. The constructability review shall include an analysis of construction staging, site access, construction methodologies and impacts to adjacent properties.
3. UNITED CONSULTING shall coordinate with lighting suppliers to provide design and details for two lighting applications which shall include the following:
 - a. LED lighting within the tunnel to provide uniform illumination. The preferred luminaire fixture and criteria for illumination levels will be provided by the CLIENT. Photometric design will be required for one fixture only.

- b. LED lighting will be utilized from the tunnel entrances to the return of the trail to existing grade. The limits of this depressed section of trail extended approximately 650' south of 161st Street and 600' north of 161st Street. The preferred luminaire fixture and criteria for illumination levels will be provided by the CLIENT. Photometric design will be required for one fixture only.
 - c. The electrical design for both applications will follow the design guidance outlined in the current version of the Indiana Design Manual (IDM) and the Illuminating Engineering Society of North America (IESNA) Lighting Handbook.
 - d. Conduit, junction boxes, and handholes will be located to facilitate the installation of the lighting system and the CLIENT'S security system. The CLIENT shall provide the required locations of the junction boxes and handholes required for the security system.
- 4. UNITED CONSULTING shall prepare design, details and necessary permits for the relocation of Citizens Energy Group's 20-inch water main.
- 5. UNITED CONSULTING shall prepare and submit Preliminary Plans to the CLIENT for review and acceptance.
- 6. UNITED CONSULTING shall organize, schedule and attend a Field Check after acceptance of the Preliminary Plans by the CLIENT.
- 7. UNITED CONSULTING shall prepare and submit Final Plans to the CLIENT for review and acceptance.
- 8. UNITED CONSULTING shall prepare the necessary contract bidding documents including Specifications, Standard Drawings, Bidding Forms both standard and unique forms which may be supplied by the CLIENT.
- 9. UNITED CONSULTING shall assist the CLIENT with contractor questions.

10. UNITED CONSULTING shall attend the bid opening, review and certify bids and provide a recommendation for the contract award.

G. PROJECT RENDERINGS

1. UNITED CONSULTING shall prepare up to three project renderings showing the proposed Phase-II work superimposed onto the existing site.

H. POST BID SERVICES

1. UNITED CONSULTING shall attend the pre-construction meeting.
2. UNITED CONSULTING shall respond to Requests for Information (RFI) submitted by the contractor.
3. UNITED CONSULTING shall review and approve shop drawings submitted by the contractor.

I. RIGHT OF WAY ENGINEERING

UNITED CONSULTING shall provide the following Right-of-Way Engineering services to secure the permanent and temporary right-of-way needed for this project.

1. TITLE SEARCH
 - a. A parcel shall be defined as all temporary and permanent right-of-way being acquired from a single existing parcel of land. This means a single parcel could have several legal descriptions based on its configuration.

- b. Determine the owners of all properties located adjacent to and in the immediate area of the project alignment, along with the legal descriptions of those properties (Preliminary Abstracting). Preliminary abstracting shall include a title search, including a search for all mortgages, easements, liens, contract sales, judgments, other encumbrances and the current legal owner and shall be performed by an INDOT pre-qualified Abstractor.

2. RIGHT-OF-WAY ENGINEERING

- a. UNITED CONSULTING shall provide legal descriptions for all parcel takings. The descriptions shall be prepared and certified by a registered land surveyor.
- b. UNITED CONSULTING shall provide individual packets for each parcel. Each packet shall include the following:
 - i. Legal descriptions.
 - ii. Total area before taking.
 - iii. Existing Right-of-Way and documentation thereof.
 - iv. Area of taking.
 - v. Areas of residue.
 - vi. Existing Right-of-Way to be reacquired.
 - vii. Sketch of the parcel, drawn to scale, with the above data indicted thereon.
- c. Provide Legal Instruments required for Transfer of Title and Recording with approval by the CLIENT.

- d. UNITED CONSULTING shall be available for assistance in interpretation of the Right-of-Way documents.

3. RIGHT-OF-WAY STAKING

- a. UNITED CONSULTING shall provide a stakeout in the field locating the proposed right-of-way line for the partial takings included in the parcels. The stakeout shall be made using wooden hubs driven flush with the ground and wooden laths located immediately behind the hubs at property line intersections with the proposed right-of-way lines and at changes in bearing of the proposed right-of-way lines.

J. LAND ACQUISITION

1. APPRAISING

- a. UNITED CONSULTING shall provide appraisers that are state certified or licensed by the Indiana Professional Licensing Agency to complete the appraisal work.
- b. Each Appraiser shall be familiar with the plans for this project and the parcels herein designated.
- c. The Appraiser shall give the owner of each parcel to be appraised the opportunity to accompany the Appraiser during the inspection of the parcel.
- d. The appraisals shall follow accepted principles and techniques in evaluation of real property in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

2. RIGHT-OF-WAY MANAGEMENT

- a. UNITED CONSULTING shall be responsible for administering, scheduling, and coordinating the activities necessary to certify that the right of way has been acquired and the project is clear for construction. This responsibility shall include:
 - i. Meetings, conferences, and coordination with property owners, attorneys, engineers, appraisers, buyers, and the CLIENT.
 - ii. UNITED CONSULTING shall coordinate the delivery of payment to each property owner.

3. BUYING

- a. UNITED CONSULTING shall provide a Right-of-Way Buyer to present the CLIENT'S offer for the required land to each property owner. The Buyer shall be a licensed real estate broker in the state of Indiana.
- b. This work shall not be sublet, assigned or otherwise performed by anyone other than the Buyer.
- c. The Right-of-Way Buyer must be able to explain the project, the acquisition, the impact of the acquisition to the residue, the offer, and negotiate in an honest and competent manner with the property owner.
- d. The Right-of-Way Buyer must document all contacts with the owner and treat all property owners fairly with respect and dignity.

4. CONDEMNATION SUPPORT SERVICES

- a. UNITED CONSULTING shall provide Condemnation Support Services to the CLIENT in the event a parcel cannot be secured. These services will include providing technical assistance and exhibits regarding the project design and the need for Right-of-Way for the condemned parcel.

Services by CLIENT

The CLIENT shall furnish UNITED CONSULTING with the following:

1. Assist UNITED CONSULTING in obtaining property owner information, deeds, and plans of adjacent developments, section corner information, and any other pertinent information necessary to perform work under this Agreement.
2. Criteria for design and details for signs, signals, highways and structures such as grades, curves, sight distances, clearances, design loadings, etc.
3. Specifications and standard drawings applicable to the project.
4. Plans of any existing structures within the project limits, if available.
5. All written views pertinent to the project that is received by the CLIENT.
6. Guarantee access to enter upon public and private lands as required for the UNITED CONSULTING to perform work under this Agreement.
7. Advertisement for Public Information Meetings and reservation of the venue.
8. Condemnation Services
9. Project Bidding Services including project advertisement, distribution of plans, contract specifications and any addenda to bidders.
10. Landscape Architecture Services

11. Obtain approval to reconstruct Citizen's Energy Group waterline.
12. Proprietary Materials Requests.
13. Photometric Requirements For Tunnel And Approaches To Tunnel.
14. Fixture and Luminaire Selections For Tunnel And Approaches To Tunnel.
15. Details And Specifications For Security Cameras To Be Installed After Project Completion.
16. Details And Specifications For Trail Amenities.

Schedule

All work by UNITED CONSULTING under this Agreement shall be completed and delivered to the CLIENT for review and approval within the following time periods:

A. FIELD SURVEY

1. Completed Field Work within **56** calendar days from the contract commencement date.

B. GEOTECHNICAL INVESTIGATION

1. The Geotechnical Investigation shall be completed within **56** calendar days after submission of Preliminary Plans.

C. REGULATORY PERMITS

1. All regulatory permits for this project shall be applied for following the project Field Check.

D. UTILITY COORDINATION

1. The various stages of Utility Coordination shall be completed as the project development progresses and completed prior to the Final Plans submission for each phase.

E. SUBSURFACE UTILITY ENGINEERING

1. The Subsurface Utility Engineering shall be completed within **28** calendar days from contract commencement date.

F. PROJECT DESIGN AND PLAN DEVELOPMENT

1. Preliminary Plan Submission within **84** days after completion of the field survey.
2. Field Check Meeting within **14** calendar days after approval of Preliminary Plans.
3. Final Plans Submission within **182** days from project field check meeting.
4. Final Contract Documents within **28** calendar days after approval of Condemnation has been finalized.

G. PROJECT RENDERINGS

1. The Project Renderings shall be completed within **56** calendar days from project field check meeting.

H. POST BID DESIGN SERVICES

1. Post Bid Services shall be completed as required throughout duration of construction.

I. RIGHT OF WAY ENGINEERING

1. The Right of Way Engineering shall be completed within **14** calendar days from approval of the Preliminary Plans.

J. LAND ACQUISITION

1. The Land Acquisition shall be completed within **213** calendar days from approval of offers.

APPENDIX D

Compensation

A. Amount of Payment

1. UNITED CONSULTING shall receive as payment for the work performed under this Agreement the total fee not to exceed **\$ 460,190** unless a modification of the Agreement is approved in writing by the CLIENT.
2. UNITED CONSULTING will be paid for the work performed under this Agreement on a lump sum basis in accordance with the following schedule:

A.	FIELD SURVEY	\$	22,500
B.	GEOTECHNICAL INVESTIGATION	\$	27,000
C.	REGULATORY PERMITS (R5, HC Outlet)	\$	7,000
D.	UTILITY COORDINATION	\$	35,600
E.	SUBSURFACE UTILITY ENGINEERING	\$	19,200
F.	PROJECT DESIGN AND PLAN DEVELOPMENT	\$	298,800
G.	PROJECT RENDERINGS	\$	9,500
H.	POST – BID DESIGN SERVICES	\$	10,800
I.	RIGHT OF WAY ENGINEERING (3 Parcels)		
	1. Title Work (\$550/Ea.)	\$	1,650
	2. Right of Way Engineering (\$2,500/Ea.)	\$	7,500
	3. Right of Way Staking (\$550/Ea.)	\$	1,650

J.	LAND ACQUISITION (3 Parcels)		
	1. Right of Way Management (\$1,450/Ea.)	\$	4,350
	2. Value Appraisal (2 @ \$1,830/Ea.)	\$	3,660
	3. Short Form Appraisal (1 @ \$2,690/Ea.)	\$	2,690
	4. Buying (3 @ \$1,930/Ea.)	\$	5,790
	5. Condemnation Support (\$2,500/Ea.)	\$	2,500

B. Method of Payment

1. UNITED CONSULTING may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the CLIENT. The invoice voucher shall represent the value, to the CLIENT, of the partially completed work as of the date of the invoice voucher. UNITED CONSULTING shall attach thereto a summary of each pay item in Section A.2. of this Appendix, percentage completed and prior payments.
2. The CLIENT for and in consideration of the rendering of UNITED CONSULTING services provided for in Appendix "A", agrees to pay UNITED CONSULTING for rendering such services the fee established above upon completion of the work thereunder and acceptance thereof by the CLIENT.
3. In the event of a substantial change in the scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with item 7, (changes in work) of the General Provisions, set out in this Agreement.

APPENDIX E

Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/1/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).	
PRODUCER Walker & Associates 7364 E. Washington Street Indianapolis IN 46219	CONTACT NAME: Brenda Russell PHONE (A/C, No, Ext): (317) 353-8000 FAX (A/C, No): (317) 351-7149 E-MAIL ADDRESS: b.russell@walkerhughes.com
INSURED United Consulting Engineers Inc. 8440 Allison Pointe Blvd., Ste 200 Indianapolis IN 46250	INSURER(S) AFFORDING COVERAGE INSURER A: Sentinel Insurance Company 11000 INSURER B: Hartford Accident & Indemnity Ins. 22357 INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES CERTIFICATE NUMBER: CL18102517456 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:			84SBWUI8421	11/1/2018	11/1/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/POP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS			84UEGVV8861	11/1/2018	11/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$ 10,000			84SBWUI8421	11/1/2018	11/1/2019	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	84WEGCB8685	11/1/2018	11/1/2019	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER CITY OF WESTFIELD 130 PENN STREET WESTFIELD, IN 46074	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Brenda Russell/BKR <i>Brenda Russell</i>
--	--

ACORD 25 (2014/01)
INS025 (201401)

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/1/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER SterlingRisk 135 Crossways Park Drive P.O. Box 9017 Woodbury NY 11797		CONTACT NAME: PHONE (A/C, No, Ext): 800-767-7837 FAX (A/C, No): 516-487-0372 E-MAIL ADDRESS: request@sterlingrisk.com	
INSURED UNITCON-02 United Consulting Engineers, Inc. 8440 Allison Pointe, BLVD, Suite 200 Indianapolis IN 46250		INSURER(S) AFFORDING COVERAGE INSURER A: Starr Surplus Lines Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 13604	

COVERAGES

CERTIFICATE NUMBER: 971030073

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☐ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC ☐ OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ OTHER:
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER:
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ OTHER:
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y ☒ N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				PER STATUTE ☐ OTHER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability			SLSLPRO26234918	12/22/2018	12/22/2019	\$3,000,000 \$3,000,000 Limit each claim Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City of Westfield 130 Penn Street Westfield IN 46074	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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ACORD 25 (2016/03)

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**City of Westfield Fire Department
Board of Public Works & Safety Report
2019 September
Report**

Contact: Fire Chief

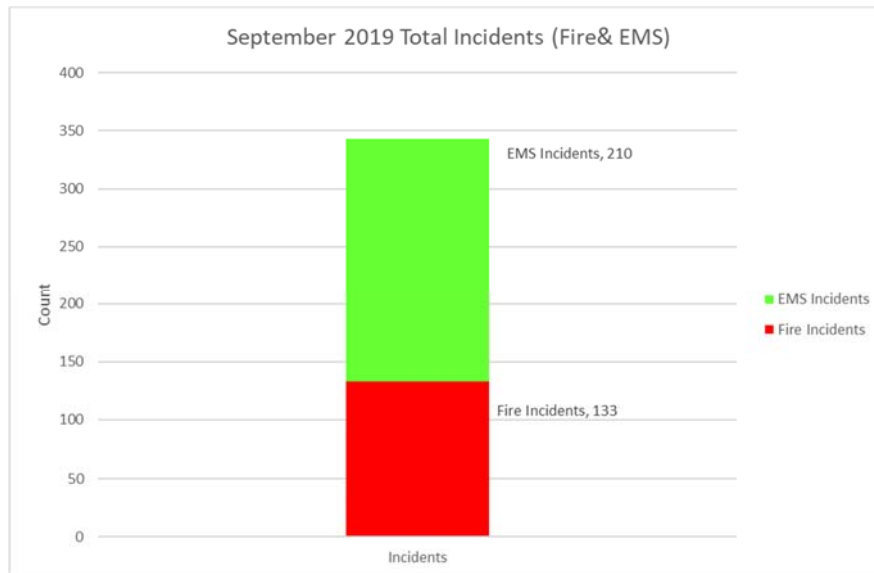
Marcus Reed

Or Nikki Hartman

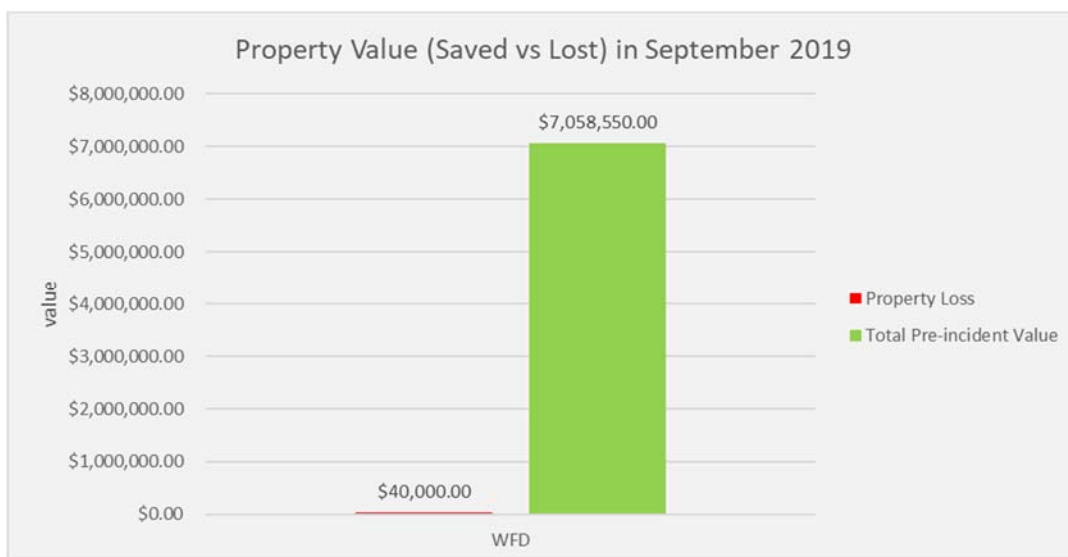


Westfield Fire Department 2019 September Incident Statistics

804-3304



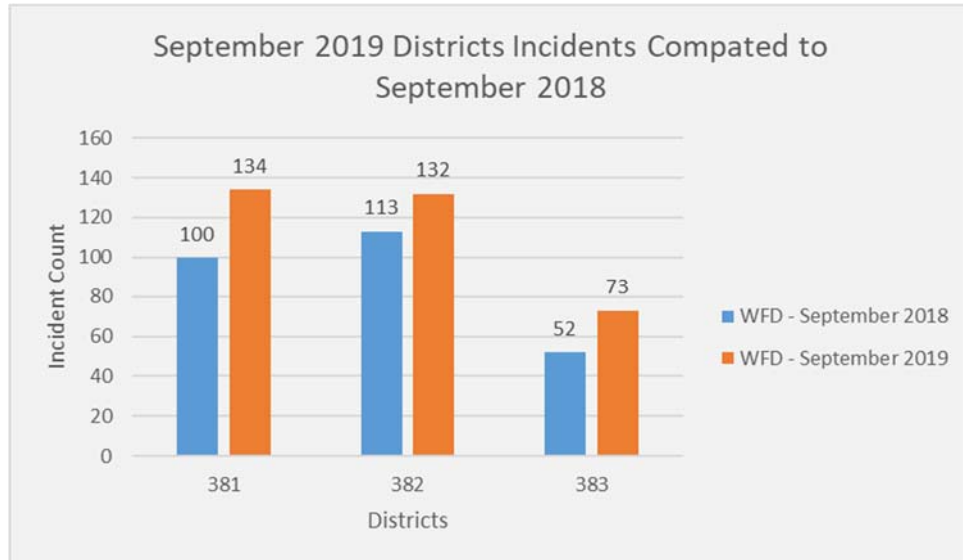
Incident Type	Incident Count	% of total Incident
Fire Incidents	133	39%
EMS Incidents	210	61%
Total Incidents	343	



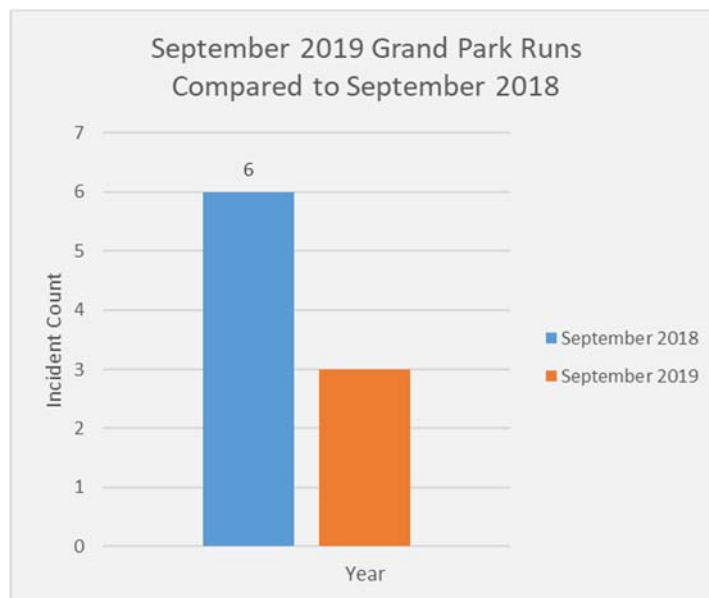
Property Loss	Total Pre-Incident Value	% of Property value saved
40000	7058550	99%



Westfield Fire Department 2019 September Incident Statistics



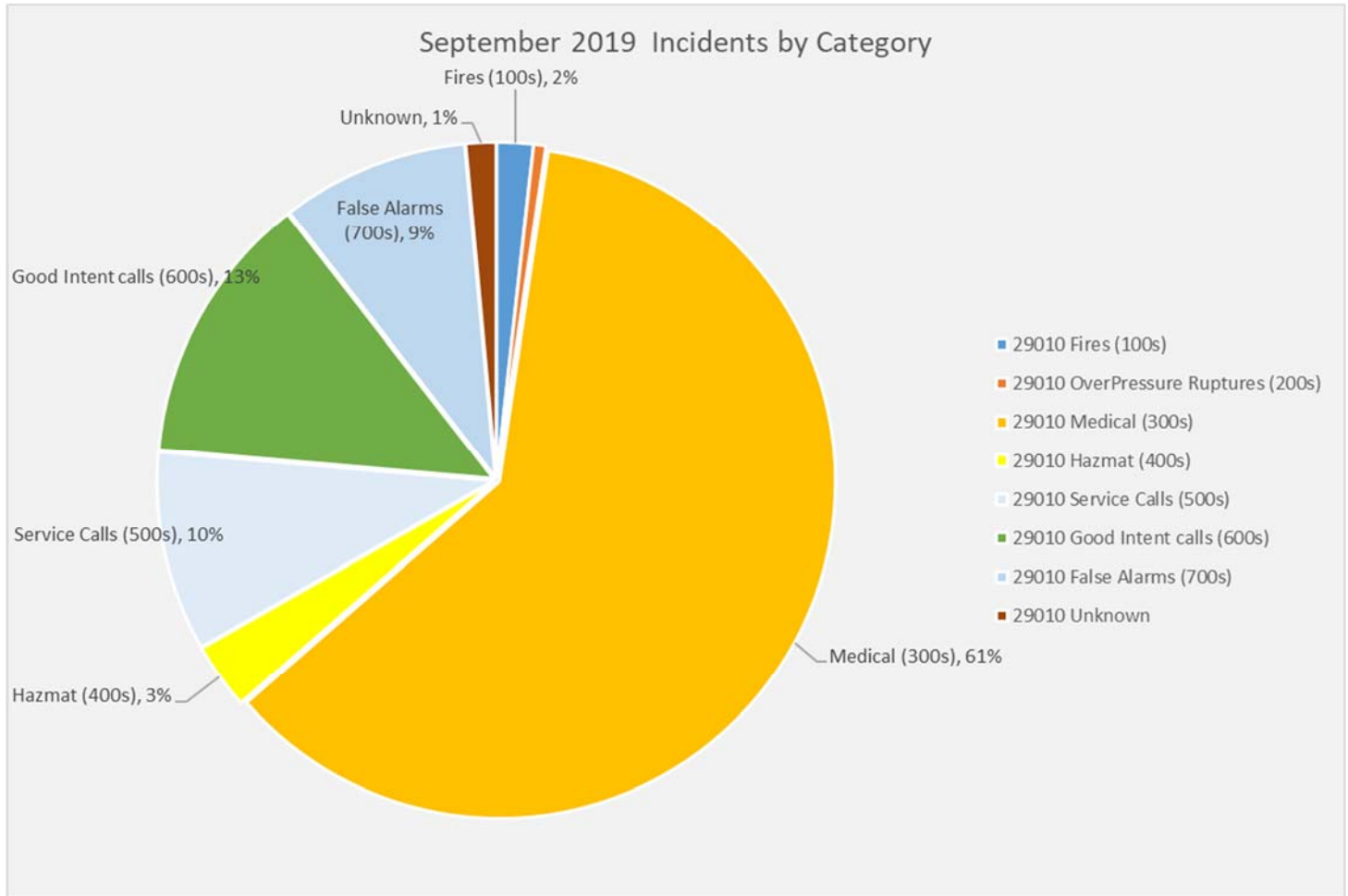
Districts	September 2018	September 2019	Increase/decrease	% increase/decrease
381	100	134	34	34%
382	113	132	19	17%
383	52	73	21	40%



September 2018 Incident Calls	September 2019 Incident Calls	Change	% Change
6	3	-3	-50%



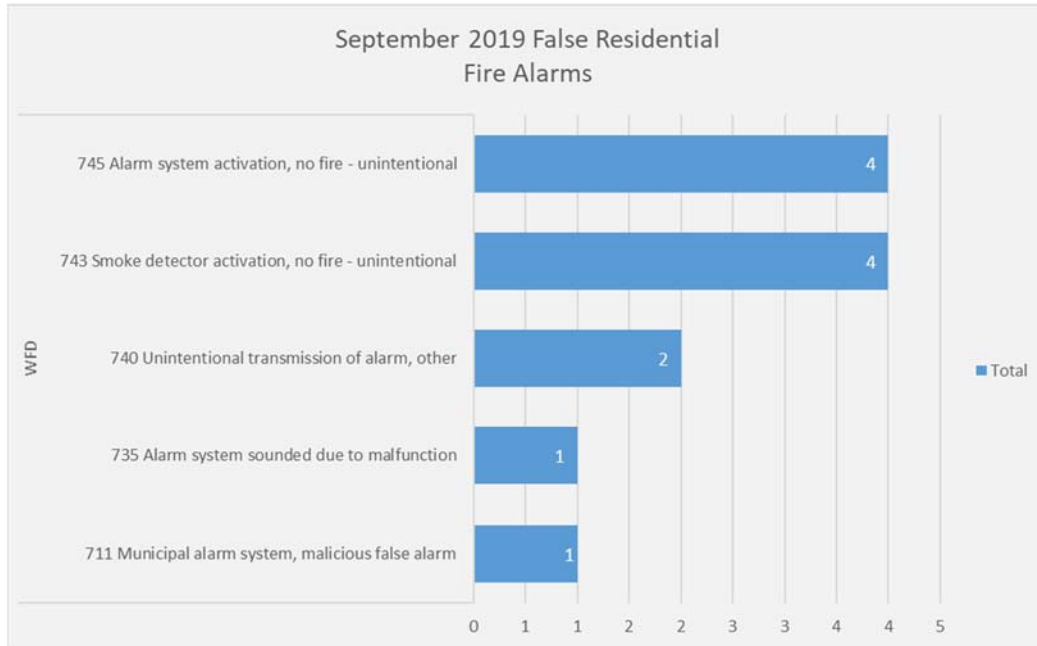
Westfield Fire Department 2019 September Incident Statistics



Call Type	Incident Count	% of total calls
Medical	210	61.22%
Good Intent	45	13.12%
Service Calls	33	9.62%
False Alarm	31	9.04%
Hazmat	11	3.21%
Fires	6	1.75%
OverPressure	2	0.58%
Unknown	5	1.46%
Total	343	

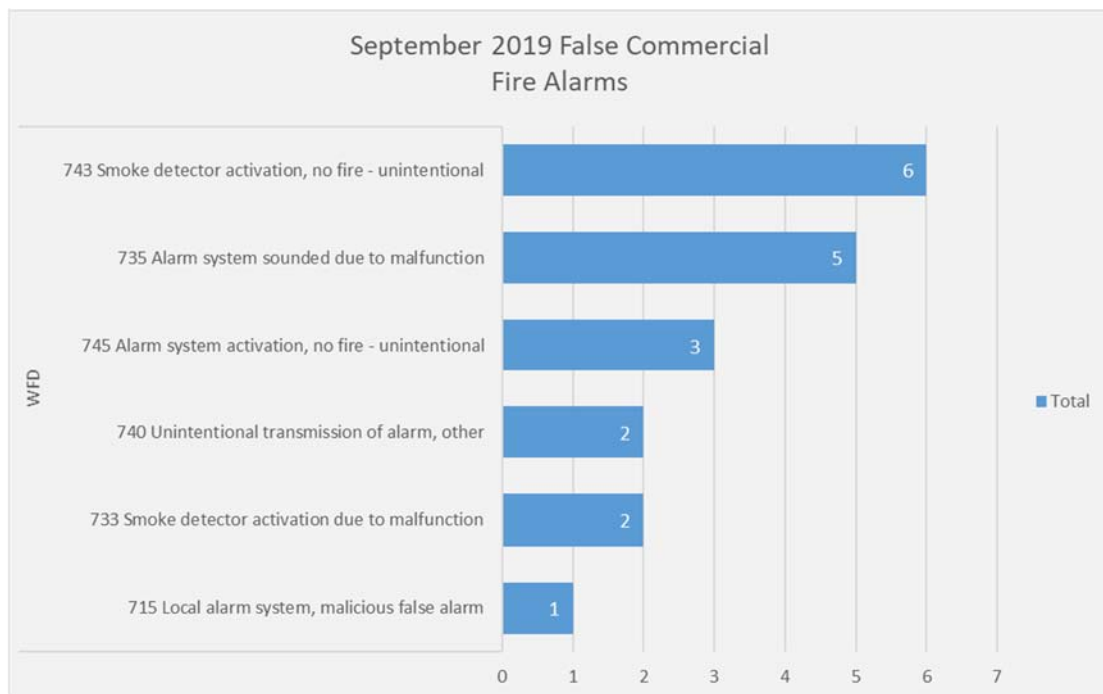


Westfield Fire Department 2019 September Incident Statistics False Residential Fire Alarm Calls



12 Residential Alarms

False Commercial Fire Alarm Calls

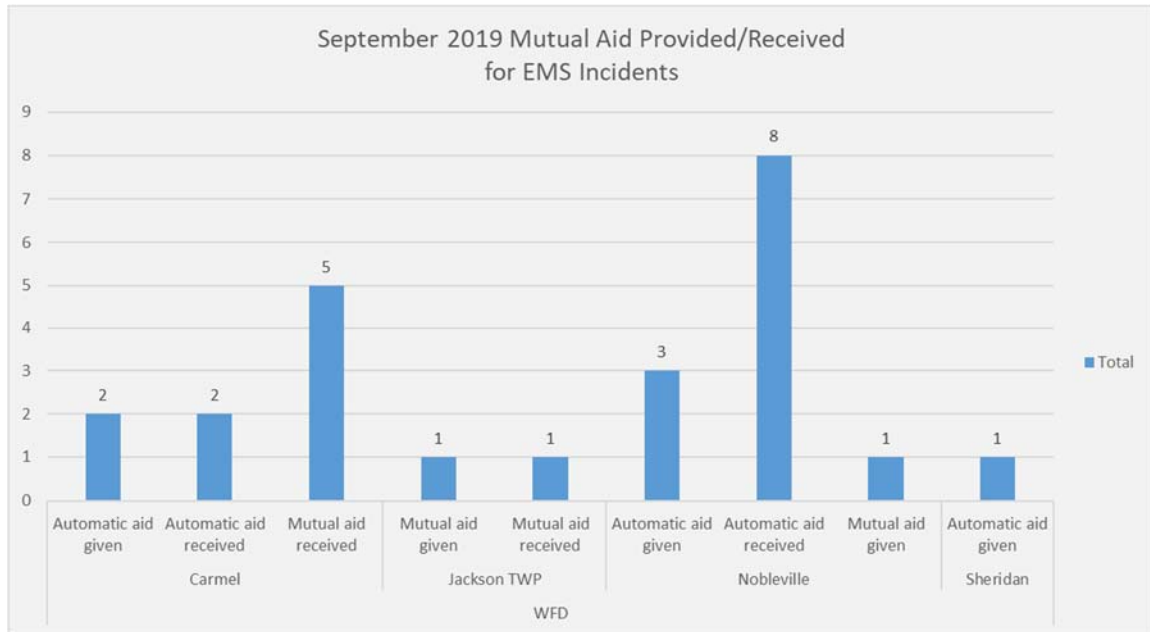


19 Commercial False Alarms



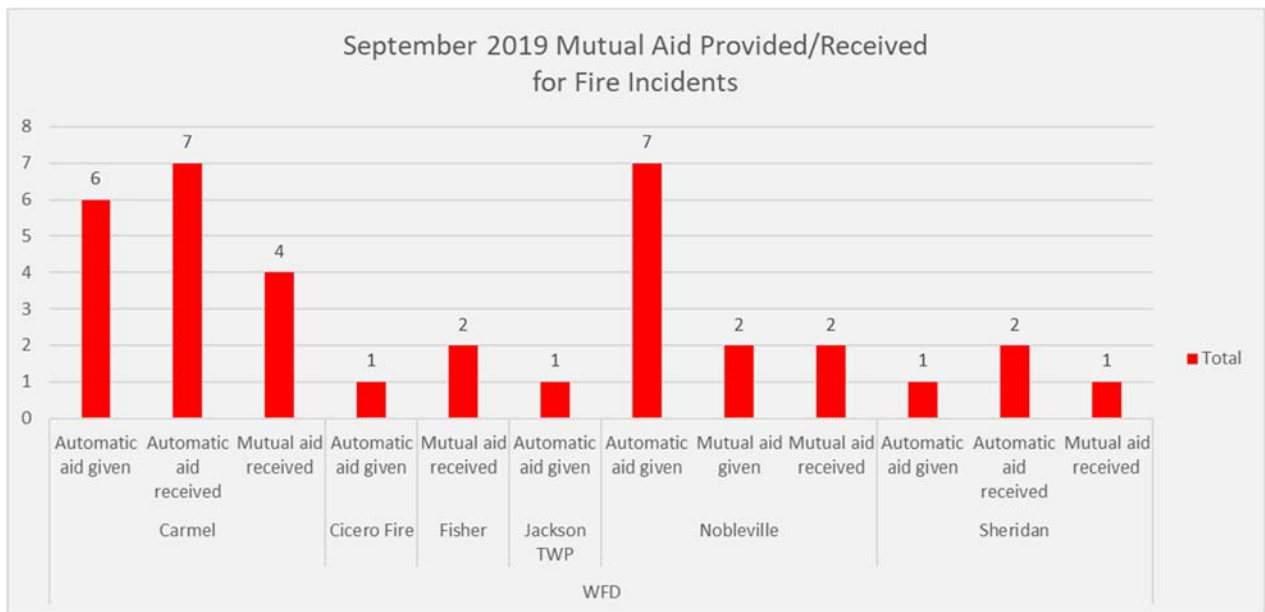
Westfield Fire Department 2019 September Incident Statistics

Mutual Aid data
EMS



Total 22

Mutual Aid Data
Fire Incidents

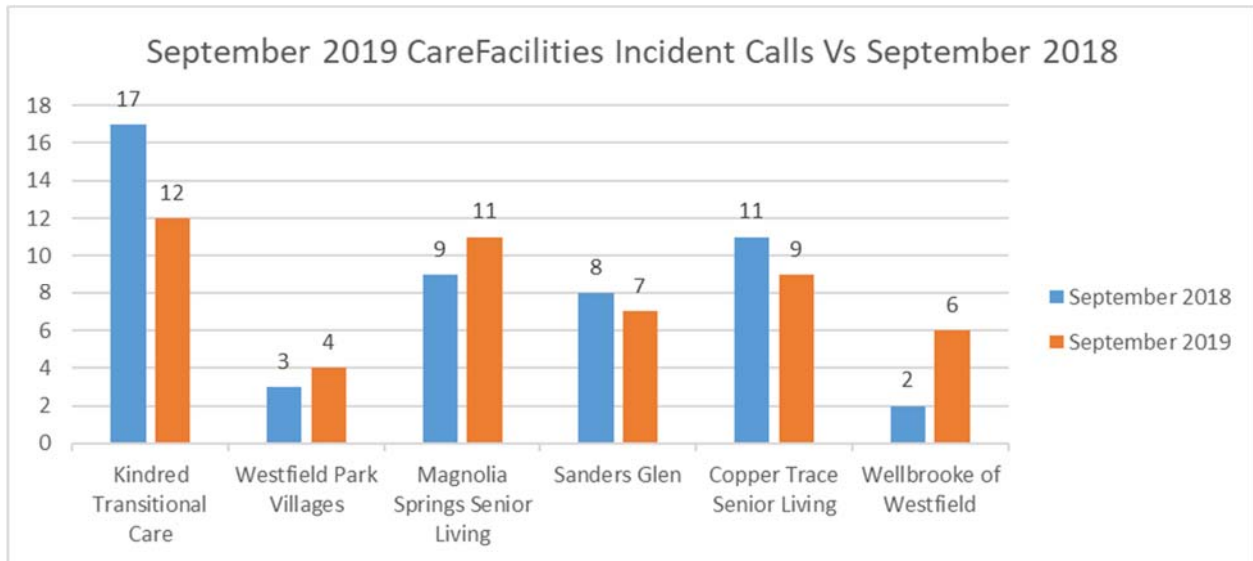


Total 28

Care Facility



Westfield Fire Department 2019 September Incident Statistics



Westfield Police Department
Monthly Performance Measures Report



Board of Public Works & Safety

September 2019

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Westfield Police Department

September 2019

Events by Nature

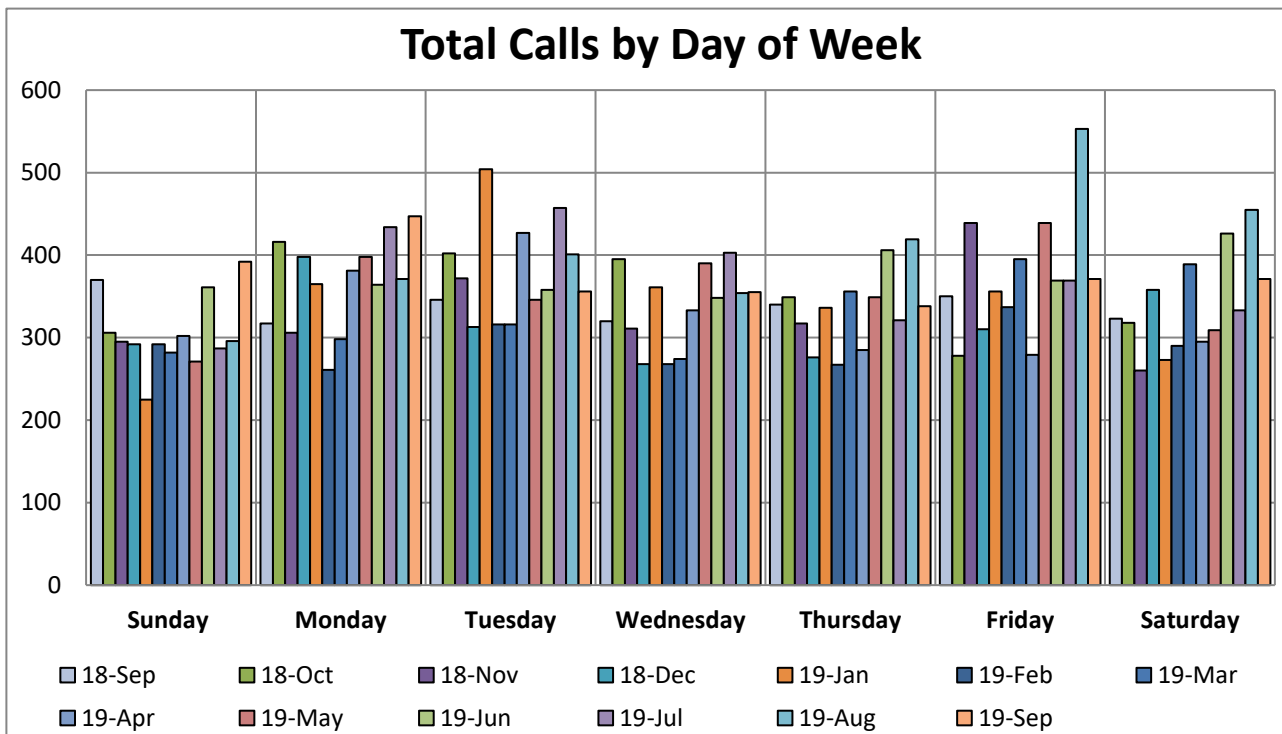
911 Hang Up	34
Abandoned Vehicle	10
Abandonment	1
Abuse / Neglect	5
Accident - Hit & Run PD	17
Accident - Hit & Run PI	0
Accident - Other	0
Accident - Property Damage	75
Accident - Personal Injury	10
Accident - Sinking Vehicle	0
Accident - Unknown	2
Accelerator Stuck	0
Active Assailant	0
Alarm - Other	0
Alarm - Vehicle	1
Alarm - Burglar	129
Alarm - Hold Up	10
Animal Bite / Attack	4
Animal Complaint	21
Assist Fire	63
Assist Other Department	21
Assist Public	20
Battery	1
Bomb Device Found	0
Bomb Threat	0
Burglary	3
Carjacking	0
Case Follow Up	88
Child Seat Inspection	1
Civil Dispute	31
Criminal Mischief	9
Damage to Property	0
Death Investigation	0
Directed Patrol	5
Disturbance	26
Driving Complaint	72
Drug Complaint	8
Drug Lab	0
Escort	0
Fight	0
Firearms Shots Fired	1
Found / Lost Property	21
Found Person	0
Fraud Prescription	0
Fraud / Deception	25
Harassment	30
Intoxicated Person	8

Investigation	5
Juvenile Complaint	12
K9 Detail	1
Kidnapping	0
Lock Out	42
Loud Party	5
Mental Emotional - Violent	1
Mental Person	12
Miscellaneous	26
Missing Person	9
Missing Person - PLS	0
Nuisance	14
Ordinance Misc.	6
Parking Complaint	16
Physical Disturbance	13
Product Contamination	0
Reckless Activity	0
Road Rage	4
Robbery	0
Runaway	0
School Patrol	160
Security Check	1
Sex Offense	6
Shooting	0
Solicitor	1
Special Detail	1
Stabbing	0
Suicide	2
Suspicious Activity	87
Suspicious Package	0
Theft	28
Theft - From a Vehicle	9
Theft - of a Vehicle	0
Threat to Life	11
Threatening Suicide	8
Tow Release	5
Traffic Hazard	78
Transport	0
Trespassing	10
Traffic Stop	1197
Unknown Call for Police	0
VIN Check	39
Wanted	2
Warrant Service	8
Weapons Complaint	2
Welfare Check	57
	2630

Westfield Police Department
September 2019

Total # of Calls by Day of Week

DAY	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep
Sunday	370	306	295	292	225	292	282	302	271	361	287	296	392
Monday	317	416	306	398	365	261	298	381	398	364	434	371	447
Tuesday	346	402	372	313	504	316	316	427	346	358	457	401	356
Wednesday	320	395	311	268	361	268	274	333	390	348	403	354	355
Thursday	340	349	317	276	336	267	356	285	349	406	321	419	338
Friday	350	278	439	310	356	337	395	279	439	369	369	553	371
Saturday	323	318	260	358	273	290	389	295	309	426	333	455	371
TOTAL	2366	2464	2300	2215	2420	2031	2310	2302	2502	2632	2604	2849	2630

