



CITY OF WESTFIELD, IN
Board of Public Works Meeting Agenda_09_25_2019

Wednesday, September 25, 2019 at 01:00 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Wednesday, September 25, 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:

Documents: [Meeting Minutes - August 28, 2019](#) | [Meeting Minutes - September 6, 2019](#)

Contracts/Agreements

Action Item #2:

Dedication of Public Right of Way - Towne Road

Documents: [Towne Road Dedication](#)

Action Item #3:

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

Documents: [Contract - City of Westfield & INDOT](#)

Action Item #4:

Westgate Park Impact Fee Credit Agreement

Documents: [Park Impact Fee Credit Agreement - Westgate](#)

Action Item #5:

169th & Spring Mill Roundabout - City of Westfield & INDOT - Local Public Agency Contract

Documents: [169th & SM RAB LPA](#)

Action Item #6:

Spring Mill Station Southwest Corner Road Impact Fee Credit Agreement

Documents: [Road Impact Fee Credit Agreement - Spring Mill Station SWC](#)

Action Item #7:

GAI On-Call Task Order #2

Documents: [GAI Task Order #2](#)

Action Item #8:

Birdie's Path Joint Use Maintenance Agreement

Documents: [Westfield Joint Use Maintenance Agreement Path SR 32](#)

Leases

Action Item #9:

Approval of Ground Lease with Westfield Economic Development Foundation for the Westfield Playhouse

Documents: [Ground Lease - Westfield Playhouse](#)

Agreements and/or Memorandum of Understanding (MOU)

Consent Agenda

September Bond Information

Documents: [Bond Information - September](#)

Department Reports

Fire

Documents: [WFD - August Report](#)

Police

Documents: [WPD - August Report](#)

Public Works

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY August 28, 2019

The Westfield Board of Public Works and Safety met on August 28, 2019 at the Westfield Public Works Conference Room. Present were, Randy Graham, Mayor Cook, Kate Snedeker, Kim Strang Records Manager, and Chris Engel, representing legal counsel.

Randy Graham called the meeting to order at 1:00 PM

AGENDA ITEMS:

Action Item #1: Meeting Minutes Consideration for Approval:

Kate Snedeker made the motion to approve the July 24, 2019 meeting minutes as presented. Mayor Cook seconded. Vote: Yes-3; No-0. Motion carried.

CONTRACTS/AGREEMENTS

Action Item #2: Westfield Boulevard Connector Project-Signing Authority

Dustin Shoe presented stating this is giving the signing authority to Jeremy Lollar on the project with a not to exceed amount of \$5,600,000.00. The city will pay for the design, land and 10% of the construction cost.

Mayor Cook made the motion to approve the signing authority. Kate Snedeker seconded. Vote: Yes-3; No-0. Motion carried.

Permit Approval

Action Item #3: Encroachment Permit Application-Duke Energy Indiana, LLC

Adam Essex presenting stating Duke is wanting to upgrading their poles/equipment to keep up with the growth of the City. Due to the placement of poles not meeting the requirements of the through fare plan (being outside of right-of-way and underground) action was denied.

Mayor Cook made the motion to deny the permit application. Randy Graham seconded. Vote: Yes-3; No-0. Motion carried.

Action Item #4: Encroachment Permit Application-Duke Energy, 271 Mill Street

Jeremy Lollar presented stating this would allow services to extend power for a new lift station.

Mayor Cook made the motion to approve the permit application. Randy Graham seconded. Vote: Yes-3; No-0. Motion carried

PROPOSALS

Action Item #5: Midland Trail Pedestrian Refuge at Carey Road

Michael Pearce presented stating JQOL will provide the engineering design for Midland Trail at Carey Rd. Refuge Island not to exceed \$13,600.

Kate Snedeker made the motion to approve Action item number 5. Mayor Cook seconded.
Vote: Yes-3; No-0. Motion carried.

CONSENT AGENDA:

Grant of Easement-City of Westfield & Duke Energy Indiana, LLC

Grant of Easement-Citizens Wastewater of Westfield & Duke Energy Indiana

Road Impact Fee Installment Agreement-Hittle at 31

WPD-Approval to Hire Two Officers (Conditional Requirements) Winyu Sheriff & Derek Baldrige

Kinsey Avenue Culvert Title Sheet

August Bond Information

Kate Snedeker made the motion to approve the consent agenda. Mayor Cook seconded.
Vote: Yes-3; No-0. Motion carried.

DEPARTMENT REPORTS:

Fire- Rob Gaylor

Police- Chief Rush

Public Works- Jeremy Lollar

With no further business Randy Graham made the motion to adjourn Kate Snedeker seconded.
The meeting was adjourned at 1:35 PM

Deputy Clerk-Treasurer

Board of Public Works and Safety

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY September 6, 2019

The Westfield Board of Public Works and Safety met on September 6, 2019 at the Westfield Public Works Conference Room. Present were, Randy Graham, Kate Snedeker, Kim Strang Records Manager, and Brian Zaiger, legal counsel.

Randy Graham called the meeting to order at 2:00 PM

AGENDA ITEMS:

Action Item #1: Springmill Pointe Road Impact Fee Credit Agreement

Jeremy Lollar presented stating the reason for “special meeting” was this one item was mistakenly taken off the previous months’ regular agenda. Details of the agreement were discussed as well the urgency in getting the road in to allow the Goddard School to be built by Spring of 2020.

Randy Graham made the motion to approve the RIF Agreement. Kate Snedeker seconded. Vote: Yes-2; No-0. Motion carried.

With no further business Randy Graham made the motion to adjourn Kate Snedeker seconded. The meeting was adjourned at 2:05 PM

Deputy Clerk-Treasurer

Board of Public Works and Safety

DEDICATION OF PUBLIC RIGHT OF WAY

THIS INDENTURE WITNESSETH: That Westfield Washington School Corporation ("Grantor"), hereby gives and dedicates to the City of Westfield (hereinafter "Grantee"), for public right-of-way purposes only, the real estate situated in Hamilton County, Indiana, and described in Exhibit "A" and depicted in Exhibit "B" attached hereto and made a part hereof ("Passing Blister"), and also the real estate situated in Hamilton County, Indiana, and described in Exhibit "C" and depicted in Exhibit "D" attached hereto and made a part hereto ("Adjoining Area").

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

This conveyance of real estate is not subject to Indiana gross income tax.

IN WITNESS WHEREOF, Grantor has executed this Dedication as of the 14
day of May, 2019.

Westfield Washington School Corporation

By: [Signature]
Printed: Brian Tomamichel
Title: CFO

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Brian Tomamichel who acknowledged his authority and the execution of the foregoing Dedication of Public Right-of-Way.

WITNESS my hand and Notarial Seal this 14 day of May, 2019.

My Commission Expires:

12/10/2025

[Signature]
NOTARY PUBLIC, A resident of Hamilton
County, Indiana
Printed: Jill Doyle



JILL DOYLE
Notary Public, State of Indiana
Hamilton County
Commission #708362
My Commission Expires
December 10, 2025

ACCEPTANCE

WHEREAS, the foregoing Grantor has this day filed with the City of Westfield Indiana, its dedication of certain real estate for the purpose of establishing City rights-of-way, which Dedication is hereinabove set forth:

AND WHEREAS, the City of Westfield, is of the opinion that said Dedication is desirable and necessary.

NOW THEREFORE, said City of Westfield, under and by virtue of the power conferred upon it by statutes of the State of Indiana, for and on behalf of the City, accepts said Dedication for the purpose of public rights-of-way, and orders that the Instrument of Dedication be recorded in the Recorder's Office of the County of Hamilton, State of Indiana, and said described real estate is hereby declared open and dedicated.

WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY

Voting For

Voting Against

Abstain

J. Andrew Cook

J. Andrew Cook

J. Andrew Cook

Randy Graham

Randy Graham

Randy Graham

Kate Snedeker

Kate Snedeker

Kate Snedeker

ATTEST:

Cindy Gossard, Clerk Treasurer

This document prepared by
Brian J. Zaiger, Esq.
KRIEG DEVAULT, LLP
(317) 238-6266

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.

Exhibit A
Legal Description of the Passing Blister

WESTGATE
ADDITIONAL R/W DESCRIPTION - TOWNE ROAD
DEDICATION FOR PASSING BLISTER

LAND DESCRIPTION

A part of the Southeast Quarter of Section 5, Township 18 North, Range 3 East, Washington Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Quarter Section; thence along the East line of said Quarter Section North 00 degrees 11 minutes 25 seconds East a distance of 1,734.05 feet to the Point of Beginning of this description; thence North 89 degrees 48 minutes 46 seconds West a distance of 25.25 feet; thence North 04 degrees 36 minutes 08 seconds West a distance of 164.95 feet; thence North 00 degrees 11 minutes 14 seconds East 151.27 feet; thence North 05 degrees 04 minutes 48 seconds East a distance of 164.96 feet; thence South 89 degrees 48 minutes 46 seconds East a distance of 24.98 feet to the East line of said Quarter Section; thence along said line South 00 degrees 11 minutes 25 seconds West a distance of 480.00 feet to the place of beginning, containing 0.378 acres, more or less.

Exhibit B
Depiction of the Passing Blister

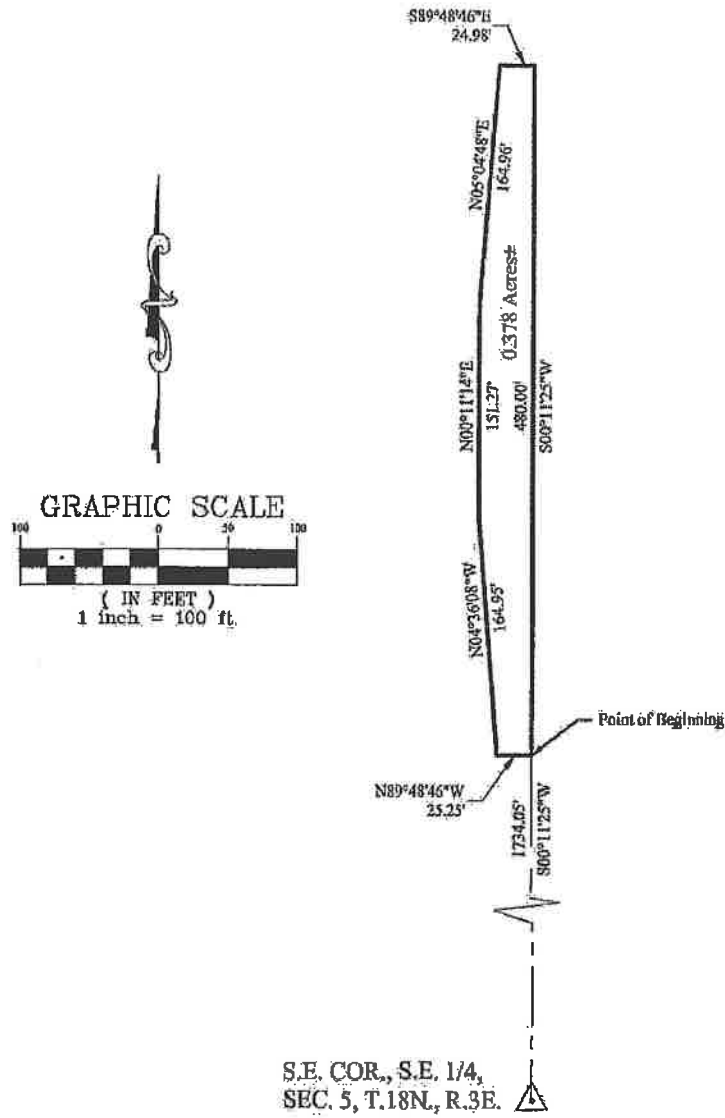


Exhibit C
Legal Description of the Adjoining Area

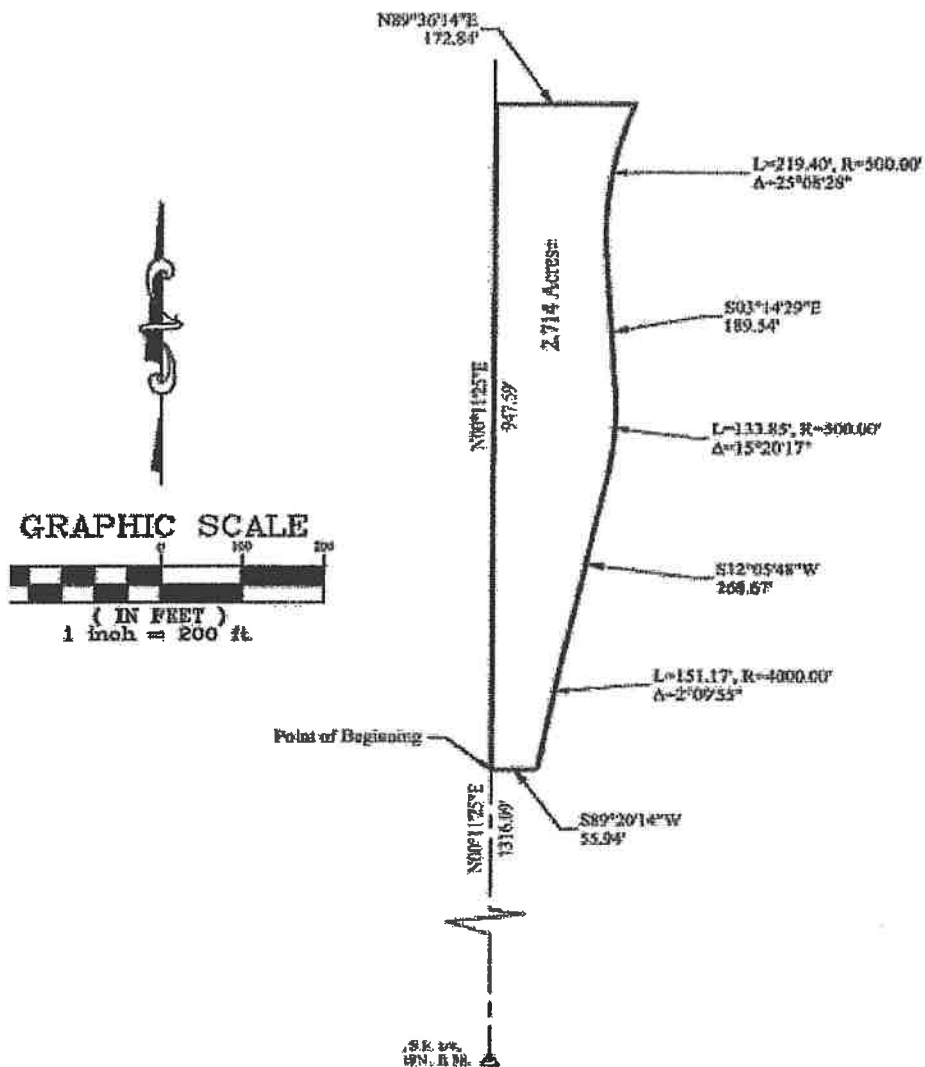
A part of the Southwest Quarter of Section 4, Township 18 North, Range 3 East, Washington Township, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Quarter Section; thence along the West line of said Quarter Section North 00 degrees 11 minutes 25 seconds East a distance of 1,316.09 feet to the Point of Beginning of this description; thence continuing along said line North 00 degrees 11 minutes 25 seconds East a distance of 947.59 feet; thence North 89 degrees 36 minutes 14 seconds East a distance of 172.84 feet to a point on a curve concave easterly, the radius point of said curve being South 68 degrees 06 minutes 01 second East a distance of 500.00 feet from said point; thence Southerly along said curve an arc length of 219.40 feet to a point on said curve, said point being South 86 degrees 45 minutes 31 seconds West a distance of 500.00 feet from the radius point of said curve; thence South 03 degrees 14 minutes 29 seconds East a distance of 189.54 feet to a point on a curve concave westerly, the radius point of said curve being South 86 degrees 45 minutes 31 seconds West a distance of 500.00 feet from said point; thence Southerly along said curve an arc length of 133.85 feet to a point on said curve, said point being South 77 degrees 54 minutes 12 seconds East a distance of 500.00 feet from the radius point of said curve; thence South 12 degrees 05 minutes 48 seconds West 268.67 feet to a point on a curve concave easterly, the radius point of said curve being South 77 degrees 54 minutes 12 seconds East a distance of 4,000.00 feet from said point; thence Southerly along said curve 151.17 feet to a point on said curve, said point being North 80 degrees 04 minutes 07 seconds West a distance of 4,000.00 feet from the radius point of said curve; thence South 89 degrees 20 minutes 14 seconds West a distance of 55.94 feet to the place of beginning, containing 2.714 acres, more or less.

Exhibit D

Depiction of the Adjoining Area

**ADDITIONAL R/W EXHIBIT - TOWNE ROAD
INTENDED TO DEPICT THE LAND IN "EXHIBIT A"
IN INSTRUMENT 2007053527**



7599924.0661565 4845-4270-7857v7

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

EDS #: A249-20-L190119

Des. No.: 1702765

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
130 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 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 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
August 9, 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.: **1702765**

Program: **Group III**

Type of Project: **Intersection Improvement, Roundabout**

Location: **151st Street and Towne Road Roundabout**

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

Intersection Improvement, 151st Street and Towne Road Roundabout in 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
<u> X </u>	Right-of-Way or
_____	Construction;

Otherwise, this contract covers all phases.

B. If the Program shown on Attachment A is receiving _____ 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 _____ % 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, _____, the maximum amount according to the TIP dated _____ is \$ _____. 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 **80%** of the eligible Project costs. The maximum amount of federal funds allocated to the project is **\$ 80,000.00.**
- 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.

PARK IMPACT FEE CREDIT AGREEMENT

This PARK IMPACT FEE CREDIT AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2019, by and between the City of Westfield, Indiana, (the “City”) and Lennar Homes of Indiana, Inc., a Delaware Corporation (the “Developer”) as follows:

WHEREAS, Westfield desires to assist development and integrate improvements of complementary infrastructure collaboratively with the development community;

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

WHEREAS, as the developer wishes to develop a new residential planned development to be known as Westgate (the “Development”);

WHEREAS, park impact fees are required to be paid to Westfield by the Developer in accordance with City Ordinance 12-31;

WHEREAS, Developer desires to construct a portion of the Midland Trace Trail through the Development in substantial compliance with the alignment illustrated in **Exhibit A** (the “Trail”);

WHEREAS, the Developer wishes to receive park impact fee credits to offset the cost associated with constructing the Trail.

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) Developer shall prepare cost estimates associated with construction of the Trail prior to initiating construction of the Trail.
- 2) The Director of Public Works shall review and approve such estimates prior to construction of the Trail, such approval shall not be unreasonably withheld.
- 3) Developer shall construct the Trail.
- 4) For any portion of the Trail constructed outside of a street right-of-way, Developer shall dedicate the Trail corridor and adjacent real estate in substantial compliance with that identified in **Exhibit B** to the City at no cost to City.
- 5) Developer shall receive park impact fee credits in an amount equal to the cost of constructing the Trail.
- 6) Any costs associated with Preliminary Engineering, Permitting or Land cost are not creditable.

- 7) Any notice, statement, demand, or other communication required or permitted to be given, rendered or made shall be addressed as indicated below:

If to Westfield:

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

With a copy to:

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

If to Developer:

Lennar Homes of Indiana, Inc.
Attn: Keith Lash, VP Land Acquisition and Development, Indianapolis
9025 N. River Road, Suite 100
Indianapolis, IN 46240

With a copy to:

Nelson & Frankenberger, LLC
550 Congressional Blvd., Suite 210
Carmel, IN 46032
Attn: Jim Shinaver

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

ALL OF WHICH IS APPROVED THIS _____ DAY OF _____ 2019.

WESTFIELD BOARD OF PUBLIC WORKS & SAFETY

Andy Cook

Randy Graham

Kate Snedeker

ATTEST:

Cindy J. Gossard, Clerk Treasurer

This document prepared by
Caleb Ernest
City of Westfield, Associate Planner
(317) 519-8630

EXHIBIT A
THE DEVELOPMENT



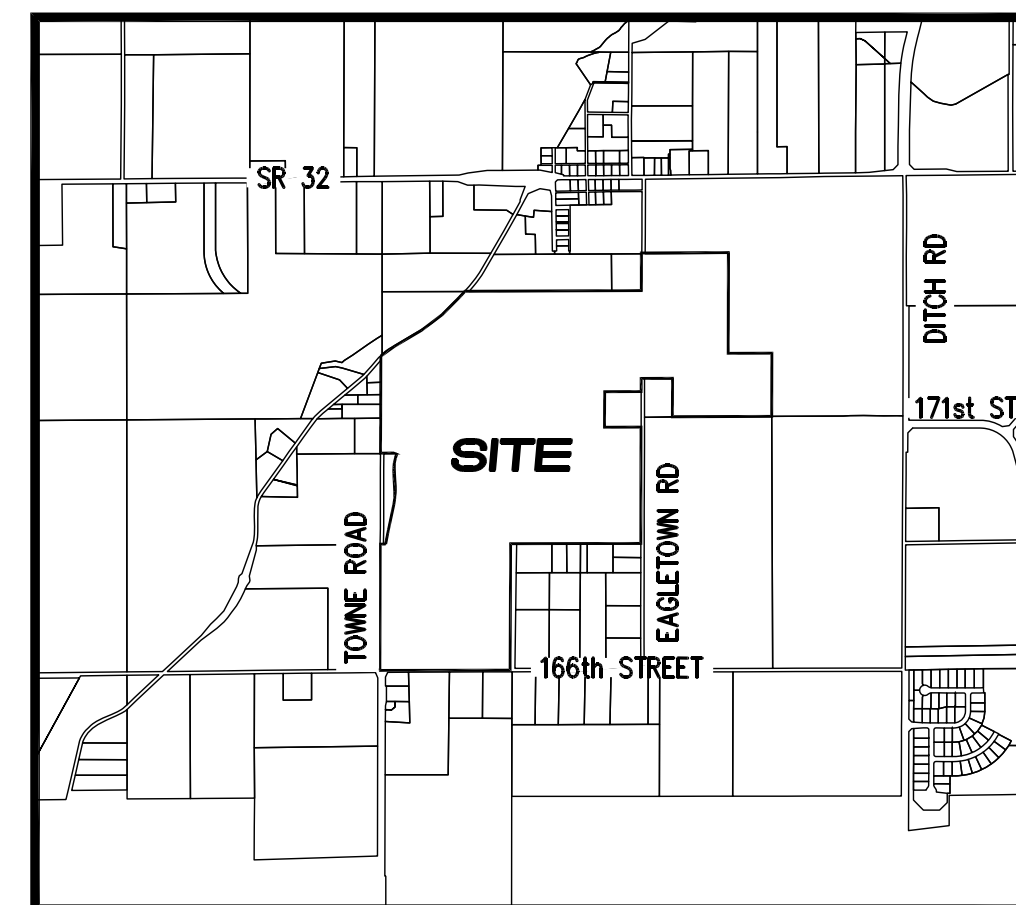
STOEPPELWERTH & ASSOCIATES, INC.
THIS INSTRUMENT PREPARED BY:
DENNIS D. OLMSTEAD
7965 E. 106TH STREET
FISHERS, INDIANA 46038
PHONE: (317) 849-5935
THIS INSTRUMENT PREPARED FOR:
LENNAR
9025 NORTH RIVER ROAD, SUITE 100
INDIANAPOLIS, INDIANA 46240
CONTACT: KEITH LASH
PHONE: (317) 659-3231

CURRENT LANDOWNER:
WILLIAM McCOLGIN
17021 TOWNE ROAD
WESTFIELD, IN 46074

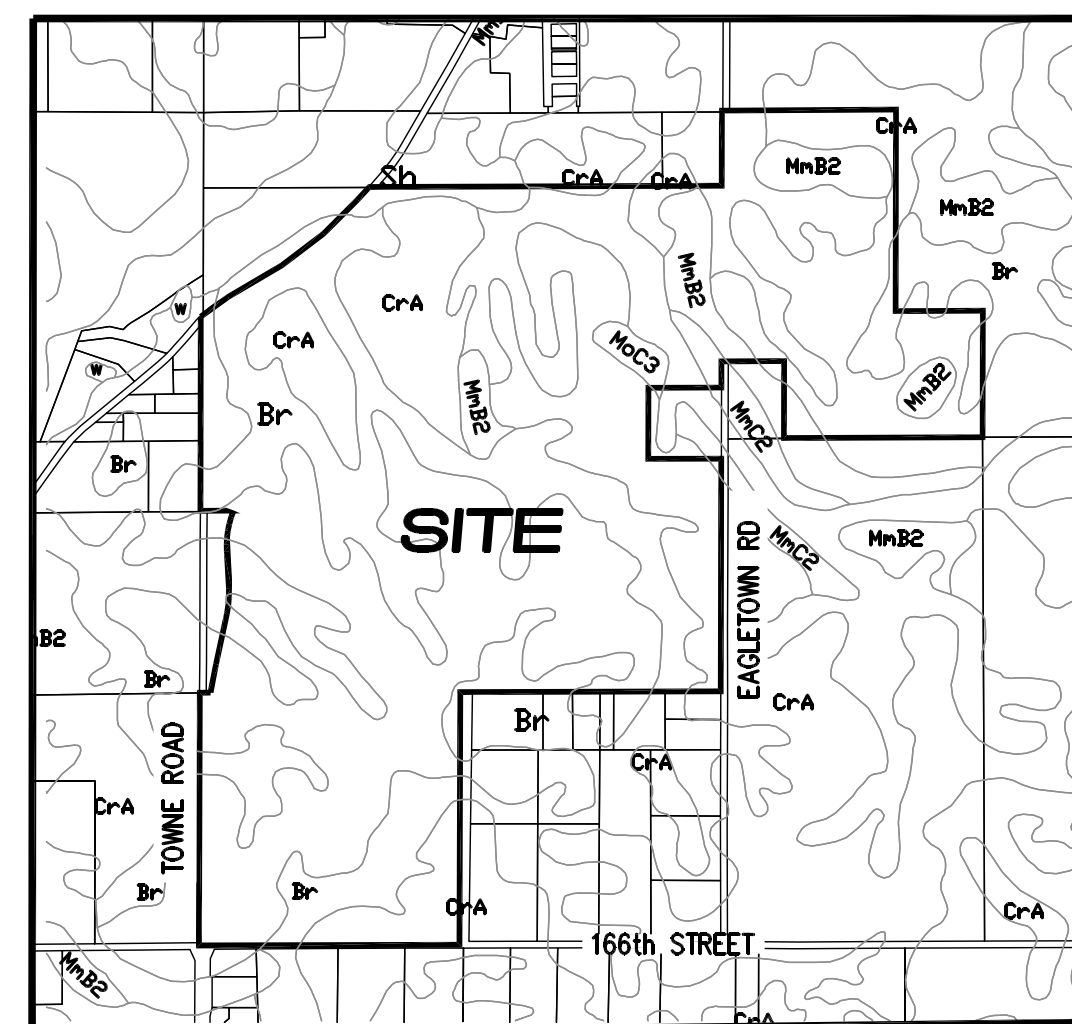
NOW OR FORMERLY
ACKERSON FAMILY FARMS LLC
INSTR. No. 2005-0804
ZONED PUD

AMENDED PRIMARY PLAT / DEVELOPMENT PLAN for WESTGATE

WESTFIELD, INDIANA
PUD ZONING



LOCATION MAP
SCALE: 1"=2000'



SOILS MAP
SCALE: 1"=1000'
Br / CrA / MoC3 / MnC2 / MmB2 / Sh

TOTAL SITE = 230.885
TOTAL LOTS - 676
DENSITY (of residential acreage) - 2.92 u/a
TOTAL COMMON AREA = 86ac± (37%)

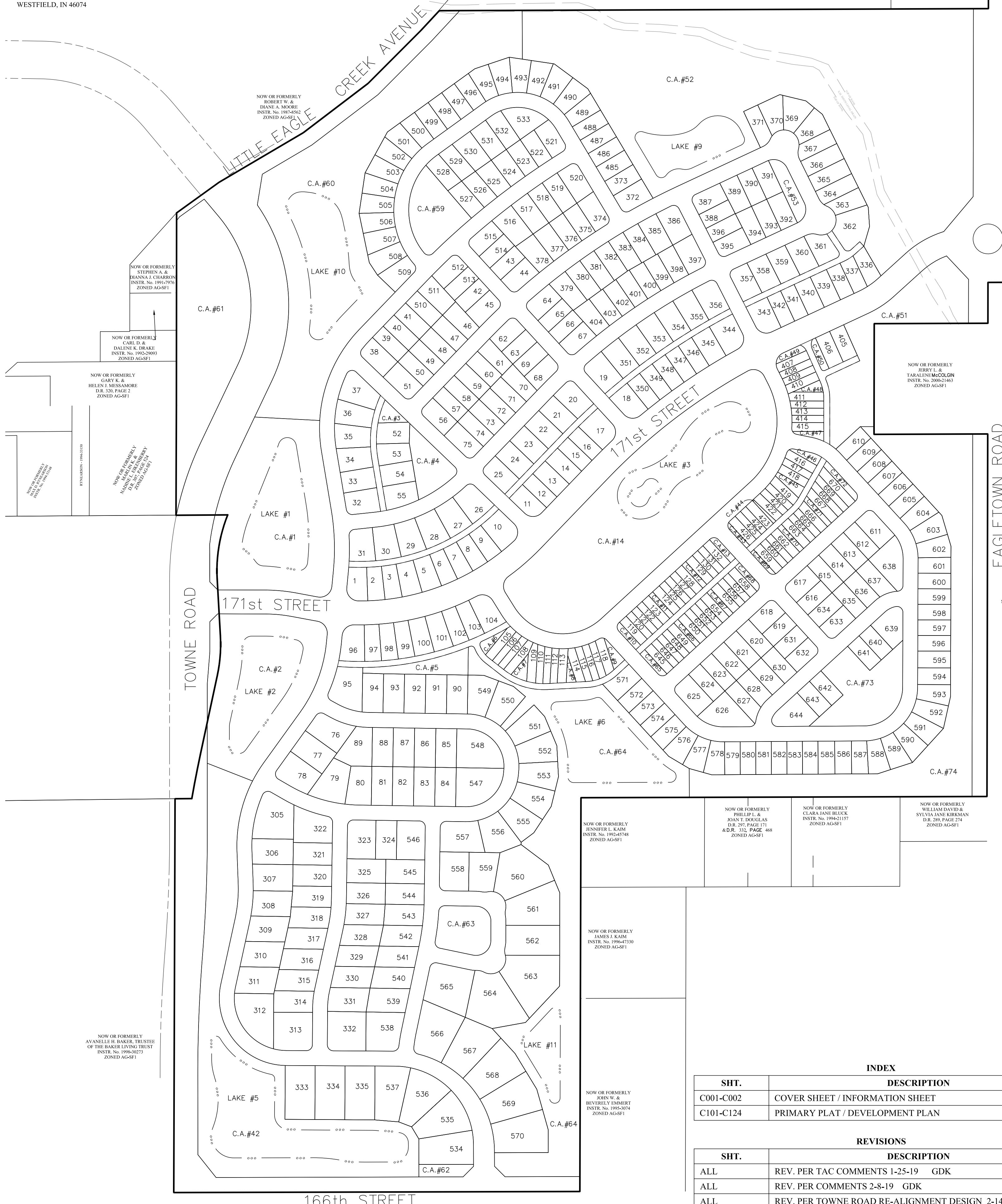
Dennis D. Olmstead
REGISTERED LAND SURVEYOR
No. 900012
DATE 11/30/18
STATE OF INDIANA
LAND SURVEYOR

PLANS PREPARED BY:

STOEPPELWERTH & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
7965 E. 106TH STREET, FISHERS, INDIANA 46038
PHONE: (317)-849-5935
FAX: (317)-849-5942
CONTACT PERSON: DENNIS D. OLMSTEAD
EMAIL: DOLMSTEAD@STOEPPELWERTH.COM



Know what's below.
Call before you dig.



EAGLETOWN ROAD

171st STREET

166th STREET

TOWNE ROAD

LAKE #1

LAKE #2

LAKE #3

LAKE #4

LAKE #5

LAKE #6

LAKE #7

LAKE #8

LAKE #9

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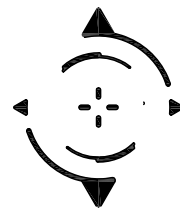
LAKE #263

LAKE #264

LAKE #265

LAKE #266

LAKE #267



STOEPPELWERTH & ASSOCIATES, INC.
THIS INSTRUMENT PREPARED BY:
DENNIS D. OLMSTEAD
7965 E. 106TH STREET
FISHERS, INDIANA 46038
PHONE: (317) 849-5935

THIS INSTRUMENT PREPARED FOR:
LENNAR
9025 NORTH RIVER ROAD, SUITE 100
INDIANAPOLIS, INDIANA 46240
CONTACT: KEITH LASH
PHONE: (317) 659-3231

CURRENT LANDOWNER:
WILLIAM McCOLGIN
17021 TOWNE ROAD
WESTFIELD, IN 46074

STREET DATA		ALLEY DATA	
171st STREET	4,591.28 L.F.	ALLEY A	643.98 L.F.
STREET A	4,572.76 L.F.	ALLEY B	618.04 L.F.
STREET B	829.11 L.F.	ALLEY C	502.00 L.F.
STREET C	620.89 L.F.	ALLEY D	452.41 L.F.
STREET D	832.09 L.F.	ALLEY E	418.19 L.F.
STREET E	940.30 L.F.	ALLEY F	178.00 L.F.
STREET F	763.43 L.F.	ALLEY G	595.72 L.F.
STREET G	2,309.44 L.F.	ALLEY H	437.17 L.F.
STREET H	947.00 L.F.	ALLEY I	482.77 L.F.
STREET I	702.21 L.F.	ALLEY J	553.51 L.F.
STREET J	574.49 L.F.	ALLEY K	468.05 L.F.
STREET K	1,689.98 L.F.	ALLEY L	148.38 L.F.
STREET L	1,939.20 L.F.	ALLEY M	835.77 L.F.
STREET M	1,557.32 L.F.	ALLEY N	724.01 L.F.
STREET N	871.06 L.F.	ALLEY O	341.00 L.F.
STREET O	882.27 L.F.	ALLEY P	127.00 L.F.
STREET P	590.53 L.F.	ALLEY Q	989.89 L.F.
STREET Q	280.07 L.F.	ALLEY R	127.00 L.F.
STREET R	1,359.11 L.F.	ALLEY S	341.00 L.F.
STREET S	1,100.30 L.F.	ALLEY T	548.00 L.F.
STREET T	528.00 L.F.	ALLEY U	533.25 L.F.
STREET U	1,098.93 L.F.	ALLEY V	723.55 L.F.
TOTAL	29,579.77 L.F.	TOTAL	10,788.69 L.F.

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD BEARING	CHORD	DELTA
C1	90.36'	500.00'	45.30'	N84°38'12"W	90.23'	10°21'15"
C2	69.52'	800.00'	34.78'	S81°56'57"E	69.50'	4°58'44"
C3	523.26'	800.00'	271.38'	N76°49'25"E	513.99'	37°28'34"
C4	198.64'	800.00'	99.83'	N50°58'20"E	198.13'	14°13'36"
C5	160.05'	2000.00'	80.07'	S46°09'05"W	160.01'	4°35'07"
C6	509.48'	2000.00'	256.13'	S55°44'30"W	508.10'	14°35'44"
C7	68.99'	2000.00'	34.50'	S64°01'40"W	68.98'	1°58'35"
C8	90.11'	300.00'	45.40'	N56°24'39"E	89.77'	17°12'35"
C9	221.42'	300.00'	116.03'	S68°57'01"W	216.43'	42°17'19"
C10	111.65'	300.00'	56.48'	N79°14'36"W	111.01'	21°19'28"
C11	113.87'	300.00'	57.63'	S79°27'16"E	113.19'	21°44'49"
C12	239.68'	300.00'	126.65'	N67°20'40"W	233.36'	45°46'34"
C13	10.04'	107.00'	5.02'	N48°13'55"E	10.04'	5°22'36"
C14	72.55'	107.00'	37.73'	N70°20'38"E	71.17'	38°50'50"
C15	168.69'	107.00'	107.61'	S45°04'08"E	151.75'	90°19'38"
C16	39.95'	50.00'	21.11'	N67°20'40"W	38.89'	45°46'34"
C17	34.57'	300.00'	17.31'	S3°23'46"W	34.55'	6°36'11"
C18	34.57'	300.00'	17.31'	N3°23'46"E	34.55'	6°36'11"
C19	78.17'	50.00'	49.63'	S44°52'58"W	70.45'	89°34'36"
C20	47.89'	50.00'	25.96'	S27°20'33"E	46.08'	54°52'26"
C21	48.18'	200.00'	24.21'	S61°40'49"E	48.06'	13°48'06"
C22	56.68'	150.00'	28.68'	S79°24'24"E	56.35'	21°39'05"
C23	65.85'	500.00'	32.97'	N9°20'04"E	65.80'	7°32'46"
C24	136.47'	500.00'	68.66'	N20°55'36"E	136.05'	15°38'18"
C25	61.07'	500.00'	30.57'	N32°14'43"E	61.04'	6°59'55"
C26	45.14'	450.00'	22.59'	S32°52'14"W	45.13'	5°44'53"
C27	252.71'	450.00'	129.79'	S13°54'30"W	249.40'	32°10'35"
C28	126.64'	500.00'	63.66'	N5°04'33"E	126.30'	14°30'41"
C29	356.02'	200.00'	246.95'	S38°39'55"E	310.84'	101°59'36"
C30	33.79'	300.00'	16.91'	N86°26'08"W	33.77'	6°27'11"
C31	435.00'	300.00'	265.79'	N41°40'09"W	397.88'	83°04'46"
C32	43.65'	500.00'	21.84'	S9°17'30"W	43.63'	5°00'05"
C33	133.05'	75.00'	92.02'	N50°58'21"E	116.27'	101°38'23"
C34	116.86'	75.00'	74.06'	N44°29'11"W	105.40'	89°16'41"
C35	152.44'	800.00'	76.45'	N6°20'01"E	152.21'	10°55'04"
C36	62.80'	300.00'	31.51'	S6°20'05"W	62.68'	11°59'36"
C37	99.98'	500.00'	50.16'	N6°36'11"E	99.81'	11°27'25"
C38	190.93'	500.00'	96.64'	S70°56'35"E	189.77'	21°52'44"
C39	58.24'	500.00'	29.15'	S85°47'19"E	58.21'	6°40'26"
C40	226.62'	150.00'	141.26'	N47°35'37"E	205.67'	86°33'44"
C41	244.62'	150.00'	159.28'	N42°24'23"W	218.40'	93°26'16"
C42	121.61'	250.00'	62.03'	S75°11'23"E	120.42'	27°52'17"
C43	492.65'	962.00'	251.85'	N81°26'11"E	487.29'	29°20'31"
C44	151.33'	962.00'	75.82'	N62°15'32"E	151.18'	9°00'48"
C45	50.27'	100.00'	25.68'	S37°38'07"E	49.74'	28°48'05"
C46	160.80'	225.00'	84.01'	S72°30'34"E	157.40'	40°56'50"
C47	103.51'	150.00'	53.91'	N67°14'53"E	101.47'	39°32'16"
C48	38.23'	215.00'	19.17'	S37°00'30"E	38.18'	10°11'16"
C49	330.49'	215.00'	207.89'	S86°08'20"E	298.90'	88°04'23"
C50	188.37'	300.00'	97.40'	N29°29'30"E	185.29'	35°58'31"
C51	201.34'	300.00'	104.63'	N7°43'20"W	197.58'	38°27'09"
C52	63.05'	150.00'	32.00'	N11°58'58"W	62.58'	24°04'55"
C53	16.20'	100.00'	8.12'	N4°41'53"E	16.18'	9°16'48"
C54	35.58'	100.00'	17.98'	N19°31'56"E	35.40'	20°23'19"
C55	46.48'	150.00'	23.43'	N38°36'10"E	46.29'	17°45'09"
C56	125.22'	150.00'	66.52'	S66°26'13"E	121.62'	47°49'56"
C57	83.48'	100.00'	44.35'	S23°33'47"W	81.08'	47°49'56"
C58	241.97'	155.00'	153.50'	N44°55'31"E	218.14'	89°26'37"
C59	74.57'	100.00'	39.11'	S68°50'29"W	72.85'	42°43'27"
C60	111.85'	150.00'	58.67'	N21°09'31"W	109.28'	42°43'27"
C61	37.13'	150.00'	18.66'	N49°36'42"W	37.03'	14°10'55"
C62	56.98'	150.00'	28.84'	N67°35'06"W	56.64'	21°45'52"
C63	134.93'	800.00'	67.63'	N1°11'06"W	134.77'	9°39'49"
C64	554.40'	638.00'	296.07'	N68°45'10"E	537.12'	49°47'17"
C65	170.29'	2162.00'	85.19'	S46°06'55"W	170.24'	4°30'46"
C66	553.51'	2162.00'	278.28'	S55°42'22"W	552.00'	14°40'07"
C67	74.54'	2162.00'	37.27'	S64°01'41"W	74.54'	1°58'31"
C68	9.80'	138.00'	4.90'	N62°58'55"E	9.80'	4°04'04"
C69	31.47'	138.00'	15.80'	N54°24'55"E	31.40'	13°03'54"
C70	21.90'	2000.00'	10.95'	S64°42'08"W	21.90'	0°37'38"
C71	594.65'	2000.00'	299.53'	S55°52'15"W	592.46'	17°02'08"
C72	121.97'	2000.00'	61.00'	S45°36'21"W	121.95'	3°29'39"
C73	315.36'	500.00'	163.12'	N61°55'40"E	310.16'	36°08'16"
C74	34.79'	500.00'	17.40'	N81°59'23"E	34.78'	3°59'12"
C75	48.74'	800.00'	24.38'	N7°45'44"W	48.74'	3°29'27"
C76	334.48'	450.00'	175.39'	S11°47'09"W	326.83'	42°35'14"
C77	234.75'	353.00'	121.90'	S9°32'37"W	230.45'	38°06'10"
C78	84.66'	450.00'	42.46'	S38°28'09"W	84.54'	10°46'46"
C79	29.77'	2485.00'	14.89'	S44°12'08"W	29.77'	0°41'11"
C80	126.19'	2485.00'	63.11'	S46°00'00"W	126.18'	2°54'34"
C81	376.00'	250.00'	233.83'	S2°22'07"E	341.55'	86°10'20"
C82	290.40'	175.00'	191.25'	N78°19'17"W	258.21'	95°04'46"
C83	510.20'	2485.00'	256.00'	S53°20'12"W	509.31'	11°45'49"
C84	219.89'	2200.00'	110.04'	S62°04'55"W	219.80'	5°43'36"
C85	451.81'	2200.00'	226.70'	S53°20'06"W	451.02'	11°46'00"
C86	137.96'	2200.00'	69.00'	S45°39'19"W	137.93'	3°35'34"
C87	2.71'	2200.00'	1.36'	S64°58'50"W	2.71'	0°04'14"

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD BEARING	CHORD	DELTA
C88	411.13'	5000.00'	205.68'	S2°11'30"W	411.01'	4°42'40"
C89	396.89'	5000.00'	198.55'	N2°16'24"E	396.79'	4°32'53"
C90	448.40'	1010.00'	227.96'	S12°43'04"W	444.73'	25°26'14"
C91	610.36'	535.00'	343.25'	N7°14'49"W	577.80'	65°22'01"

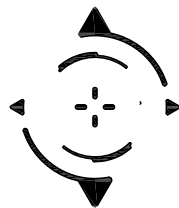
AMENDED PRIMARY PLAT / DEVELOPMENT PLAN for WESTGATE

WESTFIELD, INDIANA
PUD ZONING

PLANS PREPARED BY:

STOEPPELWERTH & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
7965 E. 106TH STREET, FISHERS, INDIANA 46038
PHONE: (317)-849-5935
FAX: (317)-849-5942
CONTACT PERSON: DENNIS D. OLMSTEAD
EMAIL: DOLMSTEAD@STOEPPELWERTH.COM





STOEPPELWERTH & ASSOCIATES, INC.
THIS INSTRUMENT PREPARED BY:
DENNIS D. OLMSTEAD
7065 E. 106TH STREET
FISHERS, INDIANA 46038
PHONE: (317) 849-5935
THIS INSTRUMENT PREPARED FOR:
LENNAR
9025 NORTH RIVER ROAD, SUITE 100
INDIANAPOLIS, INDIANA 46240
CONTACT: KEITH LASH
PHONE: (317) 659-3231
CURRENT LANDOWNER:
WILLIAM MCGILGIN
17021 TOWNE ROAD
WESTFIELD, IN 46074

WESTGATE

AMENDED PRIMARY PLAT

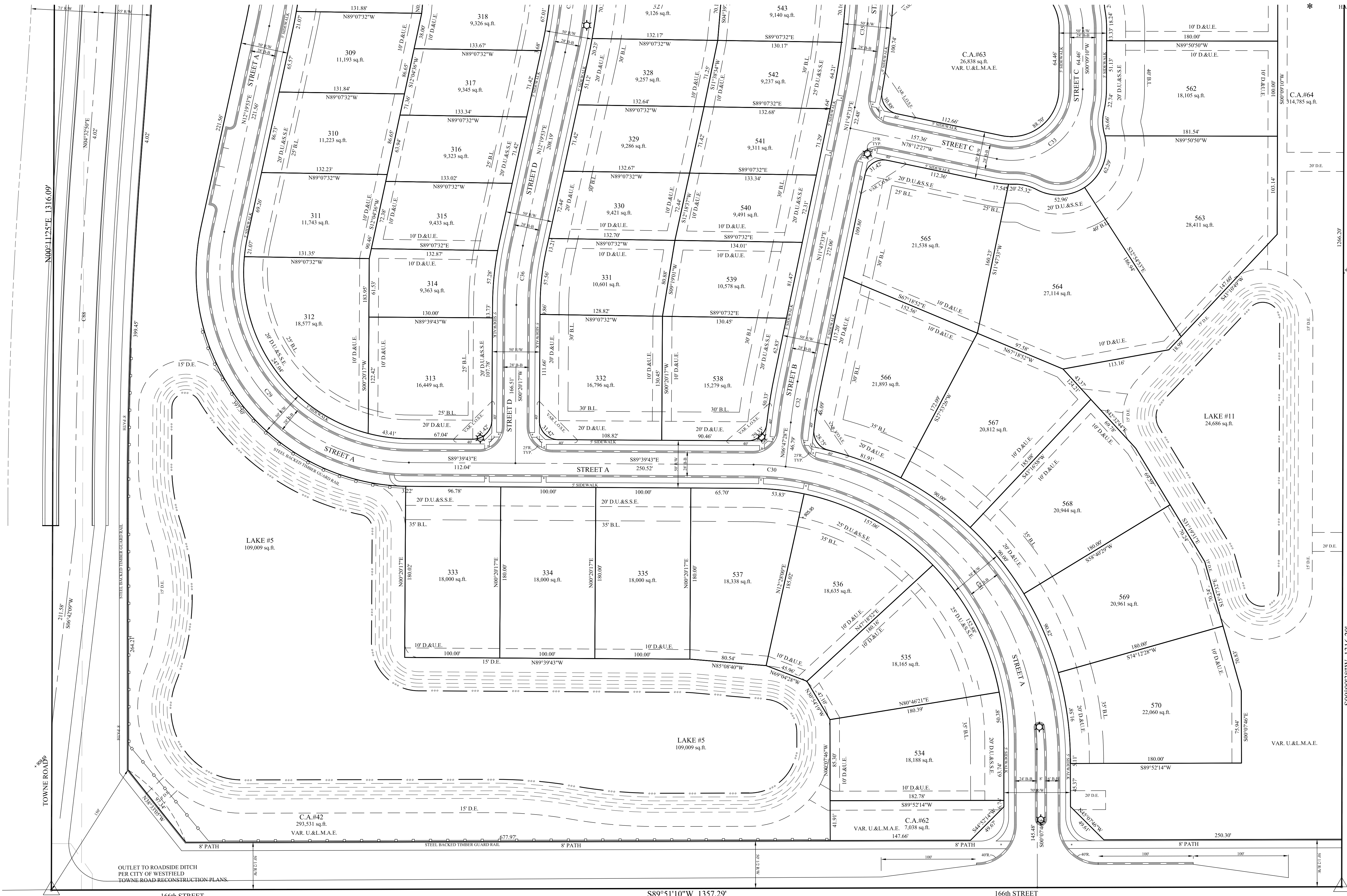
ZONING PUD

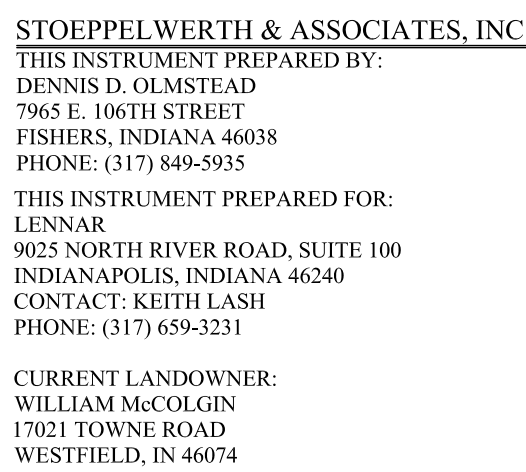
TOTAL SITE = 230.885
TOTAL LOTS = 670
DENSITY (of residential acreage) - 2.91 u/a
TOTAL COMMON AREA = 83.25ac ± (36%)

Note:
The area shown on the plat as "private drive"
(aka alleys) including, without limitation shall be maintained
as a private drive, and the undersigned owners, and their
successors and assignees, hereby waive all rights to petition
the City of Westfield to be responsible for the maintenance
and ownership of such private streets.

LEGEND

- | | |
|----------|---------------------------------------|
| 30 | LOT NUMBER |
| S.S.E. | SANITARY SEWER EASEMENT |
| D.&U.E. | DRAINAGE & UTILITY EASEMENT |
| L.O.S.E. | LINE OF SITE EASEMENT |
| D.E. | DRAINAGE EASEMENT |
| I.E.E. | INGRESS EGRESS EASEMENT |
| L.M.A.E. | LANDSCAPE MAINTENANCE ACCESS EASEMENT |
| B.L. | BUILDING LINE |
| R/W | RIGHT OF WAY |
| B-B | BACK TO BACK OF CURB |
| * | HANDICAP RAMP |





LEGEND	
	LOT NUMBER
1.E.	SANITARY SEWER EASEMENT
2.E.U.E.	DRAINAGE & UTILITY EASEMENT
3.E.S.E.	LINE OF SITE EASEMENT
4.E.	DRAINAGE EASEMENT
5.E.	INGRESS EGRESS EASEMENT
6.L.A.E.	LANDSCAPE MAINTENANCE ACCESS EASEMENT
7.E.	BUILDING LINE
8.W.	RIGHT OF WAY
9.B.	BACK TO BACK OF CURB
	HANDICAP RAMP

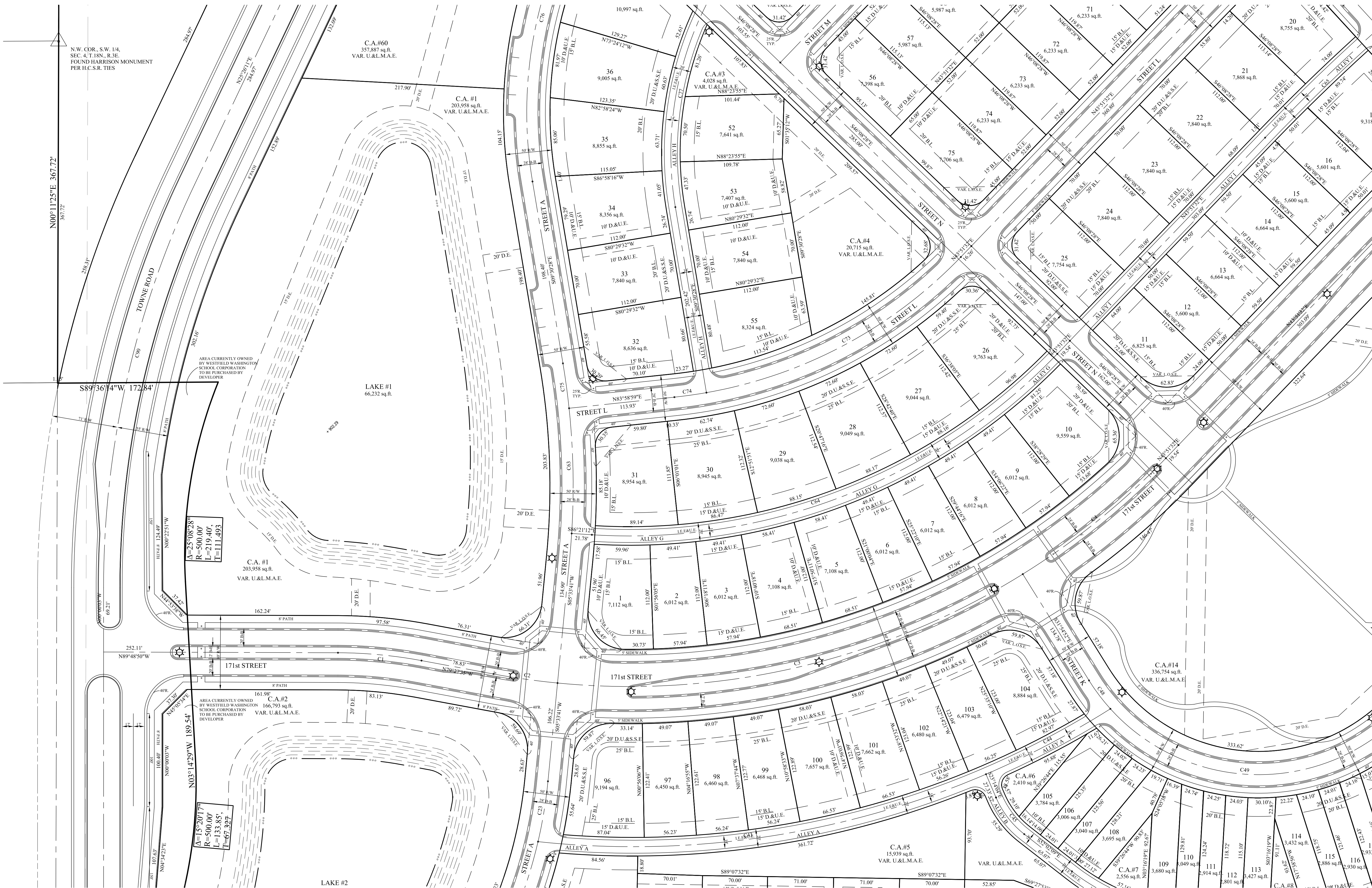
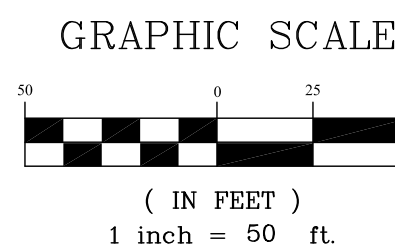
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WESTGATE

AMENDED PRIMARY PLAT

ZONING PUD



DENNIS D. OLMSTEAD
REGISTERED
No.
900012
STATE OF
INDIANA
LAND SURVEYOR

THIS DRAWING IS NOT INTENDED TO BE
REPRESENTED AS A RETRACEMENT OR
ORIGINAL BOUNDARY SURVEY, A ROUTE
SURVEY OR A SURVEYOR LOCATION
REPORT

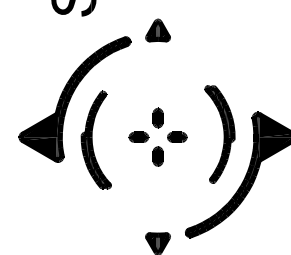
CERTIFIED: 11/30/18

PPPELWERTH

ALWAYS ON.

965 East 106th Street. Fishers, IN 46038-2505

Phone: (317) 849-5935 Fax: (317) 849-5942



AMENDED PRIMARY PLAT

WESTGATE

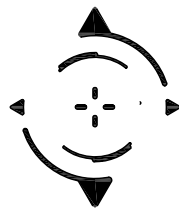
HAMILTON CO., INDIANA

PREPARED FOR:

SECTION: 4	TOWNSHIP: 18N	RANGE: 3E
DRAWN BY: LAF		CHECKED BY: GDK
SHEET NO.		

C10

S & A JOB NO.
50855LEN



STOEPPELWERTH & ASSOCIATES, INC.
THIS INSTRUMENT PREPARED BY:
DENNIS D. OLMEADO
7965 E. 106TH STREET
FISHERS, INDIANA 46038
PHONE: (317) 849-5935
THIS INSTRUMENT PREPARED FOR:
LENNVAR
9025 NORTH RIVER ROAD, SUITE 100
INDIANAPOLIS, INDIANA 46240
CONTACT: KEITH LASH
PHONE: (317) 659-3231
CURRENT LANDOWNER:
WILLIAM MCGOLGIN
17021 TOWNE ROAD
WESTFIELD, IN 46074

WESTGATE

AMENDED PRIMARY PLAT

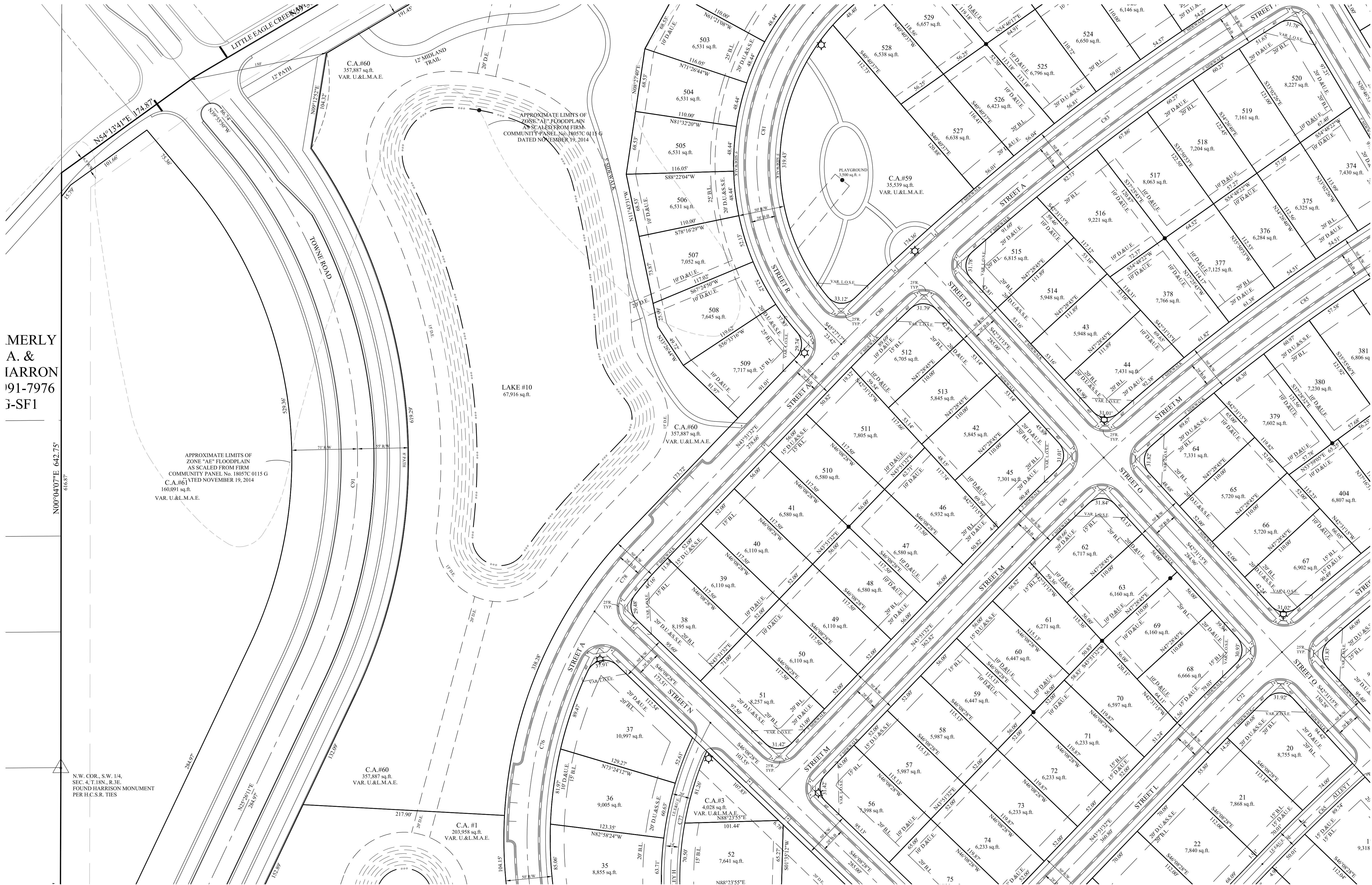
ZONING PUD

GRAPHIC SCALE
(IN FEET)
1 inch = 50 ft.

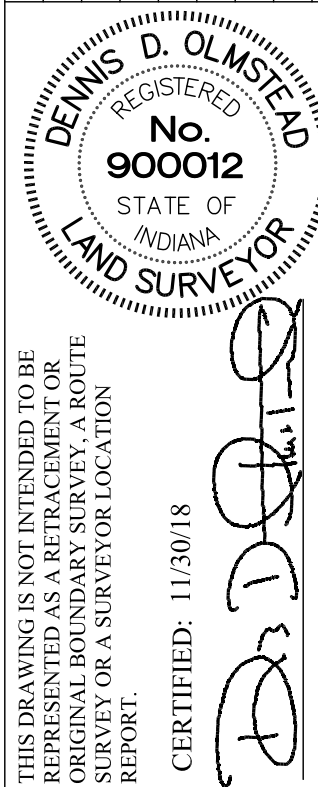
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LEGEND	
30	LOT NUMBER
S.S.E.	SANITARY SEWER EASEMENT
D.&U.E.	DRAINAGE & UTILITY EASEMENT
L.O.S.E.	LINE OF SITE EASEMENT
D.E.	DRAINAGE EASEMENT
I.E.E.	INGRESS EGRESS EASEMENT
L.M.A.E.	LANDSCAPE MAINTENANCE ACCESS EASEMENT
B.L.	BUILDING LINE
R/W	RIGHT OF WAY
B-B	BACK TO BACK OF CURB
*	HANDICAP RAMP



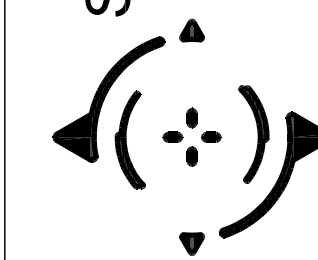
MERLY
A. &
TARRON
91-7976
3-SF1



THIS DRAWING IS NOT INTENDED TO BE
ORIGINAL BOUNDARY SURVEY OR A ROUTE
SURVEY OR A SURVEYOR LOCATION
REPORT.

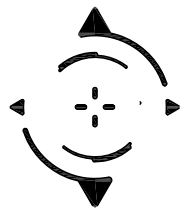
CERTIFIED: 11/30/18

STOEPPELWERTH
ALWAYS ON.
7965 East 106th Street, Fishers, IN 46038-2905
Phone: (317) 849-5935 Fax: (317) 849-5942



AMENDED PRIMARY PLAT
WESTGATE

PREPARED FOR:
SECTION: 3 TOWNSHIP: 18N RANGE: 3E
DRAWN BY: LAF CHECKED BY: GDK
SHEET NO.
C104
S & A JOB NO.
508551EN

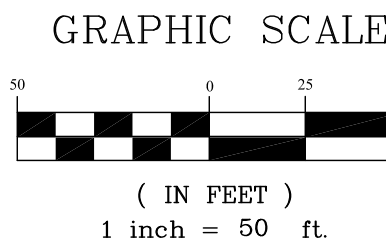


STOEPPELWERTH & ASSOCIATES, INC.
THIS INSTRUMENT PREPARED BY:
DENNIS D. OLMSHEAD
7965 E. 106TH STREET
FISHERS, INDIANA 46038
PHONE: (317) 849-5935
THIS INSTRUMENT PREPARED FOR:
LENNVAR
9025 NORTH RIVER ROAD, SUITE 100
INDIANAPOLIS, INDIANA 46240
CONTACT: KEITH LASH
PHONE: (317) 659-3231
CURRENT LANDOWNER:
WILLIAM MCOLGIN
17021 TOWNE ROAD
WESTFIELD, IN 46074

WESTGATE

AMENDED PRIMARY PLAT

ZONING PUD

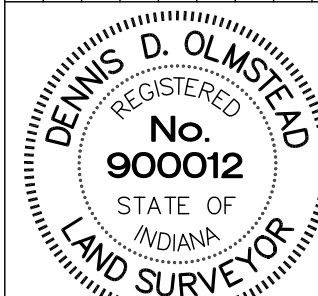


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TOTAL LOTS = 670
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and ownership of such private streets.

LEGEND

- | | |
|----------|---------------------------------------|
| 30 | LOT NUMBER |
| S.S.E. | SANITARY SEWER EASEMENT |
| D.&U.E. | DRAINAGE & UTILITY EASEMENT |
| L.O.S.E. | LINE OF SITE EASEMENT |
| D.E. | DRAINAGE EASEMENT |
| I.E.E. | INGRESS EGRESS EASEMENT |
| L.M.A.E. | LANDSCAPE MAINTENANCE ACCESS EASEMENT |
| B.L. | BUILDING LINE |
| R/W | RIGHT OF WAY |
| B-B | BACK TO BACK OF CURB |
| * | HANDICAP RAMP |



THIS DRAWING IS NOT INTENDED TO BE
A SUBSTITUTE FOR A PROFESSIONAL
ORIGINAL BOUNDARY SURVEY A ROUTE
SURVEY OR A SURVEYOR LOCATION
REPORT.

CERTIFIED: 11/30/18

[Signature]

STOEPPELWERTH

ALWAYS ON.

7965 East 106th Street, Fishers, IN 46038-2905
Phone: (317) 849-5935 Fax: (317) 849-5942

AMENDED PRIMARY PLAT

WESTGATE

WASHINGTON TOWNSHIP HAMILTON CO., INDIANA

PREPARED FOR:

SECTION:	TOWNSHIP:	RANGE:
4	18N	3E
DRAWN BY:	CHECKED BY:	
LAF	GDK	

SHEET NO.

C105

S & A JOB NO.
508551LEN



Know what's below.
Call before you dig.

NOW OR FORMERLY
ROBERT W. &
DIANE A. MOORE
INSTR. No. 1987-8562
ZONED AG-SF1

APPROXIMATE LIMITS OF
ZONING DISTRICT
AS DERIVED FROM FIRM
COMMUNITY PANEL No. 18057C 0115 G
DATED NOVEMBER 19, 2014

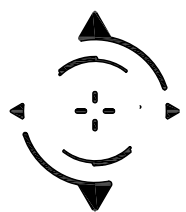
C.A.#59
35,539 sq. ft.

C.A.#60
357,887 sq. ft.
VAR. U.&L.M.A.E.

C.A.#60
357,887 sq. ft.
VAR. U.&L.M.A.E.

C.A.#52
746,291 sq. ft.

N.W. COR. S 1/2, N.W. 1/4,
SEC. 4, T.18N., R.3E.
* SEE SURVEYOR'S REPORT *

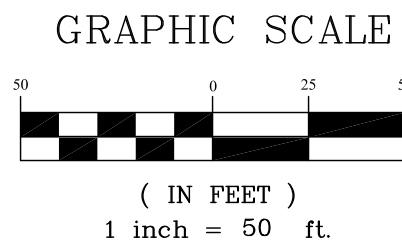


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THIS INSTRUMENT PREPARED BY:
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7965 E. 106TH STREET
FISHERS, INDIANA 46038
PHONE: (317) 849-5935
THIS INSTRUMENT PREPARED FOR:
LENNVAR
9025 NORTH RIVER ROAD, SUITE 100
INDIANAPOLIS, INDIANA 46240
CONTACT: KEITH LASH
PHONE: (317) 659-3231
CURRENT LANDOWNER:
WILLIAM MCGOLGIN
17021 TOWNE ROAD
WESTFIELD, IN 46074

WESTGATE

AMENDED PRIMARY PLAT

ZONING PUD

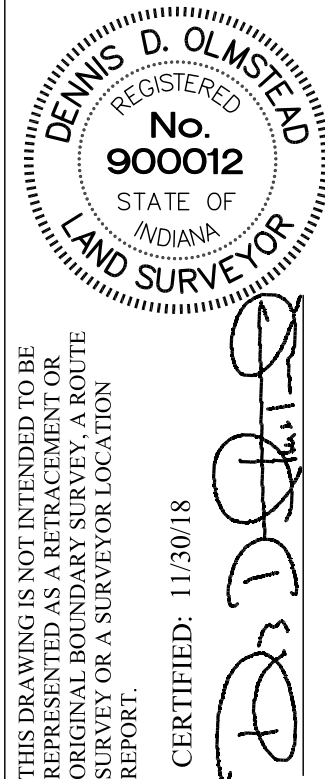


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LEGEND	
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S.S.E.	SANITARY SEWER EASEMENT
D.&U.E.	DRAINAGE & UTILITY EASEMENT
L.O.S.E.	LINE OF SITE EASEMENT
D.E.	DRAINAGE EASEMENT
I.E.E.	INGRESS EGRESS EASEMENT
L.M.A.E.	LANDSCAPE MAINTENANCE ACCESS EASEMENT
B.L.	BUILDING LINE
R/W	RIGHT OF WAY
B-B	BACK TO BACK OF CURB
*	HANDICAP RAMP



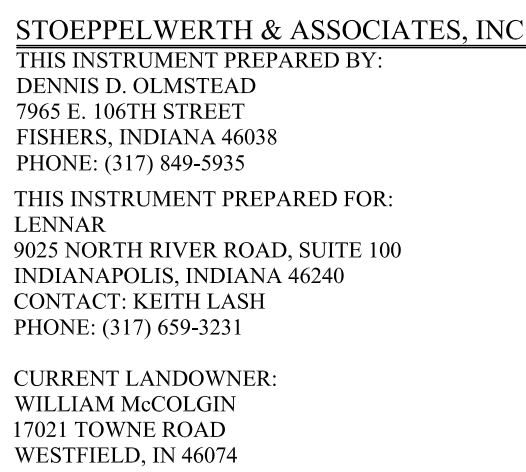
STOEPPELWERTH
ALWAYS ON.
7965 East 106th Street, Fishers, IN 46038-2905
Phone: (317) 849-5935 Fax: (317) 849-5942

AMENDED PRIMARY PLAT
WESTGATE
WASHINGTON TOWNSHIP
HAMILTON CO., INDIANA

PREPARED FOR:
SECTION: 4 TOWNSHIP: 18N RANGE: 3E
DRAWN BY: LAF CHECKED BY: GDK
SHEET NO.
C106
S & A JOB NO.
508551EN



Know what's below.
Call before you dig.



WESTGATE

AMENDED PRIMARY PLAT

ZONING PUD

GRAPHIC SCALE

(IN FEET)
1 inch = 50 ft.

TOTAL SITE = 230.885
TOTAL LOTS - 670
DENISTY (of residential acreage) - 2.91 u/a

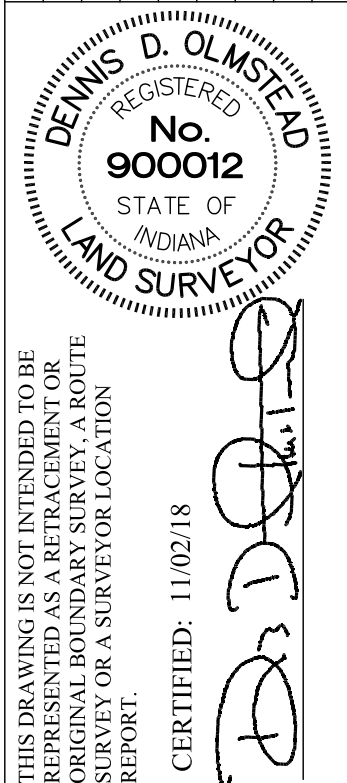
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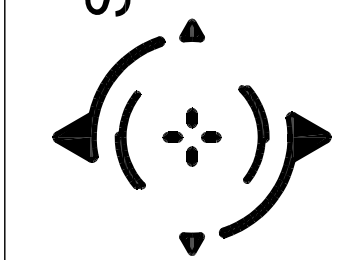
LEGEND

30	LOT NUMBER
S.S.E.	SANITARY SEWER EASEMENT
D.&U.E.	DRAINAGE & UTILITY EASEMENT
L.O.S.E.	LINE OF SITE EASEMENT
D.E.	DRAINAGE EASEMENT
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L.M.A.E.	LANDSCAPE MAINTENANCE ACCESS EASEMENT
B.L.	BUILDING LINE
R/W	RIGHT OF WAY
B-B	BACK TO BACK OF CURB
*	HANDICAP RAMP

02/14/19	REV. PER TOWNE ROAD RE-ALIGNMENT DESIGN	GDK
02/08/19	REV. PER TAC COMMENTS	GDK
1/25/19	REV. PER TAC COMMENTS	GDK
DATE	REVISIONS	BY



STOEPPELWERTH

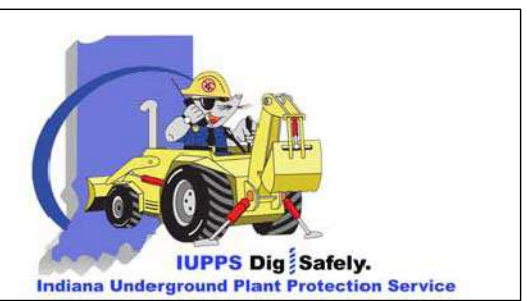


AMENDED PRIMARY PLAT

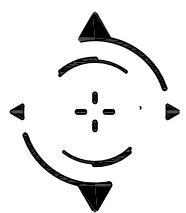
WESTGATE

WASHINGTON TOWNSHIP
HAMILTON CO., INDIANA

A			PREPARED FOR:			WASHINGTON TO		
SECTION: 4			TOWNSHIP: 18N			RANGE: 3E		
DRAWN BY: LAF			CHECKED BY: GDK					
SHEET NO. C107								
S & A JOB NO. 50855LEN								



Know what's below. Call before you dig.



STOEPPELWERTH & ASSOCIATES, INC.
THIS INSTRUMENT PREPARED BY:
DENNIS D. OLMSTEAD
7965 E. 106TH STREET
FISHERS, INDIANA 46038
PHONE: (317) 849-5935
THIS INSTRUMENT PREPARED FOR:
LENNAR
9025 NORTH RIVER ROAD, SUITE 100
INDIANAPOLIS, INDIANA 46240
CONTACT: KEITH LASH
PHONE: (317) 659-3231

CURRENT LANDOWNER:
WILLIAM MCGOLGIN
17021 TOWNE ROAD
WESTFIELD, IN 46074

WESTGATE

AMENDED PRIMARY PLAT

ZONING PUD

TOTAL SITE = 230.885
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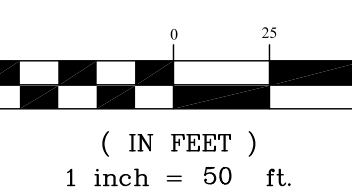
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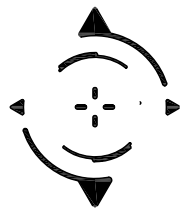
LEGEND

30	LOT NUMBER
S.S.E.	SANITARY SEWER EASEMENT
D.U.E.	DRAINAGE & UTILITY EASEMENT
L.O.S.E.	LINE OF SITE EASEMENT
D.E.	DRAINAGE EASEMENT
I.E.E.	INGRESS EGRESS EASEMENT
L.M.A.E.	LANDSCAPE MAINTENANCE ACCESS EASEMENT
B.L.	BUILDING LINE
R/W	RIGHT OF WAY
B-B	BACK TO BACK OF CURB
*	HANDICAP RAMP

N.E. COR. S.W. 1/4,
SEC. 4, T.18N., R.3E.
FOUND HARRISON
MONUMENT
PER H.C.S.R. TIES
P.O.C. COMMITMENT
& SURVEYED DESCRIPTIONS

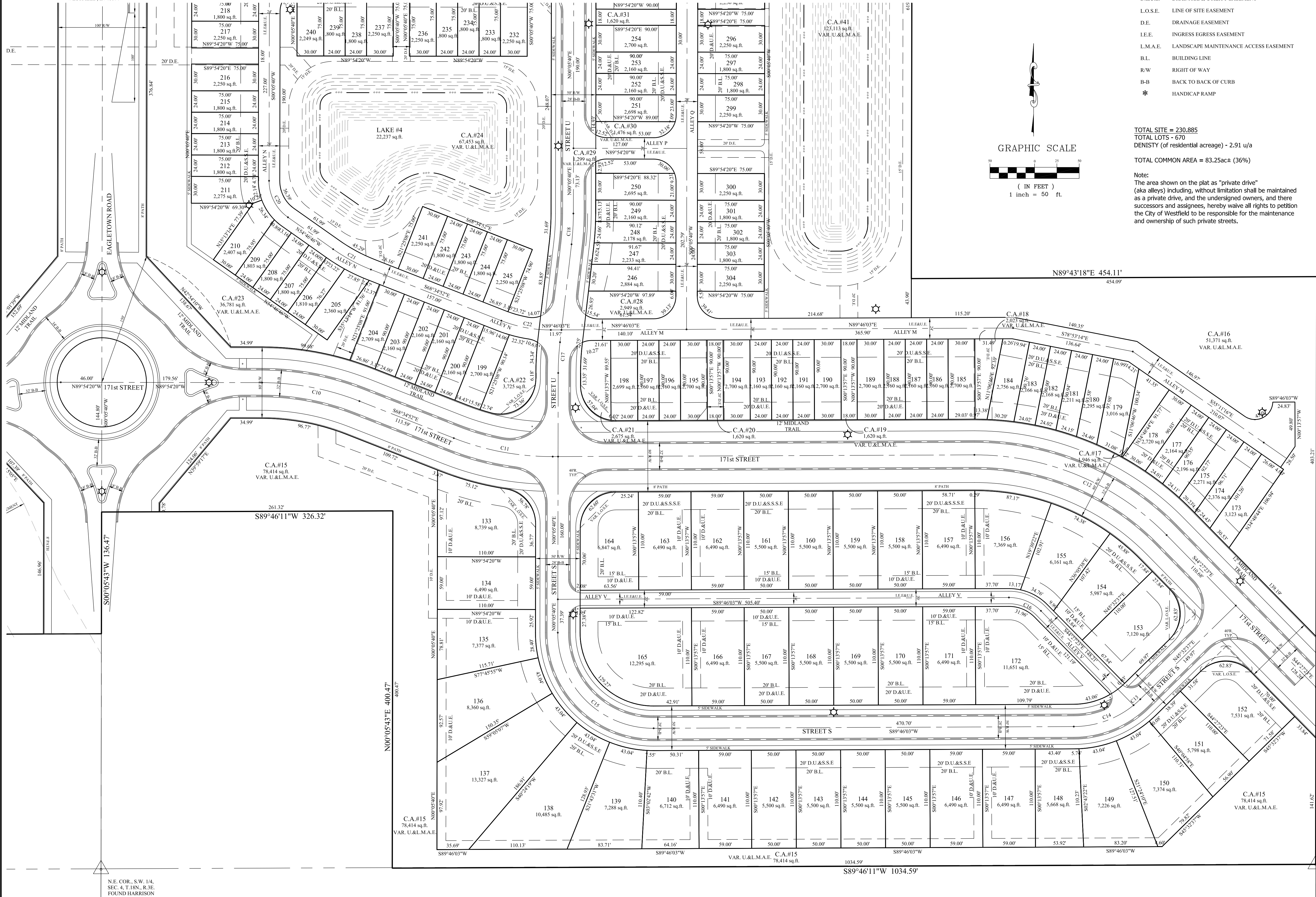
GRAPHIC SCALE

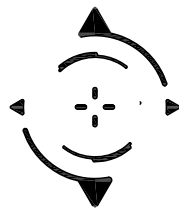




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DENNIS D. OLMSHEAD
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FISHERS, INDIANA 46038
PHONE: (317) 849-5935
THIS INSTRUMENT PREPARED FOR:
LENNVAR
9025 NORTH RIVER ROAD, SUITE 100
INDIANAPOLIS, INDIANA 46240
CONTACT: KEITH LASH
PHONE: (317) 659-3231
CURRENT LANDOWNER:
WILLIAM MCGOLGIN
17021 TOWNE ROAD
WESTFIELD, IN 46074

WESTGATE AMENDED PRIMARY PLAT ZONING PUD





STOEPPELWERTH & ASSOCIATES, INC.
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WESTGATE

AMENDED PRIMARY PLAT

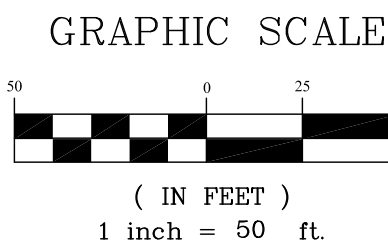
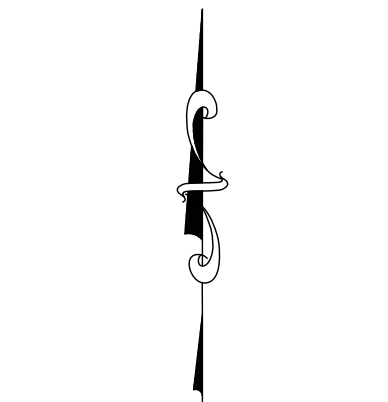
ZONING PUD

LEGEND

- 30 LOT NUMBER
- S.S.E. SANITARY SEWER EASEMENT
- D.&U.E. DRAINAGE & UTILITY EASEMENT
- L.O.S.E. LINE OF SITE EASEMENT
- D.E. DRAINAGE EASEMENT
- I.E.E. INGRESS EGRESS EASEMENT
- L.M.A.E. LANDSCAPE MAINTENANCE ACCESS EASEMENT
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- R/W RIGHT OF WAY
- B-B BACK TO BACK OF CURB
- * HANDICAP RAMP

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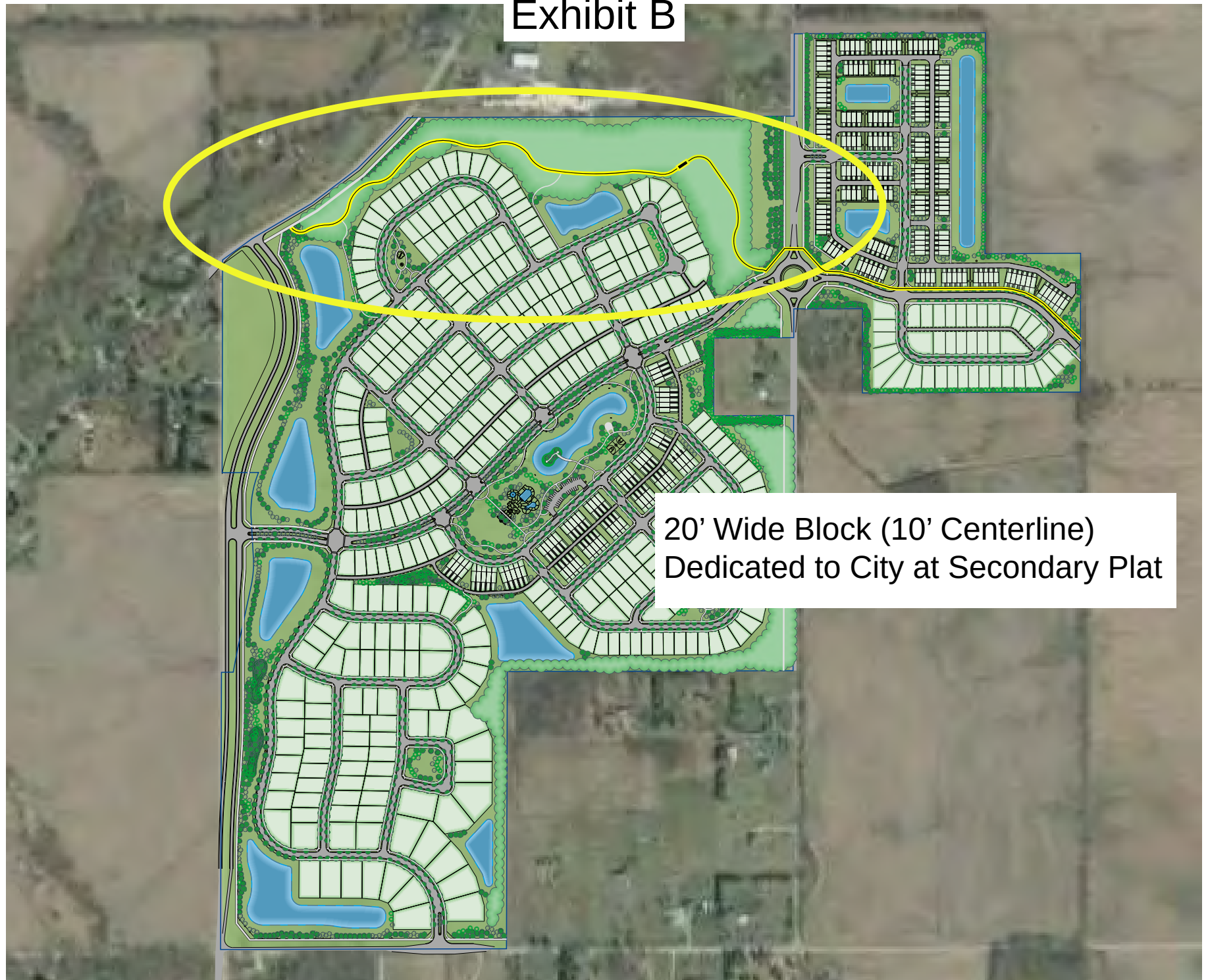
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SECTION:	TOWNSHIP:	RANGE:
4	18N	3E
DRAWN BY:	CHECKED BY:	
LAF	GDK	
SHEET NO.		
C111		
S & J ORINO		
508551EN		
PREPARED FOR:		
WASHINGTON TOWNSHIP		
WESTGATE		
HAMILTON CO., INDIANA		
STOEPPELWERTH		
ALWAYS ON.		
7965 East 106th Street, Fishers, IN 46038-2905		
Phone: (317) 849-5935 Fax: (317) 849-5942		
CERTIFIED: 11/30/18		
REGISTERED		
No. 900012		
STATE OF INDIANA		
LAND SURVEYOR		
THIS DRAWING IS NOT INTENDED TO BE A PART OF ANY OTHER INSTRUMENT OR SURVEY OR A SURVEYOR LOCATION REPORT.		
REV. PER TOWNE ROAD RE-ALIGNMENT DESIGN		
GDK		
REV. PER TAC COMMENTS		
GDK		
REV. PER TAC COMMENTS		
GDK		
DATE		
BY		

EXHIBIT B

Exhibit B



20' Wide Block (10' Centerline)
Dedicated to City at Secondary Plat

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

EDS #: A249-19-L190081

Des. No.: 1801434

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.

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:

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.: **1801434**
Program: **Group I**
Type of Project: **Intersection Improvement, Roundabout**
Location: **Intersection of 169th Street and Spring Mill Road - roundabout**

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

A project for construction of a new roundabout at the intersection at 169th Street and Spring Mill 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 \$ **1,612,800.00**. 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.

Westfield Police Department
Monthly Performance Measures Report



Board of Public Works & Safety

August 2019

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Westfield Police Department

August 2019

Events by Nature

911 Hang Up	24
Abandoned Vehicle	11
Abandonment	0
Abuse / Neglect	4
Accident - Hit & Run PD	7
Accident - Hit & Run PI	0
Accident - Other	0
Accident - Property Damage	58
Accident - Personal Injury	14
Accident - Sinking Vehicle	0
Accident - Unknown	3
Accelerator Stuck	0
Active Assailant	1
Alarm - Other	3
Alarm - Vehicle	4
Alarm - Burglar	138
Alarm - Hold Up	16
Animal Bite / Attack	3
Animal Complaint	38
Assist Fire	45
Assist Other Department	14
Assist Public	26
Battery	2
Bomb Device Found	0
Bomb Threat	0
Burglary	3
Carjacking	0
Case Follow Up	96
Child Seat Inspection	3
Civil Dispute	21
Criminal Mischief	23
Damage to Property	0
Death Investigation	1
Directed Patrol	7
Disturbance	28
Driving Complaint	96
Drug Complaint	5
Drug Lab	0
Escort	0
Fight	1
Firearms Shots Fired	3
Found / Lost Property	20
Found Person	1
Fraud Prescription	3
Fraud / Deception	23
Harassment	17
Intoxicated Person	7

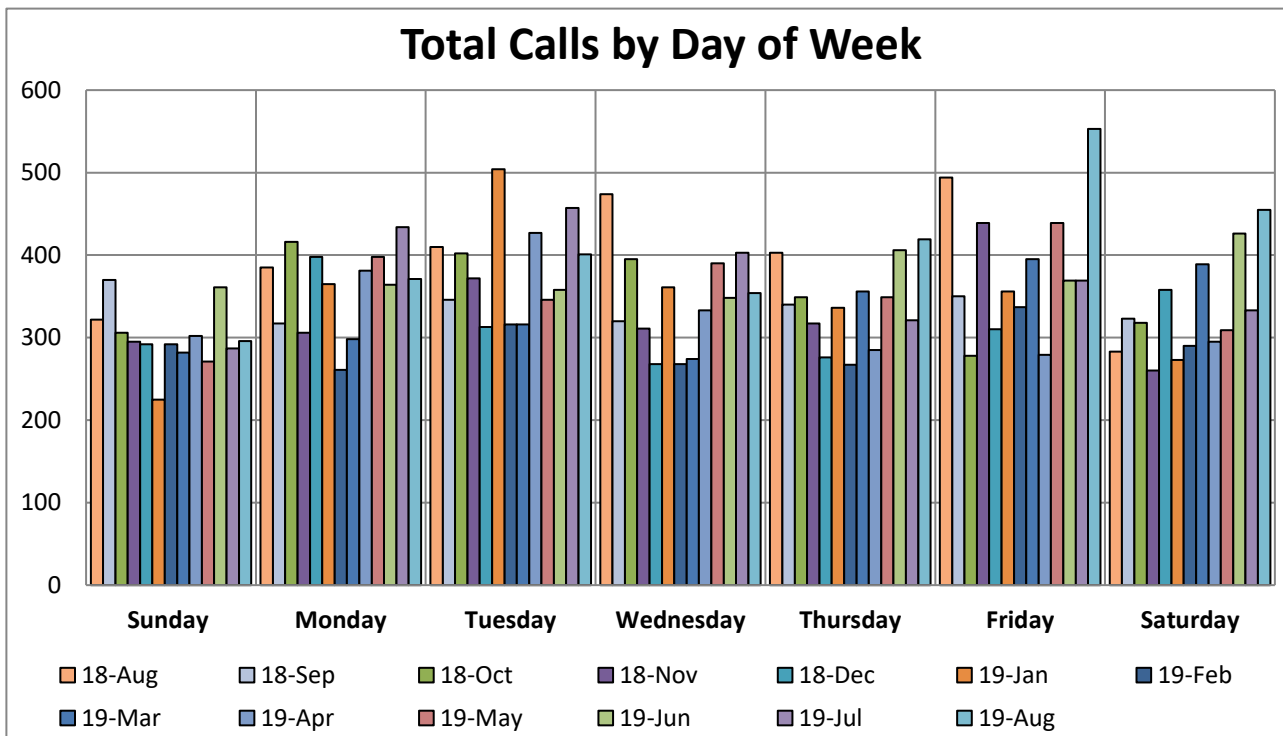
Investigation	10
Juvenile Complaint	10
K9 Detail	1
Kidnapping	0
Lock Out	54
Loud Party	4
Mental Emotional - Violent	3
Mental Person	7
Miscellaneous	17
Missing Person	3
Missing Person - PLS	1
Nuisance	8
Ordinance Misc.	16
Parking Complaint	29
Physical Disturbance	14
Product Contamination	0
Reckless Activity	0
Road Rage	6
Robbery	0
Runaway	4
School Patrol	139
Security Check	2
Sex Offense	1
Shooting	0
Solicitor	10
Special Detail	0
Stabbing	0
Suicide	0
Suspicious Activity	125
Suspicious Package	0
Theft	33
Theft - From a Vehicle	7
Theft - of a Vehicle	1
Threat to Life	2
Threatening Suicide	9
Tow Release	5
Traffic Hazard	92
Transport	0
Trespassing	17
Traffic Stop	1322
Unknown Call for Police	0
VIN Check	55
Wanted	1
Warrant Service	12
Weapons Complaint	1
Welfare Check	59
	2849

Westfield Police Department

August 2019

Total # of Calls by Day of Week

DAY	18-Aug	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug
Sunday	322	370	306	295	292	225	292	282	302	271	361	287	296
Monday	385	317	416	306	398	365	261	298	381	398	364	434	371
Tuesday	410	346	402	372	313	504	316	316	427	346	358	457	401
Wednesday	474	320	395	311	268	361	268	274	333	390	348	403	354
Thursday	403	340	349	317	276	336	267	356	285	349	406	321	419
Friday	494	350	278	439	310	356	337	395	279	439	369	369	553
Saturday	283	323	318	260	358	273	290	389	295	309	426	333	455
TOTAL	2771	2366	2464	2300	2215	2420	2031	2310	2302	2502	2632	2604	2849



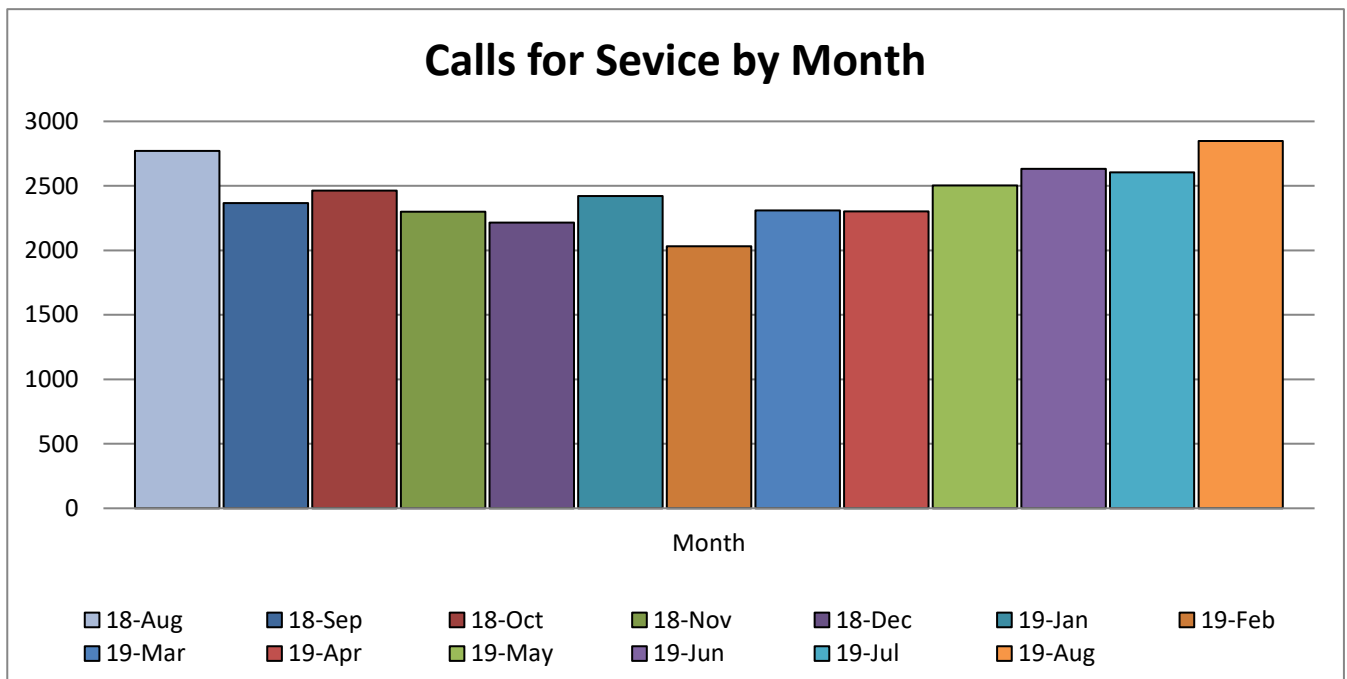
Westfield Police Department

August 2019

Total # of Calls by Hour of Day

HOURL	18-Aug	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug
0	78	80	77	70	83	76	57	105	85	121	106	99	119
1	47	68	54	49	47	56	51	71	56	85	56	80	73
2	31	44	37	38	49	47	40	45	44	59	45	42	49
3	21	47	41	47	35	44	27	61	38	39	34	39	32
4	17	17	34	30	23	29	26	32	28	18	16	20	25
5	17	21	17	30	19	33	23	25	17	25	22	23	37
6	46	28	38	40	27	46	36	36	36	24	53	57	45
7	95	79	58	65	70	71	57	49	43	84	103	71	116
8	216	150	134	141	137	142	109	111	129	160	181	136	134
9	180	170	162	166	158	189	128	139	158	173	176	160	171
10	206	162	136	146	139	156	133	128	135	155	189	152	165
11	157	116	114	134	123	118	103	96	96	135	108	127	149
12	127	97	97	109	110	128	97	104	87	120	113	127	138
13	196	106	134	143	108	134	111	133	150	120	121	123	148
14	219	122	164	131	129	144	122	118	135	128	131	159	164
15	189	134	148	118	126	139	105	110	117	121	127	131	161
16	129	130	124	97	97	106	84	109	111	131	111	117	148
17	108	105	113	83	101	93	89	106	108	144	134	96	132
18	164	156	173	149	161	169	159	180	174	137	165	182	187
19	157	149	165	132	115	137	148	161	144	121	168	161	159
20	88	72	96	70	84	65	49	89	69	82	86	79	67
21	89	77	89	97	73	80	75	68	94	94	105	120	136
22	102	111	142	115	101	123	104	107	138	109	146	172	152
23	92	125	117	100	100	95	98	127	110	117	136	131	142
TOTAL	2771	2366	2464	2300	2215	2420	2031	2310	2302	2502	2632	2604	2849

Westfield Police Department
August 2019



Westfield Police Department
August 2019

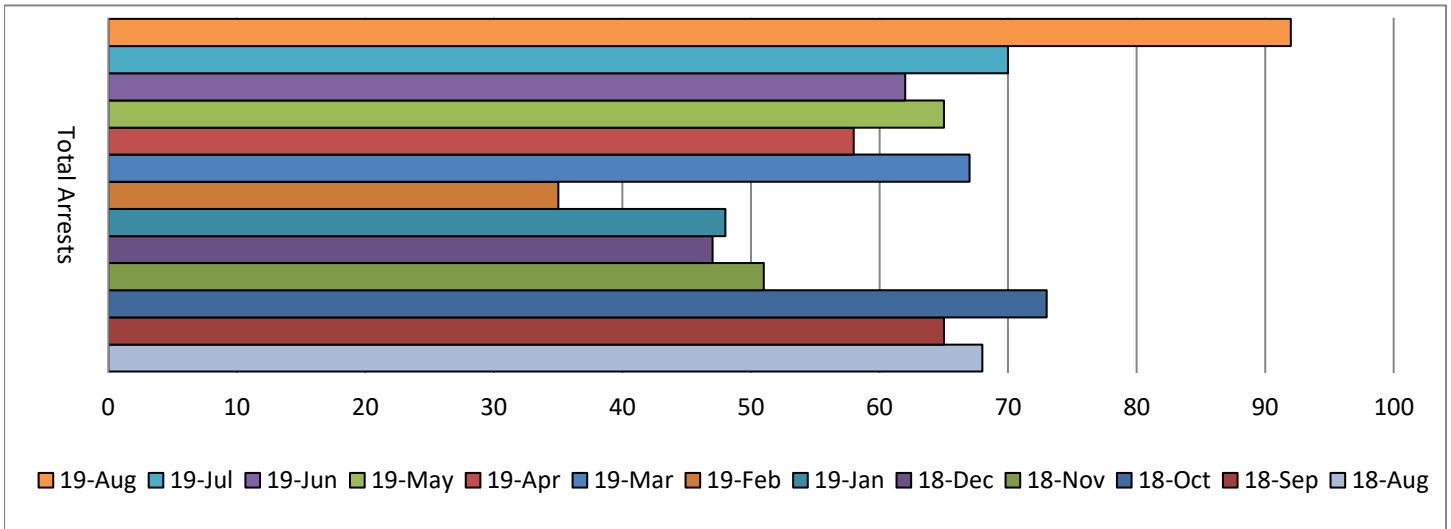
UCR OFFENSES

OFFENSE	18-Aug	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug
Arson	0	0	0	0	0	0	0	0	0	0	0	0	1
Homicide	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	0	0	1	1	-1	0	2	0	0	2	0	1	0
Robbery	0	0	0	0	0	0	0	1	2	0	0	0	0
Battery - Aggravated	0	0	0	0	0	1	0	1	0	0	0	0	0
Battery - Simple	16	11	7	11	11	12	12	12	8	13	16	17	11
Burglary	3	3	0	0	1	0	2	2	2	1	0	4	3
Theft	32	30	24	18	33	30	21	30	26	30	20	25	30
Motor Vehicle Theft	1	1	-1	0	3	0	0	2	1	0	1	2	1
TOTAL	52	45	31	30	47	43	37	48	39	46	37	49	46

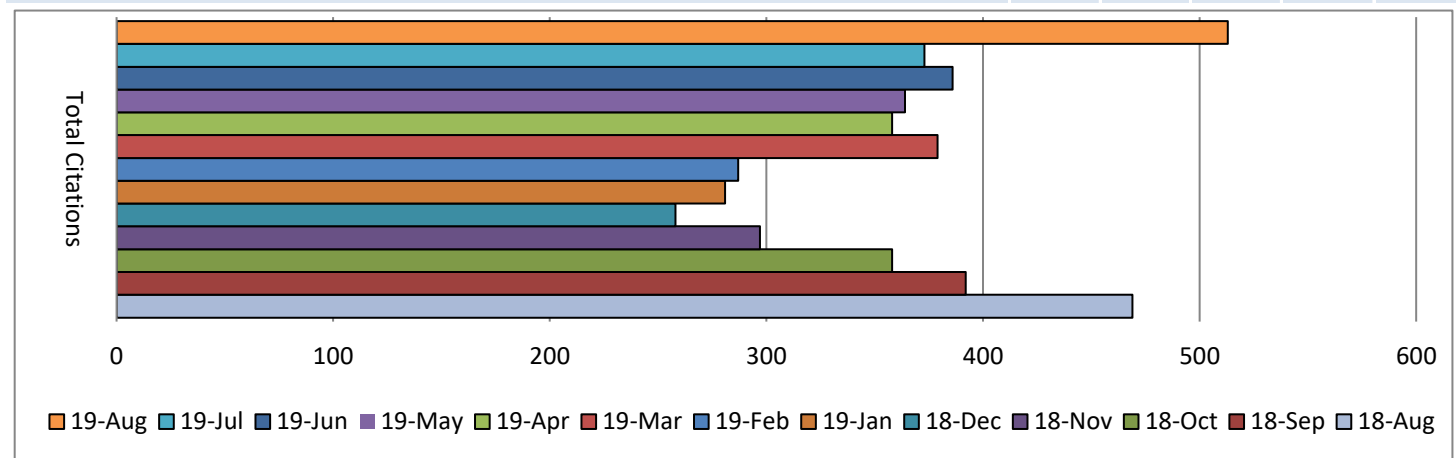
Westfield Police Department

August 2019

Arrest Reports Taken	18-Aug	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug
Alcohol/ Drug Related	14	22	28	12	18	17	17	20	20	19	28	35	35
Felony Charges	7	18	10	15	8	14	8	35	14	15	11	29	20
Misdemeanor Charges	109	90	89	52	63	55	50	70	75	81	77	89	90
Total Arrests	68	65	73	51	47	48	35	67	58	65	62	70	92



Traffic	18-Aug	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug
Total Citations	469	392	358	297	258	281	287	379	358	364	386	373	513
Total Written Warning	1127	1043	1106	997	1008	1083	909	979	976	973	1202	1057	1232
Total Traffic Accidents	66	53	76	60	66	68	41	47	46	87	62	67	54
Property Damage	57	43	66	51	52	54	37	38	40	75	51	60	43
Personal Injury	9	10	9	9	14	12	4	9	6	12	11	7	10
Fatality	0	0	1	0	0	2	0	0	0	0	0	0	1
Hit and Run*	6	3	11	8	6	5	2	4	5	2	4	6	2
<i>*numbers included in property damage, personal injury, and fatality accidents</i>													



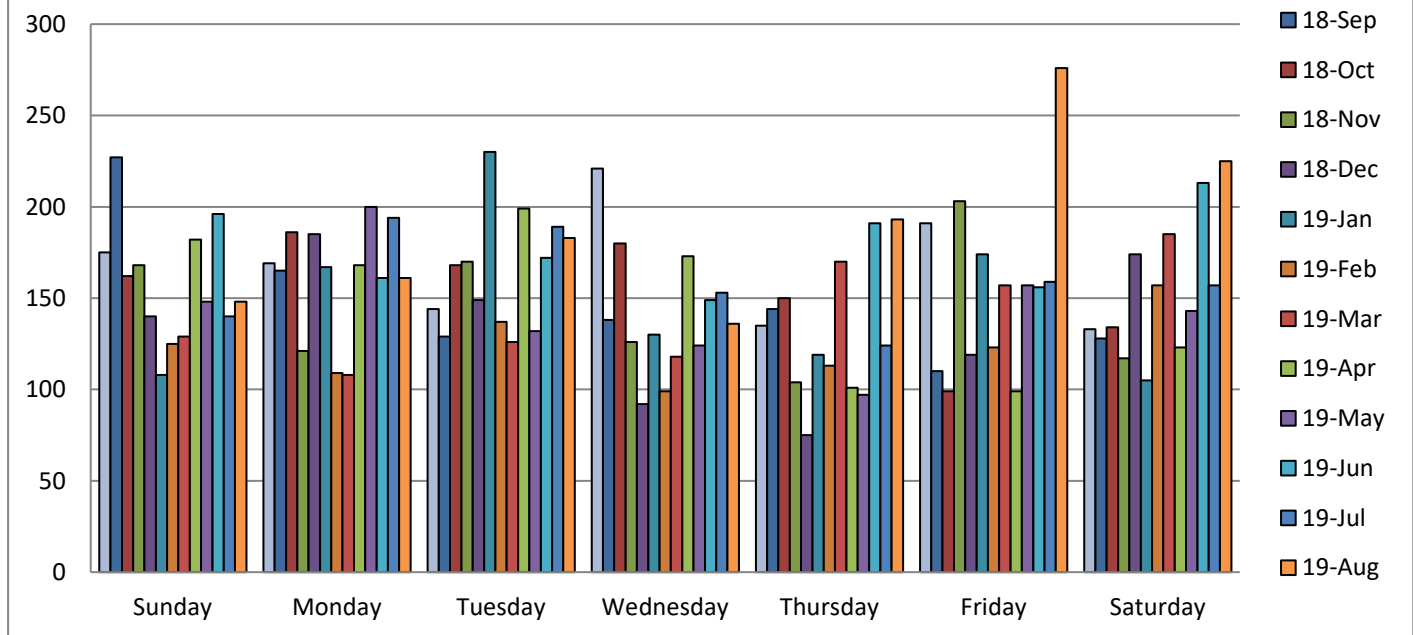
Westfield Police Department

August 2019

Traffic Stops by Day of Week

Day:	18-Aug	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug
Sunday	175	227	162	168	140	108	125	129	182	148	196	140	148
Monday	169	165	186	121	185	167	109	108	168	200	161	194	161
Tuesday	144	129	168	170	149	230	137	126	199	132	172	189	183
Wednesday	221	138	180	126	92	130	99	118	173	124	149	153	136
Thursday	135	144	150	104	75	119	113	170	101	97	191	124	193
Friday	191	110	99	203	119	174	123	157	99	157	156	159	276
Saturday	133	128	134	117	174	105	157	185	123	143	213	157	225
TOTAL	1168	1041	1079	1009	934	1033	863	993	1045	1001	1238	1116	1322

Total Traffic Stops by Day of Week



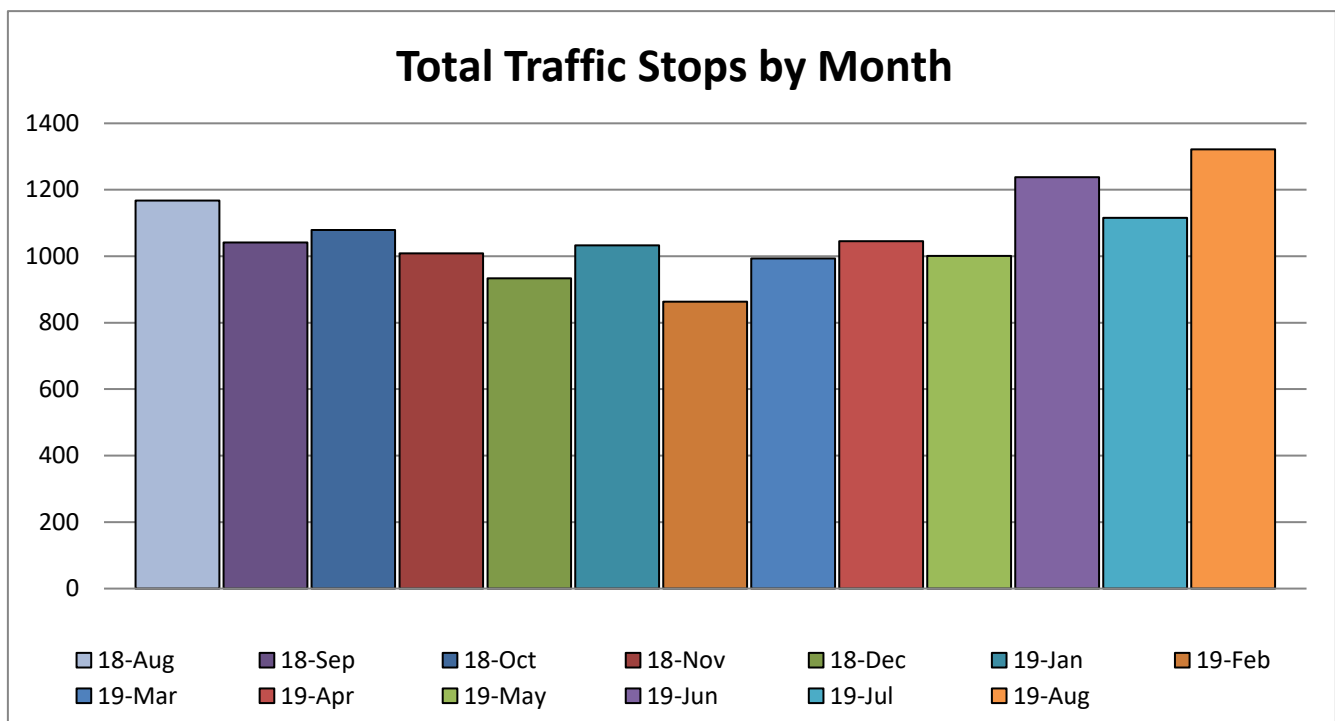
Westfield Police Department

August 2019

Traffic Stops by Hour of the Day

Hour:	18-Aug	18-Sep	18-Oct	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug
0	41	49	54	41	42	46	37	70	50	83	77	65	73
1	22	39	28	23	24	29	25	44	32	58	32	49	46
2	10	28	18	19	27	20	16	16	24	38	29	21	29
3	6	27	19	22	17	18	10	26	12	18	20	19	14
4	4	8	20	5	9	10	8	6	10	7	3	10	8
5	4	5	4	11	4	12	8	10	7	8	11	9	17
6	21	10	15	17	11	26	15	18	14	9	27	28	26
7	53	39	20	29	24	22	23	19	11	36	48	37	54
8	97	77	72	63	59	67	43	39	61	77	105	71	69
9	86	87	75	88	76	81	54	54	78	82	112	84	71
10	78	83	60	59	65	70	50	50	61	60	104	72	76
11	68	47	40	53	39	36	26	33	37	40	36	45	60
12	42	25	20	23	30	45	29	31	33	29	28	37	59
13	64	34	40	48	43	51	34	47	55	27	41	34	55
14	106	36	60	52	43	49	40	44	50	38	51	41	73
15	84	65	57	43	38	40	33	29	42	31	38	49	69
16	46	38	28	26	34	35	28	38	30	43	25	26	55
17	23	19	20	23	21	24	13	26	30	31	25	17	28
18	72	59	85	72	91	91	99	109	96	53	76	86	81
19	86	67	93	73	63	85	80	76	81	38	101	77	76
20	18	19	35	26	30	14	24	30	19	19	22	14	16
21	24	26	44	55	18	32	30	22	50	39	45	48	63
22	57	79	86	73	59	77	69	64	91	62	86	96	98
23	56	75	86	65	67	53	69	92	71	75	96	81	106
TOTAL	1168	1041	1079	1009	934	1033	863	993	1045	1001	1238	1116	1322

Westfield Police Department
August 2019



Westfield Police Department
August 2019

Community Events

8/1/2019	Library Story Time
8/14/2019	Operation Hydration
8/24/2019	Oak Ridge Crossing Neighborhood Hog Roast
8/27/2019	Tip a Cop at Texa Roadhouse

Westfield Police Department
August 2019

Training

8/1/2019	Monthly K9 Training
8/8/2019	Monthly ESU Training
8/12-13/19	Professional Grant Development - Det. Dine
8/14/2019	Leads Online Investigative - Officer Mithcell
8/15/2019	FBI Re-trainer
8/19-23/19	K9 Olympics - K9 Officers Abney, Velazquez and Stubbs

ROAD IMPACT FEE CREDIT AGREEMENT

Corporate Warranty Deed Cross Reference: 2015064031

THIS DEVELOPMENT AGREEMENT is entered this _____ day of _____, 2019, by and between the City of Westfield, Indiana, an incorporated municipality (“Westfield”), and **CRG Residential, LLC**, an Indiana limited liability corporation (“Developer”) (collectively, the “Parties”) to provide for the subdivision and development of real estate generally located on the SW Corner of 161st Street and Spring Mill Road (the “Development Project”).

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

WHEREAS, Developer has filed with Westfield a Planned Unit Development for the development of the Spring Mill Station SWC project (the “Project”) and more particularly described in the attached **Exhibit A** (the “Real Estate”); and

WHEREAS, Developer agrees to construct the Project and certain improvements subject to the terms of the Agreement; and

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

1. **Dedication of Rights-of-way.** At no cost to Westfield, Developer shall dedicate to Westfield the following Project Land Adjacent to the following rights-of-way:
 - a. Spring Mill Road right-of-way: an eighty foot (80’) one-half right-of-way measured from the center line of Spring Mill Road on the west side, including any additional land that may be required outside of the Project limits;
 - b. 161st Street (between Spring Mill Depot Drive and Spring Mill Road) right-of-way: an eighty foot (80’) one-half right-of-way measured from the center line of 161st Street on the south side, including any additional land that may be required outside of the Project limits;
 - c. 161st Street (between Shamrock Springs Elementary School and Spring Mill Depot Drive) right-of-way: a seventy-five foot (75’) one-half right-of-way measured from the center line of 161st Street on the south side, including any additional land that may be required outside of the Project limits;
 - d. A corner cut at the southwest corner of 161st Street and Spring Mill Road sufficient for construction of a future roundabout at the intersection as illustrated in **Exhibit B** (“R/W Exhibit”);

- e. Temporary right-of-way for construction of the 161st and Spring Mill Roundabout as illustrated in **Exhibit B** (“R/W Exhibit”).
 - f. The ROW Dedications shall be subject to Westfield’s review and approval, which approval shall not be unreasonably withheld. Individual ROW Dedications shall be made at the time a plat is recorded for land adjacent to a right-of-way. If Westfield elects to undertake an improvement project that will occur within any part of the ROW Dedications before that particular ROW Dedication has been dedicated, then Westfield may notify Developer in writing not more than one hundred twenty (120) days prior to the start of the improvement project of its election and Developer thereafter shall dedicate to Westfield the particular ROW Dedication within sixty (60) days of its receipt of the election notice.
2. **Additional Developer Commitments.** Developer shall, at the Developer’s sole expense, design and construct the public infrastructure related to the Spring Mill Station project. This includes Spring Mill Depot Drive and road improvements to 161st Street and Spring Mill Road, including the associated streets, sidewalks and pathways as illustrated in **Exhibit C** (“Improvements”) in substantial compliance with Westfield’s standards and procedures and relocate (or cause to be relocated) all utilities (if any) outside of the formerly mentioned Dedication of Rights-of-way. The ADDITIONAL COMMITMENTS shall be completed at or prior to the issuance of a certificate of occupancy for residential project of Spring Mill Station.
- a. The design of the ADDITIONAL COMMITMENTS shall be in compliance with Westfield’s Construction Standards, Thoroughfare Plan and be ADA compliant. Developer shall submit construction plans to Westfield for review and approval prior to a request for bids. Improvements by the Developer shall be subject to any applicable permits, financial guarantees and inspections by Westfield.
3. **Credits.** Developer shall receive road impact fee credits in the amount equal to the costs and expenses strictly for construction of the ADDITIONAL COMMITMENTS, not to exceed \$1,623,064.79 as estimated in **Exhibit C** (“Improvements”). Before any construction is initiated, Developer shall obtain Westfield’s written approval and acceptance of the design and costs of construction. Westfield’s approval and acceptance shall not be unreasonably withheld. The obligation to pay road impact fees for development within Spring Mill Station shall be deferred until the credits of this agreement have been reached. No road impact fee credits shall be granted to the Developer beyond the total amount of road impact fees generated by the Project.
4. 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: Jeremy Lollar
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:
CRG Residential, LLC
Attn: David George
805 City Center Drive
Suite 160
Carmel, IN 46032

With a Copy to:
Ice Miller
Attn: Greg Touney
One American Square
Suite 2900
Indianapolis, IN 46282

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, Indiana (“Westfield”)
Hamilton County, Indiana**

By: _____

J. Andrew Cook, Member

Board of Public Works and Safety

Date: _____

By: _____

Kate Snedeker, Member

Board of Public Works and Safety

Date: _____

By: _____

Randell Graham, Member

Board of Public Works and Safety

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 _____

[ADDITIONAL SIGNATURE PAGES AND NOTARY FOLLOWS]

CRG RESIDENTIAL, LLC (“Developer”)

By:

David C. George, PE – Vice President of Development

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 _____

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

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

EXHIBIT A
REAL ESTATE

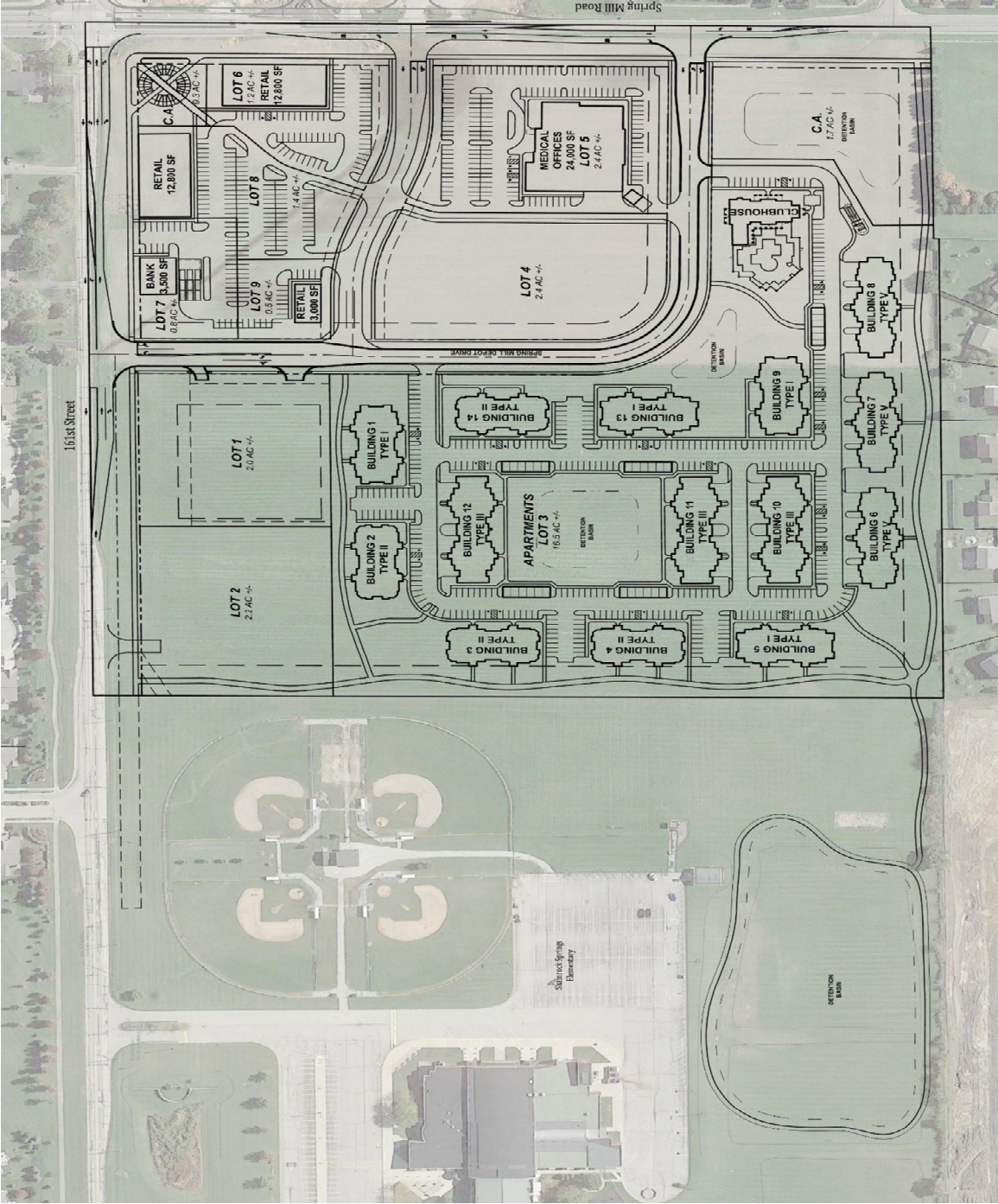
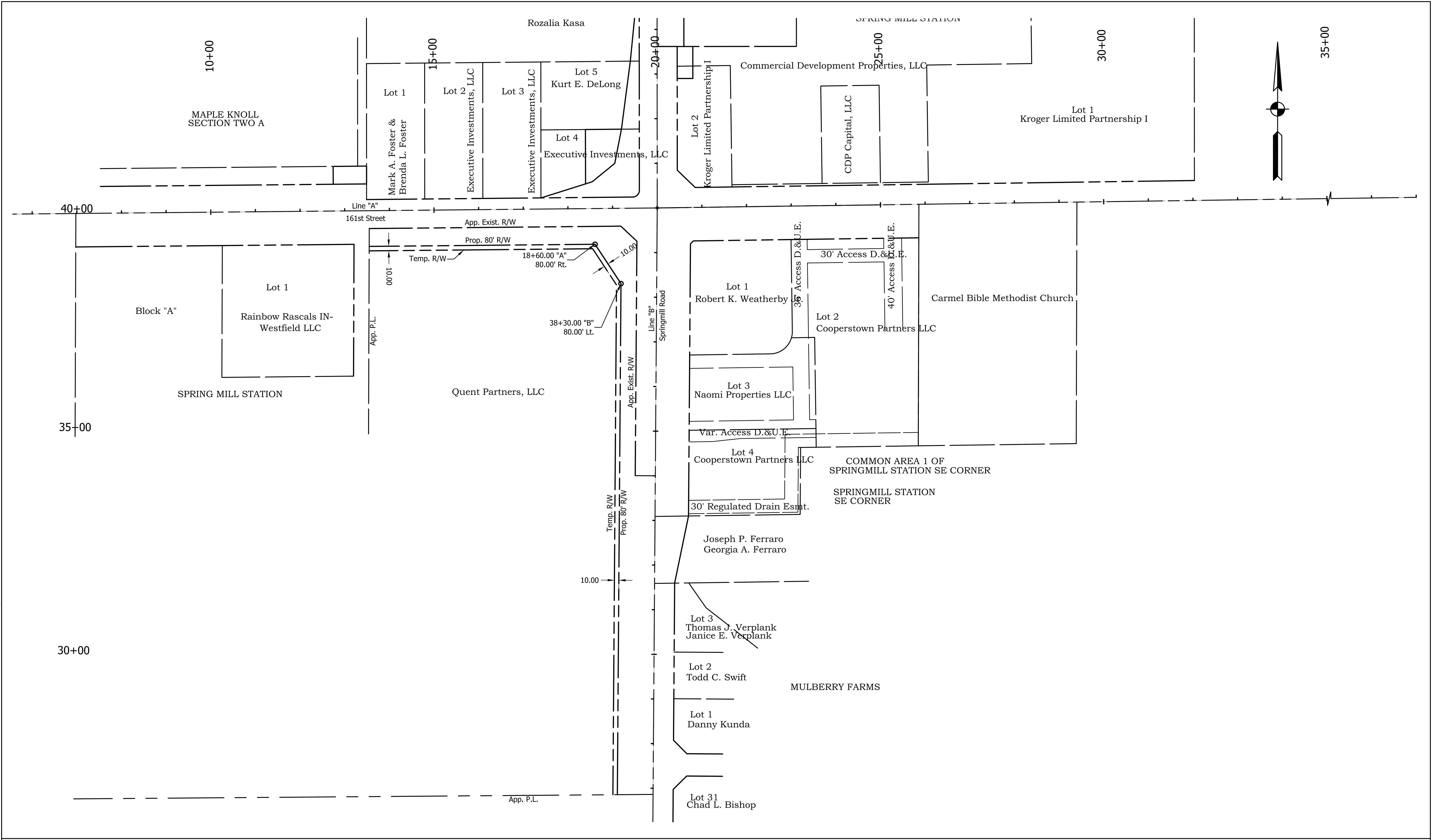
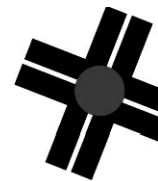


EXHIBIT B
R/W EXHIBIT

Z:\2017\17080P - ROUNDABOUT-161ST & SPRING MILL.DWG\17080P-RW EXHIBIT FOR SW PARCEL.DWG Created By: SAW Date Created: 7/25/2019





A&F ENGINEERING

Transportation & Site Engineering

Creating Order Since 1966

8365 Keystone Crossing, Suite 201, Indianapolis, IN. 46240 (317) 202-0864

RECOMMENDED FOR APPROVAL _____	
DESIGN ENGINEER _____ DATE _____	
DESIGNED: _____	DRAWN: _____
CHECKED: _____	CHECKED: _____

CITY OF WESTIFELD	
RIGHT-OF-WAY EXHIBIT 161ST AND SPRINGMILL SW CORNER	

HORIZONTAL SCALE	BRIDGE FILE
1" = 100'	N/A
VERTICAL SCALE	DESIGNATION
N/A	--
SURVEY BOOK	SHEETS
	--- of X
CONTRACT	PROJECT
--	--

EXHIBIT C
IMPROVEMENTS

Spring Mill Station

Preliminary Cost Estimate

Owner: Westfield Residential Investors - Quent LLC
Location: SWC - 161st Street & Spring Mill Road
Prepared By: Banning Engineering
Date: 8/22/2019

161st Street - Spring Mill Road (RED)

	Notes	Quantity	Unit	Unit Cost	Total
Banning Engineering Estimate					\$699,714.75

Subtotal (RED) \$699,714.75

Spring Mill Deport Drive (YELLOW)

	Notes	Quantity	Unit	Unit Cost	Total
Banning Engineering Estimate					\$634,847.08

Subtotal (YELLOW) \$634,847.08

Connector Road (BLUE)

	Notes	Quantity	Unit	Unit Cost	Total
Banning Engineering Estimate					\$288,502.95

Subtotal (BLUE) \$288,502.95

Grand Total \$1,623,064.79

Spring Mill 161st Improvements (RED)
15050 - Engineer's Estimate
CONSTRUCTION COST ESTIMATE

8/22/2019

Itemized Pricing

Item No.	Description	Quantity	Unit	Unit Price	Total Amount
1	Mobilization & Demobilization	1	LS	\$55,000.00	\$55,000.00
2	Construction Staking	1	LS	\$16,500.00	\$16,500.00
4	Grading	2970	CY	\$6.00	\$17,820.00
	Asphalt Industrial & Arterial				
5	1.5", Surface, 9.5mm	345	TONS	\$80.00	\$27,573.33
6	2.5", Intermediate, 19 mm	574	TONS	\$77.00	\$44,232.22
7	5.0", Base, 25 mm	1149	TONS	\$60.50	\$69,507.78
8	6" Aggregate Base #53 (2 lifts)	1288	TONS	\$70.00	\$90,170.37
9	Subgrade Treatment (Type IB)	4178	SY	\$6.60	\$27,573.33
	Asphalt Mill & Fill				
10	Mill Remaining Asphalt	3633	SY	\$2.00	\$7,266.00
11	1.5", Surface, 9.5mm	300	TONS	\$80.00	\$23,976.33
	Pavement Markings				
12	Road Striping	5575	LFT	\$1.95	\$10,871.25
13	Arrows	20	EA	\$143.00	\$2,860.00
14	"ONLY" per letter	12	EA	\$104.50	\$1,254.00
15	Stop Bar	36	LFT	\$7.70	\$277.20
	Concrete Curb				
17	Curb Type II	1655	LFT	\$25.10	\$41,540.50
	Storm Sewer				
20	Underdrain, 6"	1655	LFT	\$9.25	\$15,308.75
21	12" RCP	815	LFT	\$38.75	\$31,581.25
22	15" RCP	915	LFT	\$42.70	\$39,070.50
23	18" RCP	225	LFT	\$48.00	\$10,800.00
24	Manhole, 48"	2	EA	\$3,300.00	\$6,600.00
25	Curb Inlet	15	EA	\$2,310.00	\$34,650.00
26	Yard Inlet	3	EA	\$2,970.00	\$8,910.00
27	24" X 24" Box Road Inlet	3	EA	\$2,200.00	\$6,600.00
	Sanitary Sewer				
28	8" PVC	170	LFT	\$43.00	\$0.00
29	Manhole, 48"	1	EA	\$3,000.00	\$0.00
30	Manhole Adjustment	5	EA	\$150.00	\$0.00
	Signage				
31	Signage	10	EA	\$93.50	\$935.00
	Traffic Control				
32	Maintaining Traffic	1	LS	\$22,000.00	\$22,000.00
	Erosion Control				
33	Erosion Control	1	LS	\$23,226.50	\$23,226.50

Banning Engineering, P.C. created this Engineer's Estimate. The purpose of this document is to give the Owner an estimated cost of construction. The prices presented in this estimate are from previous Banning Engineering projects or other sources and may not be representative of a current construction bid.

SUB TOTAL	\$636,104.32
Contingencies 10%	\$63,610.43
TOTAL	\$699,714.75

Erosion Control details

Installation	4618	\$3.00	\$13,854.00
Monthly Maintenance	3	\$1,200.00	\$3,600.00
Removal And disposal	4618	\$1.25	\$5,772.50
Total Cost			\$23,226.50

Spring Mill 161st Improvements (YELLOW)
15050 - Engineer's Estimate
CONSTRUCTION COST ESTIMATE

8/22/2019

Itemized Pricing

Item No.	Description	Quantity	Unit	Unit Price	Total Amount
2	Construction Staking	1	LS	\$8,800.00	\$8,800.00
4	Grading	7009	CY	\$6.00	\$42,053.33
	Asphalt Industrial / Collector				
5	1.5", Surface, 9.5mm	412	TONS	\$80.00	\$32,922.27
6	2.5", Intermediate, 19 mm	686	TONS	\$77.00	\$52,812.80
7	5.0", Base, 25 mm	686	TONS	\$60.50	\$41,495.77
8	6" Aggregate Base #53 (2 lifts)	1538	TONS	\$70.00	\$107,662.46
9	Subgrade Treatment (Type IB)	4988	SY	\$6.60	\$32,922.27
	Pavement Markings				
10	Road Striping	870	LFT	\$1.95	\$1,696.50
11	Arrows	6	EA	\$143.00	\$858.00
12	Stop Bar	44	LFT	\$7.70	\$338.80
	Concrete Curb				
13	Curb Type II	2592	LFT	\$25.10	\$65,059.20
14	Concrete Gutter	382	LFT	\$25.10	\$9,588.20
	Concrete Sidewalk				
15	4" Concrete	152	CY	\$80.00	\$12,177.78
16	4" Aggregate Base #53	282	TONS	\$70.00	\$19,712.78
17	Handicap Ramps	12	EA	\$77.00	\$924.00
	Storm Sewer				
18	Underdrain, 6"	2682	LFT	\$9.25	\$24,808.50
19	12" RCP	207	LFT	\$38.75	\$8,021.25
20	15" RCP	389	LFT	\$42.70	\$16,610.30
21	18" RCP	475	LFT	\$48.00	\$22,800.00
22	24" RCP	279	LFT	\$55.00	\$15,345.00
23	Manhole, 48"	5	EA	\$3,300.00	\$16,500.00
24	Curb Inlet	12	EA	\$2,310.00	\$27,720.00
25	24" X 36" Inlet	1	EA	\$2,200.00	\$2,200.00
	Water Main				
26	8" PVC	0	LFT	\$43.00	\$0.00
27	Fire Hydrants	0	EA	\$3,000.00	\$0.00
28	8" Tapping Valves and Sleeves	0	EA	\$150.00	\$0.00
	Signage				
29	Signage	2	EA	\$93.50	\$187.00
	Erosion Control				
30	Erosion Control	1	LS	\$13,917.50	\$13,917.50

Banning Engineering, P.C. created this Engineer's Estimate. The purpose of this document is to give the Owner an estimated cost of construction. The prices presented in this estimate are from previous Banning Engineering projects or other sources and may not be representative of a current construction bid.

SUB TOTAL	\$577,133.71
Contingencies 10%	\$57,713.37
TOTAL	\$634,847.08

Erosion Control details

Installation	2710	\$3.00	\$8,130.00
Monthly Maintenance	2	\$1,200.00	\$2,400.00
Removal And disposal	2710	\$1.25	\$3,387.50
Total Cost			\$13,917.50

Spring Mill 161st Improvements (BLUE)
15050 - Engineer's Estimate
CONSTRUCTION COST ESTIMATE

8/22/2019

Itemized Pricing

Item No.	Description	Quantity	Unit	Unit Price	Total Amount
2	Construction Staking	1	LS	\$7,700.00	\$7,700.00
4	Grading	3039	CY	\$6.00	\$18,231.11
	Asphalt Industrial / Collector				
5	1.5", Surface, 9.5mm	173	TONS	\$80.00	\$13,802.80
6	2.5", Intermediate, 19 mm	288	TONS	\$77.00	\$22,141.99
7	5.0", Base, 25 mm	288	TONS	\$60.50	\$17,397.28
8	6" Aggregate Base #53 (2 lifts)	645	TONS	\$70.00	\$45,137.94
9	Subgrade Treatment (Type IB)	2091	SY	\$6.60	\$13,802.80
	Pavement Markings				
10	Road Striping	180	LFT	\$1.95	\$351.00
11	Arrows	4	EA	\$143.00	\$572.00
12	Stop Bar	48	LFT	\$7.70	\$369.60
	Concrete Curb				
13	Curb Type II	1178	1178	\$25.10	\$29,567.80
	Concrete Sidewalk				
14	4" Concrete	68	CY	\$80.00	\$5,466.67
15	4" Aggregate Base #53	126	TONS	\$70.00	\$8,849.17
	Storm Sewer				
16	Underdrain, 6"	1178	LFT	\$9.25	\$10,896.50
17	12" RCP	115	LFT	\$38.75	\$4,456.25
18	15" RCP	275	LFT	\$42.70	\$11,742.50
19	18" RCP	358	LFT	\$48.00	\$17,184.00
20	Manhole, 48"	4	EA	\$3,300.00	\$13,200.00
21	Curb Inlet	6	EA	\$2,310.00	\$13,860.00
	Water Main				
22	8" PVC	0	LFT	\$43.00	\$0.00
23	Fire Hydrants	0	EA	\$3,000.00	\$0.00
24	8" Tapping Valves and Sleeves	0	EA	\$150.00	\$0.00
	Signage				
25	Signage	2	EA	\$93.50	\$187.00
	Erosion Control				
26	Erosion Control	1	LS	\$7,359.00	\$7,359.00

Banning Engineering, P.C. created this Engineer's Estimate. The purpose of this document is to give the Owner an estimated cost of construction. The prices presented in this estimate are from previous Banning Engineering projects or other sources and may not be representative of a current construction bid.

SUB TOTAL	\$262,275.41
Contingencies 10%	\$26,227.54
TOTAL	\$288,502.95

Erosion Control details

Installation	1102	\$3.00	\$3,306.00
Monthly Maintenance	2	\$1,200.00	\$2,400.00
Removal And disposal	1102	\$1.50	\$1,653.00
Total Cost		1.25	\$7,359.00

GAI CONSULTANTS, Inc.
Work Order for Professional Services

Project Number: **D181022.02** Work Order Number: **002**

Project Name: **193rd Street & Casey Road Roundabout**

Project Location (City, County, State): **City of Westfield, Hamilton County, Indiana**

The terms and conditions of the Master Services Agreement for Professional Services, dated

January 3, 2019, (hereinafter referred to as "AGREEMENT") between City of Westfield, Indiana, (hereinafter referred to as "CLIENT") and GAI Consultants, Inc. (hereinafter referred to as "GAI") will govern the performance of the services described in this Work Order Number 002 (hereinafter referred to as "WORK ORDER").

Project Description: This WORK ORDER will be used to complete tasks as defined by the scope below. The client will request the work to be completed and provide (or approve) a written scope prior to the start of work. The tasks completed will be documented on each monthly project status report.

GAI Scope of Services: GAI shall assist the CLIENT with development of a concept roundabout drawing at the intersection of 193rd Street and Casey Road. Services shall include:

- Preliminary design of a four-leg roundabout on an aerial display.
- Preliminary design of proposed right-of-way necessary for the roundabout.

Schedule: Pursuant to the provisions of the AGREEMENT between GAI and CLIENT, GAI shall commence work upon receipt of a Notice to Proceed issued by the CLIENT after execution of this WORK ORDER. GAI and CLIENT will agree to a schedule for the services performed by GAI upon the Notice to Proceed provided by the CLIENT.

Compensation: Compensation for services rendered by GAI shall be in accordance with the rates agreed to and incorporated into the AGREEMENT between GAI and CLIENT, unless a different basis of compensation is attached hereto as Exhibit A, in which case Exhibit A shall govern the compensation to be paid by CLIENT to GAI for the services performed under this WORK ORDER. A total Lump Sum amount of \$2,500.00 is allocated for this WORK ORDER for services performed by GAI. Services will be billed according to the percentage of work completed monthly. If funds are exhausted and GAI's services are still required, additional funds will be added via an amendment to this WORK ORDER.

Assumptions and Understandings: GAI's Scope, Schedule and Compensation as set forth above have been based on the following assumptions and understandings:

- 1) Access to the project site(s) upon which GAI is to conduct its field work will be available to GAI personnel at the time this WORK ORDER is authorized. All exploration locations shall be cleared of buried utilities/piping/structures by Client.
- 2) CLIENT has provided all its requirements for GAI's services under this WORK ORDER at the time this WORK ORDER is authorized.
- 3) CLIENT has provided all available information pertinent to GAI's services, including previous reports/drawings/utility information/topo information, etc. at the time this WORK ORDER is authorized. Unless otherwise noted, GAI may rely upon such information.
- 4) CLIENT will give GAI prompt notice whenever it observes or otherwise becomes aware of any development that affects the scope or timing of GAI's performance.
- 5) CLIENT will examine and provide comments and/or decisions with respect to any GAI interim or final deliverables within a period mutually agreed upon.
- 6) Any of CLIENT's other consultant(s)/contractor(s) will cooperate and coordinate with GAI in a timely and efficient manner.

GAI CONSULTANTS, Inc.
Work Order for Professional Services

- 7) GAI's compensation is based on receiving authorization to proceed with the services described in this WORK ORDER within 45 days. If authorization to proceed is not received within 45 days, GAI reserves the right to revise its compensation.

**REQUESTED AND AUTHORIZED BY
CITY OF WESTFIELD, INDIANA**

By _____

Printed
Name _____

Title _____

**OFFERED AND AGREED BY
GAI CONSULTANTS, INC.**

By _____

Printed
Name Scott F. Hornsby, PE

Title Vice President-Midwest Markets

END OF WORK ORDER



September 25, 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:

- Platinum Properties Management Company, Emory Trace, Section 1, Bond #3085870, \$111,601.60, 193rd Street ROW, Asphalt Paving & Subgrade Stabilization; Entry Arterial Roadway (Stabilization & Paving of AD Lane & Passing Blister; Mill & Resurface & Stripe the Existing Roadway), Entry ROW 8' Path (Stabilization, Stone, Binder, & Surface).
- Jackson Taylor Contractors, LLC, Firestone BSRO #319730, Bond #387009003, \$35,442.00, Storm Sewer & Erosion Control
- The Peterson Company, LLC, Northpoint, Lot 2, Bond #30078739, \$34,874.83, Erosion Control
- The Peterson Company, LLC, Northpoint, Lot 2, Bond #30078738, \$65,145.30, Storm Sewer
- The Peterson Company, LLC, Northpoint, Lot 2, Bond #30078741, \$3,245.00, Concrete Sidewalk & Asphalt Trails
- The Peterson Company, LLC, Northpoint, Lot 2, Bond #30078740, \$26,436.30, ROW & Private Street Pavement
- Lennar Homes of Indiana, Inc., Coventry, Section 2, Bond #72BSBIE2515, \$1,322.00, Concrete Sidewalks
- Lennar Homes of Indiana, Inc., Coventry, Section 2, Bond #72BSBIE2514, \$23,653.00, Concrete Curb
- Lennar Homes of Indiana, Inc., Coventry, Section 2, Bond & Rider #72BSBIE2521, \$129,187.00, Asphalt Streets
- Lennar Homes of Indiana, Inc., Coventry, Section 2, Bond #72BSBIE2518, \$94,783.00, Storm Sewer & Subsurface Drain
- Lennar Homes of Indiana, Inc., Coventry, Section 3, Bond #72BSBIE2520, \$34,820.00, Concrete Curb
- Lennar Homes of Indiana, Inc., Coventry, Section 3, Bond #72BSBIE2516, \$12,406.00, Concrete Sidewalks
- Lennar Homes of Indiana, Inc., Coventry, Section 3, Bond #72BSBIE2517, \$539,726.00, Storm Sewer & Subsurface Drain

- Lennar Homes of Indiana, Inc., Coventry, Section 3, Bond & Rider #72BSBIE2519, \$181,651.00, Asphalt Street
- Lennar Homes of Indiana, Inc., Coventry, Section 3, Bond & Rider #72BSBIE2522, \$66,570.00, Asphalt Path
- The Skillman Corporation, Westfield Washington Schools – New Natatorium, Bond #30078753, \$319,457.00, Storm Sewer
- The Skillman Corporation, Westfield Washington Schools – New Natatorium, Bond #30078751, \$40,139.00, Erosion Control
- The Skillman Corporation, Westfield Washington Schools – New Natatorium, Bond #30078752, \$149,342.00, ROW Improvements

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:

- Design & Build Corporation, Southpark Flex Building, Bond #0371030, \$12,737.63, Erosion Control
- Design & Build Corporation, Southpark Flex Building, Bond & Rider #0371031, \$96,960.71, Storm Sewer
- Pulte Homes of Indiana, LLC, Retreat on the Monon, Section 1, Bond #59BSBHN7940, \$13,398.00, HMA Surface
- Pulte Homes of Indiana, LLC, Retreat on the Monon, Section 1, Bond #59BSBHN7938, \$55,642.00, Stone Base, HMA Base, Signage & Street Lights
- Pulte Homes of Indiana, LLC, Retreat on the Monon, Section 1, Bond #59BSBHN7939, \$19,977.00, Storm Infrastructure
- Pulte Homes of Indiana, LLC, Retreat on the Monon, Section 1, Bond #59BSBHN7941, \$15,400.00, Common Area Sidewalks
- Pulte Homes of Indiana, LLC, Retreat on the Monon, Bond #CMS293501, \$31,847.00, Pavement Improvements, Stone Base, Asphalt & Curbs within the 161st Street ROW
- Pulte Homes of Indiana, LLC, Retreat on the Monon, Bond #CMS293500, \$22,386.00, Multi Use HMA Path within the 161st Street ROW
- Pulte Homes of Indiana, LLC, Retreat on the Monon, Bond #CMS290998, \$2,039.00, Public ADA Ramps within the 161st Street ROW
- Pulte Homes of Indiana, LLC, Retreat on the Monon, Section 2, Bond #0206295, \$143,728.00, Streets & Curbs
- Pulte Homes of Indiana, LLC, Retreat on the Monon, Section 2, Bond #0206294, \$151,441.00, Storm Sewer
- Pulte Homes of Indiana, LLC, Retreat on the Monon, Section 2, Bond #0206296, \$6,301.00, Sidewalks

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:

- Design & Build Corporation, Southpark LLC, Flex Building, Bond #B0371036, \$10,880.00, Storm Sewer
- Pulte Homes of Indiana, Retreat on the Monon, Bond #CMS335524, \$204.00, Public ADA Ramps within the 161st Street ROW
- Sitecrete, LLC, Retreat on the Monon, Bond #30075940, \$542.89, Curbs
- E&B Paving, Inc., Retreat on the Monon, Section 1, Bond #30076466, \$20,084.01, ROW Stone Base & Asphalt Pavement, Onsite Stone Base & Asphalt Pavement, & Path Stone Base & Asphalt Pavement
- Atlas Excavating, Inc., Retreat on the Monon, Bond #1078348, \$36,511.70, Storm Sewer, Section 1, Storm Sewer, Section 2, & Storm Sewer within 161st ROW
- Lennar Homes of Indiana, Liberty Ridge, Section 4, Bond #72BSBIE2523, \$792.00, Concrete Sidewalks
- United Infrastructure, LLC, Liberty Ridge, Section 4, Bond #025614C, \$16,718.45, Storm Sanitary Sewer
- Sitecrete, LLC, Liberty Ridge, Section 4, Bond #30075954, \$2,687.45, Curbs
- E&B Paving, Liberty Ridge, Section 4, Bond #30076476, \$24,535.77, On site Stone Base, Asphalt Binder, & Asphalt Surface

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:

- Patch Development, Union Row, \$4,155.65, Streets/Curbs, Storm Sewer, Sidewalk, Erosion Control & ROW Improvements

GROUND LEASE

between

CITY OF WESTFIELD, INDIANA,
an Indiana municipal corporation

LESSOR

and

WESTFIELD ECONOMIC DEVELOPMENT FOUNDATION, INC.,
an Indiana nonprofit corporation

LESSEE

Dated as of _____, 2019

WESTFIELD PLAYHOUSE

GROUND LEASE

THIS GROUND LEASE (this "Lease") is made and entered into as of this ____ day of _____, 2019 (the "Effective Date"), by and between CITY OF WESTFIELD, an Indiana municipal corporation ("Lessor"), and WESTFIELD ECONOMIC DEVELOPMENT FOUNDATION, INC., an Indiana nonprofit corporation ("Lessee").

RECITALS

A. Lessor is the owner of certain real property consisting of approximately .30 acres more or less, with the common address of 220 N. Union Street, Westfield, Hamilton County, Indiana 46074, and more particularly described on Exhibit "A" attached hereto (the "Leased Premises").

B. Lessee desires to lease the Leased Premises from Lessor for the development and construction of a community theater facility (the "Building") consisting of approximately _____ square feet and related improvements on the Leased Premises (the "Project").

C. Lessor is willing to lease the Leased Premises to Lessee to undertake, construct and develop the Project subject to the terms and conditions set forth in this Lease.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements and conditions as set forth in this Lease, and desiring to provide for the terms and conditions in which the efforts of the parties will be conducted, Lessor and Lessee covenant and agree as follows:

AGREEMENT

1. Lease of Premises and Term. Lessor does hereby lease, demise and let to Lessee all of the Lessor's right, title and interest in and to the Leased Premises, together with all rights, privileges, easements and appurtenances thereunto belonging, unto the Lessee, commencing on the Effective Date and terminating on the day before the twentieth (25th) anniversary of the Rent Commencement Date (the "Expiration Date") at 12:01 A.M. (Eastern) (the "Term"), subject to the extension options and the termination rights provided for in this Lease.

2. Extension of Term. Lessee will have the option to extend the Term of this Lease for two (2) successive additional terms of (10) years (each an "Extension Term" and each such option being referred to as an "Extension Option") provided all of the following conditions (the "Extension Conditions") are met with respect to each Extension Term: (a) Tenant gives Landlord notice (the "Extension Notice") at least three hundred sixty-five (365) days prior to commencement of the Extension Term to which such notice relates, that it is exercising the Extension Option, and (b) at the date the Extension Option is exercised, and at the commencement of the Extension Term to which such option relates, there is no uncured Event of Default. The Extension Term shall commence at the expiration of the prior term. If any Extension Option is not exercised or if the Extension Conditions are not met with respect to any Extension Term, such Extension Option or Extension Term shall be deemed null and void. TIME IS OF THE ESSENCE WITH RESPECT TO THE GIVING OF EACH EXTENSION NOTICE. Tenant's Extension Option is personal to Tenant and may not be assigned or transferred.

3. Leasehold Improvements. Lessee has advised Lessor that it intends to enter into a master lease (the "Master Lease") with Main Street Productions (the "Theater Tenant") for the development the Project, which will provide for the construction of the Building and other improvements on, under and over the Leased Premises (collectively, the Building and the other improvements to the Leased Premises are referred to herein as the "Leasehold Improvements"). Title to the Leasehold Improvements will owned by be and remain in the name of the Theater Tenant (with the right, to the extent permitted under the Internal Revenue Code and applicable Indiana law, to claim or take deductions for depreciation and tax credits and exemption from real estate taxes and assessments) during the term of this Lease, provided that, upon the expiration or earlier termination of this Lease and the expiration or earlier termination of the Master, title to the Leasehold Improvements will automatically pass to, vest in and belong to Lessor without further action on the part of either party and without cost or charge to Lessor

4. Rent.

(a) Fixed Base Rent Payments. The annual base rent (the "Base Rent") to be paid by Lessee to Lessor is One Dollar (\$1.00) per annum, payable in full for the initial Term on the Commencement Date hereof and on the first day of any Extension Term.

(b) Additional Rent Payments. In addition to Base Rent as provided for in Section 3(a) above, Lessee will pay Lessor Additional Rent. For purposes of this Lease, "Additional Rent" means all amounts payable by Lessee under this Lease, other than Base Rent, and whether or not designated as Additional Rent, including, without limitation, all expenses and costs of every kind and nature incurred by Lessor in connection with the operation, maintenance, repair, replacement and use of the Leased Premises, including, if any, all real property taxes, all special assessments and other property assessments and the cost of insurance and any other costs incurred or payable by Lessor. Lessee will pay all Additional Rent to Lessor within thirty (30) days after receipt by Lessee of Lessor's written invoice for such amount. Base Rent and Additional Rent will sometimes be collectively referred to herein as "Rent".

5. Maintenance, Alterations and Repairs. Lessee will be solely responsible for the operation, maintenance, repair and alterations of all or any portion of the Leased Premises and the Leasehold Improvements.

6. Insurance.

(a) Lessee's Insurance. Lessee, at its sole cost and expense throughout the term of the Lease, will procure and maintain, or caused to be procured and maintained: (i) property insurance coverage equal to the replacement value of the Improvements,, including coverages against fire and extended coverage against collapse, liquid damage, earthquake, flood, and comprehensive boiler and machinery damage; (ii) worker's compensation insurance with policy limits in the appropriate statutory amounts (if applicable); (iii) employer's liability insurance in an amount not less than \$1,000,000 (if applicable); and (iv) comprehensive general liability insurance (without exclusion for explosion, collapse and underground hazard) written on an occurrence basis with a per occurrence limit of not less than \$3,000,000, including endorsements for

premises/operations; broad form contractual; products/completed operations; independent contractors; and broad form property damage and personal injury.

(b) Policy Requirements. The policies of insurance required pursuant to this Lease will be placed with financially sound and reputable insurers licensed to transact business in the State of Indiana and will: (i) name Lessor (and any other party designated by Lessor) as an additional insured or loss payee, as applicable; and (ii) to extent available and agreed to by the insurance carrier, contain an agreement of the insurer to give not less than thirty (30) days' advance written notice to Lessor in the event of cancellation of such policy or change materially affecting the coverage thereunder (provided, however, that if such an agreement is not available and agreed to by the insurance carrier, such policies will contain a provision that the insurer will not terminate or materially change such coverage without at least thirty (30) days' prior written notice to Lessee, and in such event Lessee will immediately notify Lessor and any other additional insureds or loss payees). All insurance policies maintained by Lessee will contain a clause pursuant to which the insurance carrier waives all rights of subrogation to the other parties with respect to losses payable under such policies. In no event will the amounts payable pursuant to property damage policies upon the occurrence of a total loss of the Leasehold Improvements be less than the actual replacement cost thereof. In addition to the policies set forth above, Lessee will cause the Master Tenant to maintain adequate insurance on the Leased Premises and the Leasehold Improvements and will name the Lessee and the Lessor as additional insureds on all insurance policies.

7. Use. Subject to the terms and conditions of this Lease, Lessee will use the Leased Premises for a community theater facility and uses ancillary thereto and for no other use without Lessor's prior written consent, which consent may be granted, withheld or conditioned in Lessor's sole discretion.

8. No Liens. Lessee will keep the Leased Premises free from any lien or other encumbrance filed or recorded in favor of any mechanic, materialman, architect or engineer and free from any similar lien or encumbrance with respect to work, material or services alleged to have been performed for Lessee. If any such lien or encumbrance is filed or recorded, Lessee will discharge any such lien or encumbrance by bond or otherwise within thirty (30) days after Lessee receives notice of such lien or encumbrance. If Lessee fails to discharge such lien or encumbrance within such 30-day period, Lessor may pay the amount reflected on such lien or encumbrance (or any portion thereof) and any costs, interest and/or penalties imposed in connection therewith or take such other action as Lessor deems necessary or desirable to remove such lien or encumbrance, without being responsible for investigating the validity thereof and without regard to any objection by Lessee. The amount so paid and costs incurred by Lessor will be deemed Additional Rent under this Lease payable within fifteen (15) days after Lessee is billed therefor. Nothing in this Lease will be deemed in any way to (a) constitute Lessor's consent or request, express or implied, that any contractor, subcontractor, laborer or materialman provide any labor or materials for any alteration, addition, improvement or repair of the Leased Premises, or (b) evidence Lessor's agreement to subject the Leased Premises to any such lien.

9. Quiet Enjoyment. Lessor covenants and warrants that Lessee, upon paying the Rent and other charges provided for in this Lease and performing all the covenants and conditions of

this Lease, will (subject to Lessor's rights specified in this Lease and only to the extent that no event of default has occurred which has not been cured) lawfully, quietly and peaceably occupy the Leased Premises and use the Leasehold Improvements during the term of this Lease without any disturbance, hindrance or molestation by Lessor, any persons claiming under Lessor or any persons with interests paramount to Lessor.

10. Assignment and Subleasing.

(a) Prohibition of Assignment and Subleasing. Excepting for that certain Master Lease entered into or to be entered into by and between Lessee and the Master Tenant, Lessee may not assign this Lease or sublease all or substantially all of the Leased Premises in a single transaction or related transactions, or otherwise transfer (whether by operation of law or otherwise) all or any portion its interest in this Lease or the Leased Premises.

(b) Assignment by Lessor. Lessor, at any time and from time to time, may assign its interest in this Lease. Lessor and its successors and assigns (other than the assignee of this Lease) will be released from any and all liability accruing hereunder prior to the effective date of such assignment, if: (i) Lessor assigns its interest in this Lease; and (ii) the assignee assumes all of the obligations of Lessor under the terms and conditions of this Lease.

11. Default. Lessee will be in default hereunder upon the occurrence of any of the following: (a) Lessee's failure to make the payment of any Rent or other sums payable to Lessor hereunder, or in the payment of any other sum herein required to be paid for Lessor and such payment is not made within five (5) business days of the due date of such payment; or (b) Lessee's failure to observe any other covenant, agreement or condition hereof, and such default will continue for thirty (30) days after written notice to correct such default; then, in any or either of such events, Lessor may proceed to protect and enforce its rights by suit or suits in equity or at law in any court of competent jurisdiction, whether for specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy; or the Lessor, at its option, without further notice, may terminate the estate and interest of the Lessee hereunder, and it will be lawful for the Lessor forthwith to resume possession of the Leased Premises and the Lessee covenants to surrender the same forthwith upon demand. The exercise by the Lessor of the above right to terminate this Lease will not release the Lessee from the performance of any obligation hereof maturing prior to the Lessor's actual entry into possession. No waiver by the Lessor of any right to terminate this Lease upon any default will operate to waive such right upon the same or other default subsequently occurring.

12. Notice. All notices or other communications required to be given under this Lease will be given in writing and will be deemed to have been duly given on the date delivered, if delivered personally, or the next business day, if delivered to a nationally recognized overnight courier service, or sent via certified U.S. Mail return receipt requested as follows:

Notice to Lessor: CITY OF WESTFIELD
Westfield Service Center
2728 East 171st Street
Westfield, IN 46074
Attention: Chief of Staff

With a copy to: Krieg DeVault LLP
12800 N. Meridian Street, Suite 300
Carmel, IN 46032
Attention: Brian J. Zaiger, Esq.

Notice to Lessee: WESTFIELD ECONOMIC DEVELOPMENT
FOUNDATION, INC.
2728 East 171st Street
Westfield, IN 46074
Attention: President

With a copy to: Krieg DeVault LLP
12800 N. Meridian Street, Suite 300
Carmel, IN 46032
Attention: Brian J. Zaiger, Esq.

Either party hereto may, by notice given to each of the other, designate any additional or different addresses to which subsequent notices or communications will be sent.

13. Lease Memorandum. Lessor and Lessee agree to execute and record a memorandum of this Lease, in substantially the form attached hereto as Exhibit "B", for the purpose of giving public notice of the existence of this Lease in the Office of the Recorder of Hamilton County, Indiana.

14. Relationship of Parties. Nothing in this Lease will create a partnership or joint venture between Lessor and Lessee, it being the express intention that the relationship of Lessor and Lessee under this Lease will at all times during the Term be that of Lessor and Lessee.

15. Further Assurances. Lessor and Lessee will, upon the request of the other party, duly execute and deliver, or cause to be executed and delivered, such further instruments, and will perform or cause to be performed such further acts, as may be reasonably necessary or proper to carry out the provisions and purposes of this Lease.

16. Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease.

17. Governing Law and Jurisdiction. This Lease will be governed by and construed in accordance with the laws of the State of Indiana. All legal actions relating to this Lease must be filed in the Circuit or Superior Courts in Hamilton County, Indiana.

18. Entire Agreement. This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreement.

19. Modification. None of the covenants, terms or conditions of this Lease, nor any Exhibits to this Lease, will in any manner be waived, amended, modified, changed or abandoned except by a written instrument duly signed, acknowledged and delivered by Lessor and Lessee.

*[Remainder of page intentionally left blank.
Signature Page Follows.]*

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

LESSOR:

CITY OF WESTFIELD, an Indiana municipal
corporation

By: _____

Printed: _____

Title: _____

LESSEE:

WESTFIELD ECONOMIC DEVELOPMENT
FOUNDATION, INC., an Indiana nonprofit
corporation

By: _____

Printed: _____

Title: _____

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EXHIBIT A

Leased Premises Legal Description

EXHIBIT B

Form of Memorandum of Lease

MEMORANDUM OF LEASE

This MEMORANDUM OF LEASE (this "Memorandum") is made and entered into as of the _____ day of _____, 2019 (the "Effective Date"), by and between CITY OF WESTFIELD, an Indiana municipal corporation ("Lessor"), and WESTFIELD ECONOMIC DEVELOPMENT FOUNDATION, INC., an Indiana nonprofit corporation ("Lessee").

RECITALS

A. Lessor and Lessee entered into that certain Ground Lease, dated even date herewith (the "Lease"), whereby Lessor leased to Lessee and Lessee leased from Lessor certain property in Westfield, Indiana, described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Leased Premises").

B. The parties desire to place this Memorandum of record to provide notice to third parties of the existence of the Lease, but do not desire to place all of the terms and provisions of the Lease of record.

NOW, THEREFORE, the parties hereby state as follows:

1. Lessor. The name of Lessor is CITY OF WESTFIELD, and its office address is 2728 East 171st Street, Westfield, Indiana 46074.

2. Lessee. The name of Lessee is WESTFIELD ECONOMIC DEVELOPMENT FOUNDATION, INC., and its office address is 2728 East 171st Street, Westfield, IN 46074.

3. Legal Description. The specific legal description of the Leased Premises is set forth on Exhibit "A" attached hereto and incorporated herein by this reference.

4. Term. The term of the Lease commenced on _____, 2019, and will expire on _____, 2044, subject to Tenant's rights to extend the term.

5. No Amendment to Lease; Reference to Lease. This Memorandum is being executed and recorded pursuant to IC § 36-2-11-20 to evidence the Lease and will not be construed to limit, amend or modify the provisions of the Lease in any respect. Reference is made to the Lease itself for a complete and definitive statement of the terms of the rights and obligations of Lessor and Lessee thereunder.

[The signature page follows.]

LESSOR:

CITY OF WESTFIELD, an Indiana municipal
corporation

By: _____

Printed: _____

Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of CITY OF WESTFIELD, who acknowledged the execution of the foregoing document on behalf of said municipal corporation.

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

(SEAL)

(signature)

(printed name) NOTARY PUBLIC

My Commission Expires:

County of Residence:

LESSEE:

WESTFIELD ECONOMIC DEVELOPMENT
FOUNDATION, INC., an Indiana nonprofit
corporation

By: _____

Printed: _____

Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for the State of Indiana, personally appeared _____, the _____ of WESTFIELD ECONOMIC DEVELOPMENT FOUNDATION, INC., who acknowledged the execution of the foregoing document on behalf of said nonprofit corporation.

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

(SEAL)

(signature)

(printed name) NOTARY PUBLIC

My Commission Expires:

County of Residence:

JOINT USE AND MAINTENANCE AGREEMENT

Between

THE INDIANA DEPARTMENT OF TRANSPORTATION

And

THE CITY OF WESTFIELD, INDIANA

Concerning

INSTALLATION AND MAINTENANCE OF TRAIL

EDS No. _____

This Joint Use and Maintenance Agreement (“Agreement”) is made 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 Noblesville, Indiana (hereinafter referred to as the “CITY”), and jointly referred to as the “PARTIES”, is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by the Office of the Indiana Attorney General. In consideration of those mutual undertakings and covenants, the Parties agree as follows:

RECITALS

WHEREAS, the CITY has applied for a permit #T130359 to install a trail running along the north side of State Road 32 (“SR 32”) east of Wheeler Road in Westfield, and for permit #T131144 to install a drainage culvert to run under the trail, as shown in **Exhibit A**, which is attached hereto and incorporated herein by reference (collectively referred to as the “TRAIL”); and

WHEREAS, the CITY has agreed to pay for all costs associated with the construction, installation and maintenance of the TRAIL; and

WHEREAS, the CITY has agreed to maintain the TRAIL after its installation to the satisfaction of INDOT and pay for all costs associated with future maintenance; and

WHEREAS, the construction, installation and maintenance will occur within the state-owned or controlled right-of-way, under the jurisdiction of INDOT, as shown in **Exhibit A**; and

WHEREAS, the PARTIES desire to delineate certain maintenance responsibilities, concerning the maintenance of the TRAIL; and

WHEREAS, it is of mutual interest for INDOT and the CITY to cooperate in maintaining the TRAIL for the convenience and safety of the public;

NOW, THEREFORE, the PARTIES to this Agreement hereby agree to the following terms and conditions:

ARTICLE I. PURPOSE AND TERM

1.1. Preamble. The Preamble and Recitals recorded above are incorporated by reference into this Agreement. 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 Agreement.

1.2. Purpose. The purpose of this Agreement is to delineate maintenance responsibilities and the costs associated with said maintenance of the TRAIL. The CITY understands and agrees that if and when the TRAIL conflicts with the operation, maintenance, regulation, construction or reconstruction of any part of the state-owned or controlled right of way or any other state highway facility, the TRAIL shall be altered or removed entirely to accommodate use of INDOT highway right-of-way for state highway purposes, at no cost to INDOT.

1.3. Term. This Agreement shall be for a twenty-five (25) year period, commencing as of the date it is approved as to form and legality by the Office of the Indiana Attorney General and shall be subject to renewal upon the same terms for one additional twenty-five (25) year term. This Agreement shall be subject to cancellation and termination by either party upon giving the other party ninety (90) days written notice of such action.

1.4. Temporary Joint Use of Right-of-Way. Subject to the terms and conditions of this Agreement, INDOT grants to the CITY, its employees and its contractors permission to enter upon the state-owned or controlled right of way, as identified in **Exhibit A** (the "Right-of-Way"), for the sole and exclusive purposes of inspecting, maintaining, operating and repairing the TRAIL. The CITY shall notify INDOT of its intent of entering on to the Right-of-Way whenever doing so could affect flow of traffic or the safety of the traveling public on SR 32 at least ten (10) business days before commencing any such work. This includes even routine maintenance and repair activities if traffic on SR 32 may be affected. Pursuant to applicable state and federal law, for highway and limited access facilities, INDOT must grant written permission for each entry into the Right-of-Way, which must be based on specific traffic control and/or worker safety plans. Accordingly, as a condition precedent to giving effective notice, the CITY shall provide to INDOT all such traffic control and worker safety plans and other information as INDOT shall request or require in connection with granting such permission. The CITY shall not enter upon the Right-of-Way until the CITY has received written approval from INDOT, which shall not be unreasonably withheld, to enter upon the Right-of-Way. INDOT shall only be required to approve the CITY's request to enter upon the Right-of-Way if the CITY's request is consistent with all applicable federal and state laws and this Agreement.

1.5. No Interest in the Land. The parties understand that this Agreement does not: (1) grant any interest or other rights in the land, either temporarily or permanently; or (2) establish a shared-use facility which would require replacement if INDOT has a need to use the affected property for highway purposes in the future.

ARTICLE II. CITY'S RESPONSIBILITIES

2.1. Any use of the Right-of-Way permitted by this Agreement remains secondary to the interest of INDOT to use the Right-of-Way for highway or other transportation purposes. The CITY agrees that it shall surrender the Right-of-Way upon which the TRAIL or its infrastructure are located, whether in part or in its entirety, if, in INDOT's discretion, the Right-of-Way or any portion thereof, is required for future expansion, modification, or maintenance of SR 32. The CITY understands and agrees that it shall not be entitled to any damages or any other compensation in the event that INDOT requires complete or partial removal of the TRAIL, or its infrastructure for any reason. Except in cases of emergency (i.e., eminent threat of harm to the traveling public), INDOT will provide ninety (90) days written notice to the CITY that the TRAIL must be removed or modified. If the TRAIL are not removed or modified to INDOT's satisfaction within ninety (90) days of issuance of notice under this Section, INDOT may remove the TRAIL and bill the CITY for costs of removal.

2.2. The CITY shall not erect any signs, sculptures or structures within the Right-of-Way without the prior approval of INDOT.

2.3. Subject to the terms and conditions of this Agreement, and prior to entering the Right-of-Way, the CITY shall apply for a right-of-way permit for all construction and maintenance by the CITY (or other parties contracted by the CITY) within the Right-of-Way. This Agreement, in no way, binds INDOT to the issuance of any permit to the CITY. However, INDOT agrees, in good faith, to review the CITY's application, and if appropriate, issue a permit to the CITY. The CITY shall notify INDOT of its intent to enter the Right-of-Way a minimum of ten (10) business days before commencing work for approved activities as specified within this Agreement.

2.4. The CITY shall perform, or cause to be performed, all necessary routine maintenance for the TRAIL including without limitation, drainage, curbs, curb ramps, sidewalks and landscaping; this will also include mowing, trash removal and the removal of noxious weeds or undesirable plants at least six (6) times per year. The CITY shall remove litter prior to mowing. The CITY shall undertake maintenance of the TRAIL as needed to ensure the safety of the motoring public and TRAIL users.

2.5. In accordance with Section 2.3 of this Agreement, the CITY shall notify INDOT and submit a Maintenance of Traffic (MOT) plan thirty (30) days prior to any maintenance or construction activities if such activities require lane closures or traffic restrictions on SR 32.

2.6. In the event that future installation of lighting occurs on the TRAIL, the cost of the design, installation and maintenance shall be borne by the CITY and covered by a separate agreement between INDOT and the owner of the lighting. INDOT shall not be responsible for the costs of any fees for any utility services serving the TRAIL infrastructure.

2.7. The CITY shall pay all the fees for any utility services serving TRAIL. Any separately-metered utilities shall be billed directly to the CITY, and INDOT shall have no obligation with respect thereto. Any utility fees related to utilities that are not separately metered shall be prorated by INDOT, on a reasonable basis and the CITY shall pay any amount it owes within thirty (30) days of receiving an invoice for the same.

2.8. When performing work required hereunder, the CITY shall at all times adhere to the traffic control measures found in the most recent version of the Manual on Uniform Traffic Control Devices, as then-currently adopted by INDOT.

2.9. The CITY shall conduct all sidewalk maintenance and reconstruction work in accordance with all applicable federal and state laws as well as INDOT and FHWA standards and good engineering practices as set forth in the following: (1) Title 23, U.S. Code, Highways, (2) the regulations issued pursuant thereto, (3) the Americans with Disabilities Act of 1990, (4) I.C. 36, and (5) the policies and procedures promulgated by INDOT and FHWA relative to the Agreement.

2.10. The CITY shall be responsible for the CITY's improvements within the Right-of-Way. To the extent permitted by law, the CITY shall indemnify and hold INDOT harmless for any claims arising out of the above-said items within the Right-of-Way. This is in addition to representations provided under Section 4.22 of this Agreement. This section of this Agreement shall survive termination of this Agreement.

2.11. After the initial construction and acceptance of the TRAIL, if the CITY wishes to install additional improvements within the Right-of-Way, prior to construction, the CITY shall submit a design plan to INDOT's Greenfield District for review and approval.

2.12. In the event that INDOT determines, in its sole reasonable discretion, that the CITY is not adequately maintaining the TRAIL, or for any other justified reason (i.e., safety concerns for either TRAIL users or the motoring public, change in policy, requirement for compliance with federal law or other federal mandate, etc.), INDOT may order the CITY to remove or modify the TRAIL at the CITY's expense. Except in cases of emergency (i.e., eminent threat of harm to the traveling public, whether on the TRAIL or on a highway facility), INDOT will provide ninety (90) days written notice to the CITY that the TRAIL must be removed or modified. If the TRAIL (including any accompanying structures, landscaping or lighting) is not removed or modified to INDOT's satisfaction within ninety (90) days of issuance of notice under this Section, INDOT may remove the TRAIL and bill the CITY for costs of removal.

2.13. Maintenance activities performed on landscaping or any portion thereof shall not create any adverse impact or interfere with the safety and travel of the motoring public.

2.14. On an annual basis, but no later than March 31st of each year, the CITY shall submit to the Greenfield District Permit Manager a maintenance plan for approval prior to commencement of any maintenance activities within the Right-of-Way. The Greenfield District Permit Manager shall promptly notify the CITY of any concerns or deficiencies in the plan.

ARTICLE III. INDOT's RESPONSIBILITIES

3.1. INDOT shall have approval authority for the CITY's maintenance plans of the TRAIL and for any improvements on or along the TRAIL located within the Right-of-Way. Such review and approval shall be completed in a reasonable period of time.

3.2. INDOT shall maintain the INDOT structures which are located within the Right-of-Way.

3.3. Under no circumstances shall INDOT be responsible for any cost of construction, installation, maintenance, operation, regulation or removal of the TRAIL or TRAIL improvements.

3.4. In the event the CITY fails to timely complete any necessary repairs, inspection, or maintenance to the TRAIL or remediate any damage caused in whole or in part by the TRAIL, in the interest of the safety of the motoring public, INDOT may complete any necessary repairs and invoice the CITY for the total cost of the repair. The CITY shall pay each invoice within thirty (30) days of issuance of the invoice. The CITY's failure to pay any invoice received from INDOT may result in removal of the TRAIL from the Right-of-Way.

ARTICLE IV. GENERAL PROVISIONS

4.1. **Access to Records.** The CITY shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Agreement, and shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for ten (10) years from the date of final payment under the terms of this Agreement, for inspection or audit by INDOT, or its authorized designee. Copies shall be furnished free of charge, if requested by INDOT. Copies shall be furnished at no cost to INDOT, if requested.

4.2. **Assignment; Successors.** The CITY binds their successors and assignees to all the terms and conditions of this Agreement. Except as otherwise specifically provided herein, the CITY shall not assign or subcontract the whole or any part of this Agreement without INDOT's prior written consent.

4.3. **Assignment of Antitrust Claims.** As part of the consideration for this Agreement, the CITY assigns to the State all right, title and interest in and to any claims the CITY now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Agreement.

4.4. **Audits.** The CITY acknowledges that it may be required to submit to an audit of funds paid, if any, through this Agreement. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

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

4.6. **Changes in Work.** [OMITTED – NOT APPLICABLE.]

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

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, 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 Agreements, 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.

B. 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 such 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.

C. The CITY also agrees by signing this Agreement 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.

4.8. Compliance with Laws.

A. The CITY 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 thereunder after execution of this Agreement shall be reviewed by the State and the CITY to determine whether the provisions of this Agreement require formal modification.

B. The CITY 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 CITY 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 CITY shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the CITY is not familiar with these ethical requirements, the CITY 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 CITY or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the CITY. In addition, the CITY may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. [OMITTED – NOT APPLICABLE.]

D. [OMITTED – NOT APPLICABLE.]

E. [OMITTED – NOT APPLICABLE.]

F. The CITY warrants that the CITY 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

Agreement. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further work with the State.

G. [OMITTED – NOT APPLICABLE.]

H. As required by IC §5-22-3-7:

- (1) The CITY and any principals of the CITY certify that:
 - (A) the CITY, 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 CITY 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 CITY and any principals of the CITY certify that an affiliate or principal of the CITY and any agent acting on behalf of the CITY or on behalf of an affiliate or principal of the CITY, 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 Agreement, even if IC §24-4.7 is preempted by federal law.

4.9. Condition of Payment. [OMITTED – NOT APPLICABLE.]

4.10. Confidentiality of State Information. [OMITTED – NOT APPLICABLE.]

4.11. Continuity of Services. [OMITTED – NOT APPLICABLE.]

4.12. Debarment and Suspension.

A. The CITY certifies by entering into this Agreement 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 Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Agreement 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 CITY.

B. The CITY certifies that it has verified the state and federal suspension and debarment status for all contractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor. The CITY 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 Agreement.

4.13. Default by State. [OMITTED – NOT APPLICABLE.]

4.14. Disputes. [OMITTED – NOT APPLICABLE.]

4.15. Drug-Free Workplace Certification.

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the CITY hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The CITY will give written notice to the State within ten (10) days after receiving actual notice that the CITY, or an employee of the CITY 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 Agreement 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 Agreement is in excess of \$25,000.00, the CITY certifies and agrees that it will provide a drug-free workplace by:

- A. 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 CITY's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CITY'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;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CITY of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(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
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

4.16. Employment Eligibility Verification.

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

A. The CITY 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 CITY is not required to participate should the E-Verify program cease to exist. Additionally, The CITY is not required to participate if the CITY is self-employed and do not employee any employees.

B. The CITY shall not knowingly employ or contract with an unauthorized alien. The CITY shall not retain an employee or contract with a person that the CITY subsequently learns is an unauthorized alien.

C. The CITY shall require its subcontractors, who perform work under this Agreement, to certify to The CITY 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 CITY 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 CITY fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

4.17. Employment Option. [OMITTED – NOT APPLICABLE.]

4.18. Force Majeure. In the event that any Party is unable to perform any of its obligations under this Agreement 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 as is reasonably possible under the circumstances give notice to the other Parties and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement 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 Agreement.

4.19. 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 Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

4.20. Governing Law. This Agreement 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.

4.21. HIPAA Compliance. [OMITTED – NOT APPLICABLE.]

4.22. Indemnification. The CITY agrees to indemnify, defend, exculpate and hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage,

injuries, or other casualties of whatever kind, to the person or property of anyone arising out of, or resulting from the performance of this Agreement or the work connected therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material, to the extent such liability is caused by the negligence of the CITY, including any claims arising out the Worker's Compensation Act or any other law, ordinance, order or decree. INDOT shall **not** provide indemnification to the CITY. The CITY agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State and INDOT in connection herewith in the event that the CITY shall default under the provisions of this Section.

4.23. Independent Entity; Workers' Compensation Insurance. The CITY is performing as an independent entity under this Agreement. No part of this Agreement shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the Parties. Neither Party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other Party. The CITY shall provide all necessary unemployment and workers' compensation insurance for the CITY's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Agreement.

4.24. Information Technology Enterprise Architecture Requirements. [OMITTED – NOT APPLICABLE.]

4.25. Insurance. [OMITTED – NOT APPLICABLE.]

4.26. Key Person(s). [OMITTED – NOT APPLICABLE.]

4.27. Licensing Standards. [OMITTED – NOT APPLICABLE.]

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

4.29. Minority and Women's Business Enterprises Compliance. [OMITTED - NOT APPLICABLE.]

4.30. Non-Discrimination.

A. 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, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the CITY covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement 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 CITY 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 paragraph may be regarded as a material breach of this

Agreement, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the CITY or any subcontractor.

B. INDOT is a recipient of federal funds, and therefore, where applicable, the CITY 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 CITY agrees that if the CITY employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CITY will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CITY 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, income status, limited English proficiency, or status as a veteran.)

C. During the performance of this Agreement, the CITY, for itself, its assignees and successors in interest (hereinafter referred to as the "CITY") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

1. Compliance with Regulations: The CITY 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 Agreement.

2. Nondiscrimination: The CITY, 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 CITY 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.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CITY 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 CITY of the CITY's obligations under this Agreement, 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.

4. Information and Reports: The CITY 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 CITY is in the exclusive possession of another who fails or refuses furnish this information, the CITY 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.

5. Sanctions for Noncompliance: In the event of the CITY's noncompliance with the nondiscrimination provisions of this Agreement, 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 CITY under the Agreement until the CITY complies, and/or (b) cancellation, termination or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions: The CITY shall include the provisions of paragraphs 1. through 5. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CITY 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 CITY becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CITY 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 CITY may request the United States of America to enter into such litigation to protect the interests of the United States of America.

4.31. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, unless otherwise specifically advised:

- A. For INDOT: Greenfield District Permit Manager
INDOT Greenfield District
32 South Broadway
Greenfield, IN 46140

With Copy to: Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, IN 46204

B. For CITY: City Engineer
City of Westfield
2728 East 171st Street
Westfield, IN 46074

4.32. Order of Precedence; Incorporation by Reference. [OMITTED – NOT APPLICABLE.]

4.33. Ownership of Documents and Materials. [OMITTED – NOT APPLICABLE.]

4.34. Payments.

A. 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 CITY 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 Agreement except as permitted by IC §4-13-2-20.

B. If the CITY has any outstanding balances on any Agreement with INDOT (including any repayment to INDOT owed under this Agreement), and such outstanding balances due to INDOT are at least sixty (60) calendar days past the due date, INDOT may proceed in accordance with IC §8-14-1-9 to invoke the powers of the Auditor of the State of Indiana to make a mandatory transfer of funds from the CITY's allocation of the Motor Vehicle Highway Account and the Local Roads and Streets Account, if any, to INDOT's account, or INDOT may withhold or garnish payments otherwise due to the CITY from INDOT under this or any other Agreement to partially or wholly satisfy such outstanding balances. In addition, to satisfy any outstanding balance owed, INDOT reserves the right to withhold any and all distributions of discretionary federal funds normally issued or allocated to the CITY.

4.35. 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, IC §5-17-5, IC §34-54-8, and IC §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.

4.36. Progress Reports. [OMITTED – NOT APPLICABLE.]

4.37. Public Record. The CITY acknowledges that the State will not treat this Agreement as containing confidential information, and will post this Agreement on its website as required by

Executive Order 05-07. Use by the public of the information contained in this Agreement shall not be considered an act of the State.

4.38. Renewal Option. This Agreement may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The term of the renewed Agreement may not be longer than the term of the original Agreement.

4.39. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

4.40. Status of Claims. The CITY shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the CITY resulting from services performed under this Agreement.

4.41. Substantial Performance. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

4.42. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the CITY or its contractors as a result of this Agreement.

4.43. Termination for Convenience. This Agreement 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 CITY 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.

4.44. Termination for Default. [OMITTED – NOT APPLICABLE.]

4.45. Travel. [OMITTED – NOT APPLICABLE.]

4.46. Indiana Veteran's Business Enterprise Compliance. [OMITTED – NOT APPLICABLE.]

4.47. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the work performed under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the CITY shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the CITY's negligent performance of any of the services furnished under this Agreement.

4.48. Work Standards. [OMITTED – NOT APPLICABLE.]

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Party, or that the undersigned is the properly authorized representative, agent, member or officer of the Party. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Party, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof. **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 Agreement, the Party attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

In Witness Whereof, the PARTIES have, through their duly authorized representatives, entered into this Agreement. The PARTIES, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

J. Andrew Cook, Member

Date: _____

Kate Snedeker, Member

Date: _____

Randy Graham, Member

Date: _____

ATTEST:

Pat Leuteritz, Office Administrator

**STATE OF INDIANA
Indiana Department of Transportation
Recommended for approval by:**

Clark W. Packer
Greenfield District Deputy Commissioner

Date: _____

Executed by:

_____ (for)
Joseph McGuinness, Commissioner
Indiana Department of Transportation

Date: _____

APPROVALS

STATE OF INDIANA
Budget Agency

By: _____ (FOR)
Zachary Q. Jackson, Director

Date: _____

STATE OF INDIANA
Department of Administration

By: _____ (FOR)
Lesley A. Crane, Commissioner

Date: _____

Approved as to Form and Legality:
Office of the Attorney General

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

Date : _____

This instrument was prepared for the Indiana Department of Transportation, 100 N. Senate Avenue, Indianapolis, IN 46204, by the undersigned attorney.

Marjorie A. Millman, Attorney No. 21748-36



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

Contact: Fire Chief

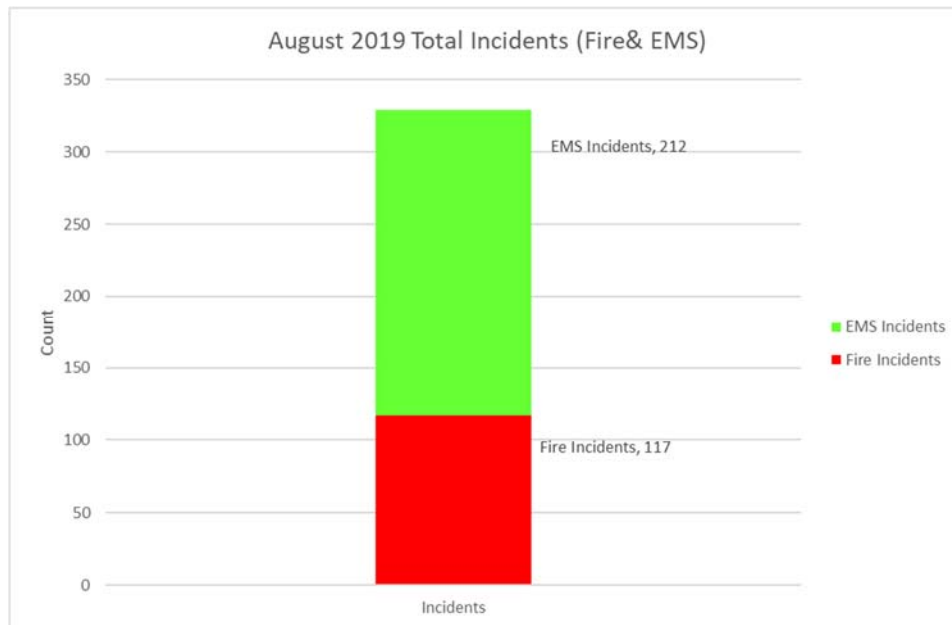
Marcus Reed

Or Nikki Hartman

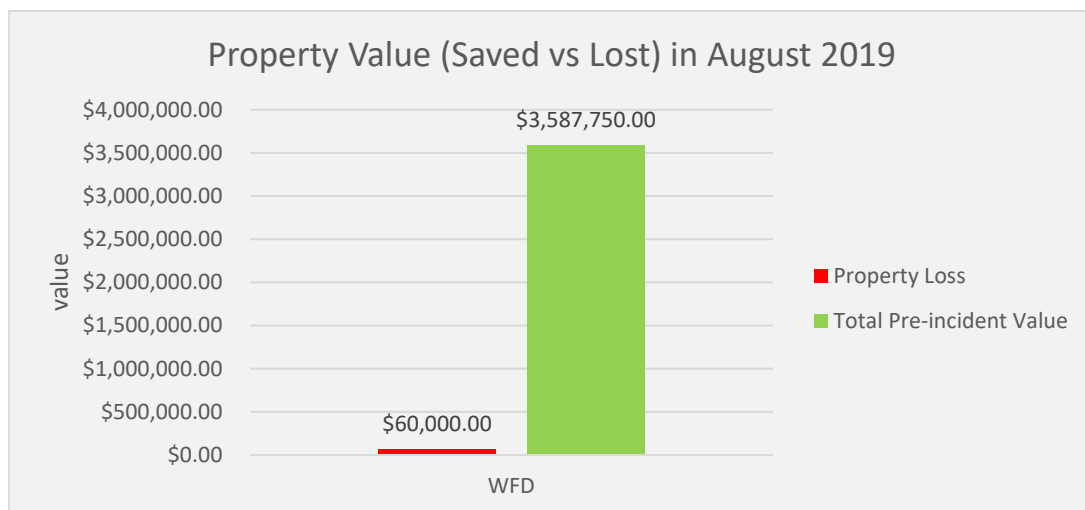
804-3304



Westfield Fire Department 2019 August Incident Statistics



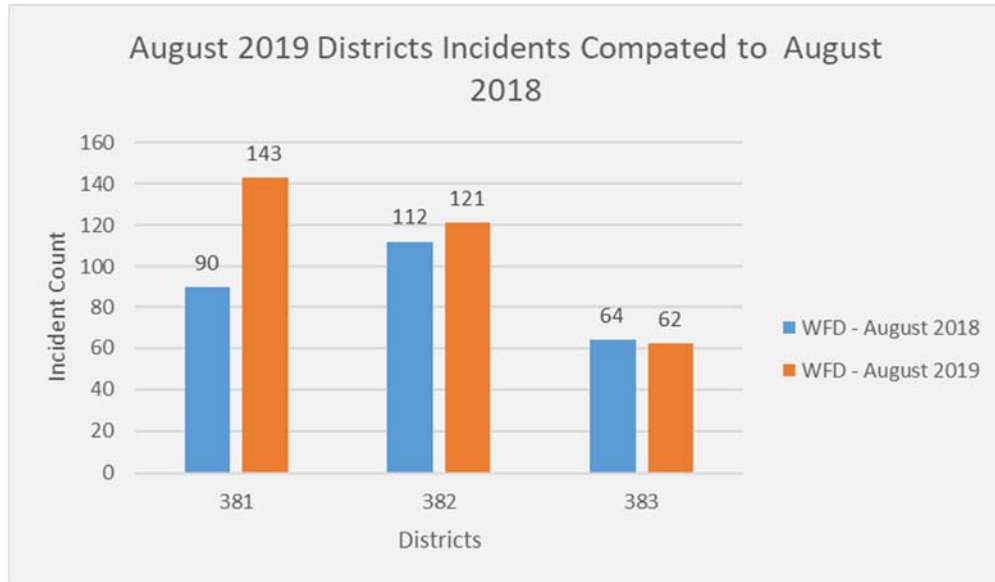
Incident Type	Incident Count	% of total Incident
Fire Incidents	117	36%
EMS Incidents	212	64%
Total Incidents	329	



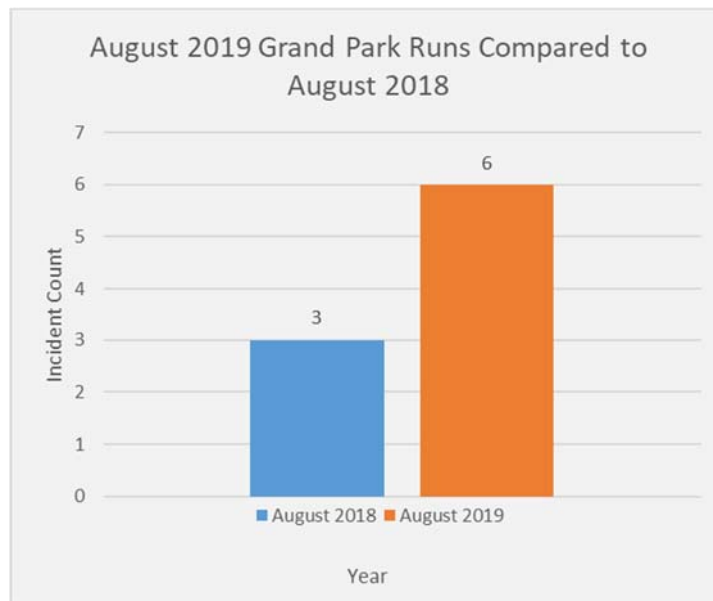
Property Loss	Total Pre-Incident Value	% of Property value saved
60000	3587750	98%



Westfield Fire Department 2019 August Incident Statistics



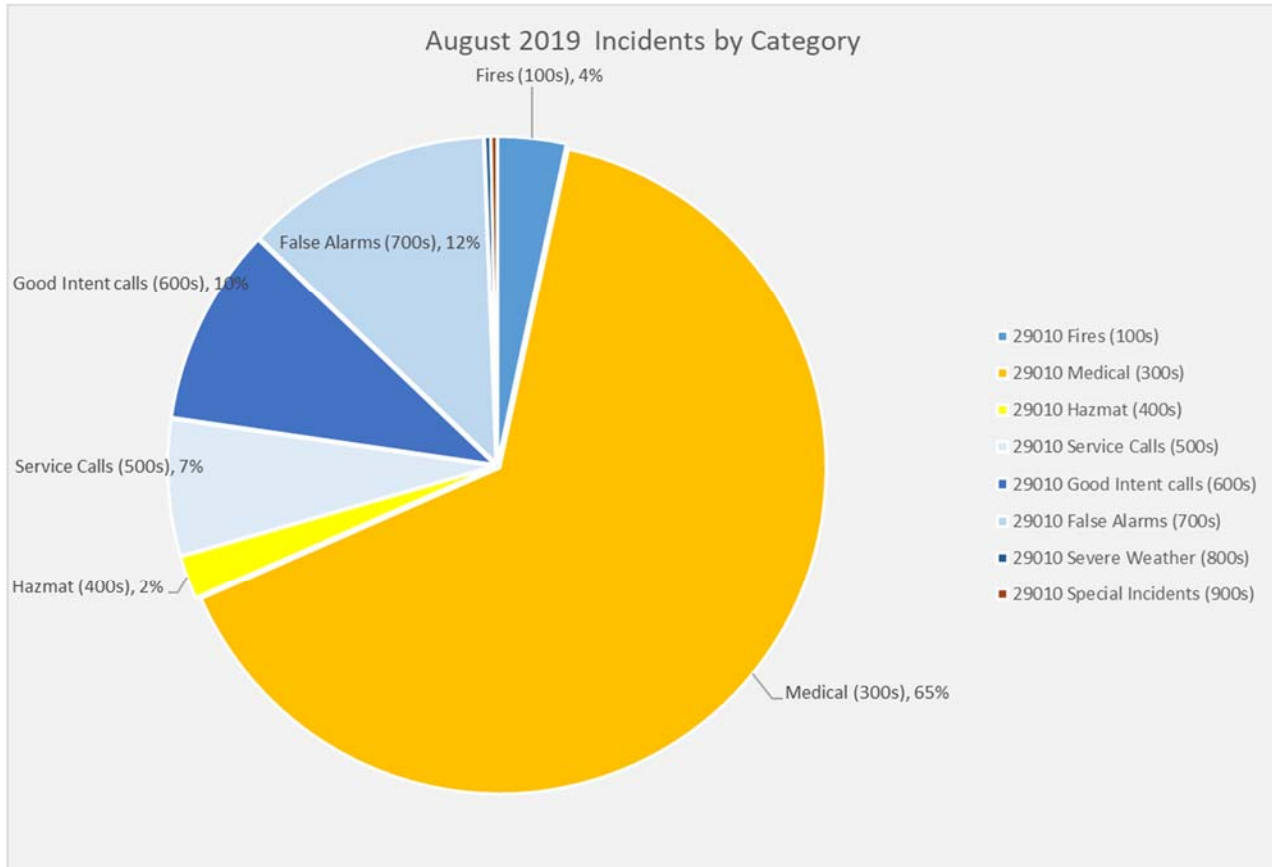
Districts	August 2018	August 2019	Increase/decrease	% increase/decrease
381	90	143	53	59%
382	112	121	9	8%
383	64	62	-2	-3%



August 2018 Incident Calls	August 2019 Incident Calls	Change	% Change
3	6	3	100%



Westfield Fire Department 2019 August Incident Statistics

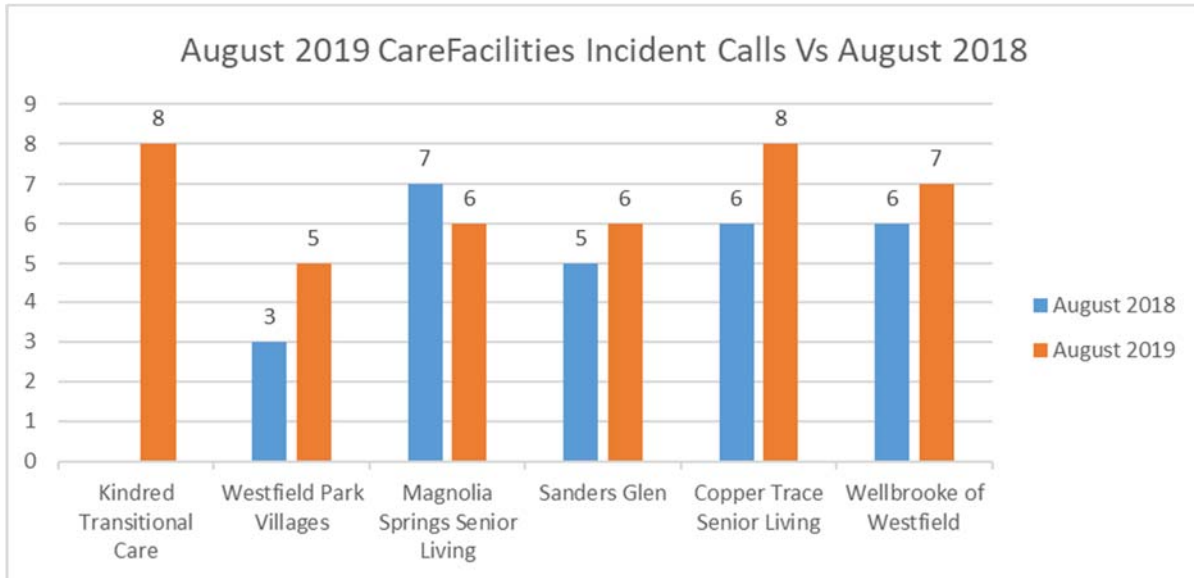


Call Type	Incident Count	% of total calls
Medical	212	65.03%
Good Intent	32	9.82%
Service Calls	22	6.75%
False Alarm	40	12.27%
Hazmat	7	2.15%
Fires	11	3.37%
Sever Weathers	1	0.31%
OverPressure	0	0.00%
Special Incident	1	0.31%
Total	326	



Westfield Fire Department 2019 August Incident Statistics

EMS



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Westfield Fire Department 2019 August Incident Statistics

MIH-CP Program Update

Three Objectives

- Decrease the number of times a person calls 911
- Keep patients at home and decrease repeat hospital visits
- Increase quality of life for patients at home

Criteria for Referral

- Frequent use of 911
- Non-compliant with medications
- PT having difficulty taking care of themselves
- Frequent falls
- PT expresses a need for any type of assistance
- Anytime the Engine and Ambulance crew believe someone can benefit from our services

Services Provided

- Visit and perform risk assessment (fall risks, having handles added to bathrooms, identifying and removing obstacles)
- Medication reconciliation
- Vital signs taken
- General Health assessments
- Consult with physicians over health concerns
- Connect the patient with appropriate resources needed

From 3/11/19–9/19/19

- Total number of referrals received: **36**
- Total number of home visits made: **26**
- Number of Patients that have called 911 after visits 1 or more times: **7**
- QRT visits made since 6/15/19: **7**



Westfield Fire Department 2019 August Incident Statistics

Most recent addition to MIH program:

- Visiting nursing homes to try and decrease the increasing number of 911 calls from their facilities.
- Bring attention to what is truly considered a 911 call by training the staff members and facility management.

Nursing Facilities Template

Row Labels	Calendar 2018	Calendar 2019	Grand Total
300s			
Abdominal Pains - Abdominal Pains	2	1	3
Assist Medical Facility - Assist Medical Facility	3	7	10
Back Pain - Back Pain		1	1
Breathing Problems - Breathing Problems	9	7	16
Cardiac Arrest/Death - Cardiac Arrest/Death	3	2	5
Chest Pain - Chest Pain	8	2	10
Convulsions/Seizures - Convulsions/Seizures	1		1
Diabetic Problems - Diabetic Problems	4		4
Falls - Falls	6	6	12
Heart Problems - Heart Problems	1		1
Hemorrhage/Laceration - Hemorrhage/Laceration	4	3	7
Mental Emotional/Suicide Attempt - Mental Emotional/Suicide Attempt	2	1	3
Sick Person/Specific Diagnosis - Sick Person/Specific Diagnosis	13	14	27
Stroke/CVA - Stroke/CVA		1	1
Traumatic Injuries - Traumatic Injuries	2	2	4
Unconscious/Fainting - Unconscious/Fainting	9	8	17
600s			
Breathing Problems - Breathing Problems	1		1
F Alarm Institutional - Fire Alarm Institutional	3		3
Unknown Call For EMS - Unknown Call For EMS		1	1
700s			
F Alarm Institutional - Fire Alarm Institutional		1	1
Grand Total	71	57	128

Mental Health Component

Currently all of our MIH-CP personnel are trained in this area. In October all WFD crews will receive baseline training in Mental Health, this will be added to our internal referral process.

Working on setting up meeting with Fishers FD to ascertain what they are doing.

MIH-CP program will be putting together some initial meetings with the School District to see what they have in place and how we might be a support arm for them.