



CITY OF WESTFIELD, IN
Board of Public Works_Meeting_Agenda_08_25_2021

Wednesday, August 25, 2021 at 01:00 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Wednesday, August 25, 2021 at 01:00 PM

MEETING PLACE: Westfield City Hall- Assembly Room

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

AGENDA ITEMS

Additions/Changes to Agenda:

Addition of Action Item #7

Meeting Minutes Consideration for Approval

Action Item #1:

Minutes - June 23, 2021

Documents: [June 23, 2021 Minutes](#)

Action Item #2:

Minutes - July 28, 2021

Documents: [Minutes - July 28, 2021](#)

Bid Approval

NONE

Construction Standards & Specifications Changes

NONE

Change Orders

NONE

Contracts/Agreements

Action Item #3:

City of Westfield & West Fork Whiskey - Development Agreement

Documents: [West Fork Whiskey Dev Agr](#)

Action Item #4:

**City of Westfield & Midwest Paving – 2021 Resurfacing Contract for Public Works
Parking Lot – Goods & Services Contract**

Documents: [2021 Resurfacing Contract PW Parking Lot](#) | [Exhibit B Parking Lot Resurfacing](#)

Action Item #5:

City of Westfield & Chick-fil-A, Inc.- Road Impact Fee Installment Agreement

Documents: [Chick-Fil-A RIF Payment Agreement](#)

Action Item #6:

City of Westfield & Grand Communities - Derby Ridge ROW Dedication

Documents: [Derby Ridge ROW Dedication](#)

Action Item #7:

Title Sheet – 151st Street Reconstruction Project

Documents: [Title Sheet - 151st Street Reconstruction Project](#)

Agreements and/or Memorandum of Understanding (MOU)

NONE

Consent Agenda

August Bond Information

Documents: [August Bond List](#)

Department Reports

Fire

Police

Documents: [WPD - July Report](#)

Public Works

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY June 23, 2021

The Westfield Board of Public Works and Safety met on June 23, 2021 at City Hall Assembly Rm. & via conference call. Present were, Jim Ake, Mayor Cook, Kim Strang, Deputy Clerk and Chou-il Lee, representing legal counsel.

Mayor Cook called the meeting to order at 1:00 PM

Mayor Cook announced that Randy Graham is stepping down from BPW and Jack Russell will be replacing Randy on the board.

AGENDA ITEMS:

Action Item #1: Approval of Meeting Minutes for May 26, 2021

Jim Ake made the motion to approval the meeting minutes as presented.
Mayor Cook seconded. Vote: Yes-2; No-0. Motion carries.

CONTRACTS/AGREEMENTS

Action Item #2: 169th Street and Spring Mill Road Roundabout-Part-time Inspection Contract

Johnathon Nail stated this contract is for United Consulting to perform the inspection & data entry required by INDOT. The cost of services has a not to exceed amount of \$99,200.

Jim Ake made the motion to approve the contract as written. Mayor Cook seconded.
Vote: Yes-2; No-0. Motion carries.

Action Item#3: Carey Road-Midland Trace Trail Ped Refuge-Part-time Inspection Contract

Johnathon Nail presented stating this contract is for United Consulting to perform inspection services on the refuge area located at the Carey Rd/Midland Trace Trail Crossing. The contract has a not to exceed amount of \$10,500. This project is a federally funded (HSIP) 80/20 match.

Jim Ake made the motion to approve the contract as written. Mayor Cook seconded.
Vote: Yes-2; No-0. Motion carries.

Action Item #4: American Structurepoint SR 32 Professional Services Supplemental #1

Johnathon Nail presented stating this supplemental request totals \$345,425. The additional scope of work is mostly attributed to the Federal to State funding swap and the additional alternate alignment analysis that resulted from comments from multiple groups.

Jim Ake made the motion to Supplemental #1. Mayor Cook seconded.
Vote: Yes 2; No-0. Motion carries.

Action Item #5: 161st Street Drainage Easement-Signing Authority

Johnathon Nail presented stating this request is to allow him the signing authority to accept a drainage easement located on the NS of 161st Street between Oak & Carey Rds. The easement is to allow for the drainage improvement project and is at no cost to the city.

Jim Ake made the motion to approve the signing authority. Mayor Cook seconded.
Vote: Yes-2; No-0. Motion carries.

Action Item #6: Chatham Multi-family Road Impact Fee Payment Agreement-Signing Authority

Johnathon Nail presented stating this would grant him the signing authority on the Road Impact Fee Payment Agreement for the Chatham Village Multifamily project located at the intersection of 196th St. and future Chad Hittle Dr.

Jim Ake made the motion to approve the signing authority. Major Cook seconded.
Vote: Yes-2; No-0. Motion carries.

PROPOSALS

Action Item #7: Public Safety Building Project Price Proposals, Review Summary, Award Proposal

Rob Gaylor presented the progressive design-build project for fire station 81. The process on how to choose the design builder for the project was outlined, using Cripe as a consultant in the process. Two companies were reviewed (Hagerman, & Performance Services) by looking at the composite score, price proposal and best value. The results of the review determined Hagerman as the best overall candidate.

Jim Ake made the motion to approve award Hagerman the project. Mayor Cook seconded.
Vote: Yes-2; No-0. Motion carries.

PERMIT APPROVAL

Action Item #8: Encroachment Application-Duke Energy-211 College Ave

Johnathon Nail presented stating this would allow for the relocation of one pole at 211 College Ave to accommodate a new parking lot.

Jim Ake made the motion to approve the encroachment application. Mayor Cook seconded.
Vote: Yes-2; No-0. Motion carries.

Action Item #9: Encroachment Application-Duke Energy-1701 E. 161st St. & E. 161st St. & Union Street Roundabout

Johnathon Nail presented stating this would allow for the relocation of 2 poles to allow for the RBA construction at 161st and Union.

Jim Ake made the motion to approve the encroachment application. Mayor Cook seconded.
Vote: Yes-2; No-0. Motion carries.

AGREEMENTS AND/OR MEMORANDUM OF UNDERSTANDING (MOU)

Resolution 21-122: Opting Out of Opioids Settlement

Todd Burtron presented stating this involves ongoing litigation. The City of Westfield is submitting notice to the Indiana Attorney General stating the city elects to opt out of the opioid settlement under the advice of counsel.

Jim Ake made the motion to approve Resolution 21-122 as presented. Mayor Cook seconded.
Vote: Yes-2; No-0. Motion carries.

CONSENT AGENDA:

June Bond Information

Jim Ake made the motion to approve the consent agenda. Mayor Cook seconded.
Vote: Yes-2; No-0. Motion carries.

DEPARTMENT REPORTS:

Fire- Mayor Cook announced he received the resignation of Chief Reed today. Chief Reed thanked city for opportunity to serve and looked forward to city moving forward with new station.

Police- Chief Rush

Public Works- Jeremy Lollar

With no further business Jim Ake made the motion to adjourn. Mayor Cook seconded.

Vote: Yes-2; No-0. Motion carries. The meeting was adjourned at 1:50 PM

Deputy Clerk-Treasurer

Board of Public Works and Safety

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY July 28, 2021

The Westfield Board of Public Works and Safety met on July 28, 2021 at City Hall Assembly Rm. & via conference call. Present were, Jim Ake, Jack Russell, Kim Strang, Deputy Clerk and Chou-il Lee, representing legal counsel.

Jim Ake called the meeting to order at 1:00 PM

Jim Ake announced a change to the agenda/adding Action Item #15 (Mayoral appointments to the Impact Fee Review Board).

Jack Russell made the motion to add agenda item #15. Jim Ake seconded.
Vote: Yes-2; No-0. Motion carries.

AGENDA ITEMS:

Action Item #1: Approval of Meeting Minutes for June 23, 2021

Due to the Mayor not being in attendance for the meeting, and Jack Russell not being a board member last meeting. Minutes were tabled to next meeting.

Jack Russell made the motion to table the minutes. Jim Ake seconded. Vote: Yes-2; No-0. Motion carries.

CONTRACTS/AGREEMENTS

Action Item #2: Daystar & City of Westfield-Centennial Permanent Sump Line Repairs Contract

Wes Rood and Jeremy Lollar presented stating this is a part of the annual repairs. In the past, temporary repairs have been performed but now looking at doing more permanent repairs over a period of time. Cost of repairs are coming out of Stormwater funds that were budgeted in 2021.

Jack Russell made the motion to approve the contract as written. Jim Ake seconded.
Vote: Yes-2; No-0. Motion carries.

Action Item#3: Daystar & City of Westfield-Centennial Roundabout Underdrain Installation Contract

Wes Rood and Jeremy Lollar presented stating this is for the installation of a sub-surface drain, prior to resurfacing work. This will extend the life of the roads.

Jim Ake made the motion to approve the contract as written. Jack Russell seconded.
Vote: Yes-2; No-0. Motion carries.

Action Item #4: INDOT & City of Westfield-Little Eagle Creek Avenue-LPA Contract

Johnathon Nail presented stating this project will reconstruct Little Eagle Creek Ave. between 146th St. and Shelborne Rd. & widen the roadway to include 11' lanes and 4' bike lanes on each side of the road. The project is federally funded and this contract is the city's commitment to INDOT that they will follow federal regulations.

Jack Russell made the motion to the contract as written. Jim Ake seconded.

Vote: Yes 2; No-0. Motion carries.

Action Item #5: Rieth-Riley Construction Co. & City of Westfield-191st & Chad Hittle RAB Goods & Services Contract

Johnathon Nail presented stating this contract is for the widening (4 lanes) from Tomlinson Rd. to US 31. Six bids were received with Rieth-Riley being the lowest.

Jim Ake made the motion to award the project to Rieth-Riley. Jack Russell seconded.

Vote: Yes-2; No-0. Motion carries.

Action Item #6: RQAW Corporation & City of Westfield-151st Street & Towne Road Roundabout-LPA Consulting Contract-Preliminary Engineering-Amendment #1

Johnathon Nail presented stating this is a supplemental contract for additional permitting on the 151st Street and Town Road roundabout.

Jack Russell made the motion to approve the supplemental contract the with corrected not to exceed amount and corrected task order total (pg.2). Jim Ake seconded. Vote: Yes-2; No-0. Motion carries.

Action Item #7: RQAW & City of Westfield-151st & Town RAB-ROW Acquisition LPA Consulting Contract

Johnathon Nail presented stating this is for the land acquisition for a roundabout including storm sewer, sidewalks, perimeter tails, curb and gutter, and payment at the intersection of 151st Street and Towne Rd. This includes the appraisals, acquisitions, and recordings. Contract has a not to exceed of \$12,715.

Jim Ake made the motion to approve the contract as written. Jack Russell seconded.

Vote: Yes-2; No-0. Motion carries.

Action Item #8: WSP & City of Westfield-ROW Task Order-Mule Barn Road

Johnathon Nail presented stating this is for right of way acquisition services for the widening project (9ft. lanes to 12ft) for Mule Barn Rd. Services include right-of-way management, title research, right-of-way engineering, appraising, and buying. The estimated cost for these services is \$11,405.

Jack Russell made the motion to approve the task order. Jim Ake seconded.
Vote: Yes-2; No-0. Motion carries.

Action Item #9: Signing Authority-Westfield Park Road Culvert Replacement

Johnathon Nail presented stating this would allow Jeremy Lollar the signing authority for the Westfield Park Road culvert replacement project. Three bids were received, with the lowest in the amount of \$1,228,732. Resurfacing of Westfield Park Road is also included in that cost.

Jim Ake made the motion to approve the signing authority. Jack Russell seconded.
Vote: Yes-2; No-0. Motion carries.

Action Item #10: Signing Authority-Public Works Parking Lot Resurfacing Project

Jeremy Lollar presented asking for the signing authority for the Public Works parking lot resurfacing project for a not to exceed amount of \$100,000.

Jim Ake made the motion to approve the signing authority. Jack Russell seconded.
Vote: Yes-2; No-0. Motion carries.

Action Item #11: Westfork Whiskey Development Agreement

Tabled

Action Item #12: West Fork Whiskey- RIF Installment Agreement

Johnathon Nail presented stating that Westfork Whiskey has requested an installment payment program for assessed road impact fees. The assessed trip generated amount is \$288,012, with 3% interest on the outstanding balance, 5% upfront for the building permit and \$59,744 each year over a five- year period.

Jack Russell made the motion to approve the RIF agreement. Jim Ake seconded.
Vote: Yes-2; No-0. Motion carries

Action Item #13: Maglin-Grand Junction Plaza-Furniture Quotation

Jeremy Lollar presented stating it was in the best interested to purchase the outdoor furnishings for the plaza at Grand Junction because it would not last as long as the term of the bond. Various companies were looked into and the Canadian company Maglin was determined to be the best, costing \$137,491.18.

Jim Ake made the motion to approve the quote. Jack Russell seconded.
Vote: Yes-2; No-0. Motion carries.

AGREEMENTS AND/OR MEMORANDUM OF UNDERSTANDING (MOU)

NONE

PERMIT APPROVAL

Action Item #14: Encroachment Permit Application-Duke Energy-1170 W. 193rd St

Adam Essex presenting stating this is for the relocation of poles for the entrance to the new Atwater Subdivision.

Jack Russell made the motion to approve the encroachment. Jim Ake seconded.
Vote: Yes-2; No-0. Motion carries.

APPOINTMENTS

Action Item #15: Approval-Mayoral Appointments to the Impact Fee Review Board Michael Pearce, Jeff Boller, and Rebecca Ogle

Jeremy Lollar presented stating state statue requires a board to handle appeals on impact fees.

Jim Ake made a motion to approve those on the review board. Jack Russell seconded.
Vote: Yes-2; No-0. Motion carries.

CONSENT AGENDA:

July Bond Information

Jim Ake made the motion to approve the consent agenda. Jack Russell seconded.
Vote: Yes-2; No-0. Motion carries.

DEPARTMENT REPORTS:

Fire- None

Police- Chief Rush

Public Works- Jeremy Lollar

With no further business Jack Russell made the motion to adjourn. Jim Ake seconded.

Vote: Yes-2; No-0. Motion carries. The meeting was adjourned at 1:45 PM

Deputy Clerk-Treasurer

Board of Public Works and Safety

SECTION 4: STANDARD FORM OF AGREEMENT

See the following pages for the sample form of agreement for this project:

CONTRACT FOR GOODS AND SERVICES

This Contract for Goods and Services (“Vendor Contract”) is made and entered into as of the 1st day of August 2021, by and between City of Westfield (“Contracting Party”) and Midwest Paving, LLC (“Vendor”).

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

- A. **Basic Terms.** This Vendor Contract is on the following basic terms and conditions:
- (a) Goods and/or services provided by Vendor: (See Exhibit B attached hereto and made a part hereof).
 - (b) Location: 2706 E. 171st Street Westfield, Indiana 46074 (the “City Property”)
 - (c) Date by which the Services shall be completed: To start September 1st, 2021 and complete by October 1st, 2021 (the “Completion Date”).
 - (d) Purchase Price: Sixty-three Thousand Forty-nine Dollars and 69/100, \$63,049.19 (see Proposal dated 07/29/2021 - Exhibit B).
 - (e) The Contracting Party provides two payment options to vendors for payment of approved invoiced amounts. They are as follows:
 - a. Option #1: Traditional – Invoices shall be payable within forty-five (45) days following Contracting Party’s receipt and approval of an invoice at the address specified below.
 - b. Option #2: Preferred – Invoices are payable within 7 days following Contracting Party’s receipt and approval of an invoice at the address specified below if vendor accepts MasterCard.
 - (f) The Contract Documents include:
 - a. This Goods and Services agreement

Should there be any conflict within the Contract Documents, the most stringent shall govern.

(g) Addresses:

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

City of Westfield
Department of Public Works
Attn: Johnathon Nail
2706 East 171st Street
Westfield, Indiana 46074

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

If to Vendor:

Midwest Paving, LLC
11827 Greenfield Ave
Noblesville, IN, 46060

B. **Contract Terms and Conditions.** This Vendor Contract is subject to the contract Terms and Conditions set forth in paragraphs 1-26 attached hereto and made a part hereof, the Project Changes, Attachment 1, and Exhibits attached hereto and made a part hereof. Parties stipulate that this agreement supersedes any and all other contracts, agreements or understandings between the Parties related to the subject matter herein is to be read strictly as the scope set forth in this agreement. The terms and conditions of prior contract(s), including but not limited to, annual support and maintenance as well as confidentiality, are not superseded by this agreement.

C. **Amendment.** No alteration, addition, deletion or modification of the Vendor Contract shall be valid or binding unless made in accordance with the contract terms and conditions set forth in this Vendor Contract.

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

CONTRACT TERMS AND CONDITIONS

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

2. **PERFORMANCE:** Vendor hereby agrees to provide all goods and services necessary to perform the requirements of this Vendor Contract and to execute its responsibilities hereunder by following and applying at all times the highest professional and technical guidelines and standards. Contracting Party reserves the right at any time to direct changes, or cause Vendor to make changes in the goods and services or to otherwise change the scope of the work covered by this Contract with a signed Change Order executed by both parties, and Vendor agrees to make such changes promptly. Any difference in price or time for performance resulting from such changes

shall be equitably adjusted by Contracting Party after receipt of documentation in such form and detail as Contracting Party may reasonably require.

3. **TIME AND PERFORMANCE:** The work and services under this Contract shall be completed no later than the Completion Date. The Vendor shall submit for Contracting Party's approval a detailed schedule for the performance of the work and services which shall include allowances for periods of time required for Contracting Party's review and approval of submissions by Vendor. Time limits established by this detailed schedule shall be consistent with the Completion Date. Time is of the essence of this Vendor Contract. If the Vendor fails to comply with Section A; Basic Terms, Paragraph c, [Completion Date], the Vendor shall be subject to any and all consequential damages unless the delays are beyond the reasonable control of the Vendor.

4. **PRICE TERMS:** All of the prices, terms and warranties granted by Vendor herein are at least as favorable to Contracting Party as those offered by Vendor to other customers purchasing similar professional services under the same material term and conditions. Vendor agrees that it will pass on to Contracting Party any discounts and/or savings for prompt payment or rebates for quantity purchasing it receives.

5. **DISCLOSURE, WARNINGS AND INSTRUCTIONS:** If requested by Contracting Party, Vendor shall furnish promptly to Contracting Party, in such form and detail as Contracting Party may direct, a list of all ingredients or components to any goods specified hereunder, including the quality or concentration thereof and any other information relating thereto. Prior to and with the delivery of any recommended goods to be purchased hereunder, Vendor agrees to furnish to Contracting Party sufficient warning and notice in writing (including appropriate labels on goods, containers and packing) of any hazardous material which is an ingredient or a party of any of the goods, together with such special handling instructions as may be necessary to advise the City of how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in respect of such goods. Vendor and any subcontracted party associated with Vendor for goods and services provided by this agreement shall maintain at the job site all Material Safety Data Sheets (MSDS) for all products used on the job site. Such MSDS sheets shall be available for inspection upon request.

6. **FORCE MAJEURE:** Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, or court injunction; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) days after discovery of the cause of such delay. During the period of such delay or failure to perform by Vendor, Contracting Party, at its option, may purchase goods or services from other sources and reduce its schedules to Vendor by such quantities, without liability to Vendor, or have Vendor provide the goods from other sources in quantities and at times requested by Contracting Party at the price set forth in this Contract.

7. **LIENS:** Vendor shall not cause or permit the filing of any lien related to its services. In the event any such lien is filed and Vendor fails to remove such lien of record within thirty (30) days after the filing thereof, by payment or bonding, Contracting Party shall have the right to pay such lien or obtain such bond, all at Vendor's sole cost and expense. Vendor shall indemnify and

hold harmless Contracting Party from and against any and all liability, loss, judgments, costs and expenses, including reasonable attorneys' fees, incurred by Contracting Party in connection with any such lien.

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

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

10. **REQUIRED INSURANCE AND INDEMNIFICATION:**

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

Worker's Compensation	Required.
Employer's Liability	\$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limits.
Commercial General Liability (CG0001) , including Personal Injury, Premises Operations, including explosion, collapse or underground property damage hazards, including costs to repair or replace damaged work. (The Commercial General Liability Insurance may be	\$1,000,000 Per Occurrence and \$2,000,000 General Aggregate.

arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy).	
Commercial Automobile Liability , including Owned, Non-Owned and Hired Car coverages.	\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage.

- (b) The insurance shall be procured from companies authorized to do business in the state of Indiana. Except as otherwise expressly set forth herein, coverage shall be on an occurrence basis. All insurance procured or maintained by Vendor on which the Contracting Party is an additional insured, shall be primary. Any insurance maintained by Contracting Party shall be considered excess and non-contributory. Vendor shall permit Contracting Party to examine the actual policies upon request at the Vendor's offices where the policy is stored.
- (c) A Certificate of Insurance acceptable to Contracting Party shall be submitted to Contracting Party prior to commencement of any work hereunder, including, without limitation, a certificate issued by the Industrial Board or other appropriate agency in the State of Indiana showing that the Worker's Compensation and other employee benefit insurance is in full force and effect. Each insurer shall possess an A.M. Best's rating of no less than A-VIII as of inception of this Contract. The Certificate of Insurance shall contain a provision that coverage shall not be canceled unless at least thirty (30) days' prior written notice has been given to Contracting Party. The Certificate of Insurance shall name the Contracting Party as an additional insured with respect to all but the Worker's Compensation, Employee Liability, and Professional Liability coverage. The additional insured endorsement shall state that coverage is afforded the additional insured as primary and non-contributory. In addition, each Certificate of Insurance shall provide that the Certificate Holder is the Contracting Party, c/o City of Westfield. Vendor shall not have earned any fees nor be due any payments hereunder unless and until such Certificate of Insurance is received by Contracting Party.
- (d) Vendor shall indemnify and hold harmless Contracting Party, and its employees from and against any and all liability, claim, damage, loss or expense (including, without limitation, court costs and reasonable attorneys' fees) to the extent caused by any negligence of the Vendor, its employees or sub Vendors, in the performance of the services under this contract, but not to the extent arising directly out of the negligence of Contracting Party. This subparagraph (d) shall survive the expiration or termination of this Contract.
- (e) Without limiting anything set forth in this paragraph 10, the following additional insurance coverage limits are required for the professional engineering services specifically required by the scope of the contracted goods and services: \$1,000,000 per claim and \$1,000,000 general aggregate professional liability, with retroactive coverage to the earlier of date of execution of Contract and

commencement of any work and coverage for a minimum period of two (2) years after professional services completion.

- (f) If Vendor fails to maintain the insurance as set forth herein, Contracting Party may terminate this Contract immediately or, at the option of Contracting Party, Contracting Party may obtain insurance on the Vendor's behalf and offset the cost of insurance related to the contracted services against any payments due Vendor.

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

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

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

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

15. **GOVERNMENT COMPLIANCE**: Vendor agrees to comply with all present federal, state and local laws, orders, rules, regulations, codes and ordinances which may be applicable to Vendor's performance of its obligations under this Contract, and all provisions required thereby to be included herein, are hereby incorporated by reference. Vendor agrees to indemnify and hold harmless Contracting Party from and against any loss, damage, liability, cost or

expense (including, without limitation, attorneys' fees) resulting from any violation of such laws, orders, rules, regulations, codes or ordinances by Vendor.

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

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

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

19. **GOVERNING LAW:** This Contract is to be construed in accordance with and governed by the laws of the State of Indiana that includes, but not limited to Indiana Code 5-16-6, 5-16-8, 5-16-9, 5-16-13, and 5-16-14.

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

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

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

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

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

25. **IRCA COMPLIANCE:** The Immigration Reform and Compliance Act of 1986 (IRCA) prohibits the employment of unauthorized aliens and requires all employers to: (1) not knowingly hire or continue to employ any person not authorized to work in the United States, (2) verify the employment eligibility of every new employee (whether the employee is a U.S. citizen or an alien), and (3) not engage in discrimination against qualified workers. The Vendor shall comply with IRCA and all other applicable federal, state and local immigration laws, regulations, Executive Orders (“other immigration laws”) and by executing this Agreement, warrants that it is in full compliance with all applicable immigration laws including, but not limited to, IRCA and has used E-Verify to pre-screen job applicants and re-verify current employees. Vendor shall not be required to verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program if the E-Verify program no longer exists. Vendor shall immediately remove any employee known to be an unauthorized alien. Failure to comply with IRCA or other immigration laws shall constitute a material breach of this Agreement. The Vendor shall indemnify the City of Westfield against all damages, losses and expenses, including attorneys’ fees, incurred or sustained by the City of Westfield as a result of the Vendor’s failure to comply with IRCA or other immigration law. Vendor shall include this provision in any subcontracts or subordinate agreements it enters into with respect to this Agreement. Vendor shall also sign and have notarized the Affidavit of Employee Status (Attachment 2).

26. **IRAN CERTIFICATION:** Vendor hereby certifies, in accordance with I.C. 5-22-16.5-1 et seq., to have no engagement in investment activities in Iran as defined in the above cited statute.

27. **E-VERIFY:** Pursuant to Ind. Code § 22-5-1.7-11, VENDOR, by entering into the Contract with CITY, is required to enroll in and verify the work eligibility status of all of its newly hired employees through the E-Verify program. VENDOR is not required to verify the work eligibility status of all of its newly hired employees through the E-Verify program if the E-Verify program no longer exists. VENDOR hereby states that it does not knowingly employ an

unauthorized alien. VENDOR further affirms that, prior to entering into the Contract with CITY, it will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

28. **NON-DISCRIMINATION:** VENDOR agrees that it, and its subcontractors, will not discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to the employee's hire, tenure, terms, conditions or privileges or employment, or any matter directly or indirectly related to employment, because of the employee's race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Contract.

EXECUTED this _____ day of _____, 2015.

Contracting Party:

City of Westfield
2728 East 171st Street
Westfield, Indiana 46074

Vendor:

Midwest Paving, LLC
11827 Greenfield Ave
Noblesville, IN, 46060

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

EXHIBIT A

Project Rules

In an effort to have COMPLETE CUSTOMER SATISFACTION, we have prepared the following Project Rules. Your personnel and all subcontracted parties shall comply with these rules without exception. Failure to follow Project Rules may be grounds for project dismissal and potentially contract termination. Following these rules will help us collectively acquire COMPLETE CUSTOMER SATISFACTION.

SITE ACCESS

- ☐ General: Vendor/Contractor ("Contractor") shall have limited use of Project site for construction operations as indicated on Drawings by the Contract limits.
- ☐ Use of Site: Limit use of Project site to areas within the Contract limits indicated. Do not disturb portions of Project site beyond areas in which the Work is indicated.
- ☐ Driveways, Walkways and Entrances: Keep driveways, loading areas, and entrances serving premises clear and available to City, City's employees, and emergency vehicles at all times. Do not use these areas for parking or storage of materials.
- ☐ Schedule deliveries to minimize use of driveways and entrances by construction operations and reduce space and time requirements for storage of materials and equipment on-site.
- ☐ Restricted Site Access: The only egress point to and from the Project area shall be as dictated by the City or authorized City's representative. Coordinate work activities in advance.
- ☐ All construction personnel will be required to have photo identification with them at all times on the project. All construction personnel shall also carry Vendor identification with them or wear hardhats with company logo and the employee's name visible to determine their site permissions.
- ☐ Noise, Vibration, and Odors: Coordinate operations that may result in high levels of noise, vibration, odors, or other disruption to occupied areas of the Project, as applicable.
- ☐ Notify City(s) not less than five days in advance of proposed disruptive operations. Obtain City(s) written permission before proceeding with disruptive operations.
- ☐ Perform work with least possible disturbance to occupants of existing facilities.
- ☐ Contractor shall seek approval from City or City representative before beginning any work outside of the approved project limits or area.
- ☐ Prior to commencing the Work, the Contractor shall tour the Project site to **examine and record** any existing damage to adjacent site or building improvements to serve as a basis for determination of subsequent damage due to Contractor's operations. Contractor shall submit such report to the City prior to commencing work.

LIMITED CITY OCUPANCY (If Applicable)

- ☐ The City and its partners intend to occupy parts of the Project immediately upon completion and when safe access is available. Your work must be coordinated in advance to limit the exposure of construction activities to occupants of the Project.
- ☐ Before limited City occupancy of any building, the mechanical and electrical systems shall be fully operational, and required tests and inspections shall be successfully completed. On occupancy, City will operate and maintain mechanical and electrical systems serving occupied portions of Work.

- ❑ On occupancy, City will assume responsibility for maintenance and custodial service for occupied portions of Work.

MATERIAL MANAGEMENT PLAN

- ❑ Contractors shall prepare a Site Utilization Plan to be submitted to the City for review and approval.
- ❑ The site use plan shall include but not be limited to the following items:
 - Material storage areas (identify material and ownership).
 - Equipment compounds.
 - Temporary utilities required
 - Trash and waste containers required for environmental disposal of waste.
 - Any other specific items requiring coordination with the City, Project partners or other trade contractors.
- ❑ Safe and protected storage of materials and equipment of the Contractor is the responsibility of the Contractor. All materials stored by the Contractor on the site are to be protected in a manner to not jeopardize their warranty or quality of material finish.

CLEAN UP

- ❑ During the progress of the Work, the Contractor shall keep the site and other areas free from accumulation of waste materials, rubbish and other debris, as provided in the contract. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations in the most environmentally sensitive manner possible. Burial of waste materials, rubbish, and other debris on the site is strictly prohibited.
- ❑ Contractor shall provide daily cleaning of their work areas including sweeping and trash/debris/rubbish removal. Contractor shall be responsible for moving trash to the designated refuse areas for disposal by others.
- ❑ At no time shall a contractor block an egress path without the expressed consent of the City or authorized City representative.
- ❑ At the completion of the Work, the Contractor shall remove from the site all tools, appliances, construction equipment, machinery, trailers, and temporary structures/utilities that they erected as well as surplus materials, rubbish and trash.

WORK HOURS

- ❑ It is the expectation of City that ALL Contractors and subcontractors limit work to normal business working hours, Monday through Friday, unless otherwise required or approved in advance by City.
- ❑ The Work of this Project shall be accomplished during normal working hours and days. Contractors planning to work on weekends or observed holidays must schedule with the authorized Owner agent, no later than 48 hours prior to the anticipated work day.
- ❑ Normal working hours and days are defined as:
 - Mondays through Fridays, 7:00 a.m. to 6:00 p.m. (typical)
 - Weekends (Saturday and Sunday), as scheduled and approved in advance by the City.
 - No work shall be performed on days of normal observance of the following holidays:
 - New Year's Day
 - Memorial Day
 - Independence Day
 - Labor Day
 - Thanksgiving Day and the Friday following
 - Christmas Day

- ❑ Requests for work on non-normal work days or outside the defined normal working hours of this project, does not constitute an approval of said request and may need to be rescheduled to provide adequate security and supervision as required by Contract.
- ❑ No use of power actuated tools or hammer drills is permitted at an occupied City building or adjacent to private residence and/or business between the hours of 7:00 AM and 5:00 PM, or as directed by City officials

PUBLIC ACCESS AND SAFETY

- ❑ Contractor is responsible to provide all safety measures required and implied as necessary to protect all persons on the Project site and all persons and public adjacent to their construction zones. It is not the responsibility of the City to specify measures to be taken.
- ❑ Comply with applicable safety and security regulations of all authorities having jurisdiction. These regulations set forth minimum requirements. Contractor shall not reduce his normal safety provisions or ignore safety regulations required by other authorities having jurisdiction where other requirements are more stringent.
- ❑ The Contractor shall provide, for coordination, and information, all material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations. Contractors must provide updated and current information as it becomes available.
- ❑ In the case of an emergency affecting the safety or protection of persons or the Work or property at the Site or adjacent areas, the Contractor shall act to prevent threat of damage, injury, or loss. The Contractor shall immediately notify the City. Within 24 hours the Contractor shall provide written notification and documentation of the event, indicating if he believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof.
- ❑ The Contractor shall designate a qualified, experienced safety representative at the Site.

SITE DECORUM

- ❑ Contractor and subcontracted employees shall conduct themselves in a professional manner in all areas of the City.
- ❑ Refrain from contact with the general public. When this cannot be avoided, Contractor's and the subcontractor's employees are to be courteous at all times.
- ❑ Proper work attire shall be required at all times on the Project. In addition to the required personal protective devices and attire required to perform work safely, all site workers are to wear clothing appropriate for the work that they are performing. Clothing with inappropriate language or pictures are strictly forbidden.
- ❑ Contractor shall control the conduct of its employees so as to prevent unwanted interaction initiated by Contractor's employees with City/Project personnel, public, other contractors and their employees, or other individuals, in the vicinity of the project site. In the event that any Contractor employee initiates such unwanted interaction, or utilizes profanity, Contractor shall, either upon request of the City or on its own initiative, replace said employee with another of equivalent technical skill, at no additional cost to the City.
- ❑ No radios, other than two-way communication type, will be allowed on the Project site.
- ❑ Smoking or the use of any tobacco products (including chew and snuff) is **NOT ALLOWED** on the Project or any City-owned properties.
- ❑ Water is allowed in Project buildings however ALL other beverages and food are only permitted in designated break areas.
- ❑ Use of any controlled substances on City's property is not permitted.

- ❑ No alcoholic beverages, illegal drugs, controlled substances or firearms of any kind are permitted on the construction site. Any persons found on the site with such in their possession will be escorted from the premises and not permitted to return.
- ❑ Fighting and horseplay on the project site are absolutely forbidden. Participants in fights will be escorted from the premises and not permitted to return.

PARKING

- ❑ Project parking is allowed at designated areas of the Project.
- ❑ Personal vehicles are to remain in provided parking areas.
- ❑ Only approved company work vehicles are allowed on the project site. This effort is dictated to prevent damage to site and other improvements and promote a safe project by minimizing project congestion.
- ❑ For Construction LOADING AND UNLOADING ONLY:
 - Contractors shall be allowed to deliver daily equipment and materials to the Project construction areas so as long that they minimize the impact and risk of damage to existing site and project improvements.
 - Delivery of materials, equipment and products associated with the completion of your scope of work must be coordinated in advance.

UTILITY COORDINATION

- ❑ All excavations shall be completed in accordance with City and OSHA standards. Due to the amount of public and private utilities in and around Grand Park, all excavations must utilize a hydro-vac when area of disruption is appropriately sized.
- ❑ Limit construction operations to those methods and procedures which will not adversely and unduly affect the working environment of City's occupied spaces, including noise, dust, odors, air pollution, ambient discomfort, poor lighting, hazards and other undesirable effects and conditions.
- ❑ Notify the City one week in advance of construction activities which will impact the occupancy and use of adjacent areas.
- ❑ Do not interrupt power, lighting, plumbing, telephone and HVAC services to occupied areas. Interruptions must be scheduled a minimum of two days in advance, receive City's approval, and be made known to users of the area a minimum of 24 hours in advance of the actual interruption.
- ❑ Contractor to connect to temporary utilities as designated by the contract documents or by the City. The Contractor will be responsible for installing and removing all temporary utilities, unless directed otherwise.
- ❑ Contractor shall be responsible for site drainage and maintaining erosion control as required.

USE OF ROADWAYS AND PATHS

- ❑ Comply with limitations on use of public streets and with other requirements of authorities having jurisdiction.
- ❑ Use of the City Park paths or perimeter trails, including those at Grand Park, is discouraged but we understand that in many cases cannot be avoided. Please coordinate in advance any vehicle or equipment size and weight with the City prior to mobilizing on site.
- ❑ Where materials are transported in the performance of this Work, do not load vehicles beyond the capacity recommended by the manufacturer of the vehicles or prescribed by any applicable state or local law or regulation.

- ❑ Provide protection against damage whenever it is necessary to cross existing paths, sidewalks, curbs, and gutters on the City project. Repair and make good at the expense of Contractor all damages thereto, including damage to existing utilities and paving, arising from the operations under the Contract.
- ❑ Access onto any athletic field at Sports Campus at Grand Park or onto any City owned property with irrigation installed is strongly discouraged. Contractor shall protect all playing surfaces and site utilities that could be compromised by the construction activities of the Contractor.
- ❑ Truck staging is not allowed on any City street surrounding the Project.
- ❑ Promptly clean all public right-of-ways should dirt or other debris from site be deposited on roads and streets by the Contractor or vehicles used to deliver or conduct the scope of this agreement.
- ❑ It is the responsibility of ALL Contractors to provide flag person(s) at pedestrian crossings of construction equipment at right of ways or pedestrian paths one hundred percent of the time such equipment is operating.

TRAFFIC CONTROL

- ❑ Provide temporary traffic control barriers to ensure safety of all persons and property.
- ❑ Contractor shall provide all flag person(s) necessary to maintain vehicular and pedestrian traffic affected by deliveries and work performed under their scope. All flag person(s) shall be certified through the union hall or other body having the authority to provide this training.
- ❑ Contractor shall provide traffic control for vehicular traffic leaving and entering the site.

CRANES & HOISTING

- ❑ All hoisting and cranes required to perform the scope of your work is the responsibility of the Contractor to install, provide and operate in accordance with all safety regulations of the authorities having jurisdiction. This includes all temporary hoisting required by job conditions for the installation of materials and equipment.

TEMPORARY SHORING AND BRACING

- ❑ Provide temporary shoring and bracing as required for execution of the Work. ALL shoring and bracing shall be engineered by the Contractor and comply with safety regulations of authorities having jurisdiction.

TEMPORARY BARRICADES

- ❑ Provide temporary barricades as necessary for the execution of the work. Maintain barricades in a clean and neat condition until no longer required and removal is approved or requested.
- ❑ Provide temporary barriers or partitions as required to protect any project workers or the general public from injury due to work of this project, and to protect adjacent areas of the project from spread of dust or dirt.
- ❑ When Work involves modification to an existing egress corridor within an existing building, the Contractor shall provide temporary barricades as necessary, constructed in a manner that maintains the fire resistive integrity of the affected corridor(s). Construction and placement of the barricades shall be approved by the City project representative and the authority having jurisdiction.

CONSTRUCTION SIGNAGE

- ❑ Advertising Signage: The use of Contractor/subcontractor advertising signage is strictly prohibited.
- ❑ No ground-mounted signage is allowed on the project site without the expressed written consent of the City.

- ❑ Signage is authorized on construction trailers and corporate-owned equipment and vehicles. Such signage cannot exceed 6' by 4' (24 square feet) in size. Trailers in violation shall be removed from the site by the Contractor and the Contractor shall have the site storage privileges revoked
- ❑ Signage to be fabricated from new materials and constructed from materials able to withstand construction use/abuse and exposure based upon its proposed installation location for its intended use.
- ❑ Project Specific Signage:
 - ALL signage shall be as approved by the City and the authority having jurisdiction.
 - All employee personnel informational signage shall be bilingual (English and Spanish) as requested by the City.
 - All project specific signage shall include the City logo and project name incorporated into the design of each sign for the project.

TEMPORARY FACILITIES

- ❑ Erect and maintain, for duration of operations and in locations as approved, suitable temporary office facilities as required for Contractor's administration of the Work. Provide necessary sheds and facilities for the storage of tools, materials, and equipment employed in the performance of the Work. Temporary buildings shall be watertight with raised solid floors, solid sheathed and composition roofs, and adequately glazed and screened windows for light and ventilation. Temporary buildings shall be painted colors as approved. Contractor shall furnish daily janitorial service in the trailer. Provide stairs and handicapped ramp per code.

RUBBER TIRED EQUIPMENT

- ❑ Where carts, hand trucks, wheelbarrows, and similar wheeled conveyances are used in interior spaces or on finished surfaces (including synthetic turf fields) on or in any portions of any structure, equipment shall be equipped with pneumatic tires or other tire approved by the City.

REMOVAL OF TEMPORARY FACILITIES

- ❑ Temporary facilities, barricades, utilities and other construction of temporary nature shall be removed from the Project site as soon as the progress of the work will permit in the opinion of the City; and the portions of the Project site and building occupied by same shall be reconditioned and restored to original condition.
- ❑ Legally dispose of all debris resulting from removal and reconditioning operations.

VIOLATIONS

- ❑ Any violator of site restrictions will be subject to removal from the site, with recourse for schedule or cost impact.

GENERAL SAFETY PRECAUTIONS

- ❑ Safe working practices shall be observed at **all times**. The safety of your employees, the buildings and the work site is considered to be paramount. All work shall be conducted and completed by the guidelines set forth by the Federal, Local and State Authorities.
- ❑ The City of Westfield is a "Safe City". Any worker or person on a jobsite shall have 100% protection as defined by OSHA for the hazards that they may be exposed. This includes but is not limited to 100% eye protection, hard hat and hi-visibility vest at all times when on-site.
- ❑ Proper gloves are to be used to limit abrasions and cuts. Hearing protection shall be accessible to employees and used whenever exposed to noises that require such protective devices.

- ❑ Fall protection shall be worn, observed or employed when working at a height greater than 6' unless approved in writing by the City and OSHA/IOSHA. This fall protection directive is to be used at all times and includes activities utilizing articulating boom lifts, scissors lifts, ladders, scaffolding and any other activity where workers are exposed to a fall and shall compile with the provisions of OSHA and IOSHA.
- ❑ Any and all "Hot Work" shall have an appropriate fire extinguisher immediately accessible and be pre-approved by the City officials.
- ❑ All electrical service shall be properly protected with a GFCI, including the use of extension cords on permanent power.
- ❑ Eye protection shall be worn at all times when cutting, grinding, chipping, drilling or using power actuated tools.
- ❑ Safety manuals and MSDS sheets must be turned in to the assigned City representative prior to commencing work on site. These manuals are still to be maintained by the Contractor on site for use and reference by any authority having jurisdiction.
- ❑ The City of Westfield is a "Safe City". In the event of an accident or near-miss, the employees involved may be required to perform a drug and alcohol screening prior to being able to continue working on site.

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

EXHIBIT B

Attachment 1

Each addenda shall be signed to prove receipt. If no addendums, the rest of Attachment 1 to be left intentionally blank.

Attachment 2

The Affidavit of Employee Status shall be signed and notarized.

AFFIDAVIT OF EMPLOYEE STATUS

Re: Project – Public Works Parking Lot Resurfacing Project

WHEREAS, the City of Westfield, Hamilton County, Indiana, hereinafter referred to as the “City” is in the process of construction work on the Public Works Parking Lot Resurfacing project, hereinafter referred to as the “Project”;

WHEREAS, Midwest Paving LLC, hereinafter referred to as the “Vendor”, is the general contractor of the above reference project; and

WHEREAS, it is necessary for the City to require the Vendor to enroll in and verify the work eligibility status of all newly hired employees through the E-Verify program per Indiana Code.

NOW THEREFORE, the Vendor agrees to have enrolled in and verified the work eligibility status of all newly hired employees through the E-Verify program and does not knowingly employ illegal aliens. The Vendor clearly understands the regulations and penalties stated in the Indiana Code should conflicts arise.

Signature:

Signature:

Printed Name:

Printed Name:

STATE OF INDIANA:

SS:

COUNTY OF _____ :

Before me the undersigned, a Notary Public in and for said State and County, personally appeared of Midwest Paving, the general contractor and acknowledge the execution of the foregoing Affidavit of Employee Status to be a free and voluntary act and deed and for the purposes stated therein, being duly sworn, stated that any representations contained therein are true.

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

Signature

Printed Name

My Commission expires _____

I am a resident of _____ County.

CITY OF WESTFIELD BY:

, Director of Public Works

STATE OF INDIANA:

SS:

COUNTY OF HAMILTON:

Before me the undersigned, a Notary Public in and for said State and County, personally appeared _____, Director of Public Works, and acknowledges the execution of the foregoing Affidavit of Employee Status to be a free and voluntary act and deed and for the purposes stated therein.

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

Signature

Printed Name

My Commission expires _____

I am a resident of _____ County.

This instrument prepared by: Manny Herceg, Attorney, One Indiana Square, Suite 3500, Indianapolis, IN 46204-2023

Attachment 3

The Invoice Cover Sheet shall be attached and filled out for all invoices submitted to the City of Westfield.



Invoice Date:	
Invoice or App Number:	

Westfield Department of Public Works
 2706 East 171st Street
 Westfield, IN 46074
AP@westfield.in.gov

Westfield Project Name:	
Westfield Project Number:	
Westfield Project Manager:	
Westfield PO Number:	
Vendor Name:	

1. Original Contract Amount	
2. Change Orders/Amendments	
3. Total Contract Amount (Line 1 ± 2)	
4. Total Earned To Date	
5. Retainage (If Applicable)	
6. Total Earned Less Retainage (Line 4 less 5)	
7. Less Previous Payments (Line 6 from prior Invoice)	
8. Total Amount Payable This Invoice (Line 6 less 7)	
9. Balance to Finish, Including Retainage (Line 3 less 6)	

Please email this cover letter, along with your invoice to AP@westfield.in.gov with attention to the Westfield Project Manager associated with this project in order to expedite payment. If you need more information regarding the Westfield Project Name, Number, and PO Number, please contact the Westfield Project Manager, thank you!

ROAD IMPACT FEE INSTALLMENT AGREEMENT

Cross Referenced to Instrument No. 2021039145

Chick-fil-A, Inc. (the “Applicant”) makes the following commitments (the “Commitments”) to the City of Westfield, Hamilton County, Indiana (“City”) regarding the installment payments for the Road Impact Fees properly assessed on the following described real estate (the “Real Estate”) located in Hamilton County, Indiana:

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

Address: 763 E Tournament Trail, Westfield, IN 46074

Parcel Nos: 08-05-36-00-00-042.000

Section 2. **Improvement Location Permit Nos.:**
21-C-002-238 (the “ILP”).

Builder/Contractor: Chipman Design Architecture

Section 3. **Statement of Terms:**

- A. As part of the development of the Real Estate, road impact fees are required to be paid to the City by the Applicant. In accordance with City Ordinance 17-43, the City assessed a road impact fee of **\$479,235** on June 9, 2021, attached hereto as Exhibit B (21-RIFA-07) (the “Assessed Road Impact Fee”), as part of the Applicant’s filed ILP for the Real Estate.
- B. Pursuant to I.C. 36-7-4-1324 the City agrees to installment payments of the Assessed Road Impact Fees as set forth herein.
- C. Prior to the issuance of the ILP, the Applicant agrees to tender \$5,000.00 (Five-Thousand Dollars) or five percent (5%), whichever is greater.
- D. Pursuant to I.C. 36-7-4-1324 the City will charge three percent (3%) interest on an annual basis, only on the portion of the impact fee that is outstanding.
- E. Pursuant to I.C. 36-7-4-1324 the City may charge a ten percent (10%) penalty on any installment which is not paid by the payable due date set forth in Section F. This penalty will be assessed only to the installment amount which is overdue and is a one-time charge for that installment. Interest in the amount described in Section D may also be charged on the penalty amount in accordance with I.C. 36-7-4-1324.
- F. The Applicant agrees to make installment payments to the City for the remaining Assessed Road Impact Fee on or before the dates set forth below. The remaining amounts shall be due in equal payments beginning August 23, 2022, and every year thereafter, in accordance with the following:

Issuance of ILP:	\$23,961.75
August 23, 2022:	\$99,411.00
August 23, 2023:	\$99,411.00
August 23, 2024:	\$99,411.00
August 23, 2025:	\$99,411.00
August 23, 2026:	\$99,411.00
Total Road Impact Fee:	\$521,016.75

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

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

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

Section 5. **Effective Date:**

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

Section 6. **Recording:**

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

Section 7. **Enforcement:**

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

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

Holladay Properties (the “Applicant”)

By: _____

Printed Name:

Title: _____

Date: _____

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

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

Subscribed and Sworn before me this _____ day of _____, 2021.

Printed Name of Notary Public _____

My Commission Expires _____

Chick-fil-A, Inc. (the “Applicant”)

By: _____

Printed Name:

Title: _____

Date: _____

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

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

Subscribed and Sworn before me this _____ day of _____, 2021.

Printed Name of Notary Public _____

My Commission Expires _____

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law: Johnathon Nail, City Engineer.

Prepared by: Johnathon Nail, City Engineer
City of Westfield
2728 East 171st Street,
Westfield, IN 46074
(317) 430-6750

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

Jim Ake, Member

J. Andrew Cook, Member

Jack Russell, Member

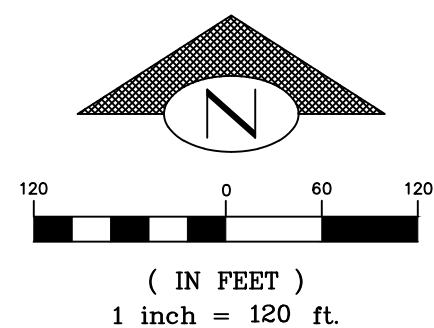
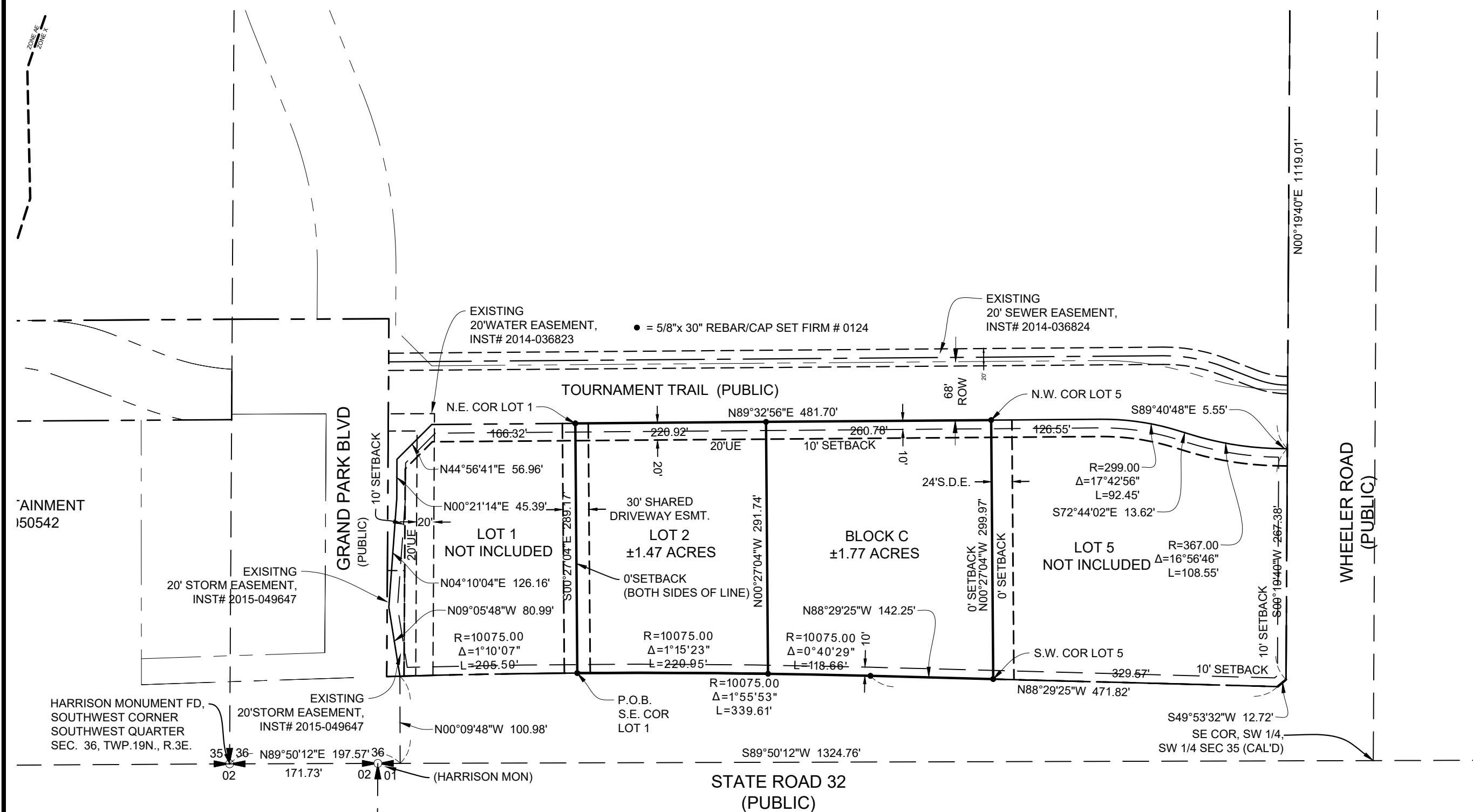
ATTEST:

Pat Leuteritz, Office Administrator

Exhibit A
Real Estate

WHEELER LANDING
SECTION TWO, BLOCK "C" LOT 2
SECONDARY PLAT
PART OF THE NW 1/4, SW 1/4 OF SECTION 36 T19N, R3E
WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA

THIS INSTRUMENT WAS PREPARED BY:
TERRY D. WRIGHT PROFESSIONAL LAND SURVEYOR
INDIANA #9700013
HAMILTON DESIGNS, LLC
11988 FISHERS CROSSING DRIVE, SUITE 154,
FISHERS, INDIANA 46038
TELEPHONE (317) 570-8800
contact@hamilton-designs.com



LEGEND

- | | |
|------|-----------------------------|
| ROW | RIGHT OF WAY |
| D&UE | DRAINAGE & UTILITY EASEMENT |
| ● | SET REBAR/CAP "FIRM 0124" |
| ■ | SET CONCRETE MONUMENT |
| BSL | BUILDING SETBACK LINE |

WHEELER LANDING
SECTION TWO, BLOCK "C" LOT 2
SECONDARY PLAT
PART OF THE NW 1/4, SW 1/4 OF SECTION 36 T19N, R3E
WASHINGTON TOWNSHIP, HAMILTON COUNTY, INDIANA

THIS INSTRUMENT WAS PREPARED BY:
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HAMILTON DESIGNS, LLC
11988 FISHERS CROSSING DRIVE, SUITE 154,
FISHERS, INDIANA 46038
TELEPHONE (317) 570-8800
contact@hamilton-designs.com

OWNER:
WHEELER FARMS LLC
18206 KINSEY AVE
WESTFIELD, IN 46074

COMMISSION CERTIFICATE:

UNDER AUTHORITY PROVIDED BY I.C. 36-7, ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF INDIANA, AND ALL ACTS AMENDATORY THERETO, AND AN ORDINANCE ADOPTED BY THE CITY COUNCIL OF THE CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA, THIS PLAT WAS GIVEN APPROVAL BY THE WESTFIELD-WASHINGTON TOWNSHIP ADVISORY PLAN COMMISSION, AS FOLLOWS:

APPROVED BY THE DIRECTOR OF THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT OF THE CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA

PURSAANT TO THE WESTFIELD-WASHINGTON TOWNSHIP UNIFIED DEVELOPMENT ORDINANCE, ON THE
____ DAY OF _____, ____.

WESTFIELD-WASHINGTON TOWNSHIP PLAN COMMISSION

BY: _____

KEVIN M. TODD DIRECTOR ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

BOARD OF PUBLIC WORKS AND SAFETY CERTIFICATE

THIS PLAT AND THE ACCEPTANCE OF ANY PUBLIC RIGHT-OF-WAY DEDICATED HEREIN IS HEREBY APPROVED ON THE ____ DAY OF _____ BY THE DIRECTOR OF THE PUBLIC WORKS DEPARTMENT OF THE CITY OF WESTFIELD, INDIANA. ON BEHALF OF THE BOARD OF PUBLIC WORKS AND SAFETY, PURSUANT TO RESOLUTION 15-120 ENACTED BY THE BOARD OF PUBLIC WORKS AND SAFETY ON AUGUST 26, 2015 AND ARTICLE 7.4(B) OF THE UNIFIED DEVELOPMENT ORDINANCE.

JEREMY LOLLAR, DIRECTOR
PUBLIC WORKS DEPARTMENT

PROPOSED LAND DESCRIPTION

A PART OF WHEELER LANDING SECTION TWO, BLOCK "C" AS SHOWN ON A PLAT RECORDED AS INSTRUMENT # 2021018250 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA. AS SHOWN ON A SURVEY PREPARED BY TERRY D. WRIGHT, PS #970013 OF HAMILTON DESIGNS FOR PROJECT # 2020-0038 ON FEB 28, 2020, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT ONE ON SAID PLAT; THENCE NORTH 00 DEGREES 27 MINUTES 04 SECONDS WEST (PLAT BEARING) ALONG THE EAST LINE OF SAID LOT 289.17 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE NORTH 89 DEGREES 32 MINUTES 56 SECONDS EAST 481.71 FEET TO THE NORTHWEST CORNER OF LOT 5; THENCE SOUTH 00 DEGREES 27 MINUTES 04 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 299.97 FEET TO SAID NORTHERLY RIGHT OF WAY; THENCE NORTH 88 DEGREES 29 MINUTES 25 SECONDS WEST LONG SAID RIGHT OF WAY LINE 142.25 FEET TO THE BEGINNING OF A NON TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 10075.00 FEET AND A CHORD BEARING NORTH 89 DEGREES 27 MINUTES 03 SECONDS WEST 339.58 FEET; THENCE ALONG SAID RIGHT OF WAY CURVE AN ARC DISTANCE OF 339.61 FEET TO THE POINT OF BEGINNING; CONTAINING 3.24 ACRES, MORE OR LESS.

REGISTERED LAND SURVEYOR'S CERTIFICATE

I, TERRY D. WRIGHT, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, LICENSED IN COMPLIANCE WITH THE LAWS OF THE STATE OF INDIANA:

THIS PLAT IS BASED ON A SUBDIVISION PLAT PREPARED BY HAMILTON DESIGNS RECORDED AS INSTRUMENT NO. 2021018250 IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA. THERE HAS BEEN NO CHANGE FROM MATTERS OF SURVEY REVEALED BY THE CROSS-REFERENCED SURVEY, OR ANY PRIOR SUBDIVISION PLATS CONTAINED THEREIN, ON ANY LINES THAT ARE COMMON WITH THIS SUBDIVISION AND THAT ALL MONUMENTS SHOWN HEREON ACTUALLY EXIST OR BOND HAS BEEN POSTED TO COVER THE LATER INSTALLATION OF THESE MONUMENTS AND THAT ALL OTHER REQUIREMENTS SPECIFIED HEREIN, DONE BY ME, HAVE BEEN MET.

APRIL 13, 2021

TERRY D. WRIGHT, PS
INDIANA REGISTRATION NO 9700013



DEED OF DEDICATION

WE THE UNDERSIGNED OWNERS OF THE REAL ESTATE SHOWN AND DESCRIBED HEREIN, DO HEREBY CERTIFY THAT WE HAVE LAID OFF, PLATTED AND SUBDIVIDED, AND DO HEREBY LAY OFF, PLAT AND SUBDIVIDE, SAID REAL ESTATE IN ACCORDANCE WITH THE WITHIN PLAT.

THIS SUBDIVISION CONSISTS OF 1 LOT AND 1 BLOCK AND SHALL BE KNOWN AND DESIGNATED AS WHEELER LANDING SECTION TWO, BLOCK "C" LOT 2 ALL RIGHTS-OF-WAY SHOWN AND NOT HERETOFORE DEDICATED ARE HEREBY DEDICATED TO THE PUBLIC.

FRONT AND SIDE YARD BUILDING SETBACK LINES ARE HEREBY ESTABLISHED AS SHOWN ON THIS PLAT, BETWEEN WHICH LINES AND THE PROPERTY LINES OF THE STREET, THERE SHALL BE ERRECTED OR MAINTAINED NO BUILDING OR STRUCTURE.

THE STRIPS OF GROUND SHOWN ON THE PLAT AND MARKED "DRAINAGE EASEMENT", "DRAINAGE AND UTILITY EASEMENT", ARE RESERVED FOR THE USE OF UTILITIES FOR THE INSTALLATION OF WATER MAINS, POLES, DUCTS, LINES AND WIRES, AND DRAINAGE FACILITIES, SAID STRIPS ARE ALSO RESERVED FOR THE CITY OF WESTFIELD OR SUCCESSORS IN THE CITY'S INTEREST FOR THE INSTALLATION AND MAINTENANCE OF SANITARY SEWER AND WATER MAINS AND APPURTENANCES SUBJECT AT ALL TIMES TO PROPER AUTHORITES AND TO THE EASEMENT HEREIN RESERVED. THE STRIPS OF GROUND SHOWN ON THE PLAT AND MARKED "DRAINAGE EASEMENT", "DRAINAGE AND UTILITY EASEMENT" AND "REGULATED DRAIN EASEMENT" ARE ALSO GRANTED TO AND ENFORCEABLE BY THE LOT OWNERS AND GOVERNMENTAL ENTITIES INCLUDING THE HAMILTON COUNTY DRAINAGE BOARD. NO PERMANENT OR OTHER STRUCTURES ARE TO BE ERRECTED OR MAINTAINED UPON SAID STRIPS OF LAND; BUT OWNERS OF LOTS IN THIS SUBDIVISION SHALL TAKE THEIR TITLES SUBJECT TO THE RIGHTS OF UTILITIES AND THE RIGHTS OF THE OWNERS OF OTHER LOTS IN THIS SUBDIVISION. "30' SHARED DRIVEWAY EASEMENT" IS RESERVED FOR USE OF LOT OWNERS WITHIN WHEELER LANDING, SECTION TWO, WHO SHALL BEAR RESPONSIBILITY FOR MAINTENANCE, REPAIR, AND REPLACEMENT.

THE RIGHT TO ENFORCE THESE PROVISIONS BY INJUNCTION, TOGETHER WITH THE RIGHT TO CAUSE THE REMOVAL, BY DUE PROCESS OF LAW, OF ANY STRUCTURE OR PART THEREOF ERRECTED, OR MAINTAINED IN VIOLATION HEREOF, IS HEREBY DEDICATED TO THE PUBLIC, AND RESERVED TO THE OWNERS OF THE LOTS IN THIS SUBDIVISION AND TO THEIR HEIRS AND ASSIGNS.

THE FOREGOING COVENANTS, OR RESTRICTIONS, ARE TO RUN WITH THE LAND AND SHALL BE BINDING ON ALL PARTIES AND ALL PERSONS CLAIMING UNDER THEM ALL LANDS IN THIS SUBDIVISION AND USE OF LANDS THEREIN BY PRESENT AND FUTURE OWNERS SHALL BE SUBJECT TO ALL ADDITIONAL DEDICATIONS, EASEMENTS, COVENANTS, AND RESTRICTIONS AS SEPARATELY RECORDED IN THE OFFICE OF THE RECORDER OF HAMILTON COUNTY, INDIANA, AND REFERENCED TO THIS SUBDIVISION PLAT

WITNESSED OUR HAND AND SEALS THIS ____ DAY OF _____, ____.

OWNER: WHEELER FARMS, LLC
STATE OF _____)

) SS:
____ COUNTY)

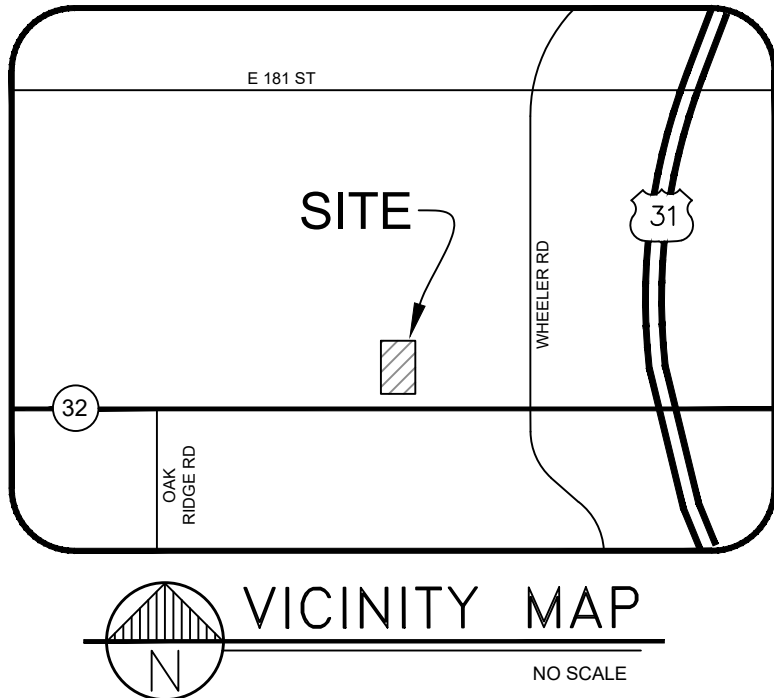
BEFORE ME THE UNDERSIGNED NOTARY PUBLIC, IN AND FOR THE COUNTY AND STATE, PERSONALLY APPEARED _____ AND ACKNOWLEDGED THE EXECUTION OF THE FORGOING INSTRUMENT AS THEIR VOLUNTARY ACT AND DEED.

WITNESS MY HAND AND NOTARY SEAL THIS ____ DAY OF _____, ____.

SIGNATURE: _____ PRINTED NAME: _____

MY COMMISSION EXPIRES: _____ COUNTY OF RESIDENCE: _____

SOURCE OF TITLE
WHEELER FARMS, LLC
INST.# 2011-069204
& INST.# 2019-018529



PLAT CREATED APRIL 13, 2021

Exhibit B

Assessed Road Impact Fee

ROAD IMPACT FEE ASSESSMENT

Assessment Request #: 21-RIFE-07
 Assessment Date: 06/09/21
 Assessment Performed by: Caleb Ernest
 (I.C. 36-7-4-1321 and City Ordinance No. 17-43)



Property Information:		Applicant Information:	
Property Description:		Name:	BLANK
Parcel: 08-05-36-00-00-042.000		Address:	ADDRESS
Address: 763 E Tournament TRL			CITY
			PHONE
		Email:	EMAIL

Development Information:**Existing:**

Undeveloped/Vacant

Proposed:

Pharmacy

1.47 +/- acres

4,976 square feet

(patio space: 1,232)

Zoning: Wheeler Landing PUD**Road Impact Fee Calculation:**

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

Land Use Code:	Fast-Food Restaurant with Drive Through Window (934)		
Independent Variable:	4,976	square feet	
Weighted Trip Average:	470.95	per	1,000 square feet (average weekday 24-hour trip rate)

Trips:

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

Pass-by Trips:

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

Calculation:

	square feet	Variable	Trip Average		
Trips:	4,976	/ 1,000	x 470.95	=	2,343.45 24-hour trips
Pass-by Trips:	Average pass-by trip percentage:				49% pass-by trip reduction %
					1,148.29 pass-by trips
Credits:	No structure demolition is proposed:				0.00 structure demolition credits
	Total net trips:				1,195.16 24-hour trips

Road Impact Fee: \$327 per trip (effective 01/01/2021 through 12/31/2021)

Road Impact Fee Assessment:							Total Road Impact Fee:
24-hour trips	fee per trip		road impact fee	pass-by trip discount	redevelopment credits		
2,343.45	x \$327	=	\$ 766,307	- \$ 287,072	- \$ -	=	\$ 479,235

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

DEDICATION OF PUBLIC RIGHT OF WAY

THIS INDENTURE WITNESSETH: That Grand Communities LLC, an Kentucky Limited Liability Company ("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" attached hereto and made a part hereof.

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.

17th IN WITNESS WHEREOF, Grantor has executed this Dedication as of the
day of August, 2021.

By: [Signature]

Title: Vice President of

Printed: David Stroup

Land Development

STATE OF ~~INDIANA~~ Kentucky)
COUNTY OF ~~HAMILTON~~ Boone) SS:

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

WITNESS my hand and Notarial Seal this 17th day of August, 2021.

My Commission Expires:

9-6-2021

Tammy L Gregory
NOTARY PUBLIC, A resident of Grant
County, ~~Indiana~~ Kentucky
Printed: Tammy L Gregory



TAMMY L. GREGORY
Notary Public, Kentucky
State At Large
My Commission Expires
September 6, 2021
Notary ID# 586274

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

Jim Ake

Jim Ake

Jim Ake

ATTEST:

Patricia Leuteritz, Public Works Administrator

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

DULY ENTERED FOR TAXATION
Subject to final acceptance of transfer
4th day of May 2021 - JKT
Robin M. Miller Auditor of Hamilton County

nkc

Parcel # 08-09-09-00-008.

RETURN TO:
Grand Communities, LLC
Attn: Real Estate Paralegal
3940 Olympic Boulevard, Suite 400
Erlanger, KY 41018

2021033359 WD \$25.00
05/04/2021 10:21:04AM 3 PGS
Jennifer Hayden
Hamilton County Recorder IN
Recorded as Presented



GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That **KATHERINE HARMON** ("Grantor"), whose address is 16140 Ditch Road, Westfield, IN 46074, does hereby Grant, Bargain, Sell, and Convey to **GRAND COMMUNITIES, LLC**, a Kentucky limited liability company ("Grantee"), its successors and assigns forever, whose tax mailing address is 3940 Olympic Boulevard, Suite 400, Erlanger, Kentucky 41018, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, the following described real property in the State of Indiana ("Property"):

TRACT I

[SEE ATTACHED EXHIBIT "A"]

PARCEL NO.: 08-09-09-00-008.005 (State No. 29-09-09-000-008.005-025)

PROPERTY ADDRESS: 16140 Ditch Road, Westfield, IN 46074

TO HAVE AND TO HOLD the same unto Grantee, and unto Grantee's heirs and assigns forever, with all appurtenances thereto belonging.

Grantor does for Grantor's successors and assigns, forever hereby covenant with Grantee, that Grantor is lawfully seized in fee simple of said premises; that the premises are free from all encumbrances, unless otherwise noted above; that Grantor has a good right to sell and convey the same as aforesaid; and to forever warrant and defend to the said lands against all claims whatsoever.

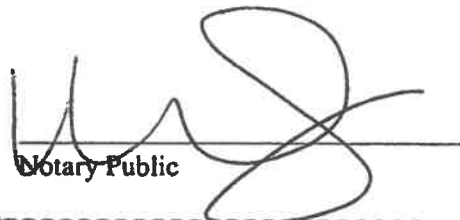
IN WITNESS WHEREOF, Grantor has executed this General Warranty Deed, this 29th day of April, 2021.

Katherine Harmon

STATE OF INDIANA

COUNTY OF HAMILTON

Before me, a Notary Public in and for said County and State personally appeared **KATHERINE HARMON**, who acknowledged the execution of the foregoing instrument, and who, being duly sworn, stated that. Witness my hand and Notarial Seal this 29 day of APRIL 2021.


Notary Public



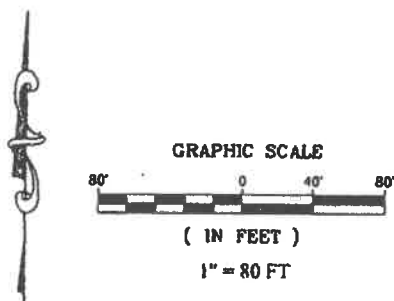
This instrument prepared by & returned to:


Bradford P. Bury, Esq., M.B.A.
Jerralyn K Burlingham, Esq.
Fischer Homes
3940 Olympic Blvd., Suite 400
Erlanger, KY 41018
(859) 341-4709

We affirm under the penalties of perjury, that we have taken reasonable care to redact each social security number in this document, unless required by law. Bradford P. Bury, Esq., M.B.A. / Jerralyn K. Burlingham, Esq.

EXHIBIT "A"

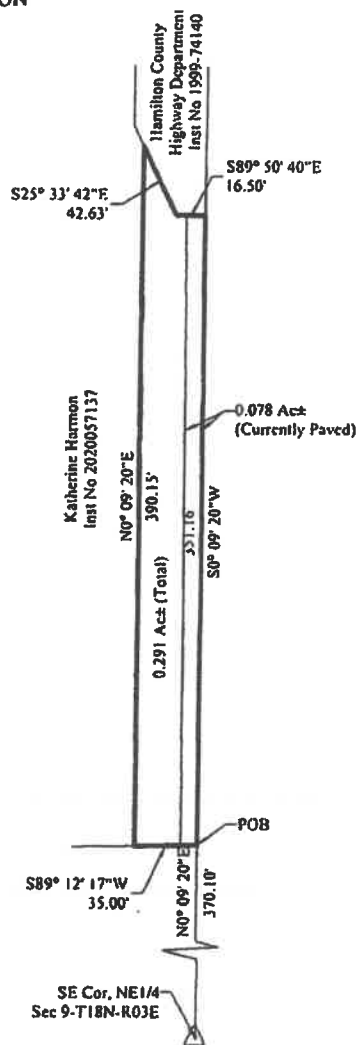
RIGHT OF WAY DEDICATION



LAND DESCRIPTION

A part of the Northeast Quarter of Section 9, Township 18 North, Range 03 East, Washington Township, Hamilton County, Indiana more particularly described as follows:

Commencing at the Southeast corner of said Quarter Section; thence North 00 degrees 09 minutes 20 seconds East, along the East line of said Quarter Section, a distance of 370.10 feet to the Southeast corner of the land described in Instrument Number 2020057137 in the Office of the Hamilton County Recorder, and the POINT OF BEGINNING of this description; thence South 89 degrees 12 minutes 17 seconds West, along the South line of said land, a distance of 35.00 feet; thence North 00 degrees 09 minutes 20 seconds East a distance of 390.15 feet to the southwesterly line of the land described in Instrument Number 1999-74140 in said Recorder's Office; thence South 25 degrees 33 minutes 42 seconds East, along said line, a distance of 42.63 feet to the South line of said land; thence South 89 degrees 50 minutes 40 seconds East, along said line, a distance of 16.50 feet to the East line of the aforementioned Quarter Section; thence South 00 degrees 09 minutes 20 seconds West, along said line, a distance of 351.16 feet to the Point of Beginning. Containing 0.291 acres, more or less.



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

Bruce E. Strack
Bruce E. Strack
Professional Land Surveyor
Indiana No. 20200057
Date: March 3, 2021



 STOEPPELWERTH ALWAYS ON 7945 East 106th Street, Fishers, IN 46038-2505 phone: 317.849.5935 fax: 317.849.5942	JOB NO. 53875FIS-S5	PAGE 1 OF 1 SHEETS
	DRAWN BY: JAB	
	CHECKED BY: HES	
	DATE DRAWN: 03/03/2021	
	FIELDWORK DATE:	

DULY ENTERED FOR TAXATION
Subject to final acceptance of transfer
4th day of May 2021 - JKT
Robin M. Tullis Auditor of Hamilton County
Parcel # 08-09-09-00-008.

mrc

FDS

RETURN TO:
Grand Communities, LLC
Attn: Real Estate Paralegal
3940 Olympic Boulevard, Suite 400
Erlanger, KY 41018

2021033441 WD \$25.00
05/04/2021 12:58:09PM 3 PGS
Jennifer Hayden
Hamilton County Recorder IN
Recorded as Presented



GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That **DAVID R. SOCHAR and CYNTHIA R. SOCHAR, husband and wife** ("Grantors"), whose address is 16116 Ditch Road N, Westfield, IN 46074, does hereby Grant, Bargain, Sell, and Convey to **GRAND COMMUNITIES, LLC**, a Kentucky limited liability company ("Grantee"), its successors and assigns forever, whose tax mailing address is 3940 Olympic Boulevard, Suite 400, Erlanger, Kentucky 41018, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, the following described real property in the State of Indiana ("Property"):

TRACT 1

[SEE ATTACHED EXHIBIT "A"]

PARCEL NO.: 08-09-09-00-008.002 (State No. 29-09-09-000-008.002-015)

PROPERTY ADDRESS: 16116 Ditch Road N, Westfield, IN 46074

TO HAVE AND TO HOLD the same unto Grantee, and unto Grantee's heirs and assigns forever, with all appurtenances thereto belonging.

Grantor does for Grantor's successors and assigns, forever hereby covenant with Grantee, that Grantor is lawfully seized in fee simple of said premises; that the premises are free from all encumbrances, unless otherwise noted above; that Grantor has a good right to sell and convey the same as aforesaid; and to forever warrant and defend to the said lands against all claims whatsoever.

IN WITNESS WHEREOF, Grantors has executed this General Warranty Deed, this 29th day of April, 2021.

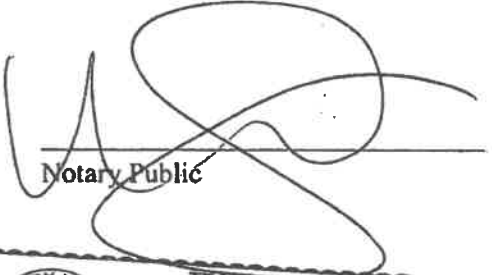
David R. Sochar

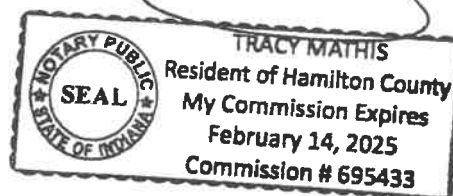
Cynthia R. Sochar

STATE OF INDIANA

COUNTY OF HAMILTON

Before me, a Notary Public in and for said County and State personally appeared **DAVID R. SOCHAR** and **CYNTHIA R. SOCHAR**, who acknowledged the execution of the foregoing instrument, and who, being duly sworn, stated that. Witness my hand and Notarial Seal this 29 day of April 2021.


Notary Public



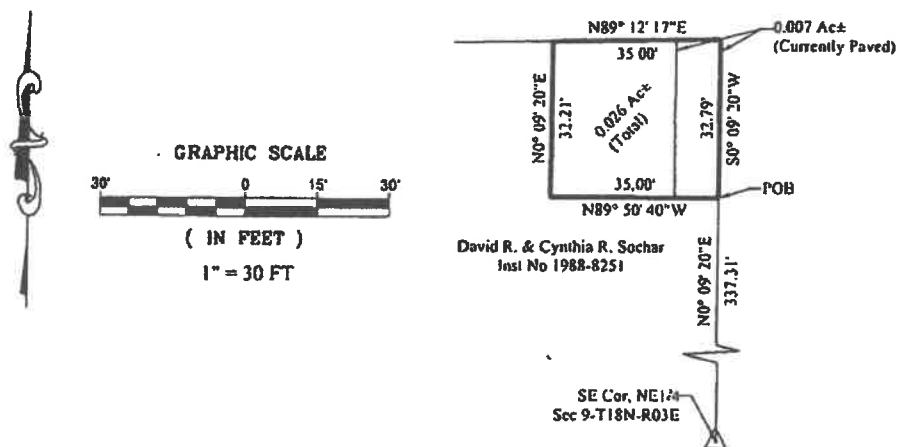
This instrument prepared by & returned to:


Bradford P. Bury, Esq., M.B.A.
Jerralyn K Burlingham, Esq.
Fischer Homes
3940 Olympic Blvd., Suite 400
Erlanger, KY 41018
(859) 341-4709

We affirm under the penalties of perjury, that we have taken reasonable care to redact each social security number in this document, unless required by law. Bradford P. Bury, Esq., M.B.A. / Jerralyn K. Burlingham, Esq.

EXHIBIT "A"

RIGHT OF WAY DEDICATION



LAND DESCRIPTION

A part of the Northeast Quarter of Section 9, Township 18 North, Range 03 East, Washington Township, Hamilton County, Indiana more particularly described as follows:

Commencing at the Southeast corner of said Quarter Section; thence North 00 degrees 09 minutes 20 seconds East, along the East line of said Quarter Section, a distance of 337.31 feet to the POINT OF BEGINNING of this description; thence North 89 degrees 50 minutes 40 seconds West a distance of 35.00 feet; thence North 00 degrees 09 minutes 20 seconds East a distance of 32.21 feet to the North line of the land described in Instrument Number 1988-8251 in the Office of the Hamilton County Recorder; thence North 89 degrees 12 minutes 17 seconds East, along the North line of said land, a distance of 35.00 feet to the East line of the aforementioned Quarter Section; thence South 00 degrees 09 minutes 20 seconds West, along said line, a distance of 32.79 feet to the Point of Beginning, Containing 0.026 acres, more or less.

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

Bruce E. Strack
 Bruce E. Strack
 Professional Land Surveyor
 Indiana No. 20200057
 Date: August 28, 2020



STOEPPELWERTH ALWAYS ON 7965 East 106th Street, Fishers, IN 46038-2505 phone: 317.849.5935 fax: 317.849.5947	JOB NO. 53875FIS-S5	PAGE 1 OF 1 SHEETS
	DRAWN BY. JAB	
	CHECKED BY. BES	
	DATE DRAWN: 08/28/2020	
	FIELDWORK DATE:	

Westfield Police Department

Monthly Performance Measures Report



Board of Public Works & Safety

July 2021

Table of Contents

	Page
1. Field Activity Performance Measures	
Events by Nature	1
Events by Incident Type	2
UCR Offenses	3
Arrests & traffic	4
Top Accident Locations	5
Total Accidents by Primary Cause	6
2. Community Events	7

Westfield Police Department

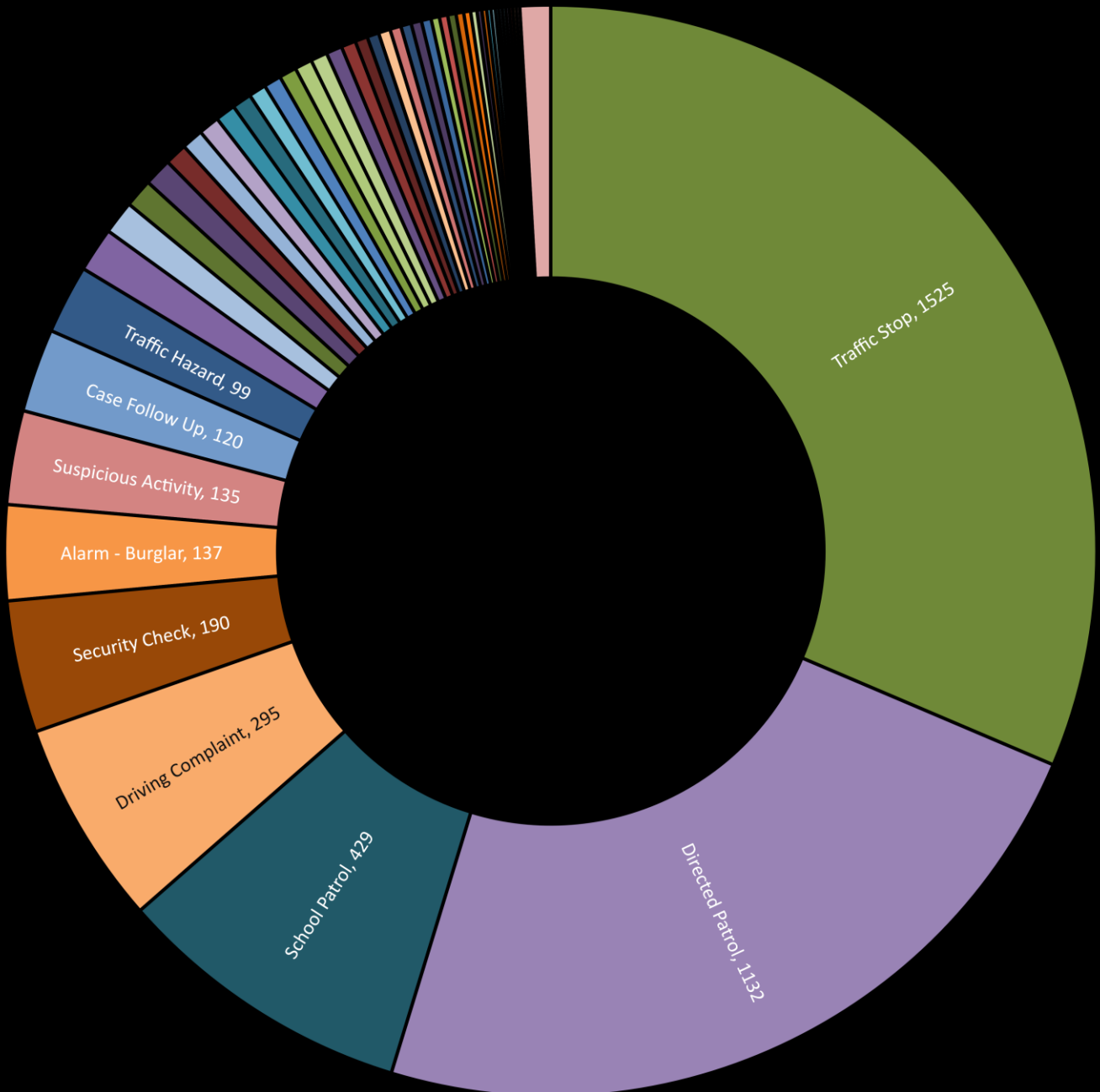
July 2021

Events by Nature

Incident Type	Count	Incident Type Cont.	Count Cont.
911 Hang Up	25	Juvenile Complaint	2
Abandoned Vehicle	12	K9 Detail	0
Abandonment	1	Kidnapping	1
Abuse / Neglect	2	Lock Out	31
Accident - Hit & Run PD	12	Loud Party	1
Accident - Hit & Run PI	0	Mental Emotional - Violent	5
Accident - Other	2	Mental Person	9
Accident - Property Damage	64	Miscellaneous	30
Accident - Personal Injury	6	Missing Person	6
Accident - Sinking Vehicle	0	Missing Person - PLS	0
Accident - Unknown	3	New Call	0
Accelerator Stuck	0	Nuisance	17
Active Assailant	0	Ordinance Misc.	17
Alarm - Other	1	Parking Complaint	18
Alarm - Vehicle	0	Physical Disturbance	12
Alarm - Burglar	137	Product Contamination	0
Alarm - Hold Up	15	Reckless Activity	4
Animal Bite / Attack	2	Road Rage	7
Animal Complaint	32	Robbery	0
Assist Fire	41	Runaway	2
Assist Other Department	15	School Patrol	429
Assist Public	28	Security Check	190
Battery	7	Sex Offense	5
Bomb Device Found	0	Shooting	0
Bomb Threat	0	Solicitor	4
Burglary	3	Special Detail	0
Carjacking	0	Stabbing	0
Case Follow Up	120	Suicide	4
Child Seat Inspection	2	Suspicious Activity	135
Civil Dispute	16	Suspicious Package	0
Criminal Mischief	25	Test	0
Damage to Property	0	Theft	24
Death Investigation	1	Theft - From a Vehicle	5
Directed Patrol	1132	Theft - of a Vehicle	2
Disturbance	25	Threat to Life	5
Driving Complaint	295	Threatening Suicide	5
Drug Complaint	14	Tow Release	3
Drug Lab	0	Traffic Hazard	99
Escort	0	Transport	0
Fight	0	Trespassing	21
Firearms Shots Fired	5	Traffic Stop	1525
Found / Lost Property	25	Unknown Call for Police	0
Found Person	0	VIN Check	40
Fraud Prescription	0	Wanted	5
Fraud / Deception	23	Warrant Service	11
Harassment	29	Weapons Complaint	1
Intoxicated Person	3	Welfare Check	48
Investigation	10	Total	4856

Westfield Police Department
July 2021

Monthly Events by Incident Type
July 2021

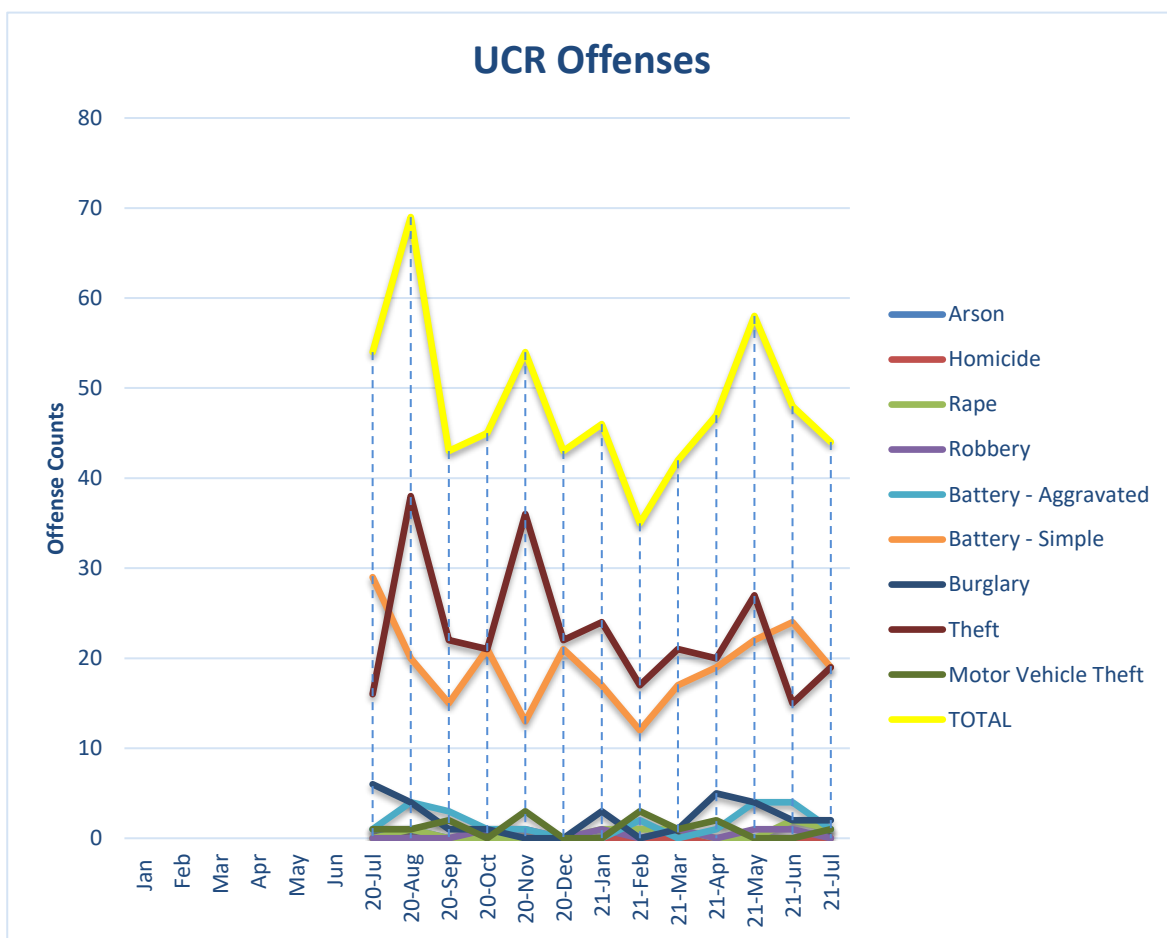


Westfield Police Department

July 2021

UCR OFFENSES

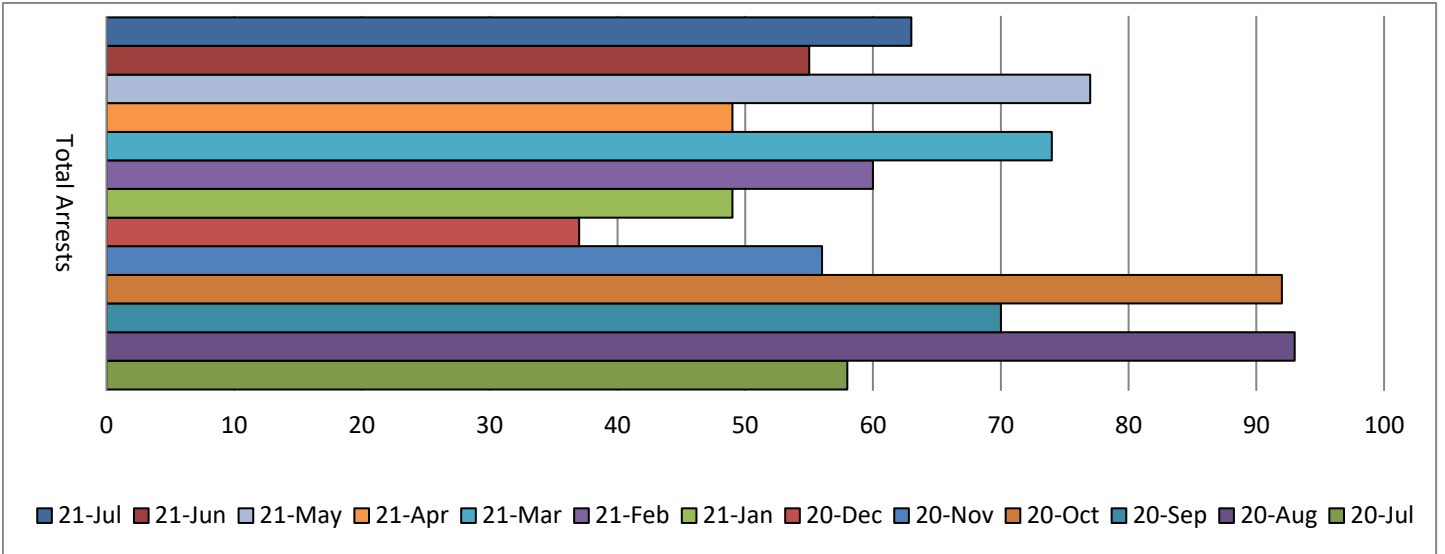
OFFENSE	20-Jul	20-Aug	20-Sep	20-Oct	20-Nov	20-Dec	21-Jan	21-Feb	21-Mar	21-Apr	21-May	21-Jun	21-Jul
Arson	1	1	0	0	0	0	0	0	0	0	0	0	1
Homicide	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	0	1	0	0	0	0	1	1	1	0	0	2	1
Robbery	0	0	0	1	1	0	1	0	1	0	1	1	0
Battery - Aggravated	1	4	3	1	1	0	0	2	0	1	4	4	1
Battery - Simple	29	20	15	21	13	21	17	12	17	19	22	24	19
Burglary	6	4	1	1	0	0	3	0	1	5	4	2	2
Theft	16	38	22	21	36	22	24	17	21	20	27	15	19
Motor Vehicle Theft	1	1	2	0	3	0	0	3	1	2	0	0	1
TOTAL	54	69	43	45	54	43	46	35	42	47	58	48	44



Westfield Police Department

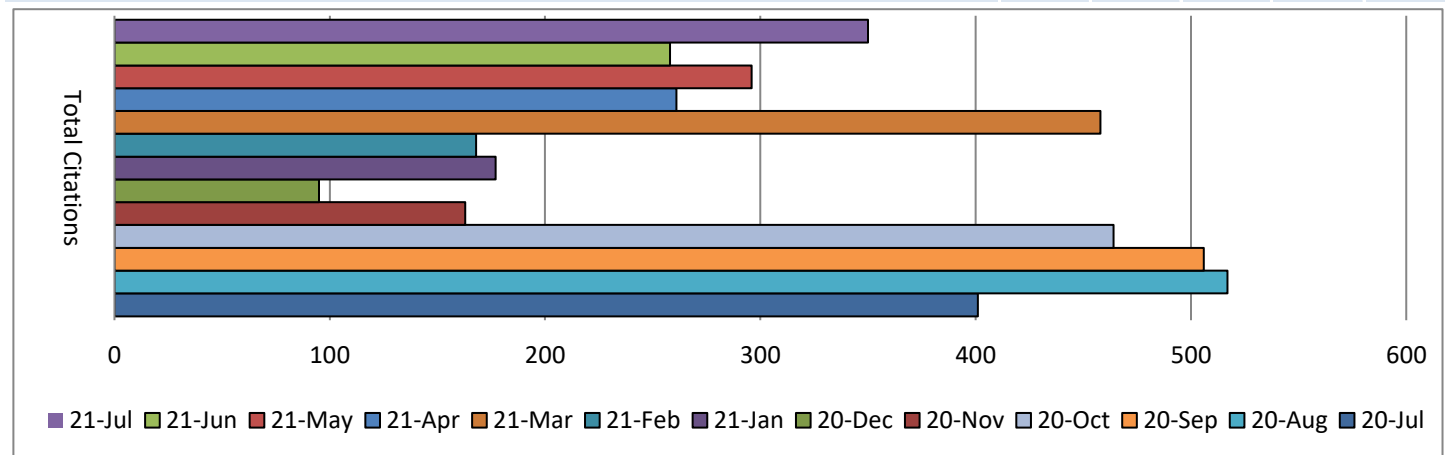
July 2021

Arrest Reports Taken	20-Jul	20-Aug	20-Sep	20-Oct	20-Nov	20-Dec	21-Jan	21-Feb	21-Mar	21-Apr	21-May	21-Jun	21-Jul
Alcohol/ Drug Related	20	25	17	34	18	18	26	26	34	13	31	19	21
Felony Charges	36	34	41	36	22	19	29	44	35	63	35	20	34
Misdemeanor Charges	78	99	67	104	48	41	71	75	124	85	88	59	78
Total Arrests	58	93	70	92	56	37	49	60	74	49	77	55	63



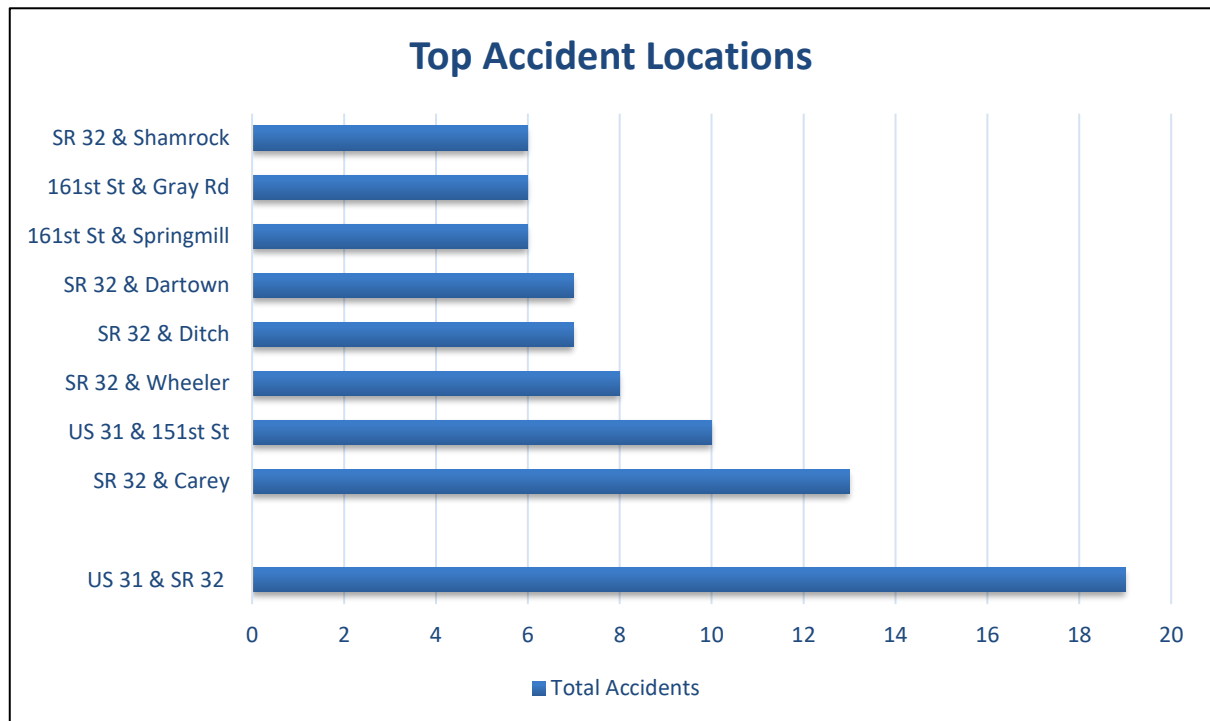
Traffic	20-Jul	20-Aug	20-Sep	20-Oct	20-Nov	20-Dec	21-Jan	21-Feb	21-Mar	21-Apr	21-May	21-Jun	21-Jul
Total Citations	401	517	506	464	163	95	177	168	458	261	296	258	350
Total Written Warning	768	961	1224	1092	426	193	558	604	1184	1118	1048	1027	1553
Total Traffic Accidents	50	48	49	58	48	65	45	53	49	52	66	98	54
Property Damage	46	40	44	47	43	56	40	49	45	47	56	82	48
Personal Injury	4	8	5	11	5	9	5	4	4	5	10	16	6
Fatality	0	0	0	0	0	0	0	0	0	0	0	0	0
Hit and Run*	6	8	4	3	8	7	5	4	10	6	9	10	4

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



Westfield Police Department
July 2021

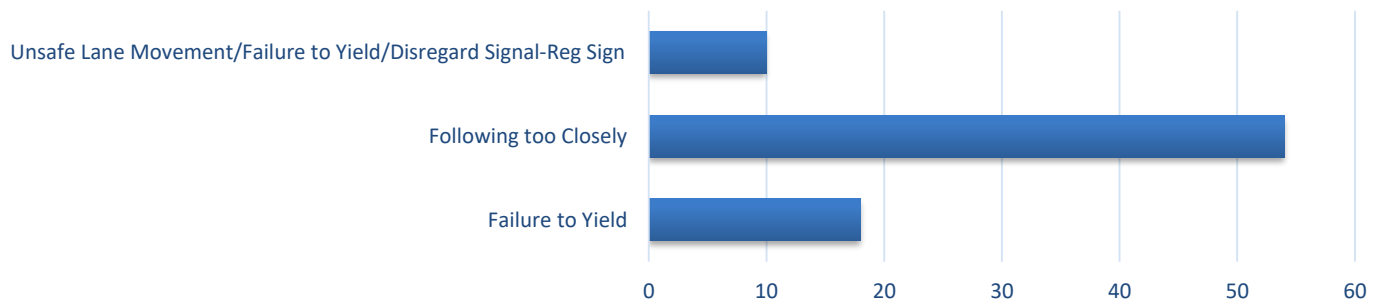
Top Accident Locations		
Accident Location	Total Accidents	Primary Cause
US 31 & SR 32	19	Following too Closely
SR 32 & Carey	13	Following too Closely
US 31 & 151st St	10	Unsafe Lane Movement/Failure to Yield/Disregard Signal-Reg Sign
SR 32 & Wheeler	8	Following too Closely
SR 32 & Ditch	7	Following too Closely
SR 32 & Dartown	7	Following too Closely
161st St & Springmill	6	Failure to Yield
161st St & Gray Rd	6	Failure to Yield
SR 32 & Shamrock	6	Failure to Yield



Westfield Police Department
July 2021

Primary Cause	Sum of Total Accidents
Failure to Yield	18
Following too Closely	54
Unsafe Lane Movement/Failure to Yield/Disregard Signal-Reg Sign	10

Sum of Total Accidents by Primary Cause, based on Top Accident Locations



Westfield Police Department
July 2021

Community Events

7/3/21	4th of July Parade Springmill Park
7/4/21	Neighborhood 4th of July Celebration Keeneland Park
7/16/21	Relay for Life
7/21/21	Fallen Officer Memorial Parade
7/23/21	Chatham Hills Spy Camp

BASE QUOTE ITEMIZED PROPOSAL

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	SUBTOTAL
1	MOBILIZATION AND DEMOBILIZATION	LS	1	\$ 2,366.22	\$ 2,366.22
2	MILLING, ASPHALT, 3 1/2 IN	SYS	1,993	\$ 3.37	\$ 6,716.41
3	MILLING, ASPHALT, 4 1/2 IN	SYS	413	\$ 6.54	\$ 2,701.02
4	HMA, TYPE B, 64, SURFACE, 9.5 mm	TON	200	\$ 91.40	\$ 18,280.00
5	HMA, TYPE B, 64, INTERMEDIATE, 19.0 mm	TON	355	\$ 77.57	\$ 27,537.35
6	ASPHALT FOR TACK COAT	TON	0.60	\$ 801.22	\$ 480.73
7	PARKING BARRIER, RESET	EA	9	\$ 453.60	\$ 4,082.40
8	CASTING, VALVE, ADJUST TO GRADE	EA	1	\$ 322.50	\$ 322.50
9	LINE, PAINT, SOLID, YELLOW, 4 IN	LFT	1,170	\$ 0.36	\$ 421.20
10	LINE, PAINT, SOLID, BLUE, 4 IN	LFT	186	\$ 0.36	\$ 66.96
11	PAVEMENT MESSAGE MARKING, PAINT, ADA ACCESSIBLE HANDICAP SYMBOL	LFT	2	\$ 37.20	\$ 74.40
TOTAL					\$ 63,049.19

Base Quote Amount in words for Public Works Parking Lot Resurfacing Project:

Sixty-three thousand, forty-nine Dollars and 19 /100

This price is the sum of the quoted unit prices multiplied by the quantity for each item as shown on the above Base Quote Itemized Proposal.

It is hereby agreed that this proposal shall remain in full force and effect and may not be withdrawn for a period of 60 days from the date of receiving proposals by the City of Westfield, Indiana.

Respectfully submitted,

Midwest Paving LLC
Contractor (Individual ☐) (Partnership ☐)
or (Corporation ☒)

By

Matt Kelley

Title

President

Dated:

Address 11827 Greenfield Ave.

July 29th, 20 21 Noblesville, IN 46060

CITY OF WESTFIELD, INDIANA

[illegible]

The Bidder shall make an entry against each possible subtrade by naming the subtrade and the proposed subcontractor that will perform the work. The Bidder shall name all subtrades to be self-performed and label as such.

Failure by a Bidder to comply with the foregoing requirements may result in his quote being disqualified.



August 25, 2021

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:

- JRF Construction, Inc., KFC – Westfield, Bond #NIN1688, \$51,889.50, Erosion Control, Storm Sewer & ROW Paving
- JRF Construction, Inc., Northpoint Commerce Park, Bond #NIN1687, \$876,376.73, ROW Storm Infrastructure, Erosion Control, & Roadwork in Public ROW
- Chick-fil-A, Inc., Wheeler Landing, Bond #016230826, \$27,784.35, Street, Curbs, Sidewalk, & Erosion Control
- Lennar Homes of Indiana, Westgate, Section 4, Bond #024253198, \$66,553.00, Erosion Control
- 202NP, LLC, North Point One, Bond #EACX4019714, \$213,594.51, ROW Pavements & Erosion Control
- Chatham Hills, LLC, Chatham Village, Section 1, Bond #1089207, \$332,475.00, Perimeter Trail, Collector Street Pavement, Seeding & Erosion Control
- Pulte Homes of Indiana, LLC, Kimblewick Water Main Extension, Bond #CMS344105, \$16,175.50, Erosion Control
- Pulte Homes of Indiana, LLC, Bent Creek Amenity Area, Bond #CMS344106, \$29,610.90, Storm Sewer
- Pulte Homes of Indiana, LLC, Bent Creek Amenity Area, Bond #CMS344109, \$3,742.75, Erosion Control
- Pulte Homes of Indiana, LLC, Bent Creek Amenity Area, Bond #CMS344107, \$16,729.35, Concrete Curb & Sidewalk
- Pulte Homes of Indiana, LLC, Bent Creek Amenity Area, Bond & Rider #CMS344108, \$56,476.42, Asphalt Paving
- Pulte Homes of Indiana, LLC, Kimblewick By Del Webb, Section 3, Bond & Rider #268015595, \$256,562.90, Storm Sewer
- Pulte Homes of Indiana, LLC, Kimblewick By Del Webb, Section 3, Bond & Rider #268015597, \$328,327.17, Asphalt Paving – Local Streets
- Pulte Homes of Indiana, LLC, Kimblewick By Del Webb, Section 3, Bond #268015594, \$66,374.00, Asphalt Paths
- Pulte Homes of Indiana, LLC, Kimblewick By Del Webb, Section 3, Bond #268015596, \$31,462.75, Concrete Curb
- Pulte Homes of Indiana, LLC, Kimblewick By Del Webb, Section 3, Bond #268015593, \$11,785.95, Common Area Sidewalk
- Pulte Homes of Indiana, LLC, Legacy Oaks, Section 2, Bond #0806482, \$381,053.88, Paving – Local Streets & Paths
- Pulte Homes of Indiana, LLC, Legacy Oaks, Section 2, Bond #0806481, \$32,444.50, Concrete Curb
- Pulte Homes of Indiana, LLC, Legacy Oaks, Section 2, Bond #0806480, \$164,614.45, Storm Sewer
- Pulte Homes of Indiana, LLC, Legacy Oaks, Section 2, Bond #0806479, \$15,451.15, Common Area Sidewalks
- Panda Express, Inc., Bond #107235058, \$196,270.25, Streets, Curbs, Storm Sewer, Sidewalks, & Erosion Control
- CCD Harmony, LLC, Harmony, Section 8, Bond #LICX1209842, \$29,462.00, Sidewalks

- CCD Harmony, LLC, Harmony, Section 8, Bond #LICX1209841, \$447,260.00, Storm
- CCD Harmony, LLC, Harmony, Section 8, Bond #LICX1209840, \$365,786.36, Streets/Curbs
- CCD Harmony, LLC, Harmony, Section 8, Bond #LICX1209843, \$50,108.05, Erosion Control
- CCD Harmony, LLC, Harmony, Section 9, Bond #LICX1209844, \$314,809.00, Street/Curbs
- CCD Harmony, LLC, Harmony, Section 9, Bond #LICX1209845, \$295,677.80, Storm
- CCD Harmony, LLC, Harmony, Section 9, Bond #LICX1209846, \$42,071.70, Sidewalks
- CCD Harmony, LLC, Harmony, Section 9, Bond #LICX1209847, \$49,866.89, Erosion Control
- Chatham Hills, LLP, Chatham Hills, Section 6B, Bond #SU1161889, \$266,546.00, Trail, ROW Improvements, & Erosion Control

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:

- The Peterson Company, Northpoint Lot 2, Bond #30078739, \$34,874.83, Erosion Control
- The Peterson Company, Northpoint Lot 2, Bond #30078738, \$65,145.30, Storm Sewer
- The Peterson Company, Northpoint Lot 2, Bond #30078741, \$3,245.00, Concrete Sidewalk & Asphalt Trails
- The Peterson Company, Northpoint Lot 2, Bond #30078740, \$26,436.30, ROW & Private Street Pavement
- Pulte Homes of Indiana, Bent Creek, Section 3, Bond #30106525, \$57,310.77, Concrete Curbs
- Pulte Homes of Indiana, Bent Creek, Section 3, Bond #30106524, \$500,114.78, Storm Sewer & Subsurface Drains
- Pulte Homes of Indiana, Bent Creek, Section 3, Bond #30106526, \$8,150.60, Common Area Sidewalks
- Pulte Homes of Indiana, Bent Creek, Section 3, Bond #30106527, \$366,390.20, Paving (Stone Base, Base Course, Intermediate Course & Surface Course)
- Pulte Homes of Indiana, Bent Creek, Section 3, Bond #SU1162768, \$237,113.00, ROW

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:

- Elevated Construction, Inc., Kiddie Academy Education Child Care, Chatham, Bond & Rider #268015309, \$16,665.13, Street, Curbs, Storm Sewer, Sidewalk, & Erosion Control
- The Peterson Company, Northpoint Lot 2, Bond #30130617, \$6,514.50, Storm Sewer
- The Peterson Company, Northpoint Lot 2, Bond #30130618, \$2,643.60, ROW & Private Street Pavement
- The Peterson Company, Northpoint Lot 2, Bond #30130619, \$3,487.50, Erosion Control
- The Peterson Company, Northpoint Lot 2, Bond #30130620, \$324.50, Sidewalk & Asphalt Trails
- Midwest Paving, LLC, Bent Creek, Section 3, Bond #7666444, \$23,711.30, ROW Improvements
- Midwest Paving, LLC, Bent Creek, Section 3, Bond #7666443, \$36,639.02, Onsite Asphalt Paving
- Conco Curbs & Paving, LLC, Bent Creek, Section 3, Bond #B3264505, \$5,731.08, Curb & Gutter
- Conco Curbs & Paving, LLC, Bent Creek, Section 3, Bond #B3264504, \$815.06, Sidewalks
- Valenti-Held Contractor/Developer, Inc., Bent Creek, Section 3, Bond #30138335, \$50,011.48, Storm Sewer & SSD

Maintenance Bond Release

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

Letter of Credit Acceptance

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

Letter of Credit Release

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

Cash In Lieu/Development Agreement

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

- Belle Crest, \$7,389.13, Cash in Lieu & Development Agreement
- Smith & Perry Enterprises, FSS (Fumigation Service & Supply, \$121.73, Cash in Lieu & Development Agreement
- Westfield Andover Two, Redwood at Andover, Phase 2, \$5,714.35, Cash in Lieu & Development Agreement

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“AGREEMENT”), dated as of _____, 2021, is entered into by and among the CITY OF WESTFIELD, INDIANA (the “City”), and WEST FORK WHISKEY REAL ESTATE JV, LLC, an Indiana limited liability company, or an affiliate or related entity thereof (the “Developer”), organized and existing under the laws of the State of Indiana (collectively, the City and Developer shall be referred to as “Parties”).

RECITALS

1. Developer has proposed to develop all or a portion of the real estate described on Exhibit A attached hereto (the “Project Site”) which is located in the City of Westfield, Indiana (the “City”) through the construction and development of the commercial project more particularly described in Exhibit B attached hereto (the “Project”);

2. Developer understands and acknowledges that the City may wish to undertake certain infrastructure work consisting of road improvements and other local public improvements located adjacent to the boundaries of the Project Site, including but not limited to the:

- (i) design and construction of the 191st Street roundabout (the “Roundabout”), as depicted in Exhibit C;
- (ii) removal and disposal of current Horton Road pavement in order to accommodate the Roundabout;
- (iii) “upsizing” of certain storm water infrastructure to accommodate the impermeable surface of the Roundabout;
- (iv) design and construction of new driveway connections from 191st Street and from Horton Road ((i) through (iv), collectively, the “Public Improvements”));

3. The Public Improvements will be of mutual benefit to the City and Developer, and the Parties desire to cooperate in accommodating both the Project and the Public Improvements through the fulfillment of obligations described in this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual obligations and covenants of the Parties hereto contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the City agree as follows:

ARTICLE I **General Terms and Conditions**

- 1.1 **No Obligation to Construct.** Nothing in this Agreement shall be interpreted in such a way as to obligate the City to construct the Public Improvements, and Developer specifically acknowledges and agrees that the City shall have no such obligation.
- 1.2 **Term of Agreement.** This Agreement shall be effective on the date set forth in the first paragraph of this Agreement. This Agreement will terminate on the Termination Date.

ARTICLE II
Representations and Warranties of Parties

2.1 **Representations, Warranties of Developer.** The Developer represents and warrants, as of the date hereof, that:

- (a) **Authority.** The Developer has the requisite power, right and legal authority to execute, deliver and perform its obligations under this Agreement and has taken all action necessary to authorize the execution, delivery, performance and observance of its obligations under this Agreement. This Agreement, when executed and delivered by duly authorized representatives of each party hereto, will constitute the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, except as may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general principles of equity.
- (b) **Capacity, Capability.** The Developer has the requisite capacity and capability to administer, complete and retain the Project.
- (c) **Estimated Improvement Cost Documentation.** The Developer will provide the City with all documentation as it becomes available that the City deems to be necessary to determine the estimated Improvement Costs.

2.2 **Representations, Warranties of City.** The City represents and warrants, as of the date hereof, that:

- (a) In the event the City should elect, in its sole discretion, to construct the Public Improvements, the City will coordinate plans and specifications and timing of construction of the Public Improvements with the Developer.
- (b) **Authority.** The City represents and warrants, as of the date hereof, that (i) it has the requisite power, right and legal authority to execute, deliver and perform its obligations under this Agreement and has taken all action necessary to authorize the execution, delivery, performance and observance of its obligations under this Agreement, and (ii) this Agreement, when executed and delivered by duly authorized representatives of each party hereto, will constitute the legal, valid and binding obligation of the City.
- (c) **No Default or Conflict.** The execution and delivery of this Agreement and the effectuation of the transactions contemplated hereby, will not conflict with or constitute a material breach of or default under any applicable law or administrative regulation of the City, or any applicable judgment or decree, or any indenture, loan agreement, note, resolution, certificate, agreement or other instrument to which the City is a party or is otherwise subject.

- (d) **Absence of Litigation.** No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the City's knowledge, threatened against the City or the other City Parties with respect to (a) the organization and existence of the City or the other City Parties, (b) the authority of the City or the other City Parties to execute or deliver this Agreement or to perform their respective obligations hereunder, including effectuating the transactions contemplated hereby, (c) the validity or enforceability of this Agreement or the transactions contemplated thereby, or (d) any authorization or proceedings related to the execution and delivery of this Agreement or the transactions contemplated hereby.
- (e) **Authorizations and Proceedings.** T actions, authorizations and proceedings referenced in this Agreement necessary to make this Agreement, when executed and delivered by the City, the legal, valid and binding obligation of the City, are in full force and effect and no such authorizations or proceedings have been repealed, revoked, rescinded or amended and all are in full force and effect.
- (f) **Compliance with Open Meeting Laws.** To the extent required by the laws of the State of Indiana, all actions of the City referenced herein occurred or will occur at meetings held after notice given in accordance with such laws, which were open to the public and at which quorums were present and acting throughout.

ARTICLE III **Agreement and Covenants of Parties**

3.1 Covenants of Developer. The Developer covenants and agrees, as follows:

- (a) **Rights of Way.** Developer will dedicate at no cost to the City, and the City will accept, all of the right of way owned by Developer necessary to complete the Public Improvements, specifically including the 1.44 acres depicted in Exhibit C (the "Right of Way Parcel"). The Developer and City acknowledge the City may need to obtain additional right of way from parties other than Developer at the City's sole cost and expense prior to commencement of the construction of the Public Improvements.
 - (i) Developer will cause to be prepared a legal description of the Right of Way Parcel within sixty (60) days of the effective date of this Agreement, and will submit the same to City for its review and comment.
 - (ii) City shall have thirty (30) days to review and provide comment regarding the Right of Way Parcel legal description (the "Review Period").
 - (iii) The Parties shall close on the conveyance of the Right of Way Parcel within thirty (30) days of the conclusion of the Review Period.

- (b) **Storm Water Improvements.** Regardless of City's election to construct the Public Improvements, Developer shall cause storm water infrastructure (the "Storm Water Improvements") installed incidental to the Project to meet the specifications identified in **Exhibit D** and to be sized and constructed in all respects to handle storm water flows stemming from the Public Improvements.
 - (i) Developer shall notify City immediately upon proposed completion of the Storm Water Improvements, and City shall have a right to inspect the same to determine completion and compliance with applicable specifications in its sole reasonable discretion.
- (c) **Compliance with Laws.** The Developer shall comply in all material respects with any and all regulations and rules applicable to the Project.
- (d) **Records, Reporting.** Through the completion of the Project, the Developer shall keep and maintain in its offices complete and accurate records and supporting documents relating to the Project.
- (e) **Inspection of Records.** The City's mayor, deputy mayor, director of public works, engineer, financial consultant, construction consultant, legal counsel or any other mutually agreed upon duly authorized representative of the City shall, during regular business hours of the Developer, have access to and the right to examine the records and supporting documents related to the Project. Developer will cooperate reasonably with the City in connection with any such examination, including, to the extent possible and permissible, posting the information on a secure website. Any examination will be at the expense of the City.
- (f) **Inspection of Project.** Any duly authorized representative of the City shall have access to and the right to inspect the Project. Prior to such termination, the Developer will cooperate reasonably with the City in connection with any such inspection.
- (g) **Nondiscrimination.** The Developer and its officers, agents and employees will not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions or privileges of employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability or United States military service veteran status. Breach of this subsection (i) shall be regarded as a material breach of this Agreement.

3.2 **Covenants of City.**

- (a) **Rights of Way.** Subject to Developer's fulfillments of the requirements of 3.1(a) of this Agreement, the City shall accept the Right of Way Parcel from Developer.

- (b) **Construction and Cost of Public Improvements.** Should the City elect, in its sole discretion, to construct the Public Improvements, it shall bear the cost thereof. The City shall establish the scope, timing, and budget/construction costs of the Public Improvements in its sole discretion. The Public Improvements will be constructed in accordance with the design standards of the City. The City covenants and agrees that the Developer will not be liable for or with respect to delivery of the Public Improvements or the payment of Improvement Costs other than payment of taxes levied on the Property, subject to Developer's rights as a taxpayer and otherwise under Indiana law.
- (c) **Landscaping and Perimeter Trail Improvements.** Should the City elect, in its sole discretion, to construct the Public Improvements, it shall also bear the responsibility and cost for construction of associated pedestrian infrastructure and landscaping (the "Pedestrian Infrastructure"), regardless of whether such Pedestrian Infrastructure would ordinarily or otherwise have been the responsibility of Developer under local zoning regulations or other local requirements.
- (d) **Storm Water Improvements Costs.** The City covenants and agrees to fund, from any legally available funds, that portion of the costs of the Storm Water Improvements equal to the difference between what would ordinarily be required to serve the Project and the "upsized" Storm Water Improvements described in Exhibit D (the "Upsize Cost Differential") in order to accommodate drainage from the Public Improvements in case the City shall elect to construct the same.
 - (i) Within sixty (60) days of the completion of the Storm Water Improvements, as determined by City in its sole reasonable discretion, and upon Developer's presentment of a detailed accounting of the Storm Water Improvements costs and the Upsize Cost Differential, along with any supporting documentation that the City should request, the City shall remit payment from legally available funds to reimburse Developer for the Upsize Cost Differential.

ARTICLE IV **Events of Default; Remedies**

- 4.1 **Developer Events of Default.** Each of the following shall constitute a "Developer Event of Default" by the Developer:
- (a) The material inaccuracy of any representation or warranty made by the Developer to the City, when made or deemed to be made, under this Agreement.
 - (b) The Developer's material failure to fulfill any covenant of the Developer in this Agreement, and such failure shall remain unremedied for a period of thirty (30) days after the City gives written notice of the failure to the Developer; *provided, however*, if the Developer can show that the failure stated in the notice cannot be

corrected within the applicable period (but can be corrected within such longer period), and the Developer initiates corrective action within said period, and diligently, continually, and in good faith works to effect a cure as soon as possible, the time period shall be reasonably extended for a period not to exceed one hundred twenty (120) days or such longer period agreed upon by the Parties.

4.2 **City Events of Default.** Each of the following shall constitute a “City Event of Default” by the City:

- (a) The material inaccuracy of any representation or warranty made by the City to the Developer, when made or deemed to be made, under this Agreement.
- (b) The City’s material failure to fulfill any covenant of the City in this Agreement, and such failure shall remain unremedied for a period of thirty (30) days after the Developer gives written notice of the failure to the City; *provided, however*, if the City can show that the failure stated in the notice cannot be corrected within the applicable period (but can be corrected within such longer period), and the City initiates corrective action within said period, and diligently, continually, and in good faith works to effect a cure as soon as possible, the time period shall be reasonably extended for a period not to exceed one hundred twenty (120) days or such longer period agreed upon by the Parties.

4.3 **City Remedies, Termination.** Upon the occurrence and continuation of a Developer Event of Default, subject to the Developer’s rights (under this Agreement or in law or in equity or otherwise) to dispute, contest or appeal any claim by the City that a Developer Event of Default has occurred or is occurring, the City may upon prompt written notice to the Developer, suspend or terminate the City’s obligation, if any, to fund the Upsize Cost Differential or fulfill any other covenant contained herein which should remain unfulfilled at the time of the occurrence of a Developer Event of Default; In addition, the City may institute any action, suit or other proceeding in law or in equity or otherwise, which the City deems necessary or appropriate for the protection of their respective interests.

4.4 **Developer Remedies, Termination.** Upon the occurrence and continuation of a City Event of Default, the Developer may, subject to the City’s rights (under this Agreement or in law or in equity or otherwise) to dispute, contest or appeal any claim by the Developer that a City Event of Default has occurred or is occurring, institute any action, suit or other proceeding in law or in equity or otherwise, which the Developer deems necessary or appropriate for the protection of its interests.

ARTICLE V
Miscellaneous

- 5.1 **Expenses Incurred Upon Developer or City Event of Default.** Upon the occurrence of either a Developer Event of Default or a City Event of Default resulting in the commencement of litigation or other administrative proceeding for dispute resolution, the party prevailing in any such litigation or proceeding shall be entitled to reimbursement by the other party (the non-prevailing party) for all reasonable and properly documented out of pocket expenses and costs of collection and enforcement, including reasonable attorneys' fees, incurred by the prevailing party as a result of one or more Events of Default by the non-prevailing party.
- 5.2 **Assignment.** The rights and obligations contained in this Agreement may be assigned by the Developer to a related or Affiliated entity with the express prior written consent of the City. Developer expressly acknowledges that this Agreement touches and concerns the Project and that this Agreement is intended to be and shall be, except as provided otherwise herein, binding upon and enforceable against the Developer, its respective successors and assigns and all persons claiming under or through the Developer collectively or individually.
- 5.3 **Amendments.** No modification or amendment of any provision of this Agreement shall be effective unless made in writing and duly executed by the City and the Developer.
- 5.4 **Disclaimer of Relationship.** Nothing contained in this Agreement, nor any act of the City or of the Developer, or of any other person, shall be deemed or construed by any person to create any relationship of third party beneficiary, employer and employee, principal and agent, limited or general partners or joint ventures. The Developer is responsible for and shall pay all amounts and benefits owing to or for the account of its employees, if any, including unemployment compensation, FICA, retirement, life and medical insurance and worker's compensation insurance.
- 5.5 **Survival of Covenants, Etc.** All representations, warranties, covenants and agreements made by the City and the Developer in this Agreement, and all certificates delivered by the City and the Developer shall survive the execution of this Agreement and the completion of the Public Improvements and Storm Water Improvements. No other person is entitled to rely upon any such representations, warranties, covenants, agreements or certificates.
- 5.6 **Notices.** Any and all notices or other communications required or permitted under this Agreement shall be in writing and shall be sufficiently given when delivered in person to, or sent by certified mail, postage prepaid, addressed as follows (provided that if mailed, any applicable time period will commence upon receipt by the addressee; and provided further that if the addressee refuses delivery, the notice will be deemed to have been given three days after the mailing of such notice or other communication):

To the City: City of Westfield, Indiana
Westfield City Hall
130 Penn Street
Westfield, Indiana 46074
Attn: Johnathon Nail

With a copy to: Taft Stettinius & Hollister
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204
Attn: Manny Herceg

To the Developer: West Fork Whiskey Real Estate JV, LLC

Attn: David McIntyre

or to such other address or person as shall be designated from time to time by notice as contemplated by this Section 5.6.

- 5.7 **Governing Law.** Except to the extent preempted by federal law, the laws of the State of Indiana shall govern all aspects of this Agreement, including execution, interpretation, performance and enforcement. All exhibits attached hereto are incorporated by reference.
- 5.8 **Dispute Resolution.** Any lawsuit arising out of or relating to this Agreement must be brought in Hamilton County, Indiana Circuit or Superior Courts. The City and the Developer consent to the jurisdiction of such court and irrevocably waive any objections they may have to such jurisdiction or venue.
- 5.9 **No Waiver.** Neither failure nor delay on the part of the City or the Developer in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any such right preclude any further exercise thereof or the exercise of any other right. No waiver of any provision of this Agreement or consent to any departure by the Developer or the City therefrom shall be effective unless the same shall be in writing, signed on behalf of the City or the Developer by a duly authorized officer thereof, and the same shall be effective only in the specific instance for which it is given. No notice to or demand on the City or the Developer shall entitle the City or the Developer to any other or further notices or demands in similar or other circumstances, or constitute a waiver of any of the City's or the Developer's right to take other or further action in any circumstances without notice or demand.
- 5.10 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original for all purposes and each of which shall constitute one and the same.

- 5.11 **Binding of Successors, Assigns.** Subject to the further provisions of this Agreement, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the City, the Developer, and their respective successors and assigns.
- 5.12 **Further Assurances.** Subject to the further provisions of this Agreement, the Developer, and the City shall, at such party's expense, upon request of the other such party, duly execute and deliver, or cause to be executed and delivered, such further instruments and perform or cause to be performed such further acts as may be reasonably necessary or proper in the reasonable opinion of the City or the Developer to carry out the provisions and purposes of this Agreement including, but not limited to, reasonable administrative amendment of this Agreement to satisfy the underwriting requirements of the Developer's Lender but only so long as such administrative amendments do not violate any provision of this Agreement, particularly Section 2.1.
- 5.13 **Severability.** The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Time is of the essence in this Agreement. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, then the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law; provided that, in lieu of such invalid or unenforceable provision, there will be added to this Agreement a provision as similar to the invalid or unenforceable provision as is possible to reflect the intent of the parties and still be valid and enforceable. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement or the scope or content of any of its provisions. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the Developer and the City or their successors in interest. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Project Site is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday.
- 5.14 **Headings.** The headings of the articles, sections and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.
- 5.15 **Entire Agreement.** Except as otherwise expressly provided herein, this Agreement constitutes the entire agreement by and between the City and the Developer and supersedes all prior agreements, written or verbal, between the City and the Developer. No statements, promises or agreements whatsoever, in writing or verbally, in conflict with the terms of this Agreement have been made by the City or the Developer that in any way modify, vary,

alter, enlarge or invalidate any of the provisions and obligations of this Agreement. The parties do contemplate entering into additional development agreements that are intended to amend and or supplement the scope and purpose of this agreement.

5.16 **No Third Party Beneficiaries.** There are no third party beneficiaries of this Agreement.

5.17 **Indemnification.**

- (a) **Developer Indemnification.** The Developer will pay, and protect, indemnify and save the City (including members, directors, officials, officers, agents, attorneys and employees thereof) harmless from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the City), causes of actions, suits, claims, demands and judgments of any nature arising from or relating to:
 - (i) Violation by the Developer of any agreement or condition of this Agreement;
 - (ii) Violation of any contract, agreement or restriction by the Developer relating to the Project, the Public Improvements or any part thereof, in connection with the implementation of or effectuation of this Agreement;
 - (iii) Violation of any law, ordinance or regulation by the Developer arising out of the ownership, occupancy or use of the Project, or a part thereof;
 - (iv) Any act, failure to act, or misrepresentation by the Developer, or any of the Developer's agents, contractors, servants, employees or licensees related to this Agreement; and
 - (v) The provision of any information or certification furnished by the Developer in connection with the issuance of the Note or this Agreement.
- (b) **City Indemnification.** To the extent permitted by law, the City will pay, and protect, indemnify and save the Developer (including members, directors, officials, officers, agents, attorneys and employees thereof) harmless from and against, all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses of the Developer), causes of actions, suits, claims, demands and judgments of any nature arising from or relating to:
 - (i) Violation by the City of any agreement or condition of this Agreement;
 - (ii) Violation of any contract, agreement or restriction by the City relating to the Project, or any part thereof, in connection with the implementation of or effectuation of this Agreement;

- (iii) Any act, failure to act, or misrepresentation by the City, or any of the City's or other City Party's agents, contractors, servants, employees or licensees related to this Agreement; and
- (iv) The defense of any claim related to the action brought by the City to obtain additional right of way from parties other than Developer for the construction of the Public Improvements.

5.18 **Force Majeure.** Notwithstanding anything to the contrary set forth herein, each party shall be excused for any failure or delay in performing any of its obligations under this Agreement, if such failure or delay is caused by an event of Force Majeure. "Force Majeure" means any act of God; any accident (including equipment failure, HVAC failure or electricity outage for extended periods of time, destruction or damage to equipment not caused by the party relying upon such circumstance or event); any explosion; any fire, flood, ice, earthquake, lightning, tornado, hurricane or other severe weather condition or calamity; any civil disturbance, labor dispute or labor or material shortage; any sabotage or act (or specific, imminent threatened act) of terrorism; any act of a public enemy, uprising, insurrection, civil unrest, war or rebellion; any action or restraint by court order or public or governmental authority or lawfully established civilian authorities; a material adverse change in the national financial economic situation in the United States; the establishment of a general banking moratorium by Federal, State of Indiana authorities; a major financial crisis or material disruption in commercial banking or securities markets; or any other circumstance or event beyond the reasonable control of the party relying upon such circumstance or event. Each party shall diligently make efforts to perform any obligations delayed under this Section 5.18, immediately upon the event of Force Majeure no longer preventing such obligation from being performed, then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

5.19 **Future Actions.** Notwithstanding any other provisions of this Agreement, the parties acknowledge and understand that (i) certain City Parties, including the Common Council of the City, must take future actions to implement and maintain the City's obligations under this Agreement, and (ii) the representations of and performance of the covenants and agreements of the City are subject to and contingent upon compliance with and completion of applicable statutory and administrative procedures, including, without limitation, any applicable public notice and public hearing requirements, official actions by governing bodies, budget appropriations, and any remonstrance and appeal rights. The City covenants that it will use its best and commercially reasonable efforts to do all things lawfully within its power to take such future actions and to comply with all applicable statutory and administrative procedures at such times and in such manner as to effectuate and implement the provisions and intent of this Agreement to the fullest extent possible in accordance with the time frames set forth herein. The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications, as may be necessary or appropriate, from time to time, to carry out the terms,

provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

- 5.20 **Interpretation.** Unless the context requires otherwise, (i) the singular includes the plural and vice versa, (ii) RECITALS and **EXHIBITS** form a part of this Agreement, (iii) any reference in this Agreement to any particular Article, Section, subsection, RECITAL or **EXHIBIT** shall be deemed to refer to an Article, Section or RECITAL of, or **EXHIBIT** to, this Agreement, (iv) the word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it, and (v) where a term is defined, another part of speech or grammatical form of that term shall have a corresponding meaning.

ARTICLE VI

Property Assessed Valuation Appeals and Payments

- 6.1 Developer covenants and warrants it will pay all property tax bills for the Project owned by Developer, its affiliates and its subsidiaries before tax bills are delinquent.
- 6.2 Developer covenants and warrants that it will not appeal or otherwise challenge the assessed valuation of the Project owned by the Developer.

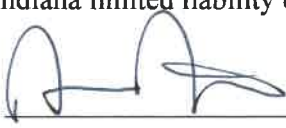
Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement.

* * *

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the day and year first above written.

"DEVELOPER"

West Fork Whiskey Real Estate JV, LLC
an Indiana limited liability company

By: 

Printed: David McIntyre

Title: MANAGER

STATE OF INDIANA)

COUNTY OF MARION)

SS:



Before me, a Notary Public in and for the State of Indiana, personally appeared ROBERT D. MCINTYRE the _____ of West Fork Whiskey Real Estate JV, LLC, who, being first duly sworn, acknowledged the execution of the foregoing Agreement for and on behalf of said limited liability company.

Witness my hand and Notarial Seal this 24TH day of AUGUST, 2021.

My Commission Expires:

JUNE 14, 2025

My County of Residence:

HENDRICKS


NOTARY PUBLIC

Printed

STELLA M ZESSIN

“CITY”

CITY OF WESTFIELD

By: _____
J. Andrew Cook, Mayor

STATE OF INDIANA)
)SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for the State of Indiana, personally appeared. Andrew Cook, the Mayor of the City of Westfield, Indiana, who, being first duly sworn, acknowledged the execution of the foregoing Agreement for and on behalf of the City of Westfield, Indiana.

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

My Commission Expires:

My County of Residence:

NOTARY PUBLIC

Printed

This instrument prepared by Cameron G. Starnes, Taft Stettinius & Hollister, One Indiana Square, Suite 3500, Indianapolis, Indiana 46204.

I affirm, under penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law. *Cameron G. Starnes*

EXHIBIT A

Project Site

PC6 Slide 106



WEST FORK WHISKEY - OSBORNE TRAILS PIC JOB #200107-30000

EXHIBIT B

Description of Project

EXHIBIT C

Public Improvements

Description/Location of Public Improvements