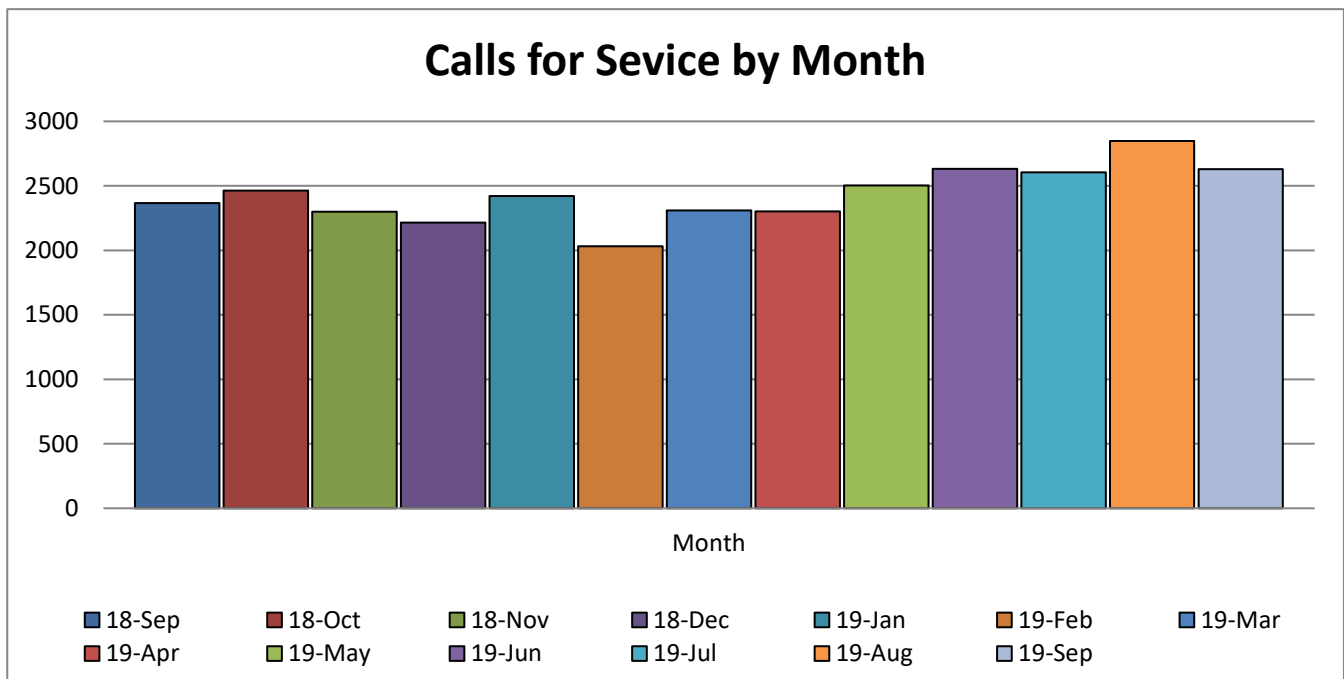


Westfield Police Department
September 2019

Total # of Calls by Hour of Day

HOURL	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep
0	80	77	70	83	76	57	105	85	121	106	99	119	116
1	68	54	49	47	56	51	71	56	85	56	80	73	83
2	44	37	38	49	47	40	45	44	59	45	42	49	59
3	47	41	47	35	44	27	61	38	39	34	39	32	62
4	17	34	30	23	29	26	32	28	18	16	20	25	32
5	21	17	30	19	33	23	25	17	25	22	23	37	40
6	28	38	40	27	46	36	36	36	24	53	57	45	42
7	79	58	65	70	71	57	49	43	84	103	71	116	90
8	150	134	141	137	142	109	111	129	160	181	136	134	128
9	170	162	166	158	189	128	139	158	173	176	160	171	155
10	162	136	146	139	156	133	128	135	155	189	152	165	175
11	116	114	134	123	118	103	96	96	135	108	127	149	132
12	97	97	109	110	128	97	104	87	120	113	127	138	108
13	106	134	143	108	134	111	133	150	120	121	123	148	106
14	122	164	131	129	144	122	118	135	128	131	159	164	126
15	134	148	118	126	139	105	110	117	121	127	131	161	120
16	130	124	97	97	106	84	109	111	131	111	117	148	132
17	105	113	83	101	93	89	106	108	144	134	96	132	109
18	156	173	149	161	169	159	180	174	137	165	182	187	176
19	149	165	132	115	137	148	161	144	121	168	161	159	154
20	72	96	70	84	65	49	89	69	82	86	79	67	90
21	77	89	97	73	80	75	68	94	94	105	120	136	108
22	111	142	115	101	123	104	107	138	109	146	172	152	139
23	125	117	100	100	95	98	127	110	117	136	131	142	148
TOTAL	2366	2464	2300	2215	2420	2031	2310	2302	2502	2632	2604	2849	2630

Westfield Police Department
September 2019



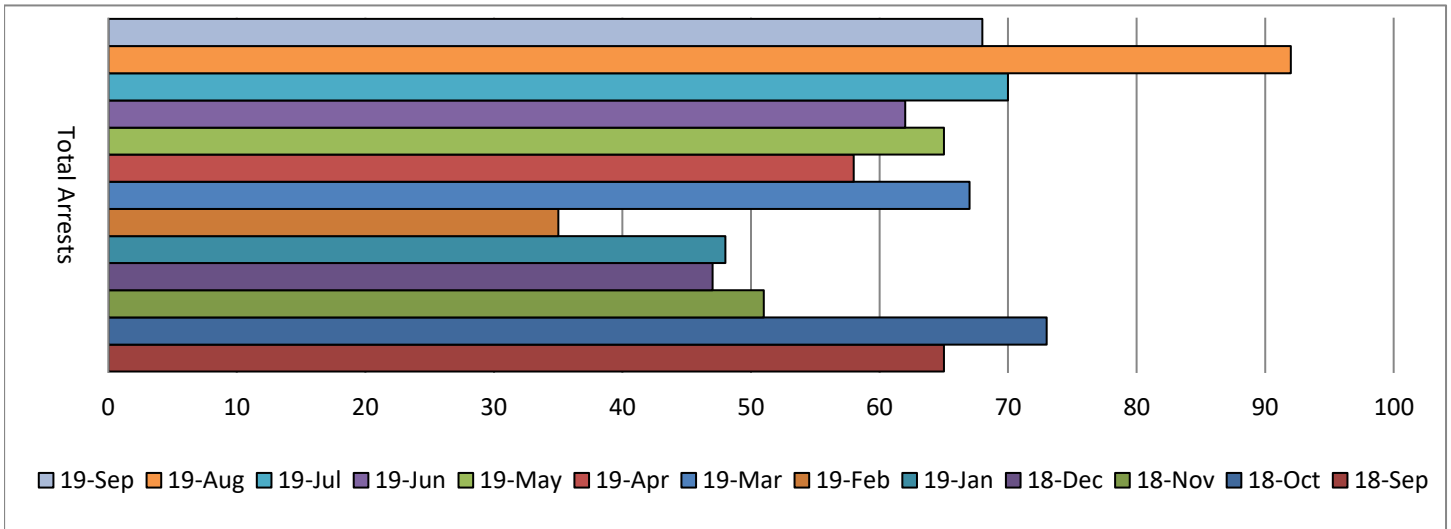
Westfield Police Department
September 2019

UCR OFFENSES

OFFENSE	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep
Arson	0	0	0	0	0	0	0	0	0	0	0	1	0
Homicide	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	0	1	1	-1	0	2	0	0	2	0	1	0	0
Robbery	0	0	0	0	0	0	1	2	0	0	0	0	0
Battery - Aggravated	0	0	0	0	1	0	1	0	0	0	0	0	1
Battery - Simple	11	7	11	11	12	12	12	8	13	16	17	11	19
Burglary	3	0	0	1	0	2	2	2	1	0	4	3	0
Theft	30	24	18	33	30	21	30	26	30	20	25	30	24
Motor Vehicle Theft	1	-1	0	3	0	0	2	1	0	1	2	1	0
TOTAL	45	31	30	47	43	37	48	39	46	37	49	46	44

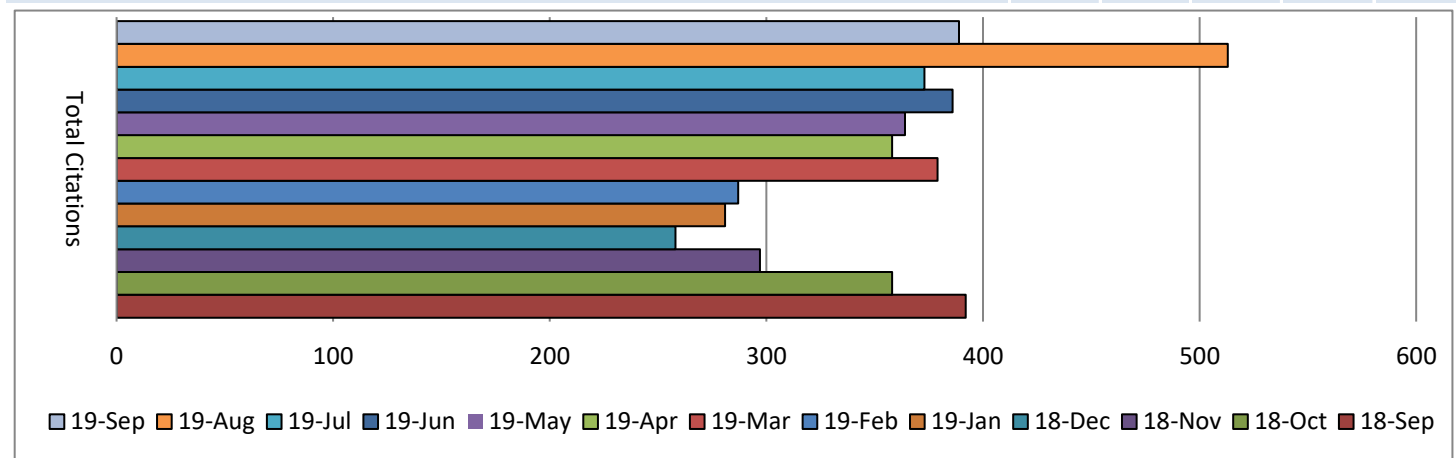
Westfield Police Department September 2019

Arrest Reports Taken	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep
Alcohol/ Drug Related	22	28	12	18	17	17	20	20	19	28	35	35	27
Felony Charges	18	10	15	8	14	8	35	14	15	11	29	20	31
Misdemeanor Charges	90	89	52	63	55	50	70	75	81	77	89	90	86
Total Arrests	65	73	51	47	48	35	67	58	65	62	70	92	68



Traffic	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep
Total Citations	392	358	297	258	281	287	379	358	364	386	373	513	389
Total Written Warning	1043	1106	997	1008	1083	909	979	976	973	1202	1057	1232	1167
Total Traffic Accidents	53	76	60	66	68	41	47	46	87	62	67	54	67
Property Damage	43	66	51	52	54	37	38	40	75	51	60	43	62
Personal Injury	10	9	9	14	12	4	9	6	12	11	7	10	5
Fatality	0	1	0	0	2	0	0	0	0	0	0	1	0
Hit and Run*	3	11	8	6	5	2	4	5	2	4	6	2	9

*numbers included in property damage, personal injury, and fatality accidents



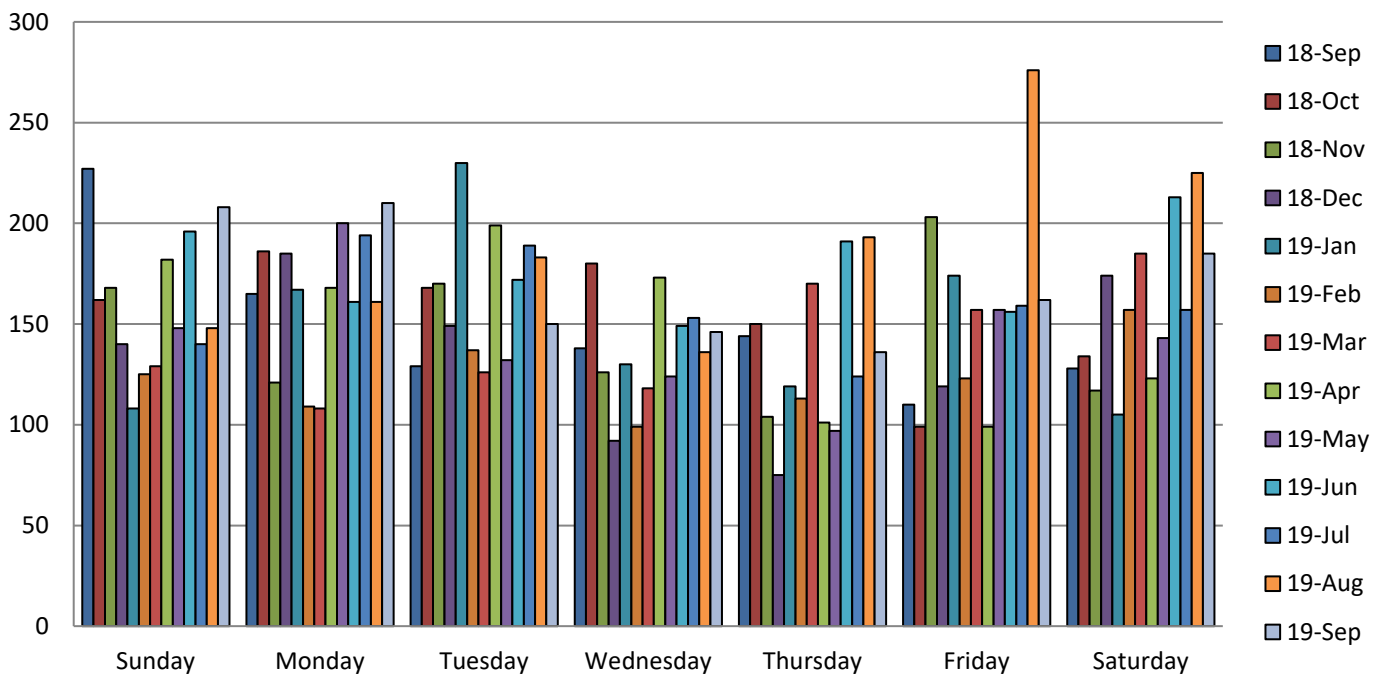
Westfield Police Department

September 2019

Traffic Stops by Day of Week

Day:	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep
Sunday	227	162	168	140	108	125	129	182	148	196	140	148	208
Monday	165	186	121	185	167	109	108	168	200	161	194	161	210
Tuesday	129	168	170	149	230	137	126	199	132	172	189	183	150
Wednesday	138	180	126	92	130	99	118	173	124	149	153	136	146
Thursday	144	150	104	75	119	113	170	101	97	191	124	193	136
Friday	110	99	203	119	174	123	157	99	157	156	159	276	162
Saturday	128	134	117	174	105	157	185	123	143	213	157	225	185
TOTAL	1041	1079	1009	934	1033	863	993	1045	1001	1238	1116	1322	1197

Total Traffic Stops by Day of Week

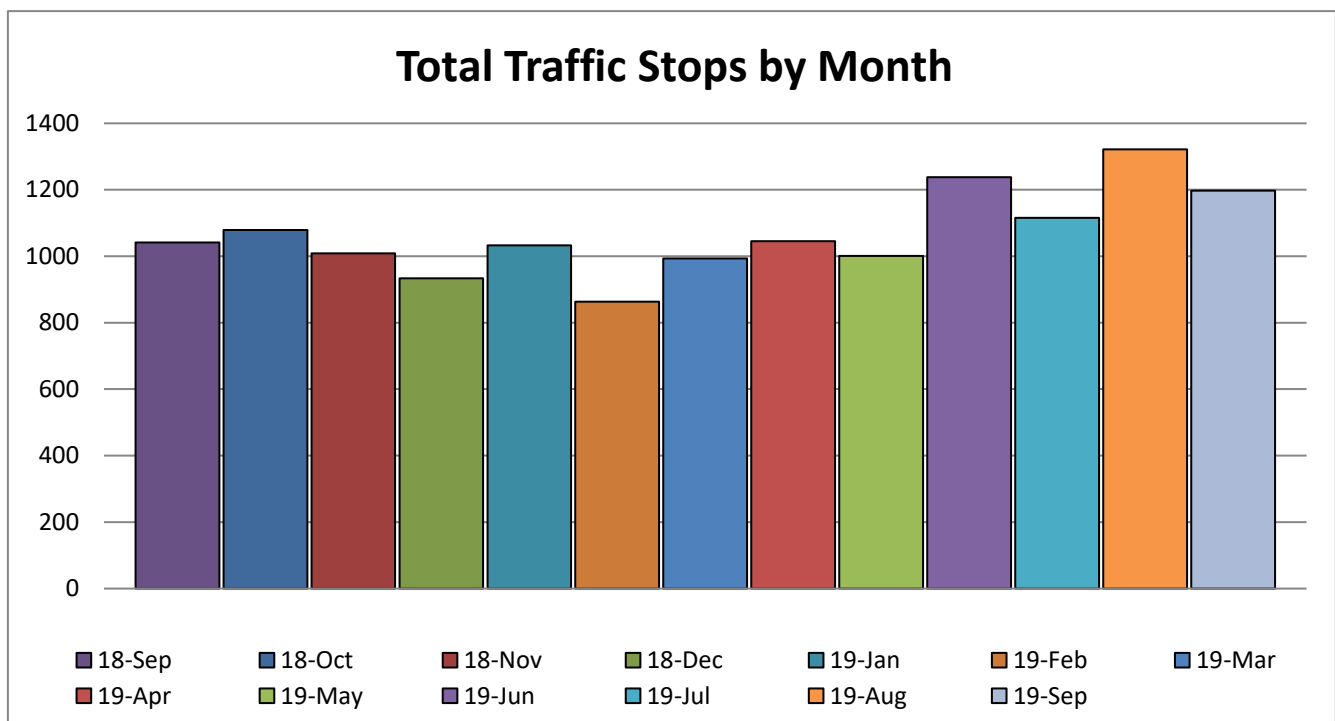


Westfield Police Department
September 2019

Traffic Stops by Hour of the Day

Hour:	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep
0	49	54	41	42	46	37	70	50	83	77	65	73	82
1	39	28	23	24	29	25	44	32	58	32	49	46	53
2	28	18	19	27	20	16	16	24	38	29	21	29	34
3	27	19	22	17	18	10	26	12	18	20	19	14	27
4	8	20	5	9	10	8	6	10	7	3	10	8	17
5	5	4	11	4	12	8	10	7	8	11	9	17	18
6	10	15	17	11	26	15	18	14	9	27	28	26	25
7	39	20	29	24	22	23	19	11	36	48	37	54	40
8	77	72	63	59	67	43	39	61	77	105	71	69	62
9	87	75	88	76	81	54	54	78	82	112	84	71	68
10	83	60	59	65	70	50	50	61	60	104	72	76	72
11	47	40	53	39	36	26	33	37	40	36	45	60	40
12	25	20	23	30	45	29	31	33	29	28	37	59	31
13	34	40	48	43	51	34	47	55	27	41	34	55	27
14	36	60	52	43	49	40	44	50	38	51	41	73	43
15	65	57	43	38	40	33	29	42	31	38	49	69	44
16	38	28	26	34	35	28	38	30	43	25	26	55	36
17	19	20	23	21	24	13	26	30	31	25	17	28	16
18	59	85	72	91	91	99	109	96	53	76	86	81	85
19	67	93	73	63	85	80	76	81	38	101	77	76	81
20	19	35	26	30	14	24	30	19	19	22	14	16	30
21	26	44	55	18	32	30	22	50	39	45	48	63	61
22	79	86	73	59	77	69	64	91	62	86	96	98	91
23	75	86	65	67	53	69	92	71	75	96	81	106	114
TOTAL	1041	1079	1009	934	1033	863	993	1045	1001	1238	1116	1322	1197

Westfield Police Department
September 2019



Westfield Police Department
September 2019

Community Events

9/10/19	Jake Laird Community Day
9/13/19	Washington Woods Elementary Heroes Week
9/18/19	Breakfast with an Officer and Ride to School
9/18/19	Shamrock Career Fair
9/28/19	Coffee With A COP

Westfield Police Department
September 2019

Training

9/4-6/19	Midwest Crisis Negotiators Conference
9/4-5/2019	S.T.O.P.S. Instructor Recertification
9/5/19	Firearms Qualifications
9/5/19	ESU Monthly Training
9/5/19	K9 Monthly Training
9/11/19	How to Supervise Bad Attitudes and Negative Behaviors
9/16-20/19	CIT
9/17/19	UAS Training
9/19/19	Firearms Qualifications
9/23-27/19	Pedestrian/Bicycle Crash Investigation
9/24/19	K9 Legal Updates and Opinions
9/30-10/1	ESU Week Long Training

Project Name: 151st and Towne Road Intersection Improvement Project

Project Number / Phase: J1632330A0/ 25

Date: 8/29/2019

Change Order Number: 01

Prepared By: Veronica Parsell

Project Manager: Tammy Miller

Change Requested:

Following a field site visit on 5/23/2019 by Cardno archaeologists, the project area was determined to consist of no-till agricultural fields with large areas of standing water, maintained lawn, and fields consisting of shrub/scrub vegetation. Each of these areas contain less than 30 percent ground surface visibility and will require shovel test unit excavation. In addition, INDOT-Cultural Resource Office guidelines require that no-till agricultural fields be subjected to shovel test unit excavation. Cardno coordinated with INDOT-CRO via email on 6/5/2019 regarding the conditions of the current project area, and INDOT-CRO confirmed that shovel testing throughout would be required. Cardno's original budget accounted for shovel test survey of 1 acre. The project area now measures 4.3 acres in size, all of which will require shovel test survey. In addition, during the field visit, archaeologists identified one small prehistoric archaeological site. While the original scope included the cost for a no find archaeological short report, the project will now require a full report of investigation. Cardno also assumes that one additional site will be identified as a result of the shovel test survey, for a total of two newly documented sites within the project area.

This change of scope includes the following:

- Shovel test excavation of 4.3 acres (69 total shovel test units),
- Field identification of two archaeological sites (20 artifacts total; 16 additional shovel test units),
- Analysis and documentation of two archaeological sites (20 artifacts total),
- A full report of investigation.

Fixed Fee: \$5,200.00

Change Approved By:

Signature

Printed Name/Title

Company

Authorization Date

Cardno, Inc.



Mayor
Andy Cook

City Council
Jim Ake
Steven Hoover
Robert L. Horkay
Charles Lehman
Joe Edwards
Cindy L. Spoljaric
Mark Keen

Clerk Treasurer
Cindy J. Gossard

To: Westfield Board of Public Works & Safety

Date: October 23, 2019

Re: Action Item - Signing Authority
196th Street and Grassy Branch Improvements

The City of Westfield Public Works Department is requesting that the Board of Public Works and Safety consider granting Jeremy Lollar, Director of Public Works, signing authority for the preliminary engineering services for the 196th Street and Grassy Branch Improvements project related to the Gordon Food Services development announcement. The signing authority is only for the scope of work necessary to get started immediately. This scope includes the topographic survey, geotechnical engineering, initial permitting, and traffic analysis. The contract for "fast-track" services will not exceed \$100,000.

Kate Snedeker

Randy Graham

Andy Cook

Public Works Department

(317) 804-3100 office
(317) 804-3190 fax

2706 East 171st Street
Westfield, IN 46074
westfield.in.gov

LPA – CONSULTING CONTRACT SUPPLEMENT NO. 3

This supplemental contract is made and entered into this _____ day of _____, 2019, by and between the City of Westfield, Indiana, hereinafter referred to as the "LPA", and WSP USA INC., formerly known as Parsons Brinckerhoff, Inc., hereinafter referred to as the "Consultant".

WITNESSETH

WHEREAS, the LPA on July 27, 2016, entered into a contract, providing for the necessary services required in connection with the Westfield Boulevard Connector (Des. No. 1401650).

WHEREAS, in order to provide for completion of these services it is necessary to amend and supplement the original Contract.

NOW, THEREFORE, it is agreed by and between the parties as follows:

1. SECTION I of the original contract is revised to include additional scope as summarized in Appendix "E", annexed hereto and by this reference incorporated herein for all purposes as if fully set forth.
2. SECTION IV of the original contract is amended to read as follows:

SECTION IV COMPENSATION. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "F" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed \$ **693,481.00.**

3. All other terms and conditions of the contract shall remain in full force and effect.

The parties having read and understand the foregoing terms of the Contract do by their respective signatures dated below hereby agree to the terms thereof.

CONSULTANT

Duane E. McKinney, Area Manager
Print or type name and title

Signature and date

ATTEST:

LOCAL PUBLIC AGENCY

Recommended for approval by:

Print or type name and title

Signature and date

Print or type name and title

Signature and date

Print or type name and title

Signature and date

ATTEST:

(Print or type name and title)

(Signature)

APPENDIX "E"
ADDITIONAL SCOPE

Westfield Boulevard Connector

Environmental Document/Permitting

WSP will amend the current contract with the Subconsultant. WSP will provide information needed by the Subconsultant for the modification request to be accepted by IDEM.

Subconsultant will submit a modification request to IDEM for additional wetland impacts. Subconsultant will act as Client's agent and will follow up with the agencies and will track the modification progress.

Subconsultant will submit an extension request to the USACE for the Indiana Regional General Permit. Subconsultant will act as Client's agent and will follow up with the agency to track the time extension progress.

Not included in this task:

- o Purchase of mitigation credits.

Roadway

Incorporation of Pond Design by Others:

WSP was directed to incorporate a revised pond design provided by Others into WSP's original design. This effort required:

- Coordination emails and phone calls in order to:
 - Convert the surface data into a usable format for WSP.
 - Coordinate a design revision in order to avoid negatively impacting other design elements.
 - Incorporate plan sheets, quantities, and special provisions designed and provided by Others into the revised plan set.
- Conduct multiple reviews of the design by Others.
- Incorporate the new surface by Others into WSP's surface for updated cross sections and earthwork.
- Revise drainage structures going into and out of the ponds due to a revised pond side slope and bottom.
- Incorporate revisions to 26 WSP plan sheets.
- Development of a design exception request.
- Updating quantities.
- Updating construction cost estimate.

Building Avoidance:

The final WSP design included a building removal. Building avoidance was not previously included because the building was going to be removed as part of the development project, and WSP and the City didn't want an abnormal condition or more maintenance for Westfield when the building was gone. Between advertisement and the letting, WSP was directed to revise the design to eliminate the building impact. This effort required:

- Assessment of alternatives for building avoidance.
- Revising surface and cross sections for earthwork.
- The addition of a new culvert and the revision of a culvert already specified.
- Revision to 8 plan sheets.
- Updating quantities.
- Updating cost estimate.

Additional Coordination with Hamilton County Surveyor's Office (HCSO):

Crossing and Outlet permits were applied for prior to WSP's Final Tracings submission in May 2018. The HCSO contact at that time held off issuing the permits until the CIF permit had been approved for the project and a definitive letting date had been set. Both the CIF

permit and the letting were delayed by the developer not purchasing the land and issuing the City flood easements until the spring/summer of 2019. By the time WSP reached out for issue of the crossing and outlet permits in August 2019, there was a new contact with HCSO who required additional coordination and a response to new and additional questions. This effort required:

- Additional correspondence with HCSO.
- Filling out a variance request with the HCSO.
- Investigating required mitigation for fill in a floodplain and what would be required to present the project to the HCSO drainage board.
- Calculating the amount of fill proposed to be placed in the floodplain below the 100 year water surface elevation by the Westfield Boulevard Connector, the proposed trail along the Anna Kendall, and the bridge.
- Determining the different types of fills being place in the flood plain below the 100 year water surface elevation.

APPENDIX "F"

A. Amount of Payment

1. The CONSULTANT shall receive as payment for the satisfactory performance of the work performed under this Agreement a firm fixed price lump sum of **693,481.00** which shall not be increased unless a modification of this Agreement is approved in writing by the LOCAL PUBLIC AGENCY.

B. Method of Payment

1. The CONSULTANT shall submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the LOCAL PUBLIC AGENCY. The invoice voucher shall represent the value, to the LOCAL PUBLIC AGENCY, of the partially completed work as of the date of the voucher. The CONSULTANT shall attach thereto a summary of each Task, percentage completed, and prior payments.
2. The LOCAL PUBLIC AGENCY, for and in consideration of the rendering of the professional services provided for Appendix A, agrees to pay the CONSULTANT for rendering such services the fees established above in the following manner:
 - i. For completed work, and upon receipt of invoices from the CONSULTANT and approval thereof by the LOCAL PUBLIC AGENCY but in no event later than 30 days after receipt of said invoices, payments covering the work performed shall be due and payable to the CONSULTANT. From the partial payment thus computed, there shall be deducted all previous partial fee payments made to the CONSULTANT.
3. In the event of a substantial change in the scope, character, or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with Item 6 (Changes in Work) of the General Provisions set out in this Agreement.

QUITCLAIM DEED

THIS INDENTURE WITNESSETH that effective this ____ day of September, 2019, DAHM NO. 49, LLC, an Indiana limited liability company (“Grantor”), QUITCLAIMS unto the CITY OF WESTFIELD, an Indiana municipal corporation (“Grantee”), for no consideration, all the right, title and interest and claim which the said Grantor has in the following described real estate in Hamilton County, Indiana, legally described on Exhibit A, attached hereto and incorporated by reference herein.

[Signature Page and Notary Acknowledgement Follow.]

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed, effective the day and year first above written.

GRANTOR:
DAHM NO. 49, LLC,
an Indiana limited liability company

By: _____
William J. Dahm, Manager

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Personally appeared before me today, William J. Dahm, the duly authorized Manager of Grantor, and acknowledged the execution of this Quitclaim Deed to be his voluntary act and deed for and on behalf of said Grantor, states that any representations contained therein are true to the best of his personal knowledge.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, on this _____ day of September, 2019.

Notary Public

Printed Name: _____

My Commission Expires: _____

My County of Residence: _____

The mailing address to which statements should be mailed under IC 6-1.1-22-8.1 is 130 Penn Street, Westfield, Indiana, 46074.

The mailing address of Grantee is 130 Penn Street, Westfield, Indiana, 46074.

A Sales Disclosure Form is not required pursuant to IC 6-1.1-5.5-2(a)(1).

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Erick D. Ponader

This instrument was prepared by Erick D. Ponader, Taft Stettinius & Hollister LLP, One Indiana Square, Suite 3500, Indianapolis, IN 46204.

EXHIBIT A

OVERALL LAND DESCRIPTION

Section 1, Township 18, Range 3 THE TRAILS OF WESTFIELD Block Pt B Irregular Shape

Deeded Acres:0.01

State Parcel Number: 29-09-01-004-007.001-015

Parcel Number: 08-09-01-00-04-007.001

AND

Section 1, Township 18, Range 3 THE TRAILS OF WESTFIELD Block Pt C Irregular Shape

Deeded Acres:0.13

State Parcel Number: 29-09-01-004-008.001-015

Alternate Parcel Number: 08-09-01-00-04-008.001

QUITCLAIM DEED

Document Cross Reference Number: 2016065124

THIS INDENTURE WITNESSETH that West 32, LLC and Indiana limited liability company, ("Grantor"), **QUITCLAIMS AND DEDICATES** to the CITY OF WESTFIELD, Hamilton County, Indiana ("Grantee"), for the sum of one Dollar \$ 1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the real estate in Hamilton County, Indiana described in Exhibit A and shown in Exhibit B (the "Real Estate").

This conveyance is made subject to all existing easements and right-of-ways.

The Real Estate may not be owned in its entirety by Grantor and this deed shall serve as a source of title only for that part of the Real Estate owned by Grantor as of the date hereof.

(The remainder of this page is intentionally left blank.)

Parcel No. 29-09-02-000-003.001-015

IN WITNESS WHEREOF, Grantor has caused this deed to be executed this _____ day of _____, 2019.

"GRANTOR":

By: _____
Signature

By: _____
Print

Title

STATE OF INDIANA)
)
COUNTY OF HAMILTON) SS:

Before me, a Notary Public in and for said County and State, personally appeared _____, as _____ of _____, an Indiana limited liability company, who acknowledged the execution of the foregoing Quitclaim Deed, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this _____ day of _____, 2019.

(Signature) _____

(Printed Name) _____

Notary Public residing in _____ County

My Commission Expires: _____

Parcel No. 29-09-02-000-003.001-015

ACCEPTED BY "GRANTEE":

CITY OF WESTFIELD, INDIANA
BY ITS BOARD OF PUBLIC WORKS AND SAFETY

By: _____ Date: _____
Andy Cook, Presiding Officer

By: _____ Date: _____
Kate Snedeker, Member

By: _____ Date: _____
Randy Graham, Member

ATTEST

Cindy J. Gossard, Clerk-Treasurer

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Andy Cook, Kate Snedeker, and Randy Graham, by me known to be the members of the City of Westfield Board of Public Works and Safety, and Cindy J. Gossard, Clerk-Treasurer of the City of Westfield, who having been duly sworn upon his/her oath acknowledged the acceptance of the foregoing Quitclaim Deed, for and on behalf of the City of Westfield, Indiana.

Witness my hand and Notarial Seal this _____ day of _____, 2019.

(Signature) _____

(Printed Name) _____

Notary Public residing in _____ County

My Commission Expires: _____

Please return recorded instrument to: Director of Public Works, City of Westfield, 2728 East 171st Street, Westfield, Indiana, 46074.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Brian Zaiger.

This instrument was prepared by: Brian Zaiger, Esq., Krieg Devault, LLP, 12800 N. Meridian Street, Suite 300, Carmel, IN 46032, 317-566-1110.

Parcel No. _____

EXHIBIT "A"

Project: Midland Trace
Fee Simple
Key No.: 29-09-02-000-003.001-015

Sheet 1 of 1

A part of the North Half of Section 2, Township 18 North, Range 3 East, Hamilton County, Indiana, described as follows: Commencing at the northeast corner of said section; thence South 88 degrees 40 minutes 35 seconds West (basis of bearings derived from Instrument No. 2016065124) 1,493.37 feet along the north line of said section to the southwest corner of the East Half of the Southeast Quarter of Section 35, Township 18 North, Range 3 East; thence South 0 degrees 34 minutes 25 seconds East 615.00 feet to the centerline of 175th Street; thence South 88 degrees 40 minutes 35 seconds West 1,095.22 feet along said centerline to the northeast corner of the tract of land described in Instrument No. 2016065124; thence South 0 degrees 34 minutes 25 seconds East 25.00 feet to the south boundary of said 175th Street; thence South 88 degrees 40 minutes 35 seconds West 195.56 feet along the boundary of said 175th Street to the point of beginning of this description: thence Southwesterly 63.70 feet along an arc to the right and having a radius of 1,037.00 feet and subtended by a long chord having a bearing of South 7 degrees 13 minutes 00 seconds West and a length of 63.69 feet; thence South 8 degrees 58 minutes 35 seconds West 100.21 feet; thence Southwesterly 69.44 feet along an arc to the left and having a radius of 813.00 feet and subtended by a long chord having a bearing of South 6 degrees 31 minutes 47 seconds West and a length of 69.42 feet to the south line of the tract of land described in Instrument No. 2016065124; thence South 88 degrees 40 minutes 35 seconds West 12.05 feet along said south line to the eastern boundary of Austrian Pine Way; thence along the boundary of said Austrian Pine Way Northeasterly 71.60 feet along an arc to the right and having a radius of 825.00 feet and subtended by a long chord having a bearing of North 6 degrees 29 minutes 25 seconds East and a length of 71.57 feet; thence North 8 degrees 58 minutes 35 seconds East 100.21 feet along said boundary; thence along said boundary Northeasterly 61.54 feet along an arc to the left and having a radius of 1,025.00 feet and subtended by a long chord having a bearing of North 7 degrees 15 minutes 23 seconds East and a length of 61.53 feet to the south boundary of said 175th Street; thence North 88 degrees 40 minutes 35 seconds East 12.09 feet along the boundary of said 175th Street to the point of beginning and containing 0.064 acres, more or less.



This description was prepared for the City
of Westfield, Indiana on the 14th day of
October, 2019

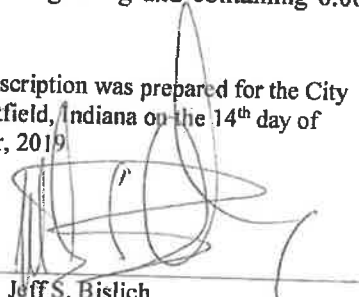
by 
Jeff S. Bislich
Indiana Registered Surveyor
License Number 9800003

EXHIBIT "B"
PREPARED FOR THE CITY OF WESTFIELD

SHEET 1 OF 1

PROJECT: MIDLAND TRACE
COUNTY: HAMILTON
SECTION: 2
TOWNSHIP: 18 N.
RANGE: 3 E.

OWNER: WEST 32 LLC
INSTRUMENT NO. 2017-50284 DATED: 10/10/17

DRAWN BY: P.A. McCALLISTER, 10-14-19
CHECKED BY: J.S. BISLICH, 10-14-19



Hatched area is the
approximate easement.

Dimensions shown below are from the above listed record documents.

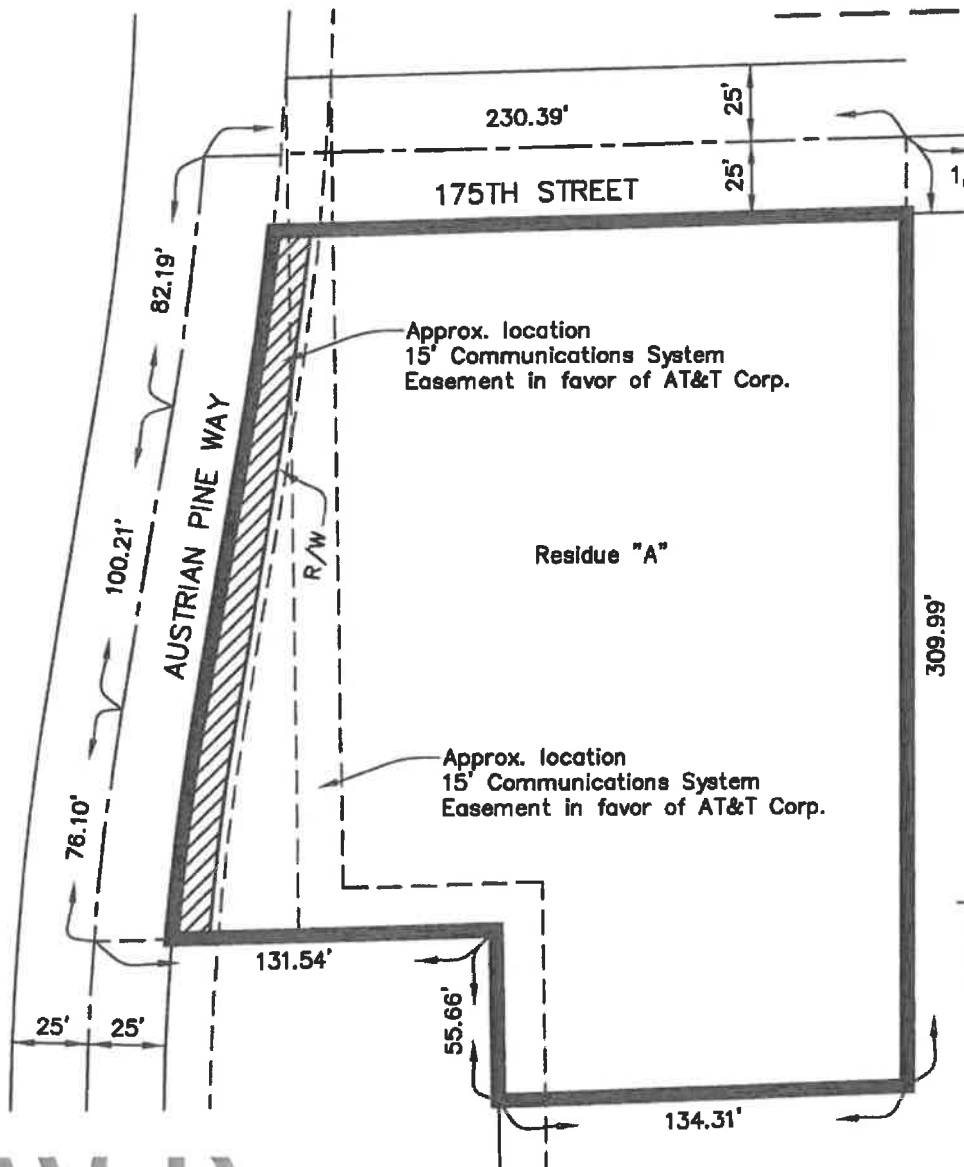


SW COR.
E 1/2 E 1/2 SE 1/4
SEC. 35, T18N, R3E

1,493.37'



SCALE: 1" = 60'



Jeff S. Bislich, PS
Professional Surveyor No. 9800003
State of Indiana

115 W. Washington Street, Suite 1270S
Indianapolis, Indiana
(317) 972-1706

This exhibit was prepared from information obtained from the recorder's office
and other sources which were not checked by a field survey.

QUITCLAIM DEED

THIS INDENTURE WITNESSETH that effective this 8 day of ~~September~~^{October}, 2019, EDGEROCK DEVELOPMENT LLC, an Indiana limited liability company ("Grantor"), QUITCLAIMS unto the CITY OF WESTFIELD, an Indiana municipal corporation ("Grantee"), for no consideration, all the right, title and interest and claim which the said Grantor has in the following described real estate in Hamilton County, Indiana, legally described on Exhibit A, attached hereto and incorporated by reference herein.

[Signature Page and Notary Acknowledgement Follow.]

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed, effective the day and year first above written.

GRANTOR:
EDGEROCK DEVELOPMENT LLC,
an Indiana limited liability company

By: [Signature]
Robert B. Dalton, Manager

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Personally appeared before me today, Robert B. Dalton, the duly authorized Manager of Grantor, and acknowledged the execution of this Quitclaim Deed to be his voluntary act and deed for and on behalf of said Grantor, states that any representations contained therein are true to the best of his personal knowledge.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, on this 8 day of ~~September~~ October, 2019.



[Signature]
Notary Public

Printed Name: Joshua David Faudree

My Commission Expires: May 11, 2022

My County of Residence: Hamilton

The mailing address to which statements should be mailed under IC 6-1.1-22-8.1 is 130 Penn Street, Westfield, Indiana, 46074.

The mailing address of Grantee is 130 Penn Street, Westfield, Indiana, 46074.

A Sales Disclosure Form is not required pursuant to IC 6-1.1-5.5-2(a)(1).

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Erick D. Ponader

This instrument was prepared by Erick D. Ponader, Taft Stettinius & Hollister LLP, One Indiana Square, Suite 3500, Indianapolis, IN 46204.

EXHIBIT A

OVERALL LAND DESCRIPTION

Section 1, Township 18, Range 3 THE TRAILS OF WESTFIELD Block Pt C Irregular
Shape

Deeded Acres: 1.12

State Parcel Number: 29-09-01-004-008.000-015

Alternate Parcel Number: 08-09-01-00-04-008.000

QUITCLAIM DEED

THIS INDENTURE WITNESSETH that effective this 10th day of September, 2019, ZPS WESTFIELD, LLC, a Florida limited liability company ("Grantor"), QUITCLAIMS unto the CITY OF WESTFIELD, an Indiana municipal corporation ("Grantee"), for no consideration, all the right, title and interest and claim which the said Grantor has in the following described real estate in Hamilton County, Indiana, legally described on Exhibit A, attached hereto and incorporated by reference herein.

[Signature Page and Notary Acknowledgement Follow.]

EXHIBIT A
OVERALL LAND DESCRIPTION

Section 1, Township 18, Range 3 THE TRAILS OF WESTFIELD Block Pt B Irregular
Shape

Deeded Acres: 0.37

State Parcel Number: 29-09-01-004-007.000-015

Alternate Parcel Number: 08-09-01-00-04-007.000

AND

Section 1, Township 18, Range 3 THE TRAILS OF WESTFIELD Block Pt C Irregular
Shape

Deeded Acres: 0.01

State Parcel Number: 29-09-01-004-008.002-015

Alternate Parcel Number: 08-09-01-00-04-008.002



For Office Use Only

PERMIT NUMBER _____ EXPIRES _____

PERMIT FEE _____ FEE WAIVED _____

Encroachment Permit Application

- The applicant named below requests permission to encroach on the following public right-of-way, street, sidewalk, alley or other public space at the location described below.
- Applicant shall submit one original application, with plans attached, either in person or by mail.
- No verbal transmissions will be accepted. Fax transmissions will only be accepted at the approval of the Director.
- **Cash or check payments only;** No credit cards accepted. Please call (317)804-3171 with any questions or to purchase an Encroachment Standards Ordinance.

Application Date 10-4-19 Estimated Completion Date 12-31-19

Work Address 161st St. BETWEEN SPRING MILL Subdivision N/A
+ Ditch Rd

Name of Contractor/Utility:

FRONTIER

Address 20905 Hague Road

City Noblesville State IN Zip 46062

Phone 317-984-9010 Fax 317-984-2381

Email STEVE.Costello@FTR.COM

Name of Sub-Contractor:

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

Email _____

LOCATION: Street ☐ Alley ☐ Sidewalk ☐ Shoulder/Berm ☒ IUPPS Number: _____

TYPE: Cut ☐ Bore ☐ Trench ☐ Other ☒ New Construction ☐ Existing Construction ☒
Water ☐ Gas ☐ Electric ☐ Phone ☒ CATV ☐ Sewer ☐ Irrigation ☐

Please describe proposed work: Replace 5 Pole on 161st St. Between SPRING MILL
+ Ditch Northside

SIZE OF STREET OR RIGHT-OF-WAY CUT

Traffic Lanes: Length _____ Width _____ Depth Within Lanes _____

Sidewalk: Length _____ Width _____ Depth Within Sidewalk _____

Type of Surface: Concrete ☐ Asphalt ☐ Asphalt Over Concrete ☐ Asphalt Over Brick ☐ Gravel-Dirt ☐ Brick ☐

TRAFFIC PORTION AFFECTED BY PERMIT

Width: _____ Length: _____ # of Lanes: _____ # of Lanes to be Closed: _____ # of Hours Closed: _____

Vehicles/equipment left on site unattended? YES _____ NO _____ Unattended for: _____ weekdays _____ weekends

CONTINUED ON BACK

TERMS AND CONDITIONS FOR ENCROACHMENT PERMIT

1. It is understood that any permit by virtue of this request is revocable at the pleasure of the City of Westfield and that the same shall be voided if the following terms and conditions are not fulfilled by the Permittee. The Permittee hereby agrees to observe all requirements of the Encroachment Standard Ordinance and comply with the conditions set forth by the MUTCD Rulings and Revisions.
2. The undersigned shall notify the Director or his representative a minimum of 72 hours prior to the time that work is to be performed. The undersigned will furnish placards identifying equipment, flashers, barricades and/or other warning devices at the construction site. When two-way traffic is confined to one lane, flagging personnel shall be required. Permittee must follow Chapter XVII of Title 29, Code of Federal Regulation, Part 1926 known as Safety & Health Regulation for Construction.
3. In cases where the work authorized by the permit will cause major interference with traffic flow on streets, Permittee shall provide a uniformed traffic officer when requested by the Director or his representative to provide traffic control at the construction site. Work shall not be performed on any major arterials, streets and thoroughfares during rush hours or peak hours of vehicular traffic flow, unless in case of emergencies.
4. The Permittee shall not create a hazardous or unsafe situation at construction sites, which would cause injury or damage to vehicular and pedestrian traffic. The Permittee shall not leave unattended open cuts unprotected overnight or during weekend periods. Permission to use temporary steel plates or any authorized substitutes shall be requested at open cuts or construction sites. The Director or his representative shall be notified of these steel plates or substitutes by the Permittee.
5. All construction equipment and/or vehicles left unattended for any length of time shall be parked in locations as to not create hazardous and unsafe situations to vehicular and pedestrian flow. The construction equipment and/or vehicles shall be parked in such a manner as to not restrict sight distance to vehicular traffic. All construction equipment and/or vehicles are prohibited from driving on named trails, neighborhood perimeter trails, and sidewalks.
6. The Permittee shall hold harmless and indemnify the City of Westfield from, for and against any claim of any person in tort, contract or otherwise arising out of the act or omissions of the Permittee, their agents, representatives, servants, contractors and the latter's subcontractors, whenever such acts or omissions or any rights or performance or exercise thereof of the Permittee arise under this permit from alteration, modernization, replacement, operation, maintenance, change or removal of any part or portion of the public right-of-way, or facility thereof. All existing utilities must be identified and located prior to all boring operations. Permittee shall be responsible for consequential damages to residents and businesses who are damaged during outages caused by these untimely accidents experienced by poorly coordinated utility borings and construction activities in the City right-of-way.
7. The Permittee shall stipulate the type of materials and method of repair utilized to close any open cuts, subject to the Director or his representative's approval.
8. The Permittee shall begin work within 45 working days from the date of application approval, and work must be completed within 60 working days of the application approval. Any construction and/or work not completed by this date shall be grounds to nullify and void this permit. Re-application would then be necessary.
9. The Permittee shall be required upon completion of construction and/or work to notify the Director or his representative for inspection and verification. The construction and/or work shall be inspected prior to being accepted by the City of Westfield as being complete. The Director or his representative shall perform the inspection.
10. Upon the completion of all open street cuts, permanent patches shall be in place no later than 20 working days from the temporary patch inspection date. Any construction work or repair measures utilized to close any open cuts made under this permit that are found to be unsatisfactory shall be corrected within 10 working days by the Permittee. The Permittee shall be responsible to maintain and repair any and all open cuts granted by this permit for a period of one year upon final acceptance, unless the City of Westfield and/or other utilities, contractors or subcontractors or other parties remove, damage, modernize, replace, change any part or portion of the public right-of-way or facility or thereof granted under this permit.
11. Upon completion/acceptance by Director or his representative as builds must be provided (print and CD form) within 30 days of completion.

Signature of Applicant

Stephen J Costlow

Title

ENGINEER

Printed Name

Stephen J Costlow

Date

10-4-19

Company Name

FRONTIER

Phone Number

317-984-9010

For Office Use Only:

Traffic Control Personnel: YES NO Uniform Police: YES NO Number of Personnel Necessary: _____

Steel Plates or other authorized substitute to be used? YES NO (If yes, refer to #4 above)

Type of materials and methods used to close or repair open cuts shall conform to Attachment A.

If another method has been pre-approved, please list below:

Director / or his representative

Project Manager/when applicable

Date Approved

POWER DUKE
WATER WELLS
SEWER SEPTIC
CITY COMCAST
CNS VEOLIA

HAMILTON COUNTY WASHINGTON TOWNSHIP

PLACE POLES BACK IN
SAME HOLE

THIS POLE HAS
BEEN DONE.

GOOD POLE

(WSDFINXA-83)
(20-7) (10.1970)

WSDFINXA-83

(WSDFINXA-82)
(20-9) (01.1946)

WSDFINXA-82

WSDFINXA9

(WSDFINXA-78)
(25-7) (01.1971)

WSDFINXA-78

(WSDFINXA-77)
(20-7) (10.1970)

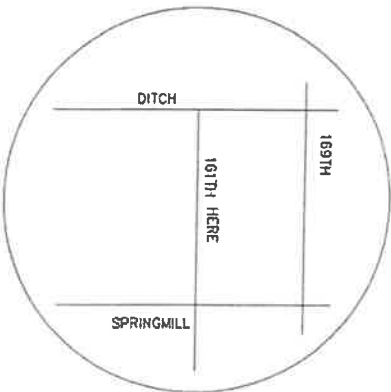
WSDFINXA-77

(WSDFINXA-76)
(20-7) (06.1970)

WSDFINXA-76

W 161ST ST (W 161ST ST)

1026' 01.1970
AE 25
WFEAG OSI.351-375



09.2006 9P063GR
223225
1300' 2421.101
AE 25 22
WFEAG OSI.351-375

HOUSE

HOUSE

HOUSE



DEFECTIVE POLES 161TH AND SPRINGMILL

PROJECT	NUMBER	2447796	CO AREA	WESTFIELD MAIN
DRAWN DATE	ENGINEER	SCOTT LOW	DATE	07/17
DATE	PROJECT	1000000000	DATE	07/17
TOWNSHIP	DISTRICT	1000000000	DATE	07/17
TOWNSHIP	DISTRICT	1000000000	DATE	07/17

ENCROACHMENT PERMIT APPLICATION

- The applicant named below requests permission to encroach on the following public right-of-way, street, sidewalk, alley or other public space at the location described below.
- Applicant shall submit one original application, with plans attached, either in person or by mail.
- No verbal transmissions will be accepted. Fax transmissions will only be accepted at the approval of the Director.
- CASH OR CHECK PAYMENTS ONLY;** No credit cards accepted. Please call (317)804-3171 with any questions or to purchase an Encroachment Standards Ordinance.

For Office Use Only

Permit Number _____

Expires _____

Permit Fee _____

Fee Waived _____

Application Date: 10/18/2019 Estimated Completion Date: 11/30/2019

Work Address: 1839 W 166th Street, Westfield, IN 46704 Subdivision: _____

Name of Contractor/Utility: _____

Duke Energy

Address: 21225 Riverwood Ave

City: Noblesville State: IN Zip: 46062

Phone: 317-838-6826 Fax: _____

Email: ocmpermits@ocmggroups.com

Name of Sub-Contractor: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

LOCATION: ☐ Street ☐ Alley ☐ Sidewalk ☒ Shoulder/Berm IUPPS Number: _____

TYPE: ☐ Cut ☐ Bore ☐ Trench ☐ Other ☐ New Construction ☐ Existing Construction

☐ Water ☐ Gas ☒ Electric ☐ Phone ☐ CATV ☐ Sewer ☐ Irrigation

Please describe proposed work: Installation of 5 new poles - remove and replace 1 pole - 1 removal of conduit and replace

SIZE OF STREET OR RIGHT-OF-WAY CUT

Traffic Lanes: Length: _____ Width: _____ Depth Within Lanes: _____

Sidewalk: Length: _____ Width: _____ Depth Within Sidewalk: _____

Type of Surface: ☐ Concrete ☐ Asphalt ☐ Asphalt Over Concrete ☐ Asphalt Over Brick ☐ Gravel-Dirt ☐ Brick

TRAFFIC PORTION AFFECTED BY PERMIT

Width: _____ Length: _____ # of Lanes: _____ # of Lanes to be Closed: _____ # of Hours Closed: _____

Vehicles/equipment left on site unattended? ☐ Yes ☐ No Unattended for: _____ weekdays _____ weekends

TERMS AND CONDITIONS FOR ENCROACHMENT PERMIT

1. It is understood that any permit by virtue of this request is revocable at the pleasure of the City of Westfield and that the same shall be voided if the following terms and conditions are not fulfilled by the Permittee. The Permittee hereby agrees to observe all requirements of the Encroachment Standard Ordinance and comply with the conditions set forth by the MUTCD Rulings and Revisions.
2. The undersigned shall notify the Director or his representative a minimum of 72 hours prior to the time that work is to be performed. The undersigned will furnish placards identifying equipment, flashers, barricades and/or other warning devices at the construction site. When two-way traffic is confined to one lane, flagging personnel shall be required. Permittee must follow Chapter XVII of Title 29, Code of Federal Regulation, Part 1926 known as Safety & Health Regulation for Construction.
3. In cases where the work authorized by the permit will cause major interference with traffic flow on streets, Permittee shall provide a uniformed traffic officer when requested by the Director or his representative to provide traffic control at the construction site. Work shall not be performed on any major arterials, streets and thoroughfares during rush hours or peak hours of vehicular traffic flow, unless in case of emergencies.
4. The Permittee shall not create a hazardous or unsafe situation at construction sites, which would cause injury or damage to vehicular and pedestrian traffic. The Permittee shall not leave unattended open cuts unprotected overnight or during weekend periods. Permission to use temporary steel plates or any authorized substitutes shall be requested at open cuts or construction sites. The Director or his representative shall be notified of these steel plates or substitutes by the Permittee.
5. All construction equipment and/or vehicles left unattended for any length of time shall be parked in locations as to not create hazardous and unsafe situations to vehicular and pedestrian flow. The construction equipment and/or vehicles shall be parked in such a manner as to not restrict sight distance to vehicular traffic. **All construction equipment and/or vehicles are prohibited from driving on named trails, neighborhood perimeter trails, and sidewalks.**
6. The Permittee shall hold harmless and indemnify the City of Westfield from, for and against any claim of any person in tort, contract or otherwise arising out of the act or omissions of the Permittee, their agents, representatives, servants, contractors and the latter's subcontractors, whenever such acts or omissions or any rights or performance or exercise thereof of the Permittee arise under this permit from alteration, modernization, replacement, operation, maintenance, change or removal of any part or portion of the public right-of-way, or facility thereof. All existing utilities must be identified and located prior to all boring operations. Permittee shall be responsible for consequential damages to residents and businesses who are damaged during outages caused by these untimely accidents experienced by poorly coordinated utility borings and construction activities in the City right-of-way.
7. The Permittee shall stipulate the type of materials and method of repair utilized to close any open cuts, subject to the Director or his representative's approval.
8. The Permittee shall begin work within 45 working days from the date of application approval, and work must be completed within 60 working days of the application approval. Any construction and/or work not completed by this date shall be grounds to nullify and void this permit. Re-application would then be necessary.
9. The Permittee shall be required upon completion of construction and/or work to notify the Director or his representative for inspection and verification. The construction and/or work shall be inspected prior to being accepted by the City of Westfield as being complete. The Director or his representative shall perform the inspection.
10. Upon the completion of all open street cuts, permanent patches shall be in place no later than 20 working days from the temporary patch inspection date. Any construction work or repair measures utilized to close any open cuts made under this permit that are found to be unsatisfactory shall be corrected within 10 working days by the Permittee. The Permittee shall be responsible to maintain and repair any and all open cuts granted by this permit for a period of one year upon final acceptance, unless the City of Westfield and/or other utilities, contractors or subcontractors or other parties remove, damage, modernize, replace, change any part or portion of the public right-of-way or facility or thereof granted under this permit.
11. Upon completion/acceptance by Director or his representative as builds must be provided (print and CD form) within 30 days of completion.

Signature of Applicant: Dawn Hornaday

Digitally signed by Dawn Hornaday
DN: cn = Dawn Hornaday email = ocmpermits@ocmgroupe.com C = US O = OCM
Engineering
Date: 2019.10.18 14:58:30 -0500

Title: Permit Administrator

Printed Name: Dawn Hornaday

Date: 10/18/2019

Company Name: OCM Engineering, LLC for Duke Energy

Phone Number: 317-644-0949

For Office Use Only:

Traffic Control Personnel: ☐ Yes ☐ No Uniform Police: ☐ Yes ☐ No Number of Personnel Necessary: _____

Steel Plates or other authorized substitute to be used? ☐ Yes ☐ No (If yes, refer to #4 above)

Type of materials and methods used to close or repair open cuts shall conform to Attachment A.

If another method has been pre-approved, please list below:

Director/or his representative

Project Manager/when applicable

Date Approved



USP: CIRCUIT BREAKER AT WESTFIELD DITCH RD (401) 1290
USP:
USP:
USP:
USP:

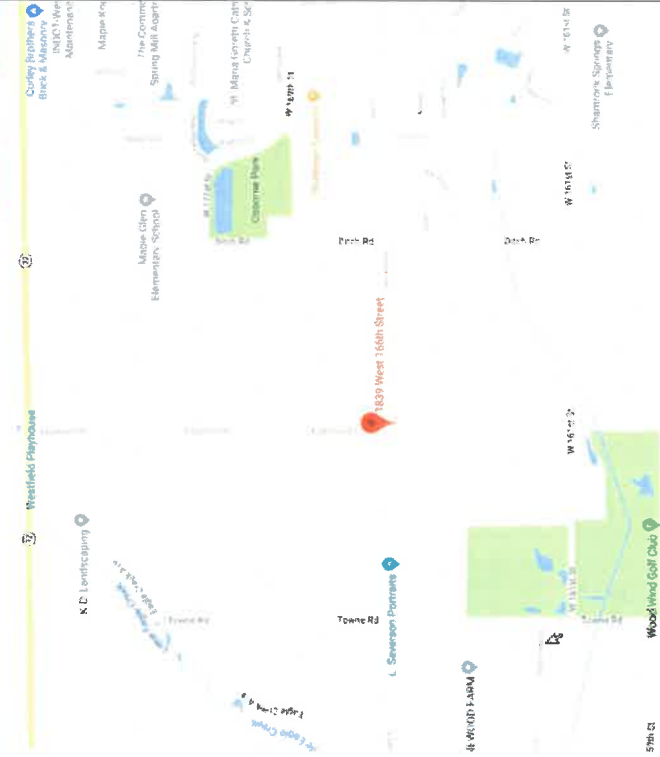
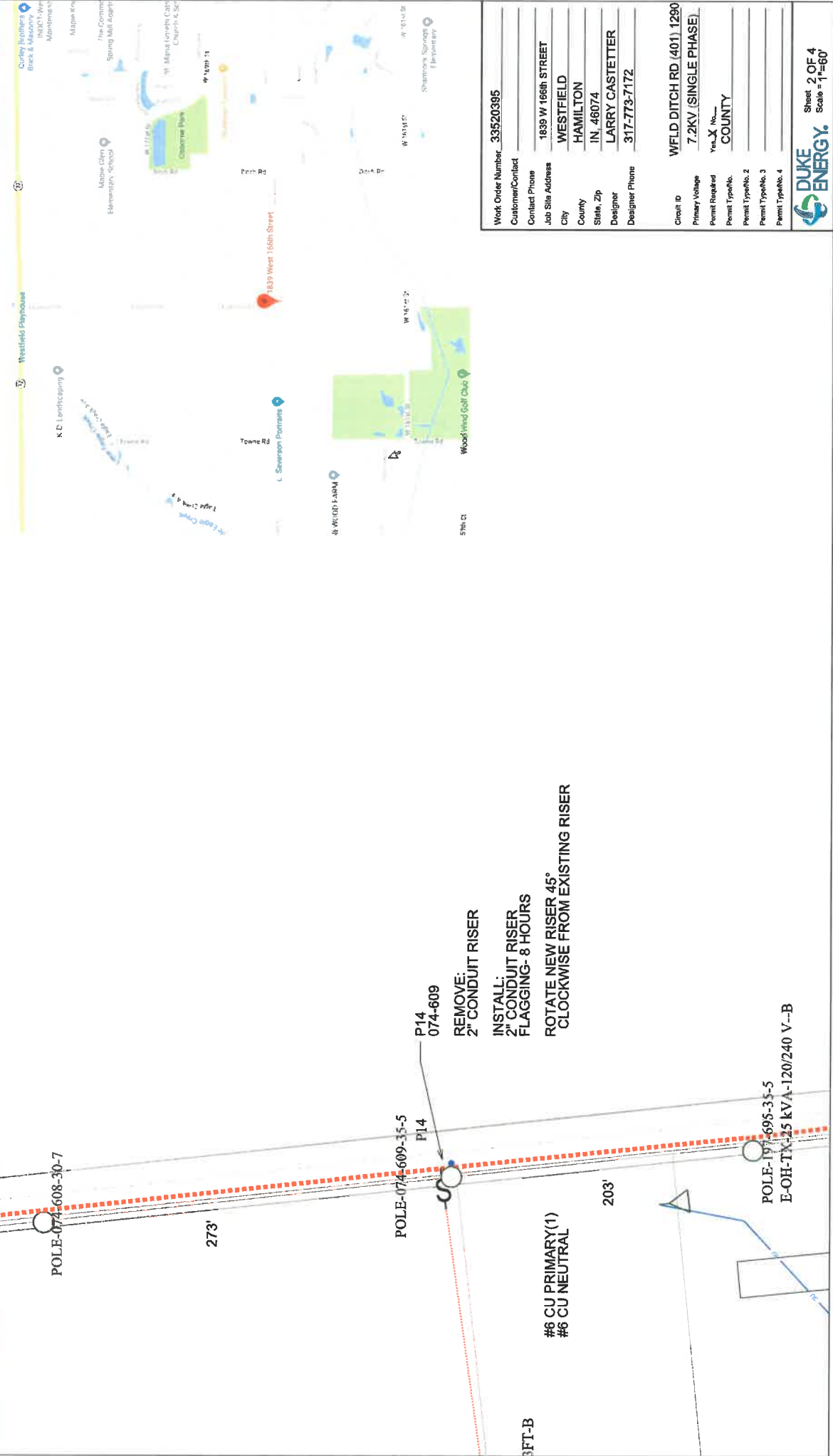


Safety Reminders / Adverse Conditions
?: 1907FRQ0791DEI
?: CARMEL SERVICE CENTER
?: OPERATING UNIT: Y562 RESP CENTER: S431
?: WASHINGTON TOWNSHIP



Work Zone General Comments: Double click to e

REMEMBER: Work zone area conditions may have changed for this job! Everyone is responsible for verifying the above safety information is correct prior to any work being performed each day.



Work Order Number	33520395
Customer/Contact	
Contact Phone	
Job Site Address	1839 W 16th STREET
City	WESTFIELD
County	HAMILTON
State, Zip	IN 46074
Designer	LARRY CASTETTER
Designer Phone	317-773-7172
Circuit ID	WFLD DITCH RD (401) 1290
Primary Voltage	7.2KV (SINGLE PHASE)
Permit Required	Yes ☒ No ☐
Permit TypeNo. 1	COUNTY
Permit TypeNo. 2	
Permit TypeNo. 3	
Permit TypeNo. 4	



USP: CIRCUIT BREAKER AT WESTFIELD DITCH RD (401) 1290
USP: ?
USP: ?
USP: ?
USP: ?

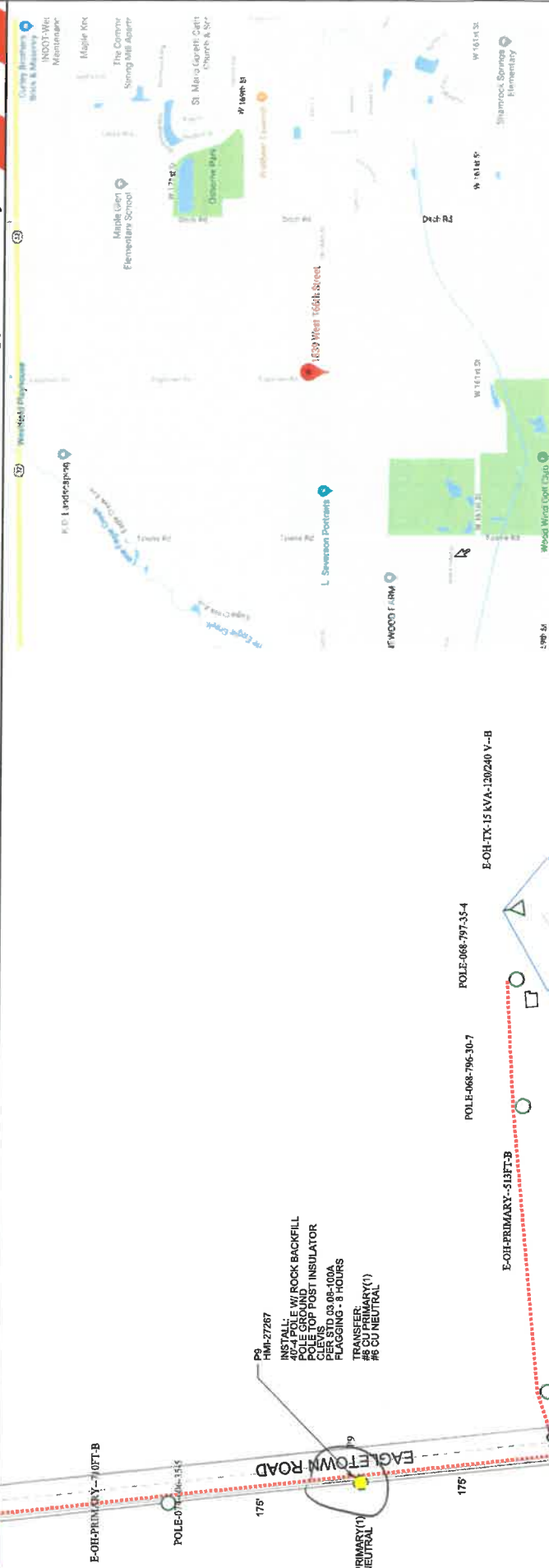


Safety Reminders / Adverse Conditions
?: 1907/FRO0791DEI
?: CARMEL SERVICE CENTER
?: OPERATING UNIT: V562 RESP CENTER: S431
?: WASHINGTON TOWNSHIP



Work Zone General Comments: Double click to e

REMEMBER: Work zone area conditions may have changed for this job! Everyone is responsible for verifying the above safety information is correct prior to any work being performed each day.



Work Order Number	33520395
Customer/Contact	
Contact Phone	
Job Site Address	1839 W 166th STREET
City	WESTFIELD
County	HAMILTON
State, Zip	IN 46074
Designer	LARRY CASTETTER
Designer Phone	317-773-7172

Circuit ID	WFLD DITCH RD (401) 1290
Primary Voltage	7.2KV (SINGLE PHASE)
Permit Required	Yes, X No
Permit TypeNo.	COUNTY
Permit TypeNo. 2	
Permit TypeNo. 3	
Permit TypeNo. 4	

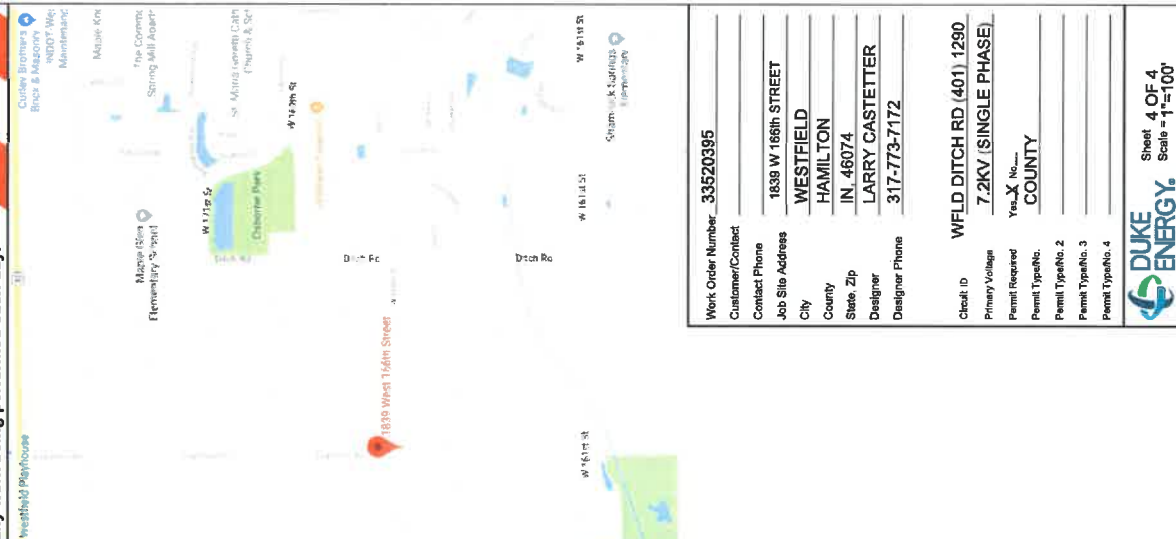
USP: CIRCUIT BREAKER AT WESTFIELD DITCH RD (40'1) 1290
USP:
USP:
USP:
USP:

Work Zone General Comments: Double click to add

Safety Reminders / Adverse Conditions	
?: 1907FRO0791DEI	
?: CARMEL SERVICE CENTER	
?: OPERATING UNIT: V562 RESP CENTER: S431	
?: WASHINGTON TOWNSHIP	

WORK ZONE GENERAL COMMENTS: DOUBLE CLICK TO

any work being performed each day.



**AMENDMENT
TO
ROAD IMPACT FEE CREDIT AGREEMENT**

This **AMENDMENT TO ROAD IMPACT FEE CREDIT AGREEMENT** (the “Amendment”) is made and entered into as of the 23rd day of October, 2019, by and between the **CITY OF WESTFIELD, INDIANA**, an incorporated municipality (the “City”), **MIDLAND ATLANTIC DEVELOPMENT COMPANY, LLC**, an Indiana limited liability company (“MAP”), and **EDGEROCK DEVELOPMENT, LLC**, an Indiana limited liability company (“EdgeRock”) (MAP and EdgeRock collectively, the “Developers”) as follows:

WHEREAS, the City desires to assist development and integrate improvements of complementary right-of-way infrastructure collaboratively with the development community;

WHEREAS, the development community desires to assist the City in its efforts to improve the Westfield road network and associated infrastructure;

WHEREAS, the City has adopted the Westfield-Washington Township Comprehensive Plan which provides for the future development and expansion of certain roadways within the City’s planning and zoning jurisdiction (the “Thoroughfare Plan”);

WHEREAS, EdgeRock is required to dedicate right-of-way and provide connectivity of streets with existing or planned streets with adjacent properties pursuant to the Westfield-Washington Township Unified Development Ordinance (the “Unified Development Ordinance”) and the Thoroughfare Plan;

WHEREAS, EdgeRock has partially developed and intends to further develop the real estate generally located between Oak Ridge Road (to the west) and the Monon Trail (to the east), and State Highway 32 (to the north) and the Midland Trace Trail (to the south), and more particularly identified in **Exhibit A** (the “EdgeRock Property”);

WHEREAS, MAP intends to develop a retail project known as Monon Crossing on the real estate generally located along State Highway 32, immediately west of the Monon Trail, north of 175th Street, and more particularly identified in **Exhibit B** (“Monon Crossing Property”);

WHEREAS, EdgeRock has partially developed and intends to further develop the EdgeRock Property’s infrastructure in accordance with the Development Plan, attached hereto as **Exhibit C** (the “Development Plan”), and the Secondary Plat recorded as Instrument No. 2018023077 in the Office of the Recorder of Hamilton County, Indiana, attached hereto as **Exhibit D** (the “Secondary Plat”) (collectively, “The Trails of Westfield”);

WHEREAS, as part of the development of the EdgeRock Property, the City requires EdgeRock to construct and dedicate to the City an access road in accordance with Article 5.3(F) of the Unified Development Ordinance (“175th Street”);

WHEREAS, MAP desires to assume certain portions of EdgeRock’s responsibilities under the Original Agreement pertaining to construction of 175th Street on Hamilton County Parcel No. 08-09-01-00-04-008.000 and extending east to Westfield Park Road, identified in **Exhibit E** attached hereto (the “Assumed Street Construction”), and EdgeRock is agreeable to MAP’s assumption of the Assumed Street Construction;

WHEREAS, as part of the development of The Trails of Westfield, road impact fees are assessed and required to be paid to the City in accordance with City Ordinance 17-43 (the “Road Impact Fees”);

WHEREAS, in accordance with Indiana Code § 36-7-4-1335 et. seq., the City previously agreed to Road Impact Fee credits or disbursements in exchange for EdgeRock constructing 175th Street in a Road Impact Fee Credit Agreement approved by the Westfield Board of Public Works and Safety on September 26, 2018 (the “Original Agreement”); and

WHEREAS, in accordance with Indiana Code § 36-7-4-1335 et. seq., the City and EdgeRock now agree to Road Impact disbursements to MAP in exchange for MAP’s constructing the Assumed Street Construction;

NOW THEREFORE, in consideration of the foregoing and of mutual covenants and agreements herein contained, and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

- 1) **Survival of Original Agreement Terms.** Nothing in this Amendment shall modify the rights and obligations established in the Original Agreement except as specifically set forth below.
- 2) **Design and Construction of Assumed Street Construction.**
 - a) MAP’s assumed responsibilities under this Amendment shall be limited to construction of the Assumed Street Construction, as more specifically outlined in the cost of completion schedule attached hereto as **Exhibit F** (the “Cost Schedule”), in accordance with the Development Plans reviewed and accepted by the City on May 30, 2018 (“Approved Plans”). Construction of the Assumed Street Construction shall be subject to any applicable permits, financial guarantees and inspections by the City.
 - b) MAP’s receipt of reimbursement for constructing the Assumed Road Construction shall not be halted or delayed due to the failure of the City or EdgeRock to effectuate the dedication or deeding of right-of-way for 175th Street (the “Right-of-Way”) under the terms of the Original Agreement.
 - c) EdgeRock relinquishes and waives any claims for Road Impact Fee credits or disbursements attributable to construction of the Assumed Street Construction.

3) Road Impact Fee Disbursements.

- a) MAP has prepared an estimate of the cost to construct the Assumed Street Construction as included in the Cost Schedule.
- b) To the extent that the City requires re-design, reconstruction, or restoration of previously installed or developed improvements in the Assumed Street Construction project which are not contemplated in the Cost Schedule ("Modifications"), the cost and design of the Modifications shall be reviewed and approved by the City prior to construction and the costs of designing and constructing the Modifications shall be incorporated into the Cost Schedule. The City's review and approvals shall not be unreasonably withheld.
- c) In consideration for the construction of the Assumed Street Construction, the City agrees to issue road impact fee disbursement(s) to MAP in the amount of the Cost Schedule, including any Modifications. City agrees to make disbursement(s) within sixty (60) days of acceptance of the improvements constructed as part of the Assumed Street Construction, subject to Section 4, below. City agrees to conduct any investigations or inspections needed to determine City's acceptance of the Assumed Street Construction project within seven (7) days of MAP's notice to City that the Assumed Street Construction project is completed.
- d) The City shall not issue a road impact fee disbursement for any construction change orders or amounts in excess of the Cost Schedule, as may be amended by any Modifications.

4) Conditions Precedent to Obligations. The obligations of parties, their successors and assigns, contained in this Amendment are expressly conditioned upon:

- a) MAP constructing the Assumed Street Construction in accordance with the Approved Plans and any Modifications; and
- b) The City inspecting and confirming compliance with the Approved Plans and any Modifications.

Absent the occurrence of the foregoing conditions, this Agreement shall be null and void and the parties shall have no further responsibility or obligation to each other under this Agreement

- 5) Authority. Each undersigned person signing certifies that (a) he has had ample time and opportunity to research, consult with experts and investigate all aspects of this Agreement, (b) that no information has been withheld from the other party, (c) he is fully empowered and duly authorized by any and all necessary action or consent to execute and deliver this Agreement for and on behalf of the party for which he signs, (d) that the party for which he signs has full capacity, power, and authority to carry out and enter into the obligations under this Agreement, and (e) that this Agreement has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of the party for which he signs.

- 6) Remedies. In the event of either the City's or the Developers' failure to perform any of its obligations hereunder, any party to this Amendment shall notify, in writing, the non-performing party of such default. If the non-performing party is unable to cure such default within thirty (30) days, then any party may pursue any remedy available at law or in equity. The substantially prevailing party (or parties) in any litigation arising as a result of a default by a party hereto shall be entitled to recover costs of the action, including reasonable attorneys' fees. The parties stipulate that the only appropriate venue shall be the Hamilton County Indiana Circuit or Superior courts. Developers waive any and all recourse should the City file a lien for all amounts due on the subject property if owned or controlled by a defaulting party.
- 7) Notices. Any notice, statement, demand, or other communication required or permitted to be given, rendered or made shall be addressed as indicated below:

If to City:

City of Westfield
Attn: Jeremy Lollar,
Director of Public Works
2706 East 171st Street
Westfield, Indiana 46074

With a copy to:

Kreig DeVault
Attn: Brian J. Zaiger
12800 N. Meridian Street, Suite 300
Carmel, Indiana 46032

If to EdgeRock:

Edgerock Development, LLC
Attn: R. Birch Dalton
555 East Main Street
Westfield, Indiana 46074

With a copy to:

The Nice Law Firm, LLP
Attn: Thomas P. Rethlake
118 S. Buckeye Street
Kokomo, IN 46901

If to MAP:

Midland Atlantic Development
Company, LLC
Attn: T. Aaron Boyle
9000 Keystone Crossing, Suite 850
Indianapolis, IN 46240

With a copy to:

Church Church Hittle + Antrim, LLP
Attn: Matthew S. Skelton
Two North Ninth Street
Noblesville, IN 46060

The remainder of this page intentionally left blank.

City of Westfield, Hamilton County, Indiana ("City")

By: _____

J. Andrew Cook, Member
Board of Public Works and Safety
Date: October 23, 2019

By: _____

Kate Snedeker, Member
Board of Public Works and Safety
Date: October 23, 2019

By: _____

Randell Graham, Member
Board of Public Works and Safety
Date: October 23, 2019

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above parties, who having been duly sworn acknowledged the execution of the foregoing instrument.

SIGNATURE OF NOTARY PUBLIC

State of Indiana, County of Hamilton, SS:

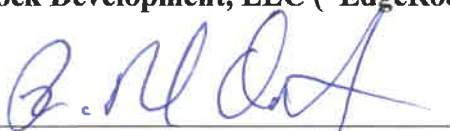
Subscribed and Sworn before me this 23rd day of October, 2019.

Printed Name of Notary Public: _____

My Commission Expires: _____

EdgeRock Development, LLC ("EdgeRock")

By:



R. Birch Dalton, its duly authorized Manager

Date: October 10, 2019

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above party, who having been duly sworn acknowledged the execution of the foregoing instrument.



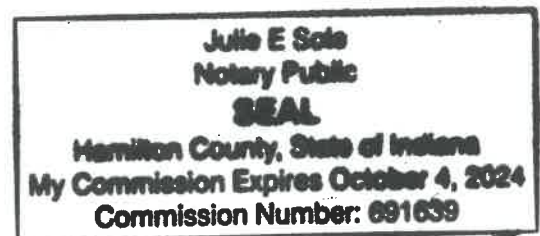
SIGNATURE OF NOTARY PUBLIC

State of Indiana, County of Hamilton, SS:

Subscribed and Sworn before me this 10 day of October, 2019.

Printed Name of Notary Public: Julie Sole

My Commission Expires: October 4, 2024



Midland Atlantic Development Company, LLC ("MAP")

By:

T. Aaron Boyle
T. Aaron Boyle, its Managing Member
Date: October 8, 2019

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above party, who having been duly sworn acknowledged the execution of the foregoing instrument.

Betsy Cohn
SIGNATURE OF NOTARY PUBLIC

State of Indiana, County of Hamilton, SS:

Subscribed and Sworn before me this 8th day of October, 2019.

Printed Name of Notary Public: Betsy Cohn

My Commission Expires: April 17, 2026



This instrument was prepared by: Matthew S. Skelton, Esq., Church Church Hittle & Antrim, LLP, 2 North 9th Street, Noblesville, Indiana, 46060, (317) 508-6288.

I affirm under the penalties for perjury, that I have taken reasonable care to redact each and every Social Security number from this document, unless it is required by law. Matthew S. Skelton

EXHIBIT A

“EdgeRock Property”

The location of the “EdgeRock Property” is identified on the following page of this Exhibit A.

EXHIBIT A
"EdgeRock Property"

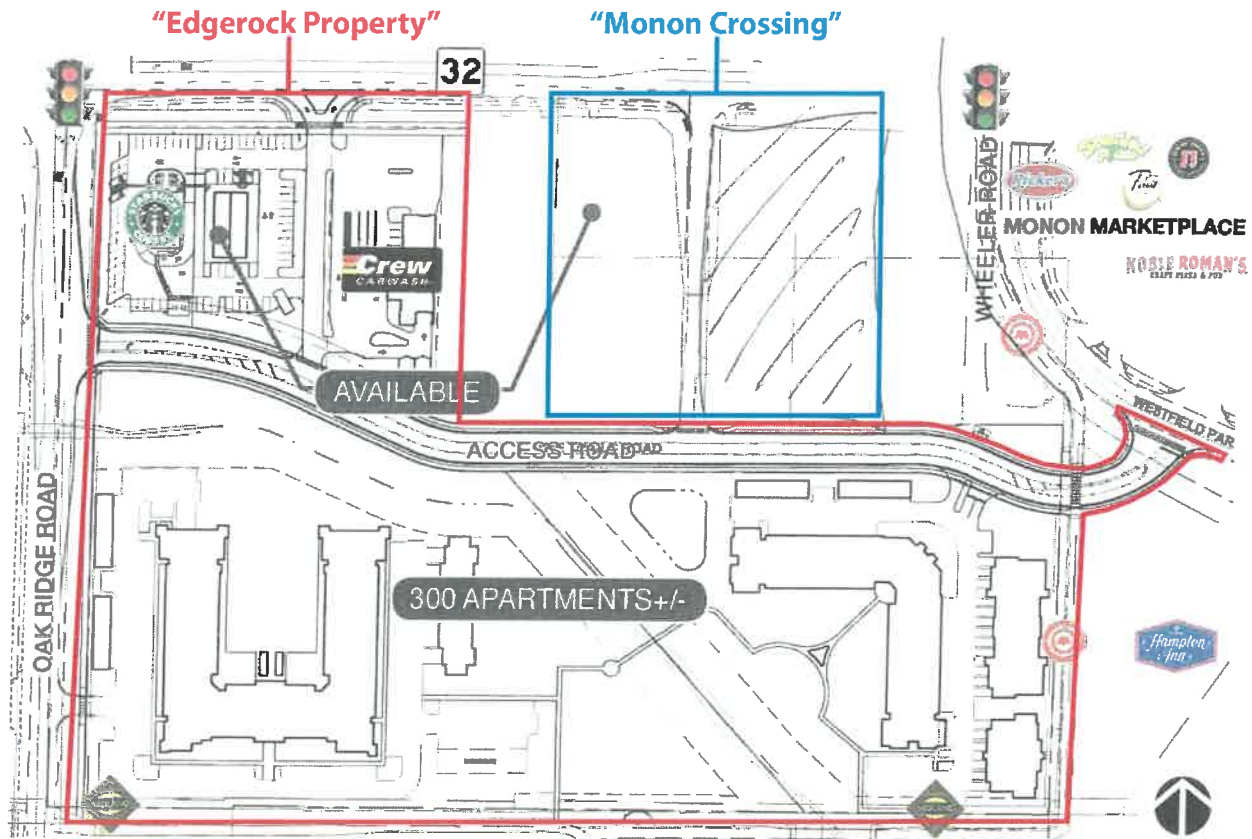


EXHIBIT B

“Monon Crossing Property”

Monon Crossing
Secondary Plat
Part of the NW $\frac{1}{4}$ of SEC 1, T18N, R3E
Washington Township, Hamilton County, Indiana
2019044256 PLAT
Recorded on 09/16/2019 at 01:35:45PM

EXHIBIT C

“Development Plan”

THE TRAILS OF WESTFIELD INFRASTRUCTURE PLANS, STAMPED AS PLANS ACCEPTED ON MAY 30, 2018, MAY BE VIEWED AND ARE ON FILE WITH THE CITY OF WESTFIELD'S DEPARTMENT OF PUBLIC WORKS OFFICE LOCATED AT 2727 EAST 171ST STREET, WESTFIELD, INDIANA 46074.

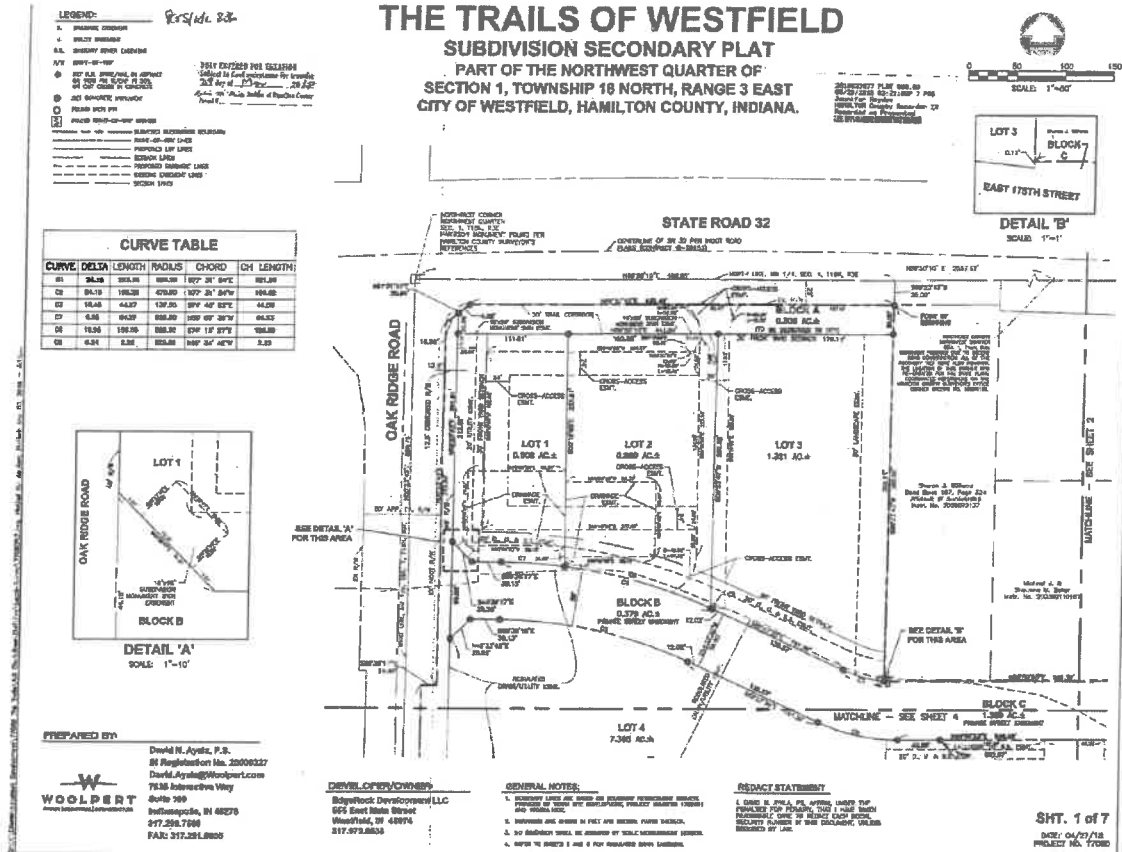
EXHIBIT D

“Secondary Plat”

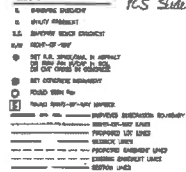
The “Secondary Plat” for The Trails of Westfield is included on the following seven (7) pages of this Exhibit D.

EXHIBIT D (Page 1 of 7)

"Secondary Plat"



THE TRAILS OF WESTFIELD
SUBDIVISION SECONDARY PLAT
 PART OF THE NORTHWEST QUARTER OF
 SECTION 1, TOWNSHIP 18 NORTH, RANGE 3 EAST
 CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA.



GENERAL NOTES:

1. MEASUREMENT SHALL BE BASED ON SURVEYED MEASUREMENTS. SURVEY POINTS TO BE USED BY THE CONTRACTOR, PROJECT MANAGER, SURVEYOR AND INSPECTOR.
2. MEASUREMENTS SHALL BE TAKEN AT THE POINT OF BEGINNING OF THE MEASUREMENT.
3. ALL MEASUREMENTS SHALL BE TAKEN BY THE CONTRACTOR'S SURVEYOR.
4. MEASUREMENTS SHALL BE TAKEN BY THE CONTRACTOR'S SURVEYOR.

REDACT STATEMENT

1. I, DAVID H. KOTLA, PG, JFTPM, UNOFFS T-2
PROMISER FOR SECURITY, THAT I HAVE TAKEN
RESPONSIBLE CARE TO REDACT EACH SOCM,
SECURITY NUMBER IN THIS DOCUMENT, UNLESS
REQUIRED BY LAW.

DEVELOPER/OWNER:
Edgebrook Development LLC
505 East Main Street
Westfield, IN 46074
217.379.8538

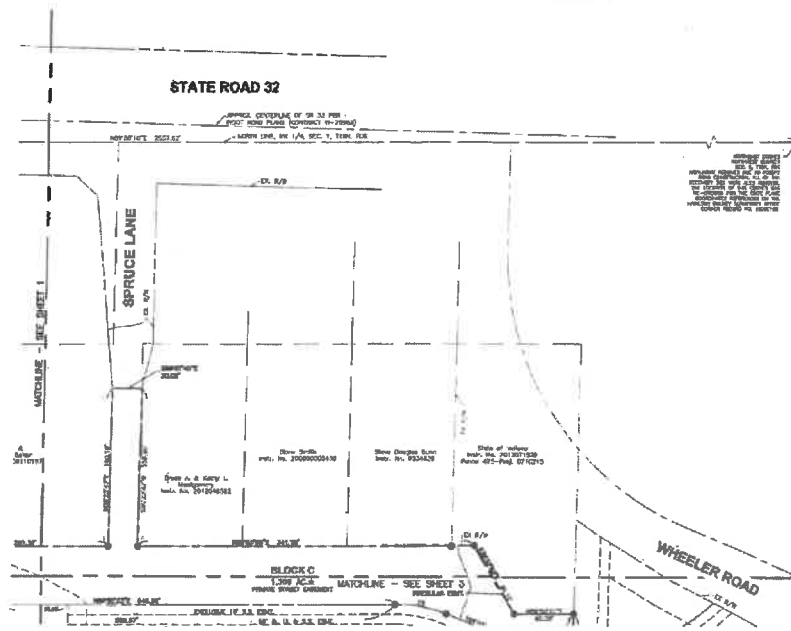
PREPARED BY:

David R. Ayala, P.E.
IN Registration No. 2808027
E-mail: David.Ayala@ProExpert.com
7638 Interactive Way
Suite 100
Indianapolis, IN 46278
317.398.7688
FAX: 317.291.5888

WOOLPERT

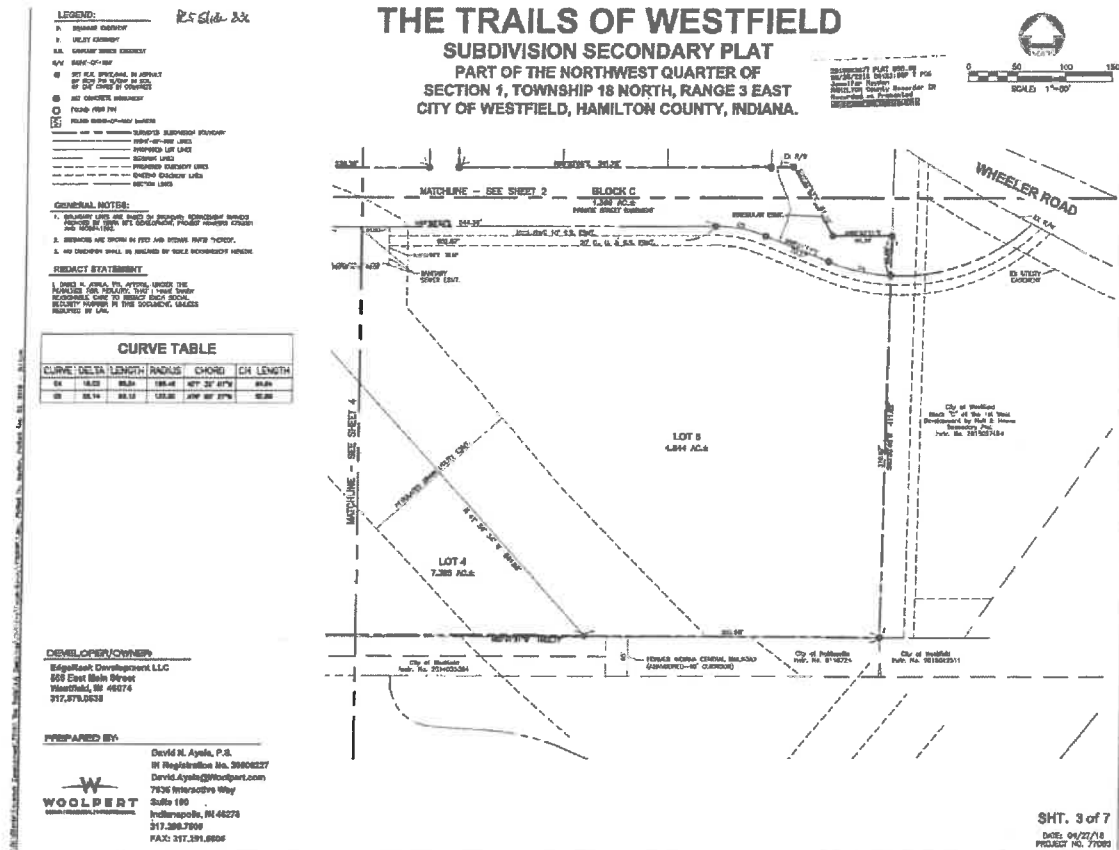


20160207T FLAT 303.00
02/20/2016 02:21:00 7 PM
Jennifer Norton
Pinal County Recorder II
Recorded as Presented
10/20/2016 02:21:00



8HT, 2 of 7
DATE: 04/27/18
PROJECT NO. 77080

THE TRAILS OF WESTFIELD
SUBDIVISION SECONDARY PLAT
 PART OF THE NORTHWEST QUARTER OF
 SECTION 1, TOWNSHIP 18 NORTH, RANGE 3 EAST
 CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA.



THE TRAILS OF WESTFIELD
SUBDIVISION SECONDARY PLAT
PART OF THE NORTHWEST QUARTER OF
SECTION 1, TOWNSHIP 18 NORTH, RANGE 3 EAST
CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA.

LEGGERE:

- [illegible]

GENERAL NOTES:

1. BENCHMARK LINES ARE BASED ON BENCHMARK PERIMETER SURVEY'S PROPERTY OF 10000 SFC. NON-COMMIT. PROJECT BENCHMARK FORMS AND BENCHMARK.
2. CORRECTED ARE 5-1000 IN FEET AND DECIMAL. PACE 10000.
3. NO SURVEYING SHALL BE APPROVED BY STATE SURVEYING MEASURE.
4. POINT TO BEING 5 AND 6 FOR BENCHMARK FORM SURVEY.

PRODUCT STATEMENT

1. DAME H. KIMLA, PS, ATTORNEY UNDER THE
PROCESSES FOR PERJURY, THAT I HAVE TAKEN
REASONABLE CARE TO PROTECT EACH SOCIAL
SECURITY NUMBER IN THIS DOCUMENT, UNLESS
REQUIRED BY LAW.

CURVE TABLE						
CURVE		DELTA	LENGTH	RADIUS	CHORD	CH LENGTH
08	34.70	34.73	100.00	479' 45" 24"	34.01	

PREPARED BY:



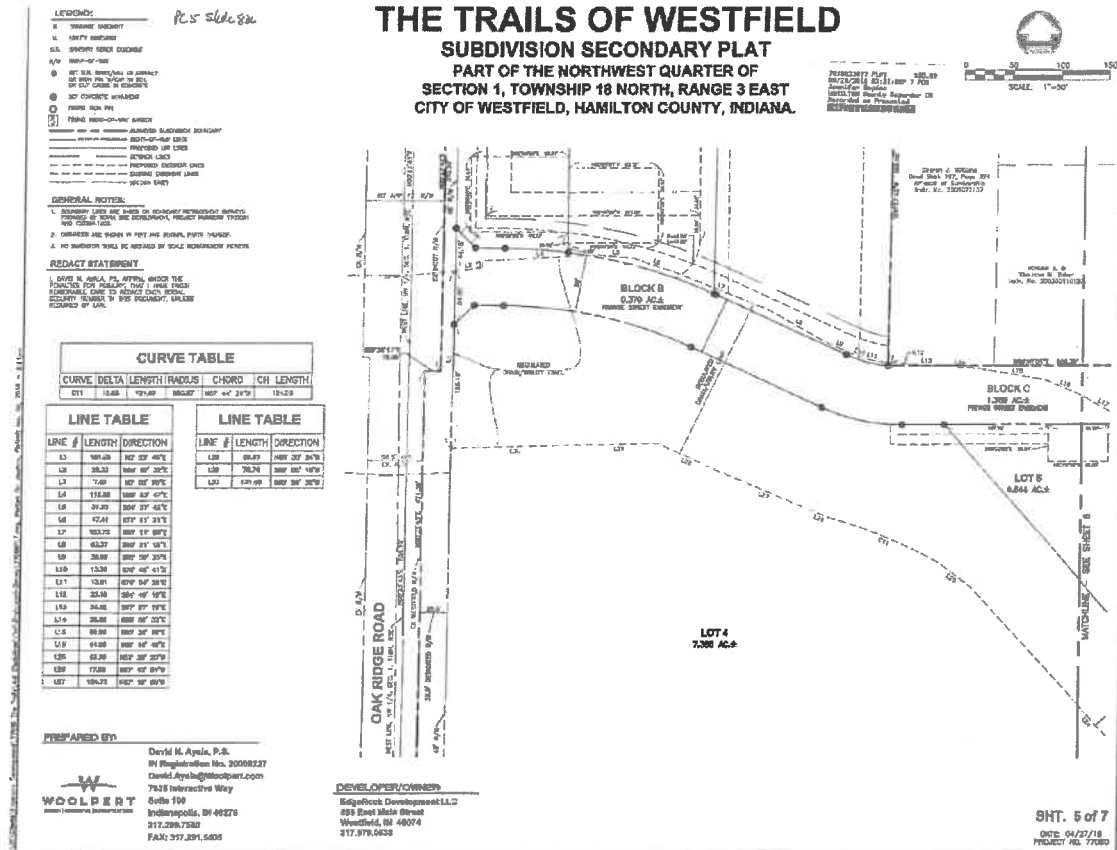
WOOLPERT
CONSULTING & ADVISORY

David N. Ayala, P.E.
RI Registration No. 20000220
David.Ayala@Weclpart.com
7836 Interactive Way
Suite 180
Indianapolis, IN 46278
317.396.7800
FAX: 317.391.8808

DEVELOPER/OWNER
EdgeRock Development LLC
555 East Main Street
Westfield, IN 46074
317.979.6339

SHT. 4 of 7
DATE: 04/27/18
PROJECT NO. 77080

EXHIBIT D (Page 5 of 7)



THE TRAILS OF WESTFIELD
SUBDIVISION SECONDARY PLAT
PART OF THE NORTHWEST QUARTER OF
SECTION 1, TOWNSHIP 18 NORTH, RANGE 3 EAST
CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA.

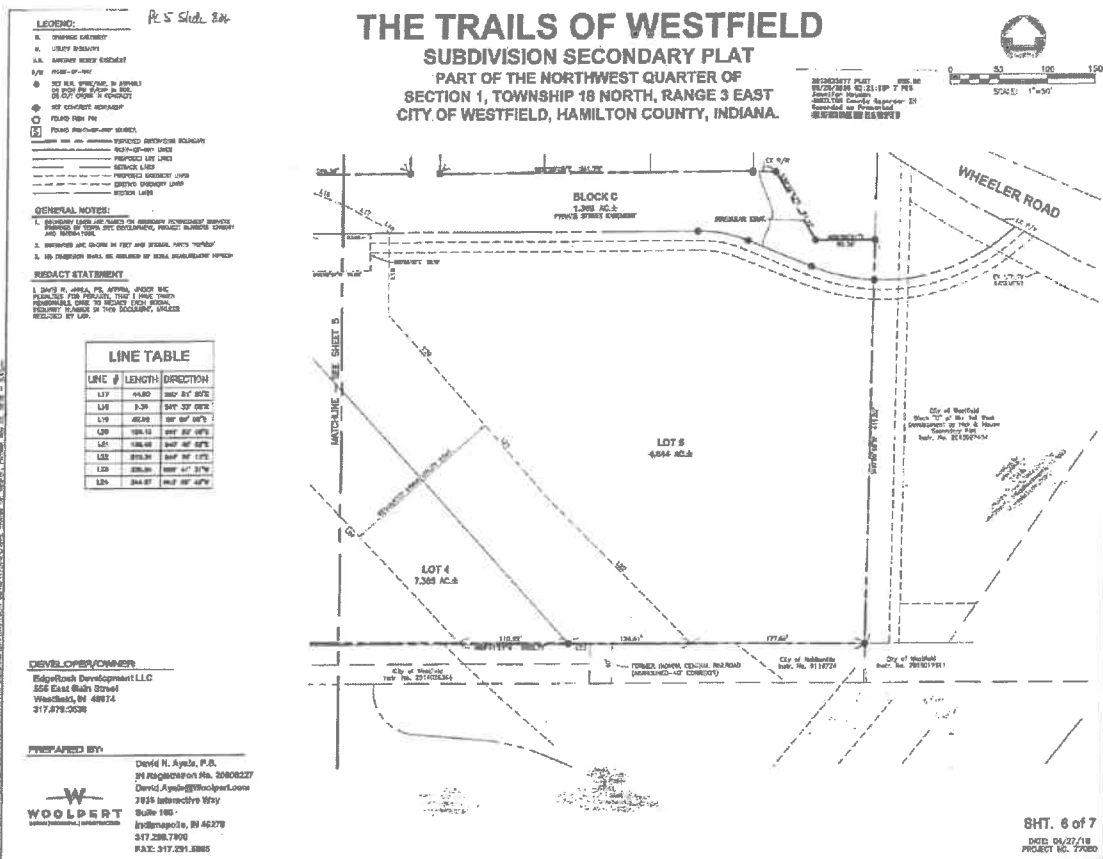


EXHIBIT E

“Assumed Street Construction”

The “Assumed Street Construction” location is shown on the following page of this Exhibit E.

EXHIBIT E
"Assumed Street Construction"

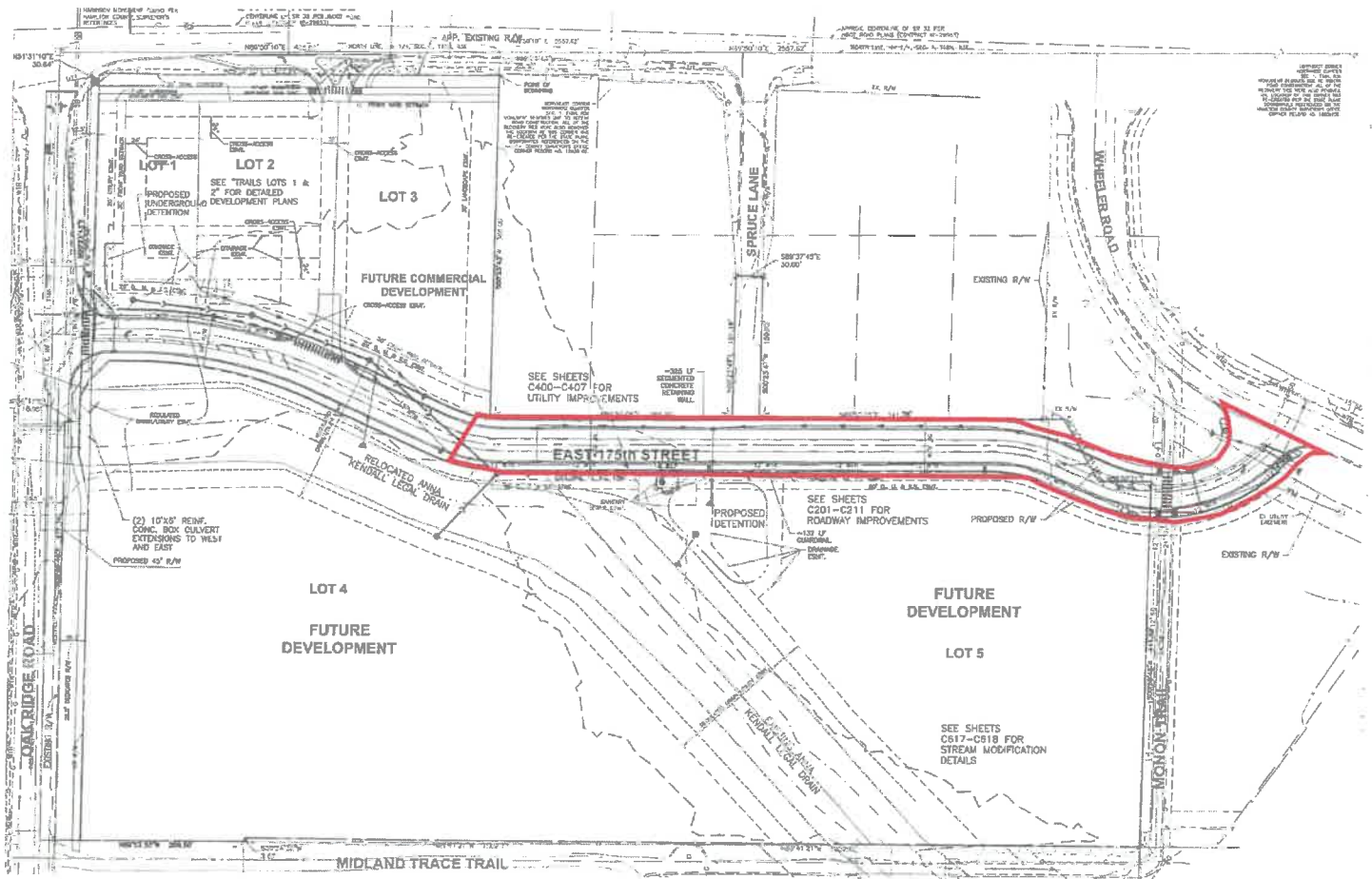


EXHIBIT F

“Cost Schedule”

The “Cost Schedule” including work elements and estimated costs associated with construction of the Assumed Street Project is included on the following page of this Exhibit F.

EXHIBIT F

“Cost Schedule”

Grading, lime, underdrains,	\$93,665.00
Curbs	\$56,000.00
Paving roadway and paths both sides	\$178,230.00
Surveying	\$12,500.00
Traffic Control and barricades	\$10,000.00
Subtotal	\$350,395.00
Overhead and Profit for Roadway	\$42,047.40
CONTINGENCY (approx. 3% of costs)	\$10,500.00
TOTAL ROADWAY COST	\$402,942.40

SECOND DEVELOPMENT AGREEMENT

THIS SECOND DEVELOPMENT AGREEMENT is entered this ____ day of _____, 2019, by and between the City of Westfield, Indiana, an incorporated municipality ("Westfield"), and Shelby Gravel, Inc., a domestic for-profit corporation ("Developer"), and sometimes referred to as the "Parties".

WITNESSETH:

WHEREAS, Westfield and Developer have come together to be collaborative; and

WHEREAS, Developer has an approved Detailed Development Plan to develop the Property generally located north of SR 32 along Mule Barn Road, and more particularly described in the attached **Exhibit A** (the "Development"); and

WHEREAS, the Developer and Westfield have previously entered into a previous Developer Agreement on or about June 4, 2017, which as amended on or about January 8, 2018, (the "Initial Development Agreement") which contains certain obligations of the parties;

WHEREAS, after the approval of the Detailed Development Plan and execution of the Initial Developer Agreement, Westfield has determined that it may desire to make prospective changes for right of way improvements necessary adjacent to heavy industrial uses;

WHEREAS, in an effort to not further delay Developer's project while final design changes are made or additional policy determinations are made regarding future design standards, Westfield and the Developer have negotiated this Second Developer Agreement to modify the obligations of delivery of right of way improvements and to provide funding for these improvements;

WHEREAS, the Developer has obtained a bid from a reputable and able contractor for the right of way improvements which are subject of this Second Developer Agreement which formed the basis for the deposit provided herein, which such bid has been reviewed by Westfield and determined to be appropriate in scope and design.

NOW THEREFORE, the Parties in consideration of the mutual covenants contained herein agree as follows:

1. Developer shall, make a deposit with Westfield of Twenty Two Thousand Six Hundred Thirteen Dollars and no/100 (\$22,613.00) (the "Deposit"), within 30 days of the execution of this Second Developer Agreement. The Deposit shall only be utilized by Westfield for improvements on Mule Barn Road immediately adjacent to the Developer's Property.

2. Upon delivery of the Deposit, Westfield shall consider the Developer's obligations related to resurfacing Mule Barn Road, not previously already assigned to Westfield through the Initial Development Agreement as completed, regardless of whether the right of way improvements are actually complete.
3. Westfield acknowledges that Developer shall have the right to utilize Mule Barn Road in its current state for the day-to-day operations of Developer and Developer shall have no financial liability for its normal, day-to-day use.
4. Westfield shall have the obligation to complete the right of way improvements as contained in the Detailed Development Plan, without further contribution for Developer, regardless of whether the actual cost of the right of way improvements exceeds the Deposit. Westfield shall also have the obligation to complete any and all necessary and on-going repairs to the right of way improvements.
5. Westfield shall coordinate the start date of such right of way improvements with Developer as to not unreasonably interfere with Developer's day-to-day operations at the Development.
6. Westfield may, after consultation with the Developer, chose to utilize another acceptable design of improvements, so long as that design is sufficient to withstand the day-to-day activities of the Developer, whose use is a heavy industrial use.
7. Westfield shall commence the right of way improvements included in this Second Westfield no later than December 31, 2024.
8. Any notice, statement, demand, or other communication required or permitted to be given, rendered or made shall be addressed as indicated below:

If to City of Westfield:
City of Westfield
Attn: Director of Public Works
2706 E. 171st Street
Westfield, IN 46074

With a Copy to:
Kreig DeVault
Attn: Brian J. Zaiger
12800 N. Meridian Street, Suite 300
Carmel, IN 46032

If to Developer:
Shelby Gravel, Inc.
Attn: Richard Haehl
P.O. Box 242
Shelbyville, IN 46176

With a Copy to:
Zentz Consulting, LLC
Attn: Randy Zentz
4630 Lisborn Drive
Carmel, Indiana 46033

Each party represents that it has the authority to enter into this Agreement binding each party.

Executed the date and year first above written.

CITY OF WESTFIELD

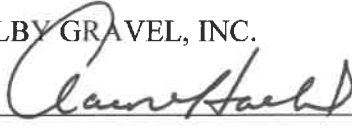
By: _____

Printed: _____

Title: _____

Date: _____

SHELBY GRAVEL, INC.

By: 

Printed: AARON HAEHL

Title: VICE PRESIDENT

Date: 10/14/2019

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

STATE OF INDIANA)

) SS:
COUNTY OF SHELBY)

Before me, a Notary Public in and for said County and State, personally appeared AARON HAEHL, on behalf of Shelby Gravel, Inc., who acknowledged the Incorporation's authority and the execution of the foregoing Development Agreement to be its voluntary act and deed.

WITNESS, my hand and Notarial Seal this 14th day of Oct, 2019.
My Commission Expires:

10/11/23



Printed: Susan M. Veerkamp
Notary Public, A Resident of
SHELBY County, Indiana
Commission Number: 573151

STATE OF INDIANA)

) SS:

COUNTY OF HAMILTON)

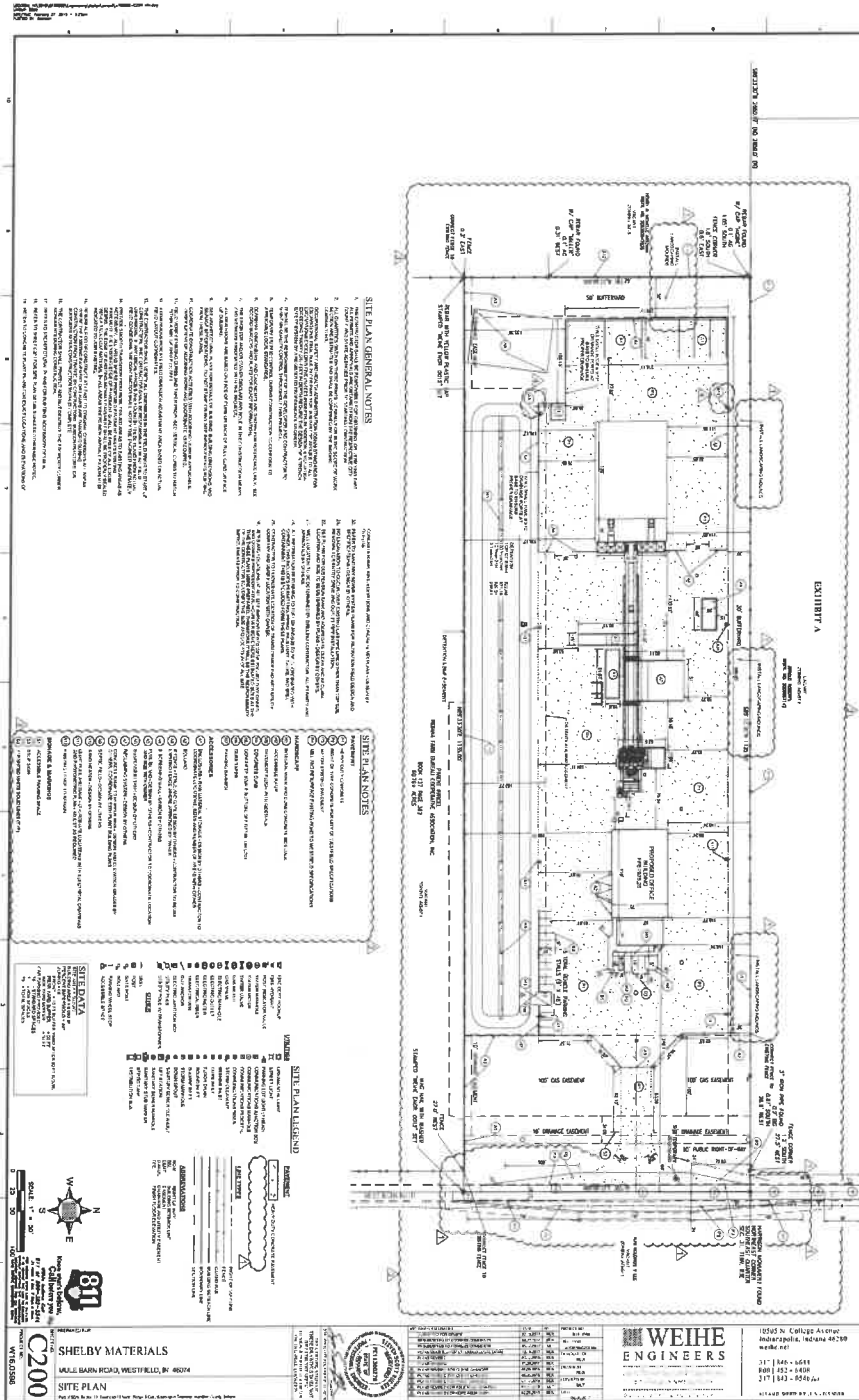
Before me, a Notary Public in and for said County and State, personally appeared _____, on behalf of The City of Westfield, who acknowledged their authority and the execution of the foregoing Development Agreement to be its voluntary act and deed.

WITNESS, my hand and Notarial Seal this _____ day of _____, 2019.
My Commission Expires:

Printed: _____
Notary Public, A Resident of
_____ County, Indiana
Commission Number: _____

THIS INSTRUMENT PREPARED BY: Brian J. Zaiger, Attorney at Law
KRIEG DEVAULT, LLP
12800 North Meridian, Suite 300
Carmel, IN 46032
(317) 238-6266

EXHIBIT A





October 23, 2019

Consent Agenda Item:

Performance Bond Acceptance

The Westfield Public Works Department is recommending that the Board of Public Works and Safety accept the following Performance Bonds for the requested developments:

- Pulte Homes of Indiana, Bent Creek, Section 3, Bond #US00089834SU19A, \$109,203.00, Erosion Control
- JKEs, Inc. d/b/a Smith Projects, The Meadows at Gristmill Crossing, Section 1, Bond #INC61217, \$1,065,232.25, Streets/Curbs, Storm Sewer, Erosion Control & ROW Improvements
- JKEs, Inc. d/b/a Smith Projects, The Highlands at Gristmill Crossing, Section 1, Bond #INC61216, \$979,911.36, Streets/Curbs, Storm Sewer, Erosion Control & ROW Improvements
- Elevated Construction, Inc., Kiddie Academy Educational Child Care, Bond & Rider, #268012772, \$183,317.00, Streets, Curbs, Storm Sewer, Sidewalks, & Erosion Control
- Beazer Homes Indiana, West Rail at the Station, Section 3, Bond #60132932, \$72,145.33, Erosion Control
- D R Horton, Sheffield Park, Section 2, Bond #772051, \$581,941.00, Storm Sewer
- D R Horton, Sheffield Park, Section 2, Bond #772049, \$16,540.00, Asphalt Trail
- D R Horton, Sheffield Park, Section 2, Bond #772048, \$61,116.00, Curbs & Gutter

Performance Bond Release

The Westfield Public Works Department is recommending that the Board of Public Works and Safety consider the following Performance Bonds for release by the requested developer:

- Weihe Construction, Inc., Indianapolis Hebrew Congregation – Cemetery Renovation, Bond #929644349, \$78,009.25, Storm Sewer, Trail & Erosion Control
- Boyle Construction Management, Hoosier Storage, Bond #2259528, \$6,819.97, Erosion Control
- Kensington Carriage Homes, LLC, Bond #5014589, \$210,756.70, Streets & Curbs

- Kensington Carriage Homes, LLC, Bond #5014593, \$40,480.00, Sidewalk

Maintenance Bond Acceptance

The Westfield Public Works Department is recommending that the Board of Public Works and Safety accept the following Maintenance Bonds for the requested developments:

- Weihe Construction, Indianapolis Hebrew Congregation – Cemetery Renovation, Bond #30076508, \$2,358.00, Storm Sewer
- Weihe Construction, Indianapolis Hebrew Congregation – Cemetery Renovation, Bond #30076509, \$657.00, Trail
- Weihe Construction, Indianapolis Hebrew Congregation – Cemetery Renovation, Bond #30083625, \$4,077.00, Erosion Control

Maintenance Bond Release

The Westfield Public Works Department is recommending that the Board of Public Works and Safety consider the following Maintenance Bonds for release by the requested developer:

- NONE

Cash In Lieu

The Westfield Public Works Department is recommending that the Board of Public Works and Safety accept the following Cash In Lieu & Development Agreement for the requested developments:

- NONE

Letter of Credit

The Westfield Public Works Department is recommending that the Board of Public Works and Safety release the following Letter of Credit for the requested developments:

- Pryam, LLC, Hittle at 31, LOC #300505815 \$747,812.00, Erosion & Storm Infrastructure for Staybridge Suites



Mayor
Andy Cook

City Council
Jim Ake
Steven Hoover
Robert L. Horkay
Charles Lehman
Joe Edwards
Cindy L. Spoljaric
Mark Keen

Clerk Treasurer
Cindy J. Gossard

To: Westfield Board of Public Works & Safety

Date: October 23, 2019

Re: Action Item-Signing Authority

The City of Westfield Public Works Department is requesting that the Board of Public Works and Safety consider granting Jeremy Lollar, Director of Public Works, signing authority for the Burger King at Monon Crossing Road Impact Fee Payment Installment Agreement. The agreement has not been signed by the other party, but the terms of the agreement are substantially the same as the document provided herein.

Kate Snedeker

Randy Graham

Andy Cook

Public Works Department

(317) 804-3100 office
(317) 804-3190 fax

2706 East 171st Street
Westfield, IN 46074
westfield.in.gov

ROAD IMPACT FEE INSTALLMENT AGREEMENT

Cross Referenced to Instrument No. 2019-27319

Carrols Corporation (the “Tenant”) and MAP Westfield, LLC (the “Property Owner”) (collectively, the “Applicant”) make the following commitments (the “Commitments”) to the City of Westfield, Hamilton County, Indiana (“City”) regarding the installment payments for the Road Impact Fees properly assessed on Lot 2 of the following described real estate (the “Real Estate”) located in Hamilton County, Indiana:

Section 1. **Description of Real Estate:** See attached Exhibit A (the “Real Estate”).

Address: 819 E SR 32, Westfield, IN 46074

Parcel No: 08-09-01-01-01-005.000, 08-09-01-01-01-005.001

Section 2. **Improvement Location Permit No.:** 19-C-015-782 (the “ILP”).

Builder/Contractor: JRF Construction

Section 3. **Statement of Terms:**

- A. As part of the development of the Real Estate, road impact fees are required to be paid to the City by the Applicant. In accordance with City Ordinance 12-13, the City assessed a road impact fee of **\$247,379** on July 30, 2019, attached hereto as Exhibit B (19-RIFE-08) (the “Assessed Road Impact Fee”), as part of the Applicant’s filed ILP for the Real Estate.
- B. Pursuant to I.C. 36-7-4-1324 the City agrees to installment payments of the Assessed Road Impact Fees as set forth herein.
- C. Prior to the issuance of the ILP, the Applicant agrees to tender \$5,000.00 (Five-Thousand Dollars) or five percent (5%), whichever is greater.
- D. Pursuant to I.C. 36-7-4-1324 the City will charge three percent (3%) interest on an annual basis, only on the portion of the impact fee that is outstanding.
- E. Pursuant to I.C. 36-7-4-1324 the City may charge a ten percent (10%) penalty on any installment which is not paid by the payable due date set forth in Section F. This penalty will be assessed only to the installment amount which is overdue and is a one-time charge for that installment. Interest in the amount described in Section D may also be charged on the penalty amount in accordance with I.C. 36-7-4-1324.
- F. The Applicant agrees to make installment payments to the City for the remaining Assessed Road Impact Fee on or before the dates set forth below. The remaining amounts shall be due in equal payments beginning October 15, 2020, and every year thereafter, in accordance with the following:

Issuance of ILP:	\$12,368.95
October 15, 2020:	\$51,315.52
October 15, 2021:	\$51,315.52
October 15, 2022:	\$51,315.52
October 15, 2023:	\$51,315.52
October 15, 2024:	\$51,315.52
Total Road Impact Fee:	\$268,946.55

- G. The Applicant is aware and agrees that a lien is placed upon the Real Estate pursuant to I.C. 36-7-4-1325 and the City reserves all rights of collection thereunder.

Section 4. **Binding on Successors and Assigns:**

This Agreement is binding upon each subsequent owner of the Real Estate, each other person acquiring an interest in the Real Estate, and each user of the Real Estate, unless modified or terminated by the City.

Section 5. **Effective Date:**

This Agreement is effective upon the issuance of the ILP and shall continue in effect until the Assessed Road Impact Fees are paid in full or unless modified or terminated in writing by the City.

Section 6. **Recording:**

The undersigned hereby authorizes the Westfield Economic and Community Development Department to record this Agreement in the Office of the Recorder of Hamilton County, Indiana, if desired by the City.

Section 7. **Enforcement:**

This Agreement may be enforced by the City of Westfield, and the only proper venue shall be the Hamilton Circuit or Superior Courts in Hamilton County, Indiana.

[Remainder of page intentionally left blank;
Signature page follows.]

Carrols Corporation (the “Tenant”)

By: _____

Printed Name:

Title: _____

Date: _____

Before me the undersigned, a Notary Public in and for said County and State,
personally appeared the above party, who having been duly sworn acknowledged
the execution of the foregoing instrument.

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

Subscribed and Sworn before me this _____ day of _____, 20__ .

Printed Name of Notary Public _____

My Commission Expires _____

MAP Westfield, LLC (the "Property Owner")

By: _____

Printed Name: _____

Title: _____

Date: _____

Before me the undersigned, a Notary Public in and for said County and State, personally appeared the above party, who having been duly sworn acknowledged the execution of the foregoing instrument.

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

Subscribed and Sworn before me this _____ day of _____, 20__ .

Printed Name of Notary Public _____

My Commission Expires _____

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law: Brian J. Zaiger. Esq.

Prepared by: Brian J. Zaiger, Krieg DeVault, LLP
12800 North Meridian
Street Suite 300
Carmel, IN 46032

**CITY OF WESTFIELD
BOARD OF PUBLIC WORKS & SAFETY**

J. Andrew Cook, Member

Kate Snedeker, Member

Randy Graham, Member

ATTEST:

Pat Leuteritz, Office Administrator

Exhibit A
Real Estate

Exhibit B

Assessed Road Impact Fee

ROAD IMPACT FEE ASSESSMENT

Estimate Request #: 19-RIFE-08
 Assessment Date: 7/30/2019
 Calculations Performed by: Jonathan Dorsey
 (I.C. 36-7-4-1321 and City Ordinance No. 12-13)



Property Information:		Applicant Information:	
Property Description:		Name: Carrols Corporation, ATTN: Amanda Aldridge	
Parcel:	08-09-01-01-01-005.000; 08-09-01-01-01-005.001	Address:	Carrols Corporation
Address:	819 E SR 32		968 James St
	Westfield, Indiana 46074		Syracuse, NY 13203
		Contact:	901-515-6865 aaldrige@carrols.com

Development Information:

Existing: non-developed lot

Proposed:

3,344 square feet restaurant building

Zoning: Monon Crossing PUD

Road Impact Fee Calculation:

In accordance with I.C. 36-7-4-1321 and the City's adopted impact fee ordinance, road impact fees are calculated based on the number of twenty-four-hour trips taken from the latest version of the *Trip Generation Manual*, a study published by the Institute of Transportation Engineers (the following were developed based on the guidelines set forth in the 10th Edition).

Land Use Code:	Fast-Food Restaurant with Drive Through Window (934)		
Independent Variable:	1,000	Square feet	
Weighted Trip Average:	470.95	per	1,000 square feet building (average weekday 24-hour trip rate)

Trips:

A "trip" is a single or one-direction vehicle movement exiting or entering the site. For trip generation purposes, the total trips for a 24-hour period are the total of all trips entering plus all trips exiting a site during this period (e.g., one vehicle in and out of site equals two trips).

Pass-by Trips:

A pass-by trip is a trip made as an intermediate stop from an origin to a primary destination, and is generally a trip attracted from traffic already passing the site on an adjacent street. Trip generation estimates may be able to be reduced, subject to the land use, its context and available data from the Trip Generation Manual. If appropriate, the calculation below takes pass-by trips into consideration.

Redevelopment:

If this development includes the demolition of an existing structure (e.g., redevelopment, relocation), then the calculation below takes into consideration the appropriate credits that may be eligible for this development, based on the demolition of the existing structure.

Calculation:

	square feet building	Variable		Trip Average		
Trips:	3,344	/	1,000	x	470.95	= 1,574.86 24-hour trips
Pass-by Trips:				Average pass-by trip percentage:		49% pass-by trip reduction %
						771.68 pass-by trips
Credits:				No structure demolition is proposed		0.00 structure demolition credits
				Total net trips:		803.18 24-hour trips

Road Impact Fee: \$ 308 per trip (effective 01/01/2019 through 12/31/2019)

Road Impact Fee Assessment:							Road Impact Fee Due:
24-hour trips	fee per trip		road impact fee	pass-by trip discount	redevelopment credits		
1,574.86	x \$ 308	=	\$ 485,056	- \$237,677	- \$0.00	=	\$ 247,379

	This is being provided as an assessment of the road impact fees due for the development. Road impact fees are due by the applicant upon the City's issuance of an improvement location permit for this development. Please provide a copy of this assessment with any Improvement Location Permit application made with the City regarding this property.
X	This is being provided as an estimate for informational purposes only at the request of the applicant and is not binding upon the applicant or the City. The actual assessment of road impact fees for this development is subject to change.