



CITY OF WESTFIELD, IN
Board of Public Works Meeting Agenda_07_28_2021

Wednesday, July 28, 2021 at 01:00 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Wednesday, July 28, 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 #15

Meeting Minutes Consideration for Approval

Action Item #1:

Approval of June 23rd Minutes

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

Contracts/Agreements

Action Item #2:

Daystar & City of Westfield – Centennial Permanent Sump Line Repairs Contract

Documents: [Proposal - Centennial Summer Sump Repairs](#)

Action Item #3:

Daystar & City of Westfield – Centennial Roundabout Underdrain Installation Contract

Documents: [Centennial RAB Underdrain Proposal](#)

Action Item #4:

INDOT & City of Westfield - Little Eagle Creek Avenue - LPA Contract

Documents: [INDOT LPA Agreement](#)

Action Item #5:

Rieth-Riley Construction Co. & City of Westfield - 191st & Chad Hittle RAB Goods & Services Contract

Documents: [Rieth-Riley Goods & Services Contract](#)

Action Item #6:

RQAW Corporation & City of Westfield – 151st Street & Towne Road Roundabout – LPA Consulting Contract – Preliminary Engineering – Amendment #1

Documents: [RQAW Amendment #1](#)

Action Item #7:

RQAW & City of Westfield – 151st & Town RAB – ROW Acquisition LPA Consulting Contract

Documents: [RQAW Consulting Contract](#)

Action Item #8:

WSP & City of Westfield - ROW Task Order - Mule Barn Road

Documents: [WSP Task Order #27](#)

Action Item #9:

Signing Authority – Westfield Park Road Culvert Replacement

Documents: [Signing Authority - Culvert Replacement](#)

Action Item #10:

Signing Authority – Public Works Parking Lot Resurfacing Project

Documents: [Signing Authority - PW Parking Lot](#)

Action Item #11:

West Fork Whiskey Development Agreement

Action Item #12:

West Fork Whiskey – RIF Installment Agreement

Action Item #13:

Maglin - Grand Junction Plaza - Furniture Quotation

Documents: [Maglin Quote](#)

Permit Approval

Action Item #14:

Encroachment Permit Application – Duke Energy – 1170 W. 193rd Street

Documents: [Duke Energy Encroachment Application](#)

Appointments

Action Item #15:

Approval – Mayoral Appointments to the Impact Fee Review Board

Michael Pearce

Jeff Boller

Rebecca Ogle

Consent Agenda

July Bond Information

Documents: [Bond Information - July](#)

Department Reports

Fire

Police

Documents: [June 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



Daystar Directional Drilling - Proposal

P.O. Box 1684

Noblesville, IN 46061

Contact: Daystar Directional Drilling

Phone: (317) 773-7455

Email: info@daystardrilling.com

Quote To: CITY OF WESTFIELD Job Name: CENTENNIAL SUB-DIVISION
 WES ROOD WESTFIELD, IN
 Phone: 317.504.2477
 Email: WROOD@WESTFIELD.IN.GOV

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
10	HDD +-500LF 4" STORM SEWER ANTHENS PLACE	1.00	LS	26,617.56	26,617.56
20	HDD +-200LF 3" STORM SEWER ANTHENS PLACE	1.00	LS	17,163.16	17,163.16
30	EXCAVATE/RECONNECT SUMP LINE ANTHENS PLACE	8.00	EA	1,349.73	10,797.84
40	HDD +-80LF 2" SUMP SERVICE 1002 PALOMAR DR	1.00	LS	3,172.57	3,172.57
50	HDD +-125LF 2" STORM SEWER 1268/1281 LEWISTON DR	1.00	LS	6,239.80	6,239.80
60	HDD +-1050LF 4" STORM SERVICE BAINBRIDGE CT	1.00	LS	59,654.54	59,654.54
70	EXCAVATE/RECONNECT SUMP LINE BAINBRIDGE CT	15.00	EA	1,342.92	20,143.80
80	HDD 2" SUMP SERVICE CURB/STORM BAINBRIDGE CT	4.00	EA	527.81	2,111.24
GRAND TOTAL					\$145,900.51

NOTES:

No excavation or materials. No private utility locates. No traffic/pedestrian control, hard surface cuts/restoration, bonds or permits included in the price. Prices quoted using standard Daystar wage rates. Proposal valid for 90 days. DDD will notify Indiana 811 but cannot be held responsible for any unmarked public or private utilities or lines. When customer is responsible for existing utility locates they agree to indemnify and hold harmless Daystar Directional Drilling Inc. (hereafter identified as DDD) from any and all actions, claims, cost, loss, damage, attorney fees or liability resulting from the following:

- 1) Damage to existing underground utilities or structures, unless one (1) copy of exact elevation and location measurements are furnished to DDD prior to excavation or unless customer field locates all existing obstacles before works begins
 - 2) Damages caused by lack of engineering or customer Supervision unless DDD Provides Supervision on project
- Any attachments included herein will be considered part of this proposal.

Payment is due 30 days upon receipt of invoice. Past due invoices are subject to one and a half (1 ½) percent per month service charge, plus reasonable attorney fees necessary to collect past due invoice. If using credit card to pay for invoice there will be a minimum convenience charge of 4%. This serves as notice of intent to file a lien for slow or nonpayment.

Quality workmanship and professionalism are standard. Material if provided by DDD will be as specified. Any alteration or

deviation from above specification involving extra cost will be executed only upon written orders, and will become an extra charge over and above the estimate. This was given under normal ground conditions. The price will be adjusted if abnormal conditions exist (i.e. water, sand, rock, under ground utilities or any other obstructions)

Acceptance of Proposal - The signature below indicates acceptance of stated terms, conditions and specifications by both parties. This document may be executed in multiple counterparts and by facsimile signatures.

Authorized Signature Jerry K. Watson Date:

Acceptance Signature: _____ Date: _____ (Customer)



Daystar Directional Drilling - Proposal

P.O. Box 1684

Noblesville, IN 46061

Contact: Daystar Directional Drilling

Phone: (317) 773-7455

Email: info@daystardrilling.com

Quote To: CITY OF WESTFIELD

Job Name: NEWHAVEN DR / PIEDMONT
WESTFIELD, IN
EXCAVATION
MATERIALS
PERMIT
RESTORE W/NO ASPHALT

Phone:

Email:

21CH0044

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
10	CUT/REMOVE 1,400SQFT OF ASPHALT	1.00	LS	6,919.60	6,919.60
20	EXCAVATE/REMOVE SPOIL	1.00	LS	17,556.78	17,556.78
30	INSTALL OF 600LF 4" DUAL WALL UNDER DRAIN	1.00	LS	11,967.05	11,967.05
40	INSTALL OF 4" OUTLET DRAIN	2.00	EA	4,768.03	9,536.06
50	RESTORATION W/GRANULAR FILL AND COMPACTION	1.00	LS	11,101.07	11,101.07
GRAND TOTAL					\$57,080.56

NOTES:

No excavation or materials. No private utility locates. No traffic/pedestrian control, hard surface cuts/restoration, bonds or permits included in the price. Prices quoted using standard Daystar wage rates. Proposal valid for 90 days.

DDD will notify Indiana 811 but cannot be held responsible for any unmarked public or private utilities or lines. When customer is responsible for existing utility locates they agree to indemnify and hold harmless Daystar Directional Drilling Inc. (hereafter identified as DDD) from any and all actions, claims, cost, loss, damage, attorney fees or liability resulting from the following:

- 1) Damage to existing underground utilities or structures, unless one (1) copy of exact elevation and location measurements are furnished to DDD prior to excavation or unless customer field locates all existing obstacles before works begins
- 2) Damages caused by lack of engineering or customer Supervision unless DDD Provides Supervision on project

Any attachments included herein will be considered part of this proposal.

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Acceptances of Proposal - The signature below indicates acceptance of stated terms, conditions and specifications by both parties. This document may be executed in multiple counterparts and by facsimile signatures.

Authorized Signature Jerry K. Watson Date:

Acceptance Signature: _____ Date: _____ (Customer)

LPA – CONSULTING CONTRACT

Amendment #1

This supplemental contract is made and entered into this _____ day of July, 2021, by and between City of Westfield, hereinafter referred to as the "LPA", and RQAW Corporation, hereinafter referred to as the "Consultant".

WITNESSETH

WHEREAS, the LPA on November 28, 2018, entered into a contract, providing for the necessary services required in connection with 151st Street and Towne Road Roundabout, Des. No. 1702765; and

WHEREAS, additional archaeology and wetland delineation services are required; and

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

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

SECTION IV of the original contract is amended to read as follows:

SECTION IV COMPENSATION. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "D" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed **\$261,438**.

*Appendix "A" of the original contract is amended as follow (changes shown in **bold** font):*

Task 1 Environmental Services

Through a subconsultant, CONSULTANT will provide the following services as described in Exhibit 3.

1. Waters delineation
2. Cultural resources/Section 106 consultation
3. Categorical Exclusion (Level 3 or lower) document.

The subconsultant will provide additional archaeological services as described in Exhibit 4 and additional wetland delineation services as described in Exhibit 5.

Task 8 Regulated Waters Determination & Permitting

The subconsultant will provide regulated waters jurisdictional determinations and permitting as described in Exhibit 5.

*Appendix "D" is amended as shown below (changes shown in ~~stricken~~ and **bold** font):*

A. Amount of Payment

1. The CONSULTANT shall receive as payment for the work performed under this Agreement the total fee not to exceed ~~\$252,383~~ **\$269,438**, unless a modification of the Agreement is approved in writing by the LOCAL PUBLIC AGENCY and the Indiana Department of Transportation.

2. The CONSULTANT will be paid for the following services performed under this Contract on a lump sum basis in accordance with the following fees:

Task 1	Environmental	\$27,800 \$36,855
Task 2	Topographic Survey Data Collection and Location Control Route Survey Plat	\$34,950
Task 4	Design and Plan Development	
1.	Roadway Design (including Rule 5 Permit)	\$122,000
Task 6	Utility Coordination Services	\$28,366
Task 8 Regulated Waters		
1.	Jurisdictional Determination	\$2,600
2.	Regional General Permit Application (if authorized)	\$3,800
3.	401 Individual WQC Application/404 RGP (if authorized)	\$5,400
Total:		<u>\$213,116</u> <u>\$230,171</u>

CONSULTANT's total not-to-exceed fee is increased by \$17,055 from \$252,383 to \$269,438.

Exhibits 4, 5, and 6 are attached hereto and incorporated herein.

Except as herein modified, changed, and supplemented, all terms of the original engineering contract dated November 28, 2018, shall continue in full force and effect.

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

CONSULTANT

RQAW Corporation

Dylan Sievers

R. Dylan Sievers, Project Manager

LOCAL PUBLIC AGENCY

Westfield Board of Public Works & Safety

J. Andrew Cook, Mayor

Randell Graham

James Ake



Scope Change Order Form

Project Name: 151st and Towne Road Intersection Improvement Project

Project Number / Phase: J1632330A0/ 25

Date: 8/29/2019

Change Order Number: 01

Prepared By: Veronica Parsell

Project Manager: Tammy Miller

Change Requested:

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

This change of scope includes the following:

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

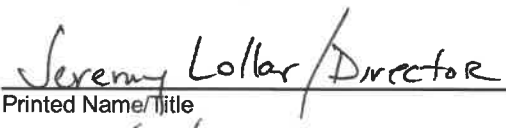
Fixed Fee: \$5,200.00

Change Approved By:



Signature
Westfield

Company



Printed Name/Title
10/23/19

Authorization Date



Scope Change Order Form

Project Name: 151st and Towne Road Intersection Improvement Project

Project Number / Phase: J1632330A0/

Date: 4/2/2021

Change Order Number: 02

Prepared By: Tammy Miller

Project Manager: Tammy Miller

Change Requested:

Cardno is submitting this supplemental as a result of changes that have occurred within the project area as well as to INDOT-Environmental Policy over the course of the project. Due to the recent construction visible on September 2020 imagery in the northern half of the project, the hydrology may have changed enough to significantly reduce the size of the wetlands in the project area. Cardno recommends that the City revise the delineation to reflect current conditions, which may provide significant cost and time savings during permitting. Based on the original delineation, current impacts to wetlands are 0.98 acre. As the IDEM regulations stand now, we would assume mitigation would be required at a 1:1 ratio at about \$85,000/acre (\$83,300). As of April 1, 2021, INDOT has updated their Categorical Exclusion Manual, including a new form for submittal. This change of scope includes updating the completed environmental documentation to meet the current INDOT guidelines.

This change of scope includes the following:

- Regulated waters delineation and reporting - \$2,561.00
- Update NEPA documentation - \$1,294.00

Total Fixed Fee: \$3,855.00

Change Approved By:



Signature
City of Westfield

Company



Printed Name/Title
4/28/21

Authorization Date

Signature
RQAW Consulting Engineers & Architects

Company

Printed Name/Title

Authorization Date



Cardno, Inc.
Matt Kwiatkowski, Operations Manager



Scope Change Order Form

Project Name: 151st and Towne Road Intersection Improvement Project

Project Number / Phase: J1632330A0/ N/A

Date: 7/12/2021

Change Order Number: 03

Prepared By: Ben Harvey

Project Manager: Tammy Miller

Change Requested:

Task 1 – Regulated Waters Jurisdictional Determinations

Cardno will prepare an Approved Jurisdictional Determination (AJD) package to accompany the Regulated Waters Delineation Report. Cardno will submit this to the US Army Corps of Engineers (USACE) with a request for jurisdictional determination on the delineation study area. Following submittal of the AJD materials, Cardno will act as your agent and track the AJD throughout the review process.

After coordinating with the Client, Cardno will prepare a Waters of the State Determination (WOSD) request and materials for submission to the Indiana Department of Environmental Management (IDEM). Cardno will provide the IDEM a copy of the Regulated Waters Delineation Report and USACE JD as part of this task. Following submittal of the WOSD materials, Cardno will act as your agent and track the WOSD throughout the review process.

A site visit with the USACE or IDEM is not anticipated at this time, nor is additional field work or investigations related to questions that the USACE or IDEM may have during their reviews.

Fee for Task 1: \$2,600.00

Task 2 – USACE and/or IDEM Water Quality Permitting

Task 2 is presented below as two options depending on the USACE AJD. If USACE determines that the wetlands are jurisdictional Task 2a would be applied. If USACE determines that the wetlands are isolated or if a 401 Individual Water Quality Certification is required, Task 2b would be applied. Cardno will not move forward under Task 2 without consulting with RQAW and the City of Westfield to discuss the appropriate permitting mechanism.

Task 2a: Section 401/404 Regional General Permit Application (if authorized)

Cardno will prepare and submit an application meeting either Regional General Permit (RGP) and/or Nationwide Permit (NWP) criteria for a Clean Water Act (CWA) Section 404 Permit to the US Army Corps and a Regional General Permit for Section 401 impacts to IDEM. It is assumed environmental mitigation will not be required – mitigation and monitoring plans are not included in this scope of work.

Following submittal of the application, Cardno will act as your agent and track the application throughout the review process. This includes correspondence, telephone discussions, and



Exhibit 6

Scope Change Order Form

response to requests for additional information or clarification. Cardno will also coordinate the submittal of additional materials requested in response to the agency review, if any, with the Client. The Client shall provide an impact plan showing project boundaries, layout, and the nature of anticipated impacts in relation to the delineated regulated water boundaries.

Cardno will contact and coordinate with the representatives of the permitting agencies to facilitate the permitting process; however, submitting an application cannot guarantee that a permit will be issued.

Fee for Task 2a: \$3,800.00

Task 2b: Section 401 Individual WQC Application/404 RGP (if authorized)

Cardno will prepare and submit an application meeting State Individual Water Quality Certification (WQC) Permit Criteria under Section 401 of the CWA or State Isolated Wetlands Permit. If necessary, Cardno will coordinate and submit a notification/request to the USACE for authorization under the RGP and/or NWP under CWA Section 404. These permit applications will include documentation of impacts and responses to questions regarding other biological issues. Following submittal of the application, Cardno will act as your agent and track the application(s) throughout the review process. This includes correspondence, telephone discussions, response to requests for additional information or clarification, and up to two meetings with agencies/ and or client to assist in negotiation with the agency on your behalf. Cardno will also coordinate the submittal of additional materials requested in response to the agency review, if any, with the Client. The Client shall provide an impact plan showing project boundaries, layout and the nature of anticipated impacts in relation to the delineated regulated water boundaries.

Cardno will contact and coordinate with the representatives of the permitting agencies to facilitate the permitting process; however, submitting an application cannot guarantee that a permit will be issued.

ASSUMPTIONS:

- The above scope of work assumes that project will impact less than 1,500 feet of jurisdictional waterway and less than 1.0 acre of wetlands.
- No Onsite or Offsite mitigation will be utilized for proposed impacts.
- Assumes wetland/stream credits, if required, will be purchased by the Client through the Indiana Stream and Wetland Mitigation Program as administered by the IDNR

Fee for Task 2b: \$5,400.00

Change Approved By:

Signature

Printed Name/Title

Company

Authorization Date

Cardno, Inc.

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of _____, 2021 ("Effective Date") by and between City of Westfield, Indiana, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and RQAW Corporation ("the CONSULTANT"), a corporation organized under the laws of the State of Indiana.

Des. No.: 1702765

Project Description: Land acquisition for a roundabout including storm sewer, sidewalks, perimeter tails, curb and gutter, and pavement at the intersection of 151st Street and Towne Road

RECITALS

WHEREAS, the LPA has entered into an agreement to utilize federal monies with the Indiana Department of Transportation ("INDOT") for a transportation or transportation enhancement project ("the Project"), which Project Coordination Contract is herein attached as Attachment 1 and incorporated as reference; and

WHEREAS, the LPA wishes to hire the CONSULTANT to provide services toward the Project completion more fully described in Appendix "A" attached hereto ("Services");

WHEREAS, the CONSULTANT has extensive experience, knowledge and expertise relating to these Services; and

WHEREAS, the CONSULTANT has expressed a willingness to furnish the Services in connection therewith.

NOW, THEREFORE, in consideration of the following mutual covenants, the parties hereto mutually covenant and agree as follows:

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

SECTION I SERVICES BY CONSULTANT. The CONSULTANT will provide the Services and deliverables described in Appendix "A" which is herein attached to and made an integral part of this Contract.

SECTION II INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA. The information and services to be furnished by the LPA are set out in Appendix "B" which is herein attached to and made an integral part of this Contract.

SECTION III TERM. The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be November 30, 2022. A schedule for completion of the Services and deliverables is set forth in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION IV COMPENSATION. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "D" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed **\$12,715**.

SECTION V NOTICE TO PROCEED AND SCHEDULE. The CONSULTANT shall begin the work to be performed under this Contract only upon receipt of the written notice to proceed from the LPA, and shall deliver the work to the LPA in accordance with the schedule contained in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION VI GENERAL PROVISIONS

1. **Access to Records.** The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by the LPA, INDOT and/or the Federal Highway Administration (“FHWA”) or its authorized representative, and copies thereof shall be furnished free of charge, if requested by the LPA, INDOT, and/or FHWA. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, the CONSULTANT may release or make available to the agency any working papers from an audit performed by the LPA, INDOT and/or FHWA of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
2. **Assignment; Successors.**
 - A. The CONSULTANT binds its successors and assignees to all the terms and conditions of this Contract. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without the LPA’s prior written consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of the LPA, provided that the CONSULTANT gives written notice (including evidence of such assignment) to the LPA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.
 - B. Any substitution of SUB-CONSULTANTS must first be approved and receive written authorization from the LPA. Any substitution or termination of a Disadvantaged Business Enterprise (“DBE”) SUB-CONSULTANT must first be approved and receive written authorization from the LPA and INDOT’s Economic Opportunity Division Director.
3. **Audit.** The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with 48 CFR part 31 and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract.
4. **Authority to Bind Consultant.** The CONSULTANT warrants that it has the necessary authority to enter into this Contract. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed hereto.
5. **Certification for Federal-Aid Contracts Lobbying Activities.**
 - A. The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief after diligent inquiry, and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:
 - i. No federal appropriated funds have been paid, or will be paid, by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, the making of any federal grant, the making of any federal loan, the

entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- B. The CONSULTANT also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

6. **Changes in Work.** The CONSULTANT shall not commence any additional work or change the scope of the work until authorized in writing by the LPA. The CONSULTANT shall make no claim for additional compensation or time in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may be amended, supplemented or modified only by a written document executed in the same manner as this Contract. The CONSULTANT acknowledges that no claim for additional compensation or time may be made by implication, oral agreements, actions, inaction, or course of conduct.

7. **Compliance with Laws.**

- A. The CONSULTANT shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Contract, shall be reviewed by the LPA and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.
- B. The CONSULTANT represents to the LPA that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:
 - i. *State of Indiana Actions.* The CONSULTANT has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify the LPA of any such actions. During the term of such actions, CONSULTANT agrees that the LPA may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.
 - ii. *Professional Licensing Standards.* The CONSULTANT, its employees and SUBCONSULTANTS have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract.

- iii. *Work Specific Standards.* The CONSULTANT and its SUB-CONSULTANTS, if any, have obtained, will obtain and/or will maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the LPA.
 - iv. *Secretary of State Registration.* If the CONSULTANT is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
 - v. *Debarment and Suspension of CONSULTANT.* Neither the CONSULTANT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State and will immediately notify the LPA of any such actions. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the CONSULTANT or who has managerial or supervisory responsibilities for the Services.
 - vi. *Debarment and Suspension of any SUB-CONSULTANTS.* The CONSULTANT’s SUB-CONSULTANTS are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The CONSULTANT shall be solely responsible for any recoupment, penalties or costs that might arise from the use of a suspended or debarred SUBCONSULTANT. The CONSULTANT shall immediately notify the LPA and INDOT if any SUB-CONSULTANT becomes debarred or suspended, and shall, at the LPA’s request, take all steps required by the LPA to terminate its contractual relationship with the SUB-CONSULTANT for work to be performed under this Contract.
- C. *Violations.* In addition to any other remedies at law or in equity, upon CONSULTANT’S violation of any of Section 7(A) through 7(B), the LPA may, at its sole discretion, do any one or more of the following:
- i. terminate this Contract; or
 - ii. delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.
- D. *Disputes.* If a dispute exists as to the CONSULTANT’s liability or guilt in any action initiated by the LPA, and the LPA decides to delay, withhold, or deny work to the CONSULTANT, the CONSULTANT may request that it be allowed to continue, or receive work, without delay. The CONSULTANT must submit, in writing, a request for review to the LPA. A determination by the LPA under this Section 7.D shall be final and binding on the parties and not subject to administrative review. Any payments the LPA may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.
8. **Condition of Payment.** The CONSULTANT must perform all Services under this Contract to the LPA’s reasonable satisfaction, as determined at the discretion of the LPA and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The LPA will not pay for work not performed to the LPA’s reasonable satisfaction, inconsistent with this Contract or performed in violation of federal, state, or local law (collectively, “deficiencies”) until all deficiencies are remedied in a timely manner.

9. Confidentiality of LPA Information.

- A. The CONSULTANT understands and agrees that data, materials, and information disclosed to the CONSULTANT may contain confidential and protected information. Therefore, the CONSULTANT covenants that data, material, and information gathered, based upon or disclosed to the CONSULTANT for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the LPA's prior written consent.
- B. The parties acknowledge that the Services to be performed by the CONSULTANT for the LPA under this Contract may require or allow access to data, materials, and information containing Social Security numbers and maintained by the LPA in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the CONSULTANT and the LPA agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by the CONSULTANT, the CONSULTANT agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract.

- 10. Delays and Extensions.** The CONSULTANT agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the Services specified in this Contract. Such delays, if any, shall be compensated for by an extension of time for such period as may be determined by the LPA subject to the CONSULTANT's approval, it being understood, however, that permitting the CONSULTANT to proceed to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the LPA of any of its rights herein. In the event of substantial delays or extensions, or change of any kind, not caused by the CONSULTANT, which causes a material change in scope, character or complexity of work the CONSULTANT is to perform under this Contract, the LPA at its sole discretion shall determine any adjustments in compensation and in the schedule for completion of the Services. CONSULTANT must notify the LPA in writing of a material change in the work immediately after the CONSULTANT first recognizes the material change.

11. DBE Requirements.

- A. Notice is hereby given to the CONSULTANT and any SUB-CONSULTANT, and both agree, that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Contract and, after notification and failure to promptly cure such breach, may result in termination of this Contract or such remedy as INDOT deems appropriate. The referenced section requires the following assurance to be included in all subsequent contracts between the CONSULTANT and any SUB-CONSULTANT:

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

- B. The CONSULTANT shall make good faith efforts to achieve the DBE percentage goal that may be included as part of this Contract with the approved DBE SUB-CONSULTANTS identified on its Affirmative Action Certification submitted with its Letter of Interest, or with approved amendments. Any changes to a DBE firm listed in the Affirmative Action Certification must be requested in writing and receive prior approval by the LPA and INDOT's Economic Opportunity Division Director. After this Contract is completed and if a DBE SUB-CONSULTANT has performed services thereon, the CONSULTANT must complete, and return, a Disadvantaged Business Enterprise Utilization Affidavit ("DBE-3 Form") to INDOT's Economic Opportunity

Division Director. The DBE-3 Form requires certification by the CONSULTANT AND DBE SUB-CONSULTANT that the committed contract amounts have been paid and received.

12. Non-Discrimination.

- A. Pursuant to I.C. 22-9-1-10, the Civil Rights Act of 1964, and the Americans with Disabilities Act, the CONSULTANT shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Contract. Acceptance of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
- B. The CONSULTANT understands that the LPA is a recipient of federal funds. Pursuant to that understanding, the CONSULTANT agrees that if the CONSULTANT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the CONSULTANT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The CONSULTANT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

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

- C. The CONSULTANT shall not discriminate in its selection and retention of contractors, including without limitation, those services retained for, or incidental to, construction, planning, research, engineering, property management, and fee contracts and other commitments with persons for services and expenses incidental to the acquisitions of right-of-way.
- D. The CONSULTANT shall not modify the Project in such a manner as to require, on the basis of race, color or national origin, the relocation of any persons. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability).
- E. The CONSULTANT shall not modify the Project in such a manner as to deny reasonable access to and use thereof to any persons on the basis of race, color or national origin. (INDOT's Title VI enforcement will include the following additional grounds; sex, ancestry, age, income status, religion and disability.)
- F. The CONSULTANT shall neither allow discrimination by contractors in their selection and retention of subcontractors, lessors and/or material suppliers, nor allow discrimination by their subcontractors in their selection of subcontractors, lessors or material suppliers, who participate in construction, right-of-way clearance and related projects.

- G. The CONSULTANT shall take appropriate actions to correct any deficiency determined by itself and/or the Federal Highway Administration ("FHWA") within a reasonable time period, not to exceed ninety (90) days, in order to implement Title VI compliance in accordance with INDOT's assurances and guidelines.
- H. During the performance of this Contract, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:
- (1) Compliance with Regulations: The CONSULTANT shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - (2) Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
 - (3) Solicitations for SUBCONSULTANTS, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential SUBCONSULTANT or supplier shall be notified by the CONSULTANT of the CONSULTANT'S obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
 - (4) Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LPA or INDOT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the LPA, or INDOT as appropriate, and shall set forth what efforts it has made to obtain the information.
 - (5) Sanctions for Noncompliance: In the event of the CONSULTANT'S noncompliance with the nondiscrimination provisions of this contract, the LPA shall impose such contract sanctions as it or INDOT may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to the CONSULTANT under the Contract until the CONSULTANT complies, and/or
 - (b) cancellation, termination or suspension of the Contract, in whole or in part.
 - (6) Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any SUBCONSULTANT procurement as the LPA or INDOT may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a SUBCONSULTANT or supplier as a result of such direction, the CONSULTANT may request the LPA to enter into such litigation to protect the interests of the LPA, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

13. Disputes.

- A. Should any disputes arise with respect to this Contract, the CONSULTANT and the LPA agree to act promptly and in good faith to resolve such disputes in accordance with this Section 13. Time is of the essence in the resolution of disputes.
- B. The CONSULTANT agrees that the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the CONSULTANT fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs (including reasonable attorneys' fees and expenses) incurred by the LPA or the CONSULTANT as a result of such failure to proceed shall be borne by the CONSULTANT.
- C. If a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify the other party of this dissatisfaction in writing. Upon written notice, the parties have ten (10) business days, unless the parties mutually agree in writing to extend this period, following the written notification to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party may submit the dispute in writing to initiate negotiations to resolve the dispute. The LPA may withhold payments on disputed items pending resolution of the dispute.

14. Drug-Free Workplace Certification.

- A. The CONSULTANT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the LPA within ten (10) days after receiving actual notice that an employee of the CONSULTANT in the State of Indiana has been convicted of a criminal drug violation occurring in the CONSULTANT's workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of Contract payments, termination of this Contract and/or debarment of contracting opportunities with the LPA.
- B. The CONSULTANT certifies and agrees that it will provide a drug-free workplace by:
 - i. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CONSULTANT's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - ii. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CONSULTANT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

- iii. Notifying all employees in the statement required by subparagraph 14.B.i above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the CONSULTANT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- iv. Notifying in writing the LPA within ten (10) days after receiving notice from an employee under subdivision 14.B.iii(2) above, or otherwise receiving actual notice of such conviction;
- v. Within thirty (30) days after receiving notice under subdivision 14.B.iii(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency; and
- vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs 14.B.i. through 14.B.v. above.

15. **Employment Eligibility Verification.** The CONSULTANT affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The CONSULTANT shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The CONSULTANT is not required to participate should the E-Verify program cease to exist. Additionally, the CONSULTANT is not required to participate if the CONSULTANT is self-employed and does not employ any employees.

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

The CONSULTANT shall require his/her/its subcontractors, who perform work under this Contract, to certify to the CONSULTANT that the SUB-CONSULTANT does not knowingly employ or contract with an unauthorized alien and that the SUB-CONSULTANT has enrolled and is participating in the E-Verify program. The CONSULTANT agrees to maintain this certification throughout the duration of the term of a contract with a SUB-CONSULTANT.

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

16. **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of fire, natural disaster, acts of God, acts of war, terrorism, civil disorders, decrees of governmental bodies, strikes, lockouts, labor or supply disruptions or similar causes beyond the reasonable control of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give written notice to the other party of the occurrence of the Force Majeure Event (with a description in reasonable detail of the circumstances causing such Event) and shall do everything reasonably possible to resume performance. Upon receipt of such written notice, all obligations under this Contract shall be immediately suspended for as long as such Force Majeure Event continues and provided that the affected party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. If the period of nonperformance exceeds thirty (30) days from the receipt of written notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

17. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana. The CONSULTANT consents to the jurisdiction of and to venue in any court of competent jurisdiction in the State of Indiana.
18. **Liability.** If the CONSULTANT or any of its SUB-CONSULTANTS fail to comply with any federal requirement which results in the LPA's repayment of federal funds to INDOT the CONSULTANT shall be responsible to the LPA, for repayment of such costs to the extent such costs are caused by the CONSULTANT and/or its SUB-CONSULTANTS.
19. **Indemnification.** The CONSULTANT agrees to indemnify the LPA, and their agents, officials, and employees, and to hold each of them harmless, from claims and suits including court costs, attorney's fees, and other expenses caused by any negligent act, error or omission of, or by any recklessness or willful misconduct by, the CONSULTANT and/or its SUB-CONSULTANTS, if any, under this Contract, provided that if the CONSULTANT is a "contractor" within the meaning of I.C. 8-3-2-12.5, this indemnity obligation shall be limited by and interpreted in accordance with I.C. 8-23-2-12-5. The LPA shall not provide such indemnification to the CONSULTANT.
20. **Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents or employees of the other party. The CONSULTANT shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.
21. **Insurance - Liability for Damages.**
- A. The CONSULTANT shall be responsible for the accuracy of the Services performed under this Contract and shall promptly make necessary revisions or corrections resulting from its negligence, errors or omissions without any additional compensation from the LPA. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction of its negligent act, error or omission or for clarification of ambiguities. The CONSULTANT shall have no liability for the errors or deficiencies in designs, drawings, specifications or other services furnished to the CONSULTANT by the LPA on which the Consultant has reasonably relied, provided that the foregoing shall not relieve the CONSULTANT from any liability from the CONSULTANT'S failure to fulfill its obligations under this Contract, to exercise its professional responsibilities to the LPA, or to notify the LPA of any errors or deficiencies which the CONSULTANT knew or should have known existed.
- B. During construction or any phase of work performed by others based on Services provided by the CONSULTANT, the CONSULTANT shall confer with the LPA when necessary for the purpose of interpreting the information, and/or to correct any negligent act, error or omission. The CONSULTANT shall prepare any plans or data needed to correct the negligent act, error or omission without additional compensation, even though final payment may have been received by the CONSULTANT. The CONSULTANT shall give immediate attention to these changes for a minimum of delay to the project.
- C. The CONSULTANT shall be responsible for damages including but not limited to direct and indirect damages incurred by the LPA as a result of any negligent act, error or omission of the CONSULTANT, and for the LPA's losses or costs to repair or remedy construction. Acceptance of the Services by the LPA shall not relieve the CONSULTANT of responsibility for subsequent correction.

- D. The CONSULTANT shall be required to maintain in full force and effect, insurance as described below from the date of the first authorization to proceed until the LPA's acceptance of the work product. The CONSULTANT shall list both the LPA and INDOT as insureds on any policies. The CONSULTANT must obtain insurance written by insurance companies authorized to transact business in the State of Indiana and licensed by the Department of Insurance as either admitted or non-admitted insurers.
- E. The LPA, its officers and employees assume no responsibility for the adequacy of limits and coverage in the event of any claims against the CONSULTANT, its officers, employees, sub-consultants or any agent of any of them, and the obligations of indemnification in Section 19 herein shall survive the exhaustion of limits of coverage and discontinuance of coverage beyond the term specified, to the fullest extent of the law.
- F. The CONSULTANT shall furnish a certificate of insurance and all endorsements to the LPA prior to the commencement of this Contract. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the CONSULTANT. Failure to provide insurance as required in this Contract is a material breach of Contract entitling the LPA to immediately terminate this Contract.

I. Professional Liability Insurance

The CONSULTANT must obtain and carry professional liability insurance as follows: For INDOT Prequalification **Work Types** 1.1, 12.2-12.6 the CONSULTANTS shall provide not less than \$250,000.00 professional liability insurance per claim and \$250,000.00 aggregate for all claims for negligent performance. For **Work Types** 2.2, 3.1, 3.2, 4.1, 4.2, 5.5, 5.8, 5.11, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 – 10.4, 11.1, 13.1, 14.1 – 14.5, the CONSULTANTS shall carry professional liability insurance in an amount not less than \$1,000,000.00 per claim and \$1,000,000.00 aggregate for all claims for negligent performance. The CONSULTANT shall maintain the coverage for a period ending two (2) years after substantial completion of construction.

II. Commercial General Liability Insurance

The CONSULTANT must obtain and carry Commercial / General liability insurance as follows: For INDOT Prequalification **Work Types** 2.1, 6.1, 7.1, 8.1, 8.2, 9.1, 9.2, 10.1 - 10.4, 11.1, 13.1, 14.1 - 14.5, the CONSULTANT shall carry \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate. Coverage shall be on an occurrence form, and include contractual liability. The policy shall be amended to include the following extensions of coverage:

1. Exclusions relating to the use of explosives, collapse, and underground damage to property shall be removed.
2. The policy shall provide thirty (30) days notice of cancellation to LPA.
3. The CONSULTANT shall name the LPA as an additional insured.

III. Automobile Liability

The CONSULTANT shall obtain automobile liability insurance covering all owned, leased, borrowed, rented, or non-owned autos used by employees or others on behalf of the CONSULTANT for the conduct of the CONSULTANT's business, for an amount not less than \$1,000,000.00 Combined Single Limit for Bodily Injury and Property Damage. The term "automobile" shall include private passenger autos, trucks, and similar type vehicles licensed for use on public highways. The policy shall be amended to include the following extensions of coverage:

1. Contractual Liability coverage shall be included.
2. The policy shall provide thirty (30) days notice of cancellation to the LPA.
3. The CONSULTANT shall name the LPA as an additional insured.

IV. Watercraft Liability (When Applicable)

1. When necessary to use watercraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT, or any SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the watercraft shall carry watercraft liability insurance in the amount of \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Protection & Indemnity where applicable. Coverage shall apply to owned, non-owned, and hired watercraft.
2. If the maritime laws apply to any work to be performed by the CONSULTANT under the terms of the agreement, the following coverage shall be provided:
 - a. United States Longshoremen & Harbor workers
 - b. Maritime Coverage - Jones Act
3. The policy shall provide thirty (30) days notice of cancellation to the LPA.
4. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

V. Aircraft Liability (When Applicable)

1. When necessary to use aircraft for the performance of the CONSULTANT's Services under the terms of this Contract, either by the CONSULTANT or SUB-CONSULTANT, the CONSULTANT or SUB-CONSULTANT operating the aircraft shall carry aircraft liability insurance in the amount of \$5,000,000 Combined Single Limit for Bodily Injury and Property Damage, including Passenger Liability. Coverage shall apply to owned, non-owned and hired aircraft.
2. The policy shall provide thirty (30) days notice of cancellation to the LPA.
3. The CONSULTANT or SUB-CONSULTANT shall name the LPA as an additional insured.

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

23. **Notice to Parties:** Any notice, request, consent or communication (collectively a "Notice") under this Agreement shall be effective only if it is in writing and (a) personally delivered; (b) sent by certified or registered mail, return receipt requested, postage prepaid; or (c) sent by a nationally recognized overnight delivery service, with delivery confirmed and costs of delivery being prepaid, addressed as follows:

Notices to the LPA shall be sent to:

Johnathon Nail
2706 E 171st Street
Westfield, IN 46074

Notices to the CONSULTANT shall be sent to:

Troy Woodruff, Co-President
RQAW Corporation
8770 North Street, Suite 110
Fishers, IN 46038

or to such other address or addresses as shall be furnished in writing by any party to the other party. Unless the sending party has actual knowledge that a Notice was not received by the intended recipient, a Notice shall be deemed to have been given as of the date (i) when personally delivered; (ii) three (3) days after the date deposited with the United States mail properly addressed; or (iii) the next day when delivered during business hours to overnight delivery service, properly addressed and prior to such delivery service's cut off time for next day delivery. The parties acknowledge that notices delivered by facsimile or by email shall not be effective.

24. **Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract and attachments, (2) RFP document, (3) the CONSULTANT's response to the RFP document, and (4) attachments prepared by the CONSULTANT. All of the foregoing are incorporated fully by reference.
25. **Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the CONSULTANT prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the CONSULTANT assigns and transfers any ownership claim to the LPA and all such materials ("Work Product") will be the property of the LPA. The CONSULTANT agrees to execute and deliver such assignments or other documents as may be requested by the LPA. Use of these materials, other than related to contract performance by the CONSULTANT, without the LPA's prior written consent, is prohibited. During the performance of this Contract, the CONSULTANT shall be responsible for any loss of or damage to any of the Work Product developed for or supplied by INDOT and used to develop or assist in the Services provided herein while any such Work Product is in the possession or control of the CONSULTANT. Any loss or damage thereto shall be restored at the CONSULTANT's expense. The CONSULTANT shall provide the LPA full, immediate, and unrestricted access to the Work Product during the term of this Contract. The CONSULTANT represents, to the best of its knowledge and belief after diligent inquiry and other than as disclosed in writing prior to or contemporaneously with the execution of this Contract by the CONSULTANT, that the Work Product does not infringe upon or misappropriate the intellectual property or other rights of any third party. The CONSULTANT shall not be liable for the use of its deliverables described in Appendix "A" on other projects without the express written consent of the CONSULTANT or as provided in Appendix "A". The LPA acknowledges that it has no claims to any copyrights not transferred to INDOT under this paragraph.
26. **Payments.** All payments shall be made in arrears and in conformance with the LPA's fiscal policies and procedures.
27. **Penalties, Interest and Attorney's Fees.** The LPA will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.

28. Pollution Control Requirements. If this Contract is for \$100,000 or more, the CONSULTANT:

- i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
- ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
- iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.

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

30. Status of Claims. The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:

Johnathon Nail
2706 E 171st Street
Westfield, IN 46074

31. Sub-consultant Acknowledgement. The CONSULTANT agrees and represents and warrants to the LPA, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, from all SUB-CONSULTANTS providing Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the Sub-consultant Acknowledgement form(s) to the LPA for approval prior to performance of the Services by any SUB-CONSULTANT.

32. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification or Amendment thereof.

33. Taxes. The LPA will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.

34. Termination for Convenience.

- A. The LPA may terminate, in whole or in part, whenever, for any reason, when the LPA determines that such termination is in its best interests. Termination or partial termination of Services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of termination. The LPA will not be liable for Services performed after the effective date of termination.
- B. If the LPA terminates or partially terminates this Contract for any reason regardless of whether it is for convenience or for default, then and in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered within ten (10) days to the LPA. In the event of the failure by the CONSULTANT to make such delivery

upon demand, the CONSULTANT shall pay to the LPA any damage (including costs and reasonable attorneys' fees and expenses) it may sustain by reason thereof.

35. Termination for Default.

- A. With the provision of twenty (20) days written notice to the CONSULTANT, the LPA may terminate this Contract in whole or in part if
- (i) the CONSULTANT fails to:
 - 1. Correct or cure any breach of this Contract within such time, provided that if such cure is not reasonably achievable in such time, the CONSULTANT shall have up to ninety (90) days from such notice to effect such cure if the CONSULTANT promptly commences and diligently pursues such cure as soon as practicable;
 - 2. Deliver the supplies or perform the Services within the time specified in this Contract or any amendment or extension;
 - 3. Make progress so as to endanger performance of this Contract; or
 - 4. Perform any of the other provisions of this Contract to be performed by the CONSULTANT; or
 - (ii) if any representation or warranty of the CONSULTANT is untrue or inaccurate in any material respect at the time made or deemed to be made.
- B. If the LPA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the LPA considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to the LPA for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.
- C. The LPA shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and the LPA shall agree on the amount of payment for manufactured materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause (see Section 13). The LPA may withhold from the agreed upon price for Services any sum the LPA determine necessary to protect the LPA against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the LPA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. **Default by the LPA.** If the CONSULTANT believes the LPA is in default of this Contract, it shall provide written notice immediately to the LPA describing such default. If the LPA fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses, provided that if such cure is not reasonably achievable in such time, the LPA shall have up to one hundred twenty (120) days from such notice to effect such cure if the LPA promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the LPA.

36. **Waiver of Rights.** No rights conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is approved in writing and signed by the party claimed to have waived such right. Neither the LPA's review, approval or acceptance of, nor payment for, the Services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the LPA in accordance with applicable law for all damages to the LPA caused by the CONSULTANT's negligent performance of any of the Services furnished under this Contract.
37. **Work Standards/Conflicts of Interest.** The CONSULTANT shall understand and utilize all relevant INDOT standards including, but not limited to, the most current version of the Indiana Department of Transportation Design Manual, where applicable, and other appropriate materials and shall perform all Services in accordance with the standards of care, skill and diligence required in Appendix "A" or, if not set forth therein, ordinarily exercised by competent professionals doing work of a similar nature.
38. **No Third-Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto. Other than the indemnity rights under this Contract, nothing contained in this Agreement is intended or shall be construed to confer upon any person or entity (other than the parties hereto) any rights, benefits or remedies of any kind or character whatsoever.
39. **No Investment in Iran.** As required by IC 5-22-16.5, the CONSULTANT certifies that the CONSULTANT is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Contract and denial of future state contracts, as well as an imposition of a civil penalty.
40. **Assignment of Antitrust Claims.** The CONSULTANT assigns to the State all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

[Remainder of Page Intentionally Left Blank]

Non-Collusion.

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

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

CONSULTANT
RQAW Corporation

Dylan Sievers

R. Dylan Sievers, Project Manager

LOCAL PUBLIC AGENCY
Westfield Board of Public Works & Safety

J. Andrew Cook, Mayor

Randell Graham

James Ake

APPENDIX "A"

SERVICES TO BE FURNISHED BY CONSULTANT:

In fulfillment of this Contract, the CONSULTANT shall comply with the requirements of the appropriate regulations and requirements of the Indiana Department of Transportation and Federal Highway Administration.

The CONSULTANT shall be responsible for performing the following activities:

Task 1 Appraising Services

1. The CONSULTANT is to provide real estate appraisals and prepare appraisal reports in accordance with the INDOT Real Estate Division Manual.
2. The CONSULTANT agrees to furnish LPA/INDOT all comparables used in the report, attached to each report and an electronic file (compact disc media) of the comparables, consisting of sufficient sales data in the vicinity of the project and of such recent date that a pattern of values may be established. Each comparable property is to be identified by photograph and shall be located on electronic map attached to each report that is to be furnished to LPA/INDOT.
3. The Appraiser agrees to furnish appraisals in an original plus three copies, an electronic file (Compact Disc media) and one copy on green paper for disbursement to the parcel owner.
4. The appraisal will conform to statutory and judicial determinations regarding non-compensable items as set forth and discussed in the INDOT Real Estate Division Manual (.pdf file format is available on the INDOT website) and/or conferences between the parties.
5. While the plans, aerial mosaics, title information, survey, parcel plats and calculation sheets have been made with reasonable care, there is no expressed or implied guaranty that conditions so indicated are entirely representative of those actually existing, or that unlooked-for developments will not occur. The CONSULTANT is required to examine carefully all such data and satisfy itself as to the actual conditions. In case of any obvious discrepancy between the information furnished by LPA/INDOT and the actual conditions of the locality, or in case of errors or omissions in said information supplied by LPA/INDOT, the CONSULTANT shall inform LPA/INDOT, in writing, of any such defect, error, or omission which cannot be resolved without altering the design.
6. The CONSULTANT agrees to update reports at the request of LPA/INDOT and/or testify on behalf of LPA/INDOT, on any parcels should he/she be required to do so by LPA/INDOT.
7. The Consultant shall be responsible for input of all required parcel data and related project information into INDOT's Land Records System (LRS) for each parcel assigned by LPA/INDOT.

Task 2 Review Appraisal Services

1. The CONSULTANT agrees to furnish LPA/INDOT all comparables used in the report, attached to each report and an electronic file (compact disc media) of the comparables, consisting of sufficient sales data in the vicinity of the project and of such recent date that a pattern of values may be established. Each comparable property is to be identified by photograph and shall be located on electronic map attached to each report that is to be furnished to LPA/INDOT.
2. The CONSULTANT agrees to furnish reviews in an original plus three copies, an electronic file (compact disc media) and one copy on green paper for disbursement to the parcel owner if there is a building in the acquisition or an original plus two copies and one copy on green paper for disbursement to the parcel owner if no building is acquired.

3. The Consultant agrees to make the Review Appraisal Report/Appraisal Problem Analysis Report of each and every parcel.
4. The Review Appraisal Report/Appraisal Problem Analysis Report will conform to statutory and judicial determinations regarding non-compensable items as set forth and discussed in the INDOT Real Estate Division Manual (.pdf file format is available on the INDOT website) and/or conferences between the parties.
5. While the plans, aerial mosaics, title information, survey, parcel plats and calculation sheets have been made with reasonable care, there is no expressed or implied guaranty that conditions so indicated are entirely representative of those actually existing, or that unlooked-for developments will not occur. The Consultant is required to examine carefully all such data and satisfy itself as to the actual conditions. In case of any obvious discrepancy between the information furnished by LPA/INDOT and the actual conditions of the locality, or in case of errors or omissions in said information supplied by LPA/INDOT, the CONSULTANT shall inform LPA/INDOT, in writing, of any such defect, error or omission which cannot be resolved without altering the design.
6. The CONSULTANT agrees to updating reports at the request of LPA/INDOT and/or testify in court on behalf of LPA/INDOT, on any parcels should he/she be required to do so by LPA/INDOT.
7. The CONSULTANT shall be responsible for input of all required parcel data and related project information into INDOT's Land Records System (LRS) for each parcel assigned by LPA/INDOT.

Task 3 Buying Services

1. The CONSULTANT shall make every reasonable effort to acquire assigned parcels expeditiously.
2. The CONSULTANT shall make a prompt offer to acquire each parcel for the full amount, which has been established and approved by LPA/INDOT as just compensation for the acquisition. The offer shall be made in a Uniform Land and Easement Acquisition Offer letter which shall be given to each parcel owner in person or sent by certified mail with return receipt requested. The CONSULTANT shall also provide the parcel owner a copy of the appraisal (the appraisal copy furnished the owner shall only be on light green paper) written statement explaining the basis for the amount, which has been established. In accomplishing the above, the CONSULTANT shall do the following:
 - a. Make all reasonable efforts to personally contact each owner or his designated representative, explain the acquisition, and offer in writing the approved estimate of just compensation. When all efforts to make personal contact have failed or in the event the property owner resides out of state, the owner may be contacted by certified or registered first class mail or other means appropriate to the situation.
 - b. No later than the first contact where the offer is discussed, the CONSULTANT shall give the owner a brochure describing the land acquisition process and the owner's rights, privileges and obligations.
3. The owner of improvements located on lands being acquired for right-of-way should be offered the option of retaining those improvements at a retention value determined by the CONSULTANT and approved by INDOT.
4. A revised offer and summary statement of just compensation shall be provided the owner if:
 - a. The extent of the taking is revised, or
 - b. The approved estimate of just compensation is revised by the Review Buyer, or
 - c. If the purchase of excess land requires a new or revised SJC.

5. The CONSULTANT shall maintain adequate records to include a report for each parcel containing but not limited to:
 - a. The date and place of contact,
 - b. The parties of interest contacted,
 - c. The offer made,
 - d. The counter offer or reasons offer was not accepted,
 - e. The signature of the CONSULTANT, date, and initials of the person contacted.
6. The property owner must be given a copy of the report on each contact.
7. The CONSULTANT further agrees that the parcel(s) shall be sufficiently documented to meet the minimum standards set out in Title 49 CFR Part 24, dated March 2, 1989 and all attachments and amendments thereto. Said Title CFR Part 24, attachments and amendments are incorporated into this Agreement by reference and made a part hereto. The CONSULTANT further agrees to follow accepted principles and techniques in purchase of real estate in accordance with existing State Laws, the INDOT Real Estate Division Manual, this "Appendix "A", and any necessary interpretation of these furnished by INDOT. Any parcel that does not meet such requirements shall be further documented without additional compensation to the CONSULTANT.
8. When attempts to buy are successful, a signed statement is to be prepared by the CONSULTANT to the effect that:
 - a. The written agreement secured, embodies all considerations agreed to by the property owner;
 - b. The CONSULTANT has no direct or indirect, present or contemplated future personal interest in the property or in any monetary benefit from the acquisition of the property; and
 - c. The agreement was reached without coercion of any type.
9. When attempts to buy are unsuccessful, the CONSULTANT shall record his recommendation for action and submit it to INDOT:
 - a. The recommendation shall consider administrative settlement, include the amount of settlement and reasons for a settlement,
 - b. Otherwise, a condemnation report shall be filled out and submitted with the completed file.
10. The CONSULTANT shall provide an updated title and encumbrance report upon submission of any secured or condemned parcel.
11. The CONSULTANT shall be responsible for input of all required parcel data and related project information into INDOT's Land Records System (LRS) for each parcel assigned by LPA/INDOT, based on the current standards set by INDOT's Central Office.

Task 4 Right-of-Way Management

The CONSULTANT shall coordinate all of the right of services related activities and make sure to complete all of the activities complete within the established schedule by LPA/INDOT.

The CONSULTANT shall provide weekly progress reports for all activities related to right-of-way services to LPA/INDOT.

The CONSULTANT shall be responsible for input of all required parcel data and related project information into INDOT's Land Records System (LRS) for each parcel assigned by LPA/INDOT, based on the current standards set by INDOT's Central Office.

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INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

The LPA shall furnish the CONSULTANT with the following:

1. LPA/INDOT, consistent with its requirements, shall furnish the CONSULTANT a description of the property or properties to be appraised. LPA/INDOT will also furnish the CONSULTANT a legal description of the Right-of-Way to be taken on each parcel and a certificate or an abstract of title on each parcel, together with Right-of-Way plans for said parcel.
2. In the event additional Appraisal Report/Appraisal Problem Analysis Reports are necessary for any parcels not herein designated that later may be necessary to be made under this project, an additional fee estimate sheet will be submitted covering the additional parcels, with the fee being determined by the method used on similar properties, and a supplemental agreement entered into.
3. Should the quality or progress of the Review Appraisal Report be unsatisfactory, LPA may terminate the services of the CONSULTANT. The CONSULTANT will be compensated on a pro rata basis for the amount of work completed in relationship to the overall quoted fee and such work as completed shall then be the sole property of LPA.
4. The needed forms and brochures to secure and/or condemn the parcel.
5. Access to enter upon public and private lands as required for the CONSULTANT to perform work under this Contract.
6. Assistance to the CONSULTANT by placing at his disposal all available information pertinent to the Project.
7. Designate an LPA representative with decision making authority regarding the Project
8. Utility plans available to INDOT/LPA, including the location of signals and underground conduits throughout the affected areas
9. The LPA shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the LPA's needs and interests.

APPENDIX "C"**SCHEDULE:**

No work under this Contract shall be performed by the CONSULTANT until the CONSULTANT receives a written notice to proceed from the LPA.

All work by the CONSULTANT under this Contract shall be completed and delivered to the LPA for review and approval within the approximate time periods shown in the following submission schedule:

Right-of-way services-related activities are to be completed 60 calendar days before Tracings Submittal (estimated April 4, 2022).

APPENDIX "D"**COMPENSATION:****A. Amount of Payment**

1. The CONSULTANT shall receive as payment for the work performed under this Agreement the total fee not to exceed **\$12,715**, unless a modification of the Agreement is approved in writing by the LOCAL PUBLIC AGENCY and the Indiana Department of Transportation.
2. The CONSULTANT will be paid for the services performed under this Agreement on a unit cost basis in accordance with the INDOT Real Estate Services Fee Schedule in effect at the time that the Notice to Proceed is issued for right-of-way acquisition services.
3. Three parcels requiring waiver valuations are assumed, and INDOT's January 2021 right-of-way acquisition rates have been used in calculating the not-to-exceed fee. Should the actual number or type of parcels differ, or if the applicable rates change, CONSULTANT's fee will be adjusted accordingly.

a. Appraisal:	3@ \$680/each	\$2,040
b. Review Appraisal	3@ \$410/each	\$1,230
c. Buying (Permanent Taking)	2@ \$2,030/each	\$4,060
d. Buying (Temporary Taking)	1 @ \$1,695/each	\$1,695
e. ROW Management	3@ \$1,230/each	\$3,690
5. The CONSULTANT shall not be paid for any service performed by the LOCAL PUBLIC AGENCY or not required to develop this project.
6. For those services performed by other than the CONSULTANT, the CONSULTANT will be reimbursed for the actual invoice for the services performed by other than the CONSULTANT, provided that each invoice shall be subject to approval as reasonable by INDOT prior to any reimbursement therefore.

B. Method of Payment

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice vouchers shall represent the value, to LPA, of the partially complete work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of each task in Section A.2 of this Appendix, including percentage completed and prior payments.
2. LPA, for and in consideration of the rendering of the services provided for in Appendix "A", agrees to pay to the CONSULTANT for rendering such services the fees established above in the following manner:
 - a. For each task, and upon receipt of invoices from the CONSULTANT and the approval thereof by LPA, payments covering the work performed shall be due and payable to the CONSULTANT, such payments to be equal to an amount arrived at by multiplying the percentage of the specified work by the fee heretofore set forth. From the partial payment thus computed, there shall be deducted all previous partial fee payments made to the CONSULTANT.

- b. Upon approval by LPA, after submittal of the completed work, a sum of money equal to the fees heretofore set forth, less the total of the amounts of the partial payments previously paid to the CONSULTANT under section B.2.a of this Appendix "D", shall be due and payable to the CONSULTANT.
3. The CONSULTANT shall only bill for work completed on the above tasks. If any task is eliminated, then no additional billing will be allowed. If a portion of work is completed for a task then the CONSULTANT shall bill for the services completed.
4. If LPA does not agree with the amount claimed by the CONSULTANT on an invoice voucher, it will send the CONSULTANT a letter by regular mail and list the differences between actual and claimed progress. The letter will be sent to the CONSULTANT's address on page 13 of this Agreement or the CONSULTANT's last known address.



Board of Works

Andy Cook
Randy Graham
Jim Ake

Clerk Treasurer

Cindy J. Gossard

To: Westfield Board of Public Works & Safety

Date: July 28, 2021

Re: Action Item-Signing Authority

Westfield Park Road Culvert Replacement Project

The City of Westfield Public Works Department is requesting that the Board of Public Works and Safety consider granting Jeremy Lollar, Director of Public Works, signing authority for the Westfield Park Road Culvert Replacement Project. The bid opening was on July 20, 2021. The low bid of \$1,228,732.00 was received from 3D Company. All bid documents have been reviewed for proper compliance and are acceptable.

Randy Graham

Jim Ake

Andy Cook

Public Works Department

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

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



Board of Works

Andy Cook
Randy Graham
Jim Ake

Clerk Treasurer

Cindy J. Gossard

To: Westfield Board of Public Works & Safety

Date: July 28, 2021

Re: Action Item-Signing Authority

Public Works Parking Lot Resurfacing Project

The City of Westfield Public Works Department is requesting that the Board of Public Works and Safety consider granting Jeremy Lollar, Director of Public Works, signing authority for the Public Works Parking Lot Resurfacing Project for the not to exceed amount of \$100,000.00. The quotes are due on July 30, 2021. All documents will be reviewed for proper compliance before the acceptance of the lowest, most responsive bidder.

Randy Graham

Jim Ake

Andy Cook

Public Works Department

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

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



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WOODSTOCK 3-468 Innovation Way, Woodstock ON N4V 0B9
CALGARY 4303 9th Street SE, Calgary, AB T2G 3C8
DENVER 999 18th Street, #3000, Denver, CO 80202

T 800-716-5506
F 877-260-9393
www.maglin.com
sales@maglin.com

QUOTATION / ORDER CONFIRMATION

DATE: 7/20/21

QUOTE #: 00038103

COMPANY NAME:

City of Westfield

PROJECT NAME:

Grand Junction Plaza - Westfield IN

COMPANY ADDRESS:

2728 East 171st Street
Westfield IN
US

SHIP TO LOCATION:

2706 E 171st
Westfield IN 46074
US

CONTACT

NAME: Christopher McConnell

OFFICE NUMBER: 317 372 1192

CELL NUMBER:

EMAIL: cmcconnell@westfield.in.gov

REQUESTED DELIVERY DATE:¹

PAYMENT TERMS: Net 30 Days

MODEL #	DESCRIPTION	COLOUR	QTY	LIST PRICE	SUBTOTAL	SUBTOTAL AFTER DISCOUNTS
MUM-2400-00002	MUM-2400-00002 TUUCI UMBR, SQ, 7.5FT W,, FABRIC BLACK 2400 Series - TUUCI Ocean Master Square Umbrella: 7.5ft W, Polished Aluminum, Fabric - Black Color, Manual Lift Pin		10	\$1,200.00	\$12,000.00	\$10,200.00
MCH-0720-00004	MP-MCCH915911 720 CHAIR, 38.13IN L, STEEL FRAME, IPE 700 Series - 720 Chair: 38.13in L, Laser Cut and Formed Steel Frame, Ipe Wood Seat, Surface Mount	Gunmetal Gloss 059/95726	6	\$2,160.00	\$12,960.00	\$10,581.84
MCH-1700-00005	FRST1700-BH-MSF-M1 FORO STOOL,30IN H,STL FRM,MTL,LD1-CIRCLES PTRN 1700 Series - Foro Bar Height Stool: Steel Frame, Laser Formed Steel Seat with Aluminum Back Casting, Laser Design 1, Freestanding	Gunmetal Gloss 059/95726	40	\$480.00	\$19,200.00	\$16,320.00
MPF-2200-00001	MPF-2200-00001 PIXEL PANEL, TALL, EXTERIOR 2200 Series - Pixel Exterior Panel: 24x16 3/16, Steel	Gunmetal Gloss 059/95726	36	\$135.00	\$4,860.00	\$4,131.00
MPF-2200-00030	MPF-2200-00030 PIXEL SEAT,	Gunmetal	24	\$1,180.00	\$28,320.00	\$24,072.00

*SALES TAX NOT INCLUDED.

¹Order completion will be scheduled and you will be contacted by your Maglin representative to advise of scheduled completion date.

("Production Confirmation" notice)

Average lead time of standard products is 6 weeks. Average lead time for modified / original products is 12 weeks.

See next page for *TERMS & CONDITIONS* and *ORDER ACCEPTANCE*.



MAGLIN™

WOODSTOCK 3-468 Innovation Way, Woodstock ON N4V 0B9
 CALGARY 4303 9th Street SE, Calgary, AB T2G 3C8
 DENVER 999 18th Street, #3000, Denver, CO 80202

T 800-716-5506
 F 877-260-9393
 www.maglin.com
 sales@maglin.com

	IPE, REC PROFILE, STANDARD BACK 2200 Series - Pixel Seat: 24x24, Ipe Wood, Style 2 Rectangular Profile, Standard Back	Gloss 059/95726				
MPF-2200-00014	MPF-2200-00014 PIXEL TOP, IPE WOOD, STYLE 2, REC PROFILE 2200 Series - Pixel Top: 24x24, Ipe Wood, Style 2 Rectangular Profile	Gunmetal Gloss 059/95726	4	\$530.00	\$2,120.00	\$1,802.00
MPF-2200-00003	MPF-2200-00003 PIXEL PANEL, TALL, INTERIOR 2200 Series - Pixel Interior Panel: 24x16 3/16, Steel	Gunmetal Gloss 059/95726	92	\$145.00	\$13,340.00	\$11,339.00
MTB-1700-00058	FRT1700-BH-SQ-M1-FS-36 1700 Series - Foro Bar Height Square Table: 42.13in H x 36in W, Steel Plate Base and Steel Tube Post, Laser Cut Steel and Steel Tube Outer Ring Table Top, Laser Design 1, Freestanding	Gunmetal Gloss 059/95726	10	\$1,115.00	\$11,150.00	\$9,477.50
MCH-1700-00002	FRC1700-MSF-M1-A 1700 Series - Foro Standard Chair: Steel Frame, Laser Formed Steel Seat with Aluminum Back Casting, Laser Design 1, with Arms, Freestanding	Gunmetal Gloss 059/95726	40	\$435.00	\$17,400.00	\$14,790.00
MPF-2200-00033	MPF-2200-00033 PIXEL FOOT, LEVELLING ASSY 2200 Series - Pixel Foot: Levelling Assembly	Gunmetal Gloss 059/95726	128	\$40.00	\$5,120.00	\$4,352.00
MMP-2200-00022	PIXEL SEAT, IPE WOOD, STYLE 2, REC PROFILE, STANDARD BACK, SIDE CLADDING RIGHT	Gunmetal Gloss 059/95726	2	\$1,235.00	\$2,470.00	\$2,099.50
PIXEL LAYOUT	PIXEL LAYOUT PIXEL LAYOUT Pixel Layout	Custom Layout - CML00112	1	\$0.00	\$0.00	\$0.00
MCH-0720-00003	MCL720-W 720 LOUNGE, 62IN L, STEEL FRAME, IPE WOOD 700 Series - 720 Lounge: 62in L, Laser Cut and Formed Steel Frame, Ipe Wood Seat, Surface Mount Dwg # MCH-0720-00003	Gunmetal Gloss 059/95726	6	\$2,160.00	\$12,960.00	\$10,581.84
MTB-1700-00127	FRT1700-SQ-M1-FSU-36 1700 Series - Foro Square Table: 30.13in H x 36in W, Steel Plate Base and Steel Tube Post, Laser Cut Steel and Steel Tube Outer Ring Table Top, Laser Design 1, Freestanding, Umbrella Hole	Gunmetal Gloss 059/95726	10	\$1,170.00	\$11,700.00	\$9,945.00
MMP-2200-00021	PIXEL SEAT, IPE WOOD, STYLE	Gunmetal	2	\$1,235.00	\$2,470.00	\$2,099.50



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2, REC PROFILE, STANDARD
BACK, SIDE CLADDING LEFT

Gloss
059/95726

FREIGHT	FREIGHT Freight	1	\$5,700.00	\$5,700.00	\$5,700.00
---------	-----------------	---	------------	------------	------------

Total before discount: \$161,770

Your Savings: \$24,278

Grand Total: \$137,491.18*

TERMS & CONDITIONS

1. Prices for products and freight charges are valid for 60 days from date.
2. If this project is tax exempt please advise Maglin at the time of order placement and provide tax exempt documentation.
3. For more information please see the "Working with Maglin Site Furniture" document.
4. Maglin Site Furniture is a material supply company only.
5. All products are made to order. Cancellation requests will be subject to restocking fees of 25% of order value.
6. Product is sent common carrier. Off-loading at ship to location is the responsibility of the receiving party.
7. Should product not be accepted by the later of the Product Confirmation date or order release from product on date, storage charges will apply at a rate of \$10 per skid per day, plus a one-time handling fee of \$60 per skid.

Maglin Site Furniture²

Maglin Contact:

Name: Adam Trakinskas

Phone Number: (519) 539-6776

Email: atrakinskas@maglin.com

TO PROCEED WITH YOUR ORDER, PLEASE FORWARD A PURCHASE ORDER AND INDICATE YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS DESCRIBED ABOVE BY SIGNING BELOW:

COMPANY NAME: City of Westfield

Authorized By:

Name: _____

Position: _____

Date: _____

²Maglin Site Furniture is the registered trademark of Maglin Site Furniture Inc. and Maglin Corporation

ENCROACHMENT PERMIT APPLICATION

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

For Office Use Only

Permit Number _____

Expires _____

Permit Fee _____

Fee Waived _____

Application Date: _____ Estimated Completion Date: _____

Work Address: _____ Subdivision: _____

Name of Contractor/Utility: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Name of Sub-Contractor: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

LOCATION: ☐ Street ☐ Alley ☐ Sidewalk ☐ Shoulder/Berm

IUPPS Number: _____

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

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

Please describe proposed work: _____

**Please contact Carlton Summe at 317-460-9670 24 hours prior to pouring concrete.*

SIZE OF STREET OR RIGHT-OF-WAY CUT

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

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

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

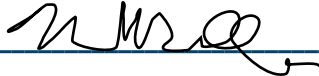
TRAFFIC PORTION AFFECTED BY PERMIT

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

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

TERMS AND CONDITIONS FOR ENCROACHMENT PERMIT

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

Signature of Applicant:  Title: _____

Printed Name: _____ Date: _____

Company Name: _____ Phone Number: _____

For Office Use Only:

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

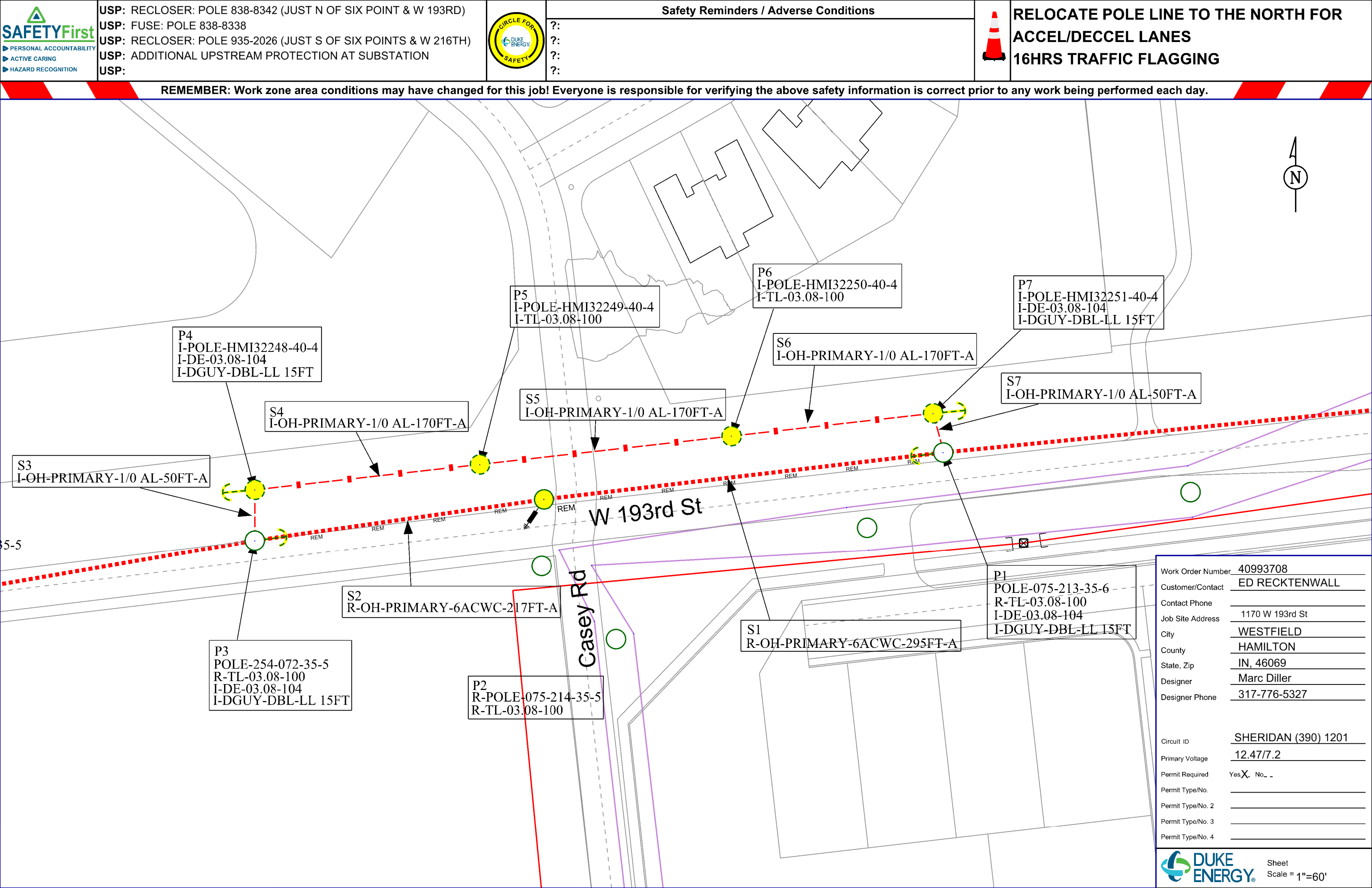
Steel Plates or other authorized substitute to be used? YES NO (If yes, refer to #4 above)

Type of materials and methods used to close or repair open cuts shall conform to Attachment A.
If another method has been pre-approved, please list below:

Director/or his representative

Project Manager/when applicable

Date Approved



CONTRACT FOR GOODS AND SERVICES

This Contract for Goods and Services ("Vendor Contract") is made and entered into as of the 28th day of July 2021, by and between City of Westfield ("Contracting Party") and Rieth-Riley Construction Co., Inc. ("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: 191st AND CHAD HITTLE DRIVE INTERSECTION IMPROVEMENT PROJECT at the intersection of 191st Street and Chad Hittle Drive, Westfield, Indiana 46074 (the "City Property")
- (c) Date by which the Services shall be completed: Intermediate Completion, as defined by Section 10 within the Project Specifications, by July 31, 2022 and final completion by November 15, 2022 (the "Completion Date").
- (d) Purchase Price: Two million three hundred thirty-seven thousand three hundred seventy-eight and 06/100 dollars, \$2,337,378.06 (see Proposal dated 6-30-2021 - 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
 - b. "Contract and Specifications for 191st Street and Chad Hittle Drive Intersection Improvement Project" dated June 30, 2021 inclusive of all sections and appendixes.
 - c. Addendum #1, #2, #3, and #4 Dated June 23rd, June 25th, June 28th, and June 28th 2021, respectively.

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: John Nail
2706 East 171st Street
Westfield, Indiana 46074

jnail@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:

Rieth-Riley Construction Co., Inc.
1751 Minnesota Street
Indianapolis, IN, 46621

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.

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.

EXECUTED this 28th day of July, 2021.

Contracting Party:

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

Vendor:

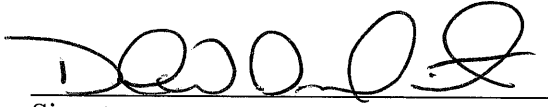
Rieth-Riley Construction Co., Inc.
1751 Minnesota Street
Indianapolis, IN, 46621

Signature

Printed Name

Title

Date


Signature

David W. Dankert
Printed Name

Area Manager
Title

July 19, 2021
Date

Westfield Police Department

Monthly Performance Measures Report



Board of Public Works & Safety

June 2021

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Top Accident Locations	5
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Westfield Police Department

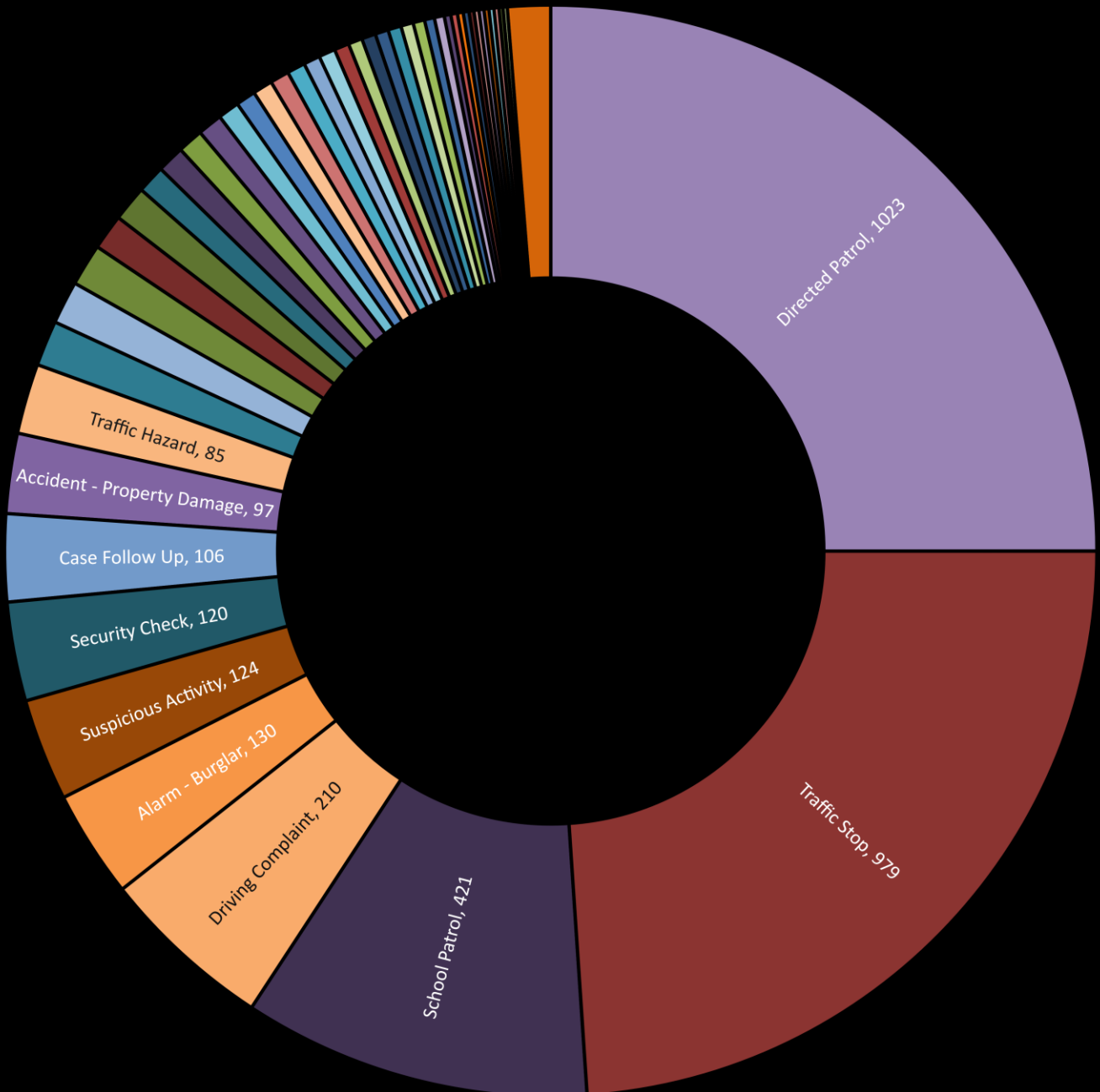
June 2021

Events by Nature

Incident Type	Count	Incident Type Cont.	Count Cont.
911 Hang Up	24	Juvenile Complaint	7
Abandoned Vehicle	8	K9 Detail	0
Abandonment	1	Kidnapping	0
Abuse / Neglect	4	Lock Out	52
Accident - Hit & Run PD	14	Loud Party	2
Accident - Hit & Run PI	0	Mental Emotional - Violent	4
Accident - Other	2	Mental Person	6
Accident - Property Damage	97	Miscellaneous	15
Accident - Personal Injury	22	Missing Person	4
Accident - Sinking Vehicle	0	Missing Person - PLS	0
Accident - Unknown	2	New Call	0
Accelerator Stuck	0	Nuisance	12
Active Assailant	0	Ordinance Misc.	20
Alarm - Other	1	Parking Complaint	24
Alarm - Vehicle	2	Physical Disturbance	17
Alarm - Burglar	130	Product Contamination	0
Alarm - Hold Up	7	Reckless Activity	6
Animal Bite / Attack	0	Road Rage	5
Animal Complaint	43	Robbery	0
Assist Fire	43	Runaway	0
Assist Other Department	33	School Patrol	421
Assist Public	34	Security Check	120
Battery	6	Sex Offense	3
Bomb Device Found	0	Shooting	0
Bomb Threat	0	Solicitor	4
Burglary	1	Special Detail	2
Carjacking	0	Stabbing	0
Case Follow Up	106	Suicide	2
Child Seat Inspection	3	Suspicious Activity	124
Civil Dispute	23	Suspicious Package	1
Criminal Mischief	17	Test	0
Damage to Property	0	Theft	20
Death Investigation	0	Theft - From a Vehicle	6
Directed Patrol	1023	Theft - of a Vehicle	0
Disturbance	26	Threat to Life	5
Driving Complaint	210	Threatening Suicide	6
Drug Complaint	12	Tow Release	6
Drug Lab	0	Traffic Hazard	85
Escort	2	Transport	2
Fight	0	Trespassing	16
Firearms Shots Fired	2	Traffic Stop	979
Found / Lost Property	18	Unknown Call for Police	1
Found Person	1	VIN Check	51
Fraud Prescription	1	Wanted	1
Fraud / Deception	31	Warrant Service	8
Harassment	30	Weapons Complaint	1
Intoxicated Person	3	Welfare Check	55
Investigation	16	Total	4091

Westfield Police Department
June 2021

Monthly Events by Incident Type
June 2021

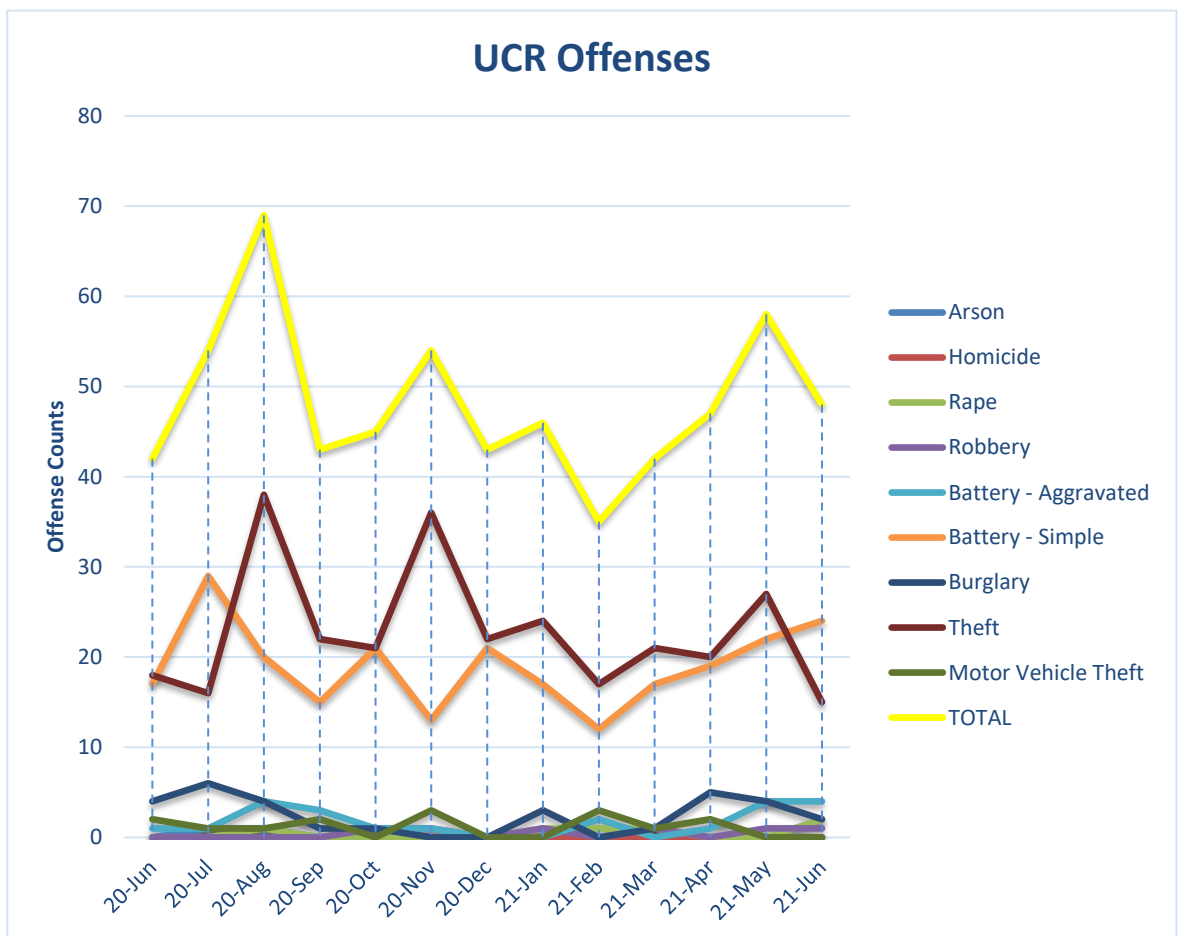


Westfield Police Department

June 2021

UCR OFFENSES

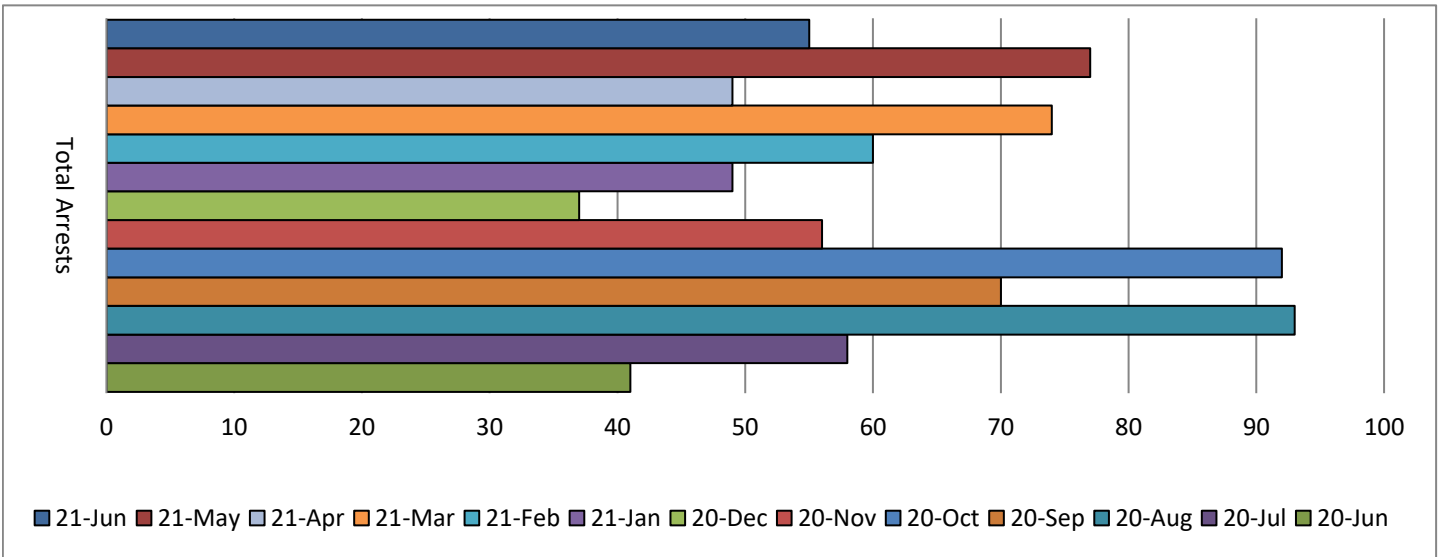
OFFENSE	20-Jun	20-Jul	20-Aug	20-Sep	20-Oct	20-Nov	20-Dec	21-Jan	21-Feb	21-Mar	21-Apr	21-May	21-Jun
Arson	0	1	1	0	0	0	0	0	0	0	0	0	0
Homicide	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	0	0	1	0	0	0	0	1	1	1	0	0	2
Robbery	0	0	0	0	1	1	0	1	0	1	0	1	1
Battery - Aggravated	1	1	4	3	1	1	0	0	2	0	1	4	4
Battery - Simple	17	29	20	15	21	13	21	17	12	17	19	22	24
Burglary	4	6	4	1	1	0	0	3	0	1	5	4	2
Theft	18	16	38	22	21	36	22	24	17	21	20	27	15
Motor Vehicle Theft	2	1	1	2	0	3	0	0	3	1	2	0	0
TOTAL	42	54	69	43	45	54	43	46	35	42	47	58	48



Westfield Police Department

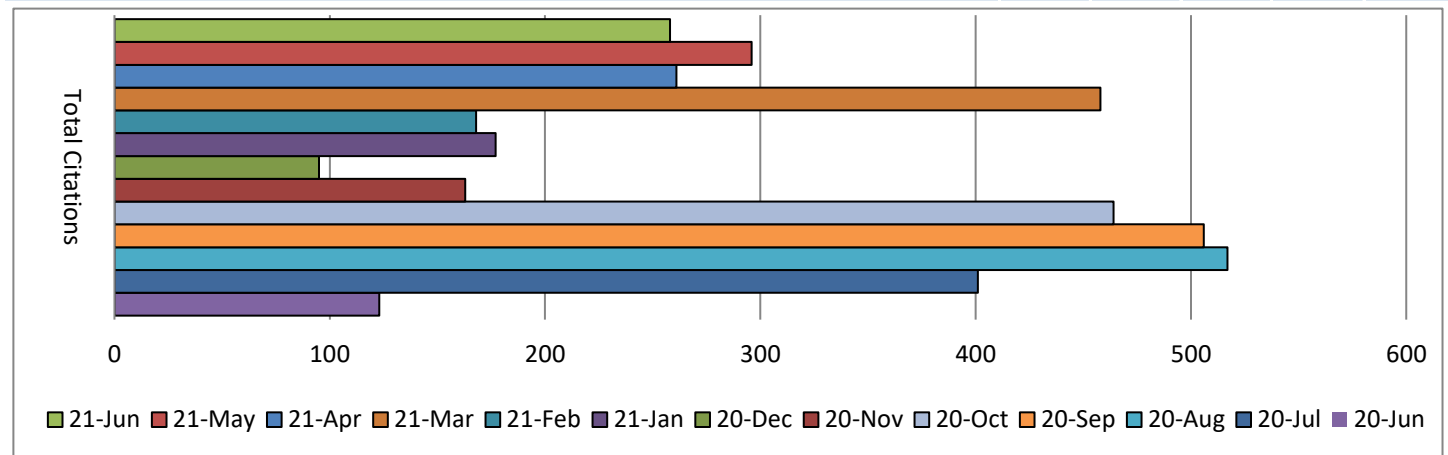
June 2021

Arrest Reports Taken	20-Jun	20-Jul	20-Aug	20-Sep	20-Oct	20-Nov	20-Dec	21-Jan	21-Feb	21-Mar	21-Apr	21-May	21-Jun
Alcohol/ Drug Related	18	20	25	17	34	18	18	26	26	34	13	31	19
Felony Charges	23	36	34	41	36	22	19	29	44	35	63	35	20
Misdemeanor Charges	79	78	99	67	104	48	41	71	75	124	85	88	59
Total Arrests	41	58	93	70	92	56	37	49	60	74	49	77	55



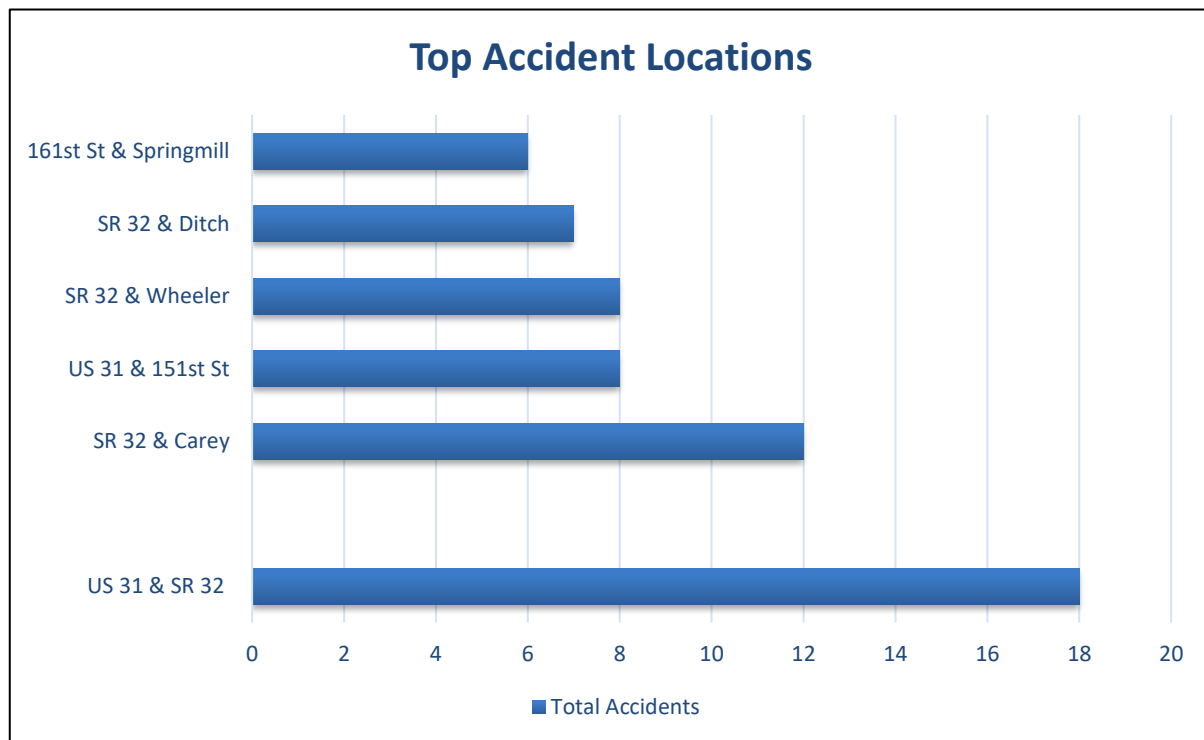
Traffic	20-Jun	20-Jul	20-Aug	20-Sep	20-Oct	20-Nov	20-Dec	21-Jan	21-Feb	21-Mar	21-Apr	21-May	21-Jun
Total Citations	123	401	517	506	464	163	95	177	168	458	261	296	258
Total Written Warning	350	768	961	1224	1092	426	193	558	604	1184	1118	1048	1027
Total Traffic Accidents	58	50	48	49	58	48	65	45	53	49	52	66	98
Property Damage	55	46	40	44	47	43	56	40	49	45	47	56	82
Personal Injury	3	4	8	5	11	5	9	5	4	4	5	10	16
Fatality	0	0	0	0	0	0	0	0	0	0	0	0	0
Hit and Run*	8	6	8	4	3	8	7	5	4	10	6	9	10

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



Westfield Police Department
June 2021

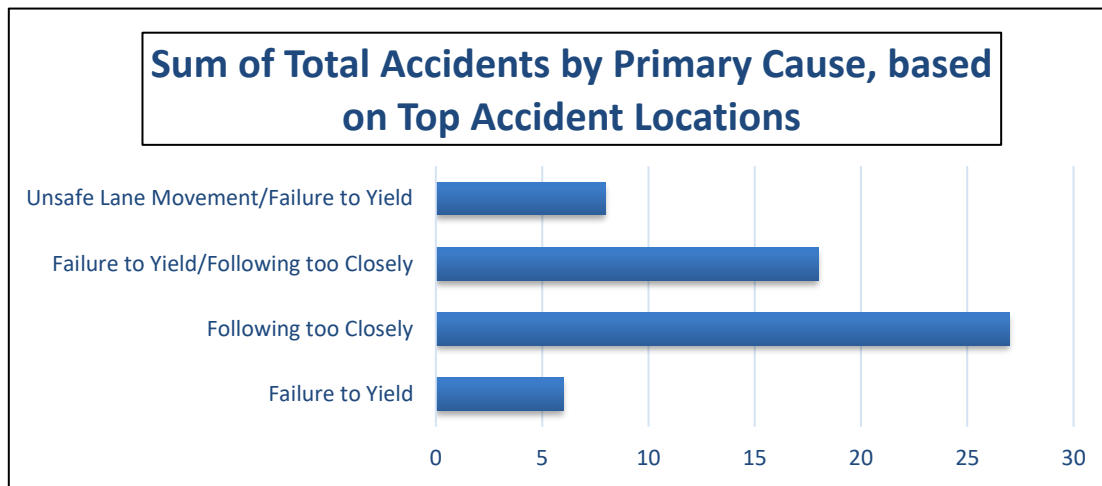
Top Accident Locations		
Accident Location	Total Accidents	Primary Cause
US 31 & SR 32	18	Failure to Yield/Following too Closely
SR 32 & Carey	12	Following too Closely
US 31 & 151st St	8	Unsafe Lane Movement/Failure to Yield
SR 32 & Wheeler	8	Following too Closely
SR 32 & Ditch	7	Following too Closely
161st St & Springmill	6	Failure to Yield



Westfield Police Department

June 2021

Primary Cause	Sum of Total Accidents
Failure to Yield	6
Following too Closely	27
Failure to Yield/Following too Closely	18
Unsafe Lane Movement/Failure to Yield	8



Westfield Police Department
June 2021

Community Events

6/5/21	Pack the Cruiser
6/8/21	Blood Drive
6/29/21	Library Summer Reading Program



July 28, 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:

- Langston Development Company, Inc., Shady Nook 3, Bond #LICX1206297, \$116,461.00, Storm Sewer, Swale SSD, Video & Jetting, Common Area Sidewalks
- West Fork Whiskey Real Estate, Bond & Rider #EACX4019709, \$359,148.09, Storm Sewer & Erosion Control
- Lennar Homes of Indiana, Osborne Trails, Section 6, Bond #024253143, \$61,855.00, Erosion Control
- Menard, Inc., Bond #107294437, \$14,113.77, Storm Extension, Street/Curb Improvements, Trail Improvements & Erosion Control
- TWG Construction, LLC, Chatham Multifamily Project, Bond & Rider #7901044599, \$375,849.28, Erosion Control, Streets, Curbs, Sidewalks, Storm, and other Public Improvements in the ROW
- Platinum Properties Management Company, LLC, Lancaster, Section 6, Bond #3739846, \$36,164.70, Erosion Control
- Platinum Properties Management Company, LLC, Lancaster, Section 8, Bond #3739847, \$23,030.70, Erosion Control
- CCD Ackerson, LLC, Ackerson, Section 2, Bond #LICX1206861, \$21,567.70, Erosion Control
- CCD Ackerson, LLC, Ackerson, Section 1A, Bond #LICX1206859, \$38,044.60, Erosion Control
- CCD Ackerson, LLC, Ackerson, Section 1B, Bond #LICX1206860, \$39,644.00, Erosion Control
- Grand Communities, Derby Ridge, Section 5, Bond #CMS0341708, \$81,843.15, Soil Erosion
- Grand Communities, Derby Ridge, Section 5, Bond #CMS0341713, \$120,524.34, ROW, Asphalt Path, Paving, & Stabilization

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:

- JRF Construction, Birdies, Bond #NIN1552, Erosion Control, ROW Improvements, Streets/Curbs, Storm Sewer, Sidewalk, & Trail
- Platinum Properties Management Company, Lancaster, Section 1, Bond #3152061, \$35,000.00, Concrete Curbs Punchlist Items

- Millennium Contractors, Westfield High School Community Stadium, Bond #929598120, \$320,610.40, Storm Sewer
- Millennium Contractors, Westfield High School Community Stadium, Bond #929598121, \$87,107.90, Erosion Control
- CCD Harmony, Section 6, Bond #LICX1167069, \$9,251.00, Sidewalks
- CCD Harmony, Section 6, Bond #LICX1167068, \$196,023.30, Storm
- CCD Harmony, Section 6, Bond #LICX1167067, \$147,367.70, Street/Curbs
- CCD Harmony, Section 6, Bond #LICX1167070, \$33,139.05, Erosion Control
- Grand Communities, Villages of Oak Manor, Section 2B, Bond #0228000, \$80,955.60, Storm Sewers
- Grand Communities, Villages of Oak Manor, Section 2B, Bond #0228001, \$6,864.00, Common Sidewalks
- Grand Communities, Villages of Oak Manor, Section 2B, Bond #0228002, \$4,084.30, Street Lights & Signage
- Grand Communities, Villages of Oak Manor, Section 2B, Bond & Rider #0223906, \$33,834.00, Erosion Control

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:

- Langston Development Company, Inc., Shady Nook 3, Bond #LICX1206298, \$22,063.00, Storm Sewer, Curb SSD
- Delello & Sons, The Lakes at Shady Nook, Section 3, Bond #7666110, \$2,405.00, Trail
- Delello & Sons, The Lakes at Shady Nook, Section 3, Bond #7666109, \$18,029.20, Streets
- Sitecrete, LLC, Lakes Shady Nook, Section 3, Bond #30131895, \$3,556.32, Curbs
- JRF Construction, Inc., Birdie's, Bond #NIN1686, \$17,409.06, Erosion Control & ROW Improvements
- CCD Harmony, Harmony, Section 6, Bond #LICX1206845, \$13,397.06, Streets/Curbs
- CCD Harmony, Harmony, Section 6, Bond #LICX1206846, \$17,820.30, Storm
- CCD Harmony, Harmony, Section 6, Bond #LICX1206847, \$841.00, Sidewalks
- CCD Harmony, Harmony, Section 6, Bond #LICX1206848, \$3,012.64, Erosion Control
- Sitecrete, LLC, Bordeaux Walk, Section 1, Bond #30131902, \$2,134.00, Common Area Sidewalk
- Harding Asphalt, LLC, d/b/a Harding Group, Bordeaux Walk, Section 2, Bond #7901071837, \$11,543.00, Streets
- Sitecrete, LLC, Bordeaux Walk, Section 2, Bond #30131900, \$2,259.00, Curbs
- Platinum Properties Management Company, LLC, Bordeaux Walk, Section 2, Bond #3739860, \$22,300.00, Storm Sewers & Subsurface Drains
- Sitecrete, LLC, Bordeaux Walk, Section 2, Bond #30131901, \$175.00, Common Area Sidewalk
- Grand Communities, Villages of Oak Manor, Section 2B, Bond #CMS0341710, \$686.40, Common Sidewalks
- Grand Communities, Villages of Oak Manor, Section 2B, Bond #CMS0341711, \$8,095.56, Storm Sewers
- Grand Communities, Villages of Oak Manor, Section 2B, Bond #CMS0341712, \$408.43, Street Lights & Signage
- Grand Communities, Villages of Oak Manor, Section 2B, Bond #CMS0341709, \$3,383.40, Erosion Control

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:

- E&B Paving, Scofield Farms 1, Bond #30031849, \$27,143.30, Onsite Stone, Asphalt Binder, & Temporary Cul-de-sacs
- Sitecrete, LLC, Scofield Farms 1, Bond #30027662, \$7,464.00, Curbs

- S&B Construction, Northview Church, Bond & Rider #30049760, \$25,372.20, Streets/Curbs, Storm Sewer, & Erosion Control
- Beazer Homes, Andover, Section 5, Bond #SNN4007890, \$5,501.16, Sidewalks
- Langston Residential Development Company, Belmont Woods, Bond #1155701, \$60,856.00, Streets, Curbs, Storm Sewer, Erosion Control, Common Area Sidewalks, & Paths
- Justus Home Builders, Bridgewater Apartments, Section 2, Bond #NIN1528, \$32,168.30, Streets/Curbs
- Justus Home Builders, Bridgewater Apartments, Section 2, Bond #NIN1526, \$20,451.40, Storm Sewer
- Justus Home Builders, Bridgewater Apartments, Section 2, Bond #NIN1527, \$7,709.50, Sidewalk
- Justus Home Builders, Bridgewater Apartments, Section 2, Bond #NIN1525, \$1,574.50, Erosion Control
- Sigma Builders, Bridgewater Club – Replat – Parcel J, Bond & Rider #69C007852, \$23,424.00, Erosion Control, Storm Sewers & Underdrains, Curbs, Roadways, & Walking Trail
- Grand Communities, Derby Ridge, Section 3, Bond #CMS0324513, \$3,224.36, Erosion Control
- Weihe Construction, Derby Ridge, Section 3, Bond #30011798, \$1,040.00, Curbs
- Weihe Construction, Derby Ridge, Section 3, Bond #30011797, \$7,634.00, Storm/Subsurface Drain
- Weihe Construction, Derby Ridge, Section 3, Bond #30011796, \$1,116.00, Streets (Lime Stabilization)
- Globe Asphalt Paving, Derby Ridge, Section 3, Bond #7653568, \$5,698.00, Stone Base, HMA Binder & HMA Surface
- Langston Residential Development, Lakes at Grassy Branch, Section 2A, Bond #1147004, \$24,783.00, Streets/Curbs, Storm Sewer, Sidewalk & Erosion Control
- Langston Residential Development, Lakes at Grassy Branch, Section 2B, Bond & Rider #1150202, \$21,132.00, Streets/Curbs, Storm Sewer, Sidewalks, & Erosion Control
- Karns, Inc., Lakes at Shady Nook, 2A, Bond & Rider #BMID297118, \$3,978.00, Concrete Curbs
- Langston Residential Development Lakes at Shady Nook, 2A, Bond #1153301, \$35,678.00, Streets/Curbs, Storm Sewer, Sidewalk & Erosion Control
- Northpoint Owners, Northpoint, Phase I, Bond #800015536, \$72,120.45, Streets/Curbs, Storm Sewer, Sidewalk, Trail, & Erosion Control
- Midwest Paving, Enclave at Viking Meadows, Section 2, Bond #9248658, \$18,242.73, Roads & Paths
- Conco Curbs & Paving, Enclave at Viking Meadows, Section 2, Bond #B1240211, \$2,933.76, Curb & Gutter
- Valenti-Held Contractor/Developer, Inc., Enclave at Viking Meadows, Section 2, Bond #1112674, \$30,587.40, Storm Sewer & Sub-Surface Drain
- Beazer Homes Indiana, Villages of Oak Manor, Sections 3D & 3E, Bond #SNN4009351, \$3,080.00, Sidewalk
- Beazer Homes Indiana, Villages of Oak Manor, Sections 3D & 3E, Bond #SNN4009350, \$7,760.27, Storm Sewer
- Beazer Homes Indiana, Villages of Oak Manor, Sections 3D & 3E, Bond #SNN4009352, \$8,446.56, Streets & Curbs
- Globe Asphalt Paving, Villages of Oak Manor, Section 4B, Bond #9274844, \$7,590.00, Aggregate Base Course, Bituminous Binder, Bituminous Surface
- Johannigman Excavating, Inc., Villages of Oak Manor, Section 4B, Bond #INC60693, \$13,311.60, Storm/Subsurface Drain
- Weihe Construction, Villages of Oak Manor, Section 4B, Bond #30031861, \$1,720.00, Subgrade Treatment
- Weihe Construction, Villages of Oak Manor, Section 4B, Bond #30031862, \$210.00, Sidewalk
- Weihe Construction, Villages of Oak Manor, Section 4B, Bond #30031863, \$1,620.00, Concrete Curb & Gutter
- Grand Communities, Villages of Oak Manor, Section 4B, Bond #CMS0326605, \$27,483.50, Erosion Control
- Karns, Inc., Maple Knoll, Section 6, Bond #Q95-6870239, \$4,610.00, Concrete Curb & C.A. Walk
- Baumgartner & Company, Inc., Maple Knoll, Section 6, Bond #B1221820, \$17,009.00, Street Improvements – Stone Base, Asphalt Intermediate, & Surface
- Harding Group, Inc., Maple Knoll, Section 7, Bond #B1221821, \$11,497.00, Streets: Stone, Base, Binder, & Surface
- Karns, Inc., Maple Knoll, Section 7, Bond #Q95-6870240, \$2,892.00, Improvement: Concrete Curb & C.A. Sidewalk
- Maple Knoll Developer, Maple Village, Section 6, Bond #091114-1, \$3,380.00, Erosion Control
- Karns, Inc., Maple Village, Section 6A/6B, Bond #Q94-8070249, \$3,480.00
- Karns, Inc., Spring Orchard, Section 2, Bond #Q95-6870241, \$2,078.00, Concrete Curb & C.A. Walk

- D&R Excavating, d/b/a Earth Resources, Spring Orchard, Section 2, Bond #INC45737, \$18,220.00, Storm Sewer & Subsurface Drains
- Delello & Sons Asphalt Paving, Spring Orchard, Section 2, Bond #7646599, \$9,325.00, Streets-Stone, Base, Binder, & Surface
- Karns, Inc., Spring Orchard, Section 3, Bond #Q95-6870242, \$2,192.00, Concrete Curb
- D&R Excavating, d/b/a Earth Resources, Spring Orchard, Section 3, Bond #INC45736, \$13,523.00, Storm Sewer & Subsurface Drains
- Delello & Sons Asphalt Paving, Spring Orchard, Section 3, Bond #7647078, \$8,869.00, Streets-Stone, Base, Binder, & Surface
- Weihe Construction, Spring Orchard, Section 4, Bond #929644335, \$2,324.80, Concrete Curbs & Walks
- D&R Excavating, d/b/a Earth Resources, Spring Orchard, Section 4, Bond #INC45795, \$18,472.30, Storm Sewer & Subsurface Drains
- Delello & Sons Asphalt Paving, Spring Orchard, Section 4, Bond #9234368, \$9,214.50 Streets-Stone, Base, Binder, & Surface
- Platinum Properties Management Co., Spring Orchard, Section 4, Bond #2982025, \$3,526.80, Erosion Control

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:

- Valvoline, LLC, \$6,743.45, Cash in Lieu & Development Agreement

PROFESSIONAL SERVICES TASK ORDER AGREEMENT

WSP Agreement No. - 185360 Task Order No. 27

This Task Order No. 27 is made and entered into this ___th day of _____, 2021, by and between the City of Westfield with offices at 2706 East 171st Street, Westfield, IN 46074 (hereinafter called the "Client"), and WSP USA, Inc. (formerly Parsons Brinckerhoff, Inc.) a New York corporation, with offices at 115 W. Washington Street, Suite 1270S, Indianapolis, In 46204 (hereinafter called "WSP").

WITNESSETH

WHEREAS, the parties entered into a Professional Services Agreement on February 11, 2014 (hereinafter called the "Agreement") to provide Right of Way (ROW) Management services on a task order basis;

WHEREAS, the Client has determined the need for WSP to perform certain Services;

NOW, THEREFORE, for the consideration hereinafter set forth, the parties do mutually agree as follows:

1. Scope of Services

WSP shall perform the Services and provide the deliverables as set forth below:

Right of Way Acquisition Services for Mule Barn Road with a total of 1 parcel. These services shall include: right-of-way management, title research, right-of-way engineering, appraising, and buying.

2. Schedule

WSP shall provide the services stated above in accordance with a schedule set forth below:

Title Research -	30 days from Title Researcher Notice to Proceed
Right of Way Engineering -	30 days from received Title Research
Appraising –	60 days from Appraiser Notice to Proceed
Review Appraising -	14 days from Appraiser Notice to Proceed
Buying –	35 days from Buyer Notice to Proceed

PROFESSIONAL SERVICES TASK ORDER AGREEMENT

3. Compensation

The Client shall compensate WSP for the performance of the services stated above, on a unit rate basis, based on actual number of parcels managed and procured by WSP and the unit price rates provided herein for an estimated total amount of \$11,405.00.

Title	Unit Rate per parcel	# of parcels	Total Cost
Title Research	\$375	2	\$750
Right of Way Engineering	\$3200	1	\$3200
Right of Way Management	\$1,230	1	\$1,230
Appraisal – Short Form	\$2,835	1	\$2,835
Review Appraisal – Short Form	\$1,360	1	\$1,360
Buying - Permanent	\$2,030	1	\$2,030

4. Both parties agree that this Task Order No. 27 shall be made part of the Agreement between Client and WSP, and except as amended herein, all terms, covenants and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this Task Order No. 27 has been executed by Client and WSP, effective from the day and year first written above.

City of Westfield

WSP USA, Inc.

Signature

Signature

Jeremy Lollar
Director of Public Works

Kelli McNamara
Area Manager

INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY

PROJECT COORDINATION CONTRACT

CONTRACT #0000000000000000000053934

Des. No.: 1902801

LPA DUNS # 962590683

CFDA No.: 20.205

This Contract is entered into by and between the State of Indiana, acting by and through the Indiana Department of Transportation, (hereinafter referred to as "INDOT"), and the **CITY OF WESTFIELD**, a local public agency in the State of Indiana (hereinafter referred to as the "LPA"), and collectively referred to as the "PARTIES" is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by the Office of the Indiana Attorney General. In consideration of those mutual undertakings and covenants, the PARTIES agree as follows:

NOTICE TO PARTIES

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

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

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

With a copy to:

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

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

INDOT Greenfield District
32 South Broadway
Greenfield, Indiana 46140

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

City of Westfield
130 Penn Street
Westfield, Indiana 4607

RECITALS

WHEREAS, the LPA has submitted an application to receive federal funds for the project described in **Attachment A** (the "Project"), which is attached herein and made an integral part of this Contract; and

WHEREAS, INDOT has approved of the LPA's application for federal funding, and the PARTIES desire to enter into this Contract to establish the responsibilities for the Project; and

WHEREAS, the LPA shall be responsible for its share of the Project cost as stated in this Contract; and

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

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

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

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

I. PROJECT DESCRIPTION.

1.1. The Parties are entering into this Contract to complete the Project described as follows:

Des. No. **1902801**

Program: **Group I - TAP**

Type of Project: **Bike/Pedestrian Facilities**

General Scope/Location: **Project will reconstruct Little Eagle Creek Avenue between 146th Street and Shelborne Road and widen the roadway to include 11' lanes as well as 4' bike lanes on each side of the road.**

II. LPA RESPONSIBILITIES.

2.1. The LPA shall complete the Project in accordance with INDOT's Design Manual (See http://www.in.gov/indot/design_manual/) and all pertinent state and federal laws, regulations, policies and guidance, including the INDOT's LPA Guidance Document (See <https://www.in.gov/indot/2390.htm>). The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/2523.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/2493.htm>).

2.2. The LPA shall select the consultant in accordance with INDOT's consultant selection procedure for the consultant services to be eligible for federal funding or federal credits.

- 2.3. If the LPA contracts with a consultant, contractor, or other agent to complete work on the Project, the LPA may use either the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/2833.htm>, or an agreement that has been reviewed and approved by INDOT.
- 2.4. The LPA shall provide all relevant documents including, but not limited to, all plans, specifications, and special provisions, to INDOT for its review and approval, which said approval will not be unreasonably withheld. If INDOT does not approve the LPA submittal, the LPA shall modify the submittal to secure INDOT's approval. If the LPA fails to provide a submittal, untimely provides the submittal, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.
- 2.5. The LPA shall complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
- 2.6. If the LPA fails to meet any of the requirements of Sections 2.1, 2.2, 2.4, or 2.5 above, INDOT will not let the construction Project. If INDOT, and FHWA where necessary, approve LPA's submittals, INDOT shall schedule the Project for letting at the next reasonable date.
- 2.7. The cost of the invoice of the construction, utility, and/or railroad work shall be paid by the LPA no later than thirty (30) calendar days from the date of letting.
- 2.8. The LPA shall make timely payments of costs to INDOT to avoid delays and increased costs to the Project. If the LPA fails to make timely payments of the full amount invoiced by INDOT, within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of **Attachment A**, which is attached hereto and incorporated herein by reference, and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
- 2.9. The LPA shall be responsible for all costs associated with additional provisions and/or expenses in excess of the federal funds allocated to the Project. The LPA, in conjunction with FHWA (if applicable) and INDOT shall review and approve all change orders submitted by the field Project Engineer/Supervisor, and such approvals shall not be unreasonably withheld.
- 2.10. The LPA shall provide competent and adequate engineering, testing, and inspection service to ensure the performance of the work is in accordance with the construction contract, plans and specifications and any special provisions or approved change orders. If, in INDOT's opinion, the services enumerated in this Section are deemed to be incompetent, inadequate or are otherwise insufficient, or if a dispute arises, INDOT shall, in its sole discretion, have the right to supplement the services or replace the engineers or inspectors providing these services at the sole expense of the LPA.
- 2.10.1. If project inspection will be provided by full-time LPA employees, the personnel must be employees of the LPA. Temporary employment or retainage-based payments are not permissible. INDOT must pre-approve, in writing, the LPA's personnel. Only costs incurred after INDOT's written notice to proceed to the LPA shall be eligible for federal-aid participation. All claims for federal aid shall be submitted to the District office, referenced on Page 1 of the Contract for payment.
- 2.10.2. If project inspection will be provided by the LPA's consultant, INDOT must approve, in writing, the consultant personnel prior to their assignment to the Project. The LPA shall execute a contract with a consultant setting forth the scope of work and fees. The LPA shall submit this contract to INDOT prior to INDOT's Ready for Contracts date for the Project. Only costs incurred after INDOT's written notice to proceed to the LPA and the LPA's written notice to proceed to the consultant shall be eligible for federal aid participation. All

claims for federal aid shall be submitted to the District office, referenced on page 1 of this Contract for payment.

- 2.11.** The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the Project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.
- 2.12.** The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2389.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
- 2.13.** If FHWA or INDOT invokes sanctions per Section 6.6.2. of this Contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
- 2.13.1.** In the event of a correctable noncompliance, the LPA shall make the corrections to the satisfaction of FHWA and INDOT in a reasonable amount of time. In the event the LPA fails to make the required corrections, Sections 2.14.2 and 2.14.3 (as applicable) shall apply.
- 2.13.2.** In the event a citation for noncompliance: (1) is unable to be corrected, (2) the LPA fails to make corrections, (3) the LPA makes corrections which are not acceptable to FHWA and INDOT, or (4) for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, Section 2.14.2 shall apply and adjustments shall be made as follows:
- A. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation which have been paid by INDOT to the LPA.
 - B. If no right-of-way costs have been paid by INDOT to the LPA or on the LPA's behalf, INDOT shall not pay any claim or billing for right-of-way that is subject to the FHWA citation.
 - C. The LPA is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
- 2.13.3.** If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA's noncompliance with right-of-way requirements, and construction work has commenced, the following shall apply:
- A. INDOT may elect to terminate, suspend, or continue construction work in accordance with the provisions of the construction contract.
 - B. INDOT may elect to pay its obligations under the provisions of the construction contract.
 - C. If the noncompliance can be corrected, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.
 - D. In the event a citation for noncompliance: (1) is unable to be corrected, (2) the LPA fails to make corrections, (3) the LPA makes corrections which are not acceptable to FHWA and INDOT, or (4) for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, and construction work has been terminated or suspended, the LPA shall reimburse INDOT the full amount the LPA paid for said construction work, less the amount of federal funds allowed by FHWA.

- 2.13.4.** The LPA shall reimburse INDOT the total cost of the Project not eligible for federal participation.
- 2.13.5.** If for any reason INDOT is required to repay to FHWA the sum(s) of federal funds paid to the LPA or any other entity through INDOT under the terms of this Contract, then the LPA shall repay to INDOT such sum(s) within forty-five (45) days after receipt of an invoice from INDOT. Payment for any and all costs incurred by the LPA which are not eligible for federal funding shall be the sole obligation of the LPA.

III. INDOT RESPONSIBILITIES.

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

IV. PROJECT FUNDS.

- 4.1. INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. Payment will be made for the services performed under this Contract in accordance with **Attachment A** (Project Funds).

V. TERM AND SCHEDULE.

- 5.1. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract), between **July 1, 2024 and June 30, 2025**, INDOT will make the federal funds shown in Section I.A. and/or Section I.B. of **Attachment A** available for the Project, provided the Project is eligible, and provided the federal funds shown in Section I.B. of **Attachment A** are available.
- 5.2. In the event that federal funds for the Project are not obligated during the time listed in Section 5.1, but the LPA has the plans, special provisions, and cost estimate for the Project ready such that federal funds can be obligated between **July 1, 2025 and June 30, 2027**, INDOT will schedule the contract for letting, provided the Project is eligible, and provided the federal funds shown in Section I.B. of **Attachment A** are available.
- 5.3. In the event that federal funds for the Project are not obligated during the period listed in Section 5.1 or Section 5.2, the federal funds allocated to the Project may be obligated in the fiscal year chosen by INDOT or the federal funds allocated to the Project will lapse.
- 5.4. If the Program is Group I or Group II, Sections 5.1, 5.2 and 5.3 do not apply, but will be obligated according to the fiscal year programmed in the most current MPO TIP, provided the MPO funding is within their fiscal year allocation.

VI. GENERAL PROVISIONS

- 6.1. **Access to Records.** The LPA shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by INDOT and/or the Federal Highway Administration ("FHWA") or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT, and/or FHWA. The LPA agrees that, upon request by any agency participating in federally-assisted programs with whom the LPA has contracted or seeks to contract, the LPA may release or make available to the agency any working papers from an audit performed by INDOT and/or FHWA of the LPA in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.
- 6.2. **Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the LPA assigns to the State all right, title and interest in and to any claims the LPA now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.
- 6.3. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State. The State considers the LPA to be a "sub-recipient" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations),

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

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

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

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

- 6.4. Authority to Bind LPA.** The signatory for the LPA represents that he/she has been duly authorized to execute this Contract on behalf of the LPA, and has obtained all necessary or applicable approvals to make this Contract fully binding upon the LPA when his/her signature is affixed and accepted by the State.
- 6.5. Certification for Federal-Aid Contracts Lobbying Activities.** The LPA certifies, by signing and submitting this Contract, to the best of its knowledge and belief that the LPA has complied with Section 1352, Title 31, U.S. Code, and specifically, that:
- A.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the LPA, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreement, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.
 - B.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.
 - C.** The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
- 6.6. Compliance with Laws.**

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

- B. will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

6.7. Debarment and Suspension.

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

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

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

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

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

6.9. Disputes.

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

within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:

6.9.4. The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

6.9.5. INDOT may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by INDOT to the LPA of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for LPA to terminate this Contract, and the LPA may bring suit to collect these amounts without following the disputes procedure contained herein.

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

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

- A.** Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the LPA's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B.** Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the LPA's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C.** Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the LPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D.** Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;
- E.** Within thirty (30) days after receiving notice under subdivision (3)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of

drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

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

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

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

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

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

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

6.15. Indemnification. The LPA agrees to indemnify, defend, exculpate, and hold harmless the State of Indiana, and INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other

legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:

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

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

The LPA also agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys, and/or employees, individually and/or jointly, in asserting successfully a claim against the LPA for indemnity pursuant to this contract. INDOT will not provide indemnification to the LPA.

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

6.17. Non-Discrimination.

6.17.1. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the LPA covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state or local law ("Protected Characteristics"). The LPA certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any subcontractor.

6.17.2. INDOT is a recipient of federal funds, and therefore, where applicable, the LPA and any subcontractors shall comply with requisite affirmative action requirements, including

reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

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

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

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

Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
- F. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

- 6.18. Payment.** All payments (if any) shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20.

- 6.19. Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.

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

- 6.20. Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:

- A. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
- B. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
- C. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance

under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.

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

6.22. Status of Claims. The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

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

6.23. General. This Contract represents the entire understanding between the PARTIES relating to the subject matter and supersedes any and all prior oral and/or written communications, understandings or agreements relating to the subject matter. Any amendment or modification to this Contract must be in writing and be signed by duly authorized representatives of the PARTIES (and by all necessary approving State agencies or parties). Neither this Contract nor any portions of it may be assigned, licensed or otherwise transferred by the LPA without the prior written consent of INDOT. This Contract will be binding upon the PARTIES and their permitted successors or assigns. Failure of either Party to enforce any provision of this Contract will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Contract. The Recitals and "Notice to PARTIES" on page 1 of the Contract are hereby made an integral part and specifically incorporated into this Contract.

[Remainder of this page intentionally left blank.]

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the LPA, or that the undersigned is the properly authorized representative, agent, member or officer of the LPA. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the LPA, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof.

Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Party attests to compliance with the disclosure requirements in IC 4-2-6-10.5.

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:

https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTRCTS.GBL

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

WESTFIELD, CITY OF

Indiana Department of Transportation

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Electronically Approved by:
Department of Administration

Electronically Approved by:
State Budget Agency

By: (for) Lesley A. Crane, Commissioner

By: (for) Zachary Q. Jackson, Director

***Form approval has been granted by the
Office of the Attorney General pursuant to
IC 4-13-2-14.3(e) on October 22, 2020.
FA 20-82***

ATTACHMENT A
PROJECT FUNDS

I. Project Costs.

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

_____ Preliminary Engineering or
_____ Right-of-Way or
 X Construction;

B. If the Program is receiving federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP, or any increase or decrease in the funding from a prior year, authorized by the MPO that may not be reflected in the current TIP, are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay **80%** of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is dependent upon the current TIP allocation. As of this date, **May 26, 2021**, the maximum amount according to the TIP dated **October 29, 2020** is **\$2,875,520.00**. The most current MPO TIP page, or MPO authorization, is uploaded into INDOT's Scheduling Project Management System (SPMS).

OR

- C. Federal-aid Funds made available to the LPA by INDOT will be used to pay % of the eligible Project costs. The maximum amount of federal funds allocated to the project is \$.
- D. The LPA understands and agrees that it is INDOT's policy to only allow non-discretionary changes to a Project scope after bidding. Changes to the Project scope after bidding that are by the choice of the LPA and are not required to complete the Project will not be eligible for federal-aid funds and must be funded 100% locally.
- E. The LPA understands and agrees that the federal-aid funds allocated to the Project are intended to accomplish the original scope of the Project as designed. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the Local Program.
- F. If the Program is Group I or Group II, Section E. does not apply. If the Project bid prices are lower than estimated, the LPA may not utilize those federal-aid funds and the remaining balance of federal-aid funds will revert back to the MPO.
- G. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of **Attachment A** of this Contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.
- H. Every project must have a project end date based upon the reasonable timeframe for the project phase to be completed. If a project end date lapses, the project is no longer eligible for federal reimbursement in accordance with 2 CFR 200. See <https://www.in.gov/indot/2833.htm>.

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

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

II. Billings.

A. Billing:

1. When INDOT awards and enters into a contract (i.e., construction, utility, and/or railroad) on behalf of the LPA, INDOT will invoice the LPA for its share of the costs. The LPA shall pay the invoice within thirty (30) calendar days from date of INDOT's billing.
2. The LPA understands time is of the essence regarding the Project timeline and costs and delays in payment may cause substantial time delays and/or increased costs for the Project.
3. If the LPA has not paid the full amount due within sixty (60) calendar days past the due date, INDOT shall be authorized to cancel all contracts relating to this Contract, including the contracts listed in II.A.1 of **Attachment A** and/or proceed in accordance with I.C. 8-14-1-9 to compel the Auditor of the State of Indiana to make a mandatory transfer of funds from the LPA's allocation of the Motor Vehicle Highway Account to INDOT's account.
4. Federal funds on projects which have not been billed for a twelve (12) month period are considered inactive and must be removed from the project in accordance with 2 CFR 200. To receive federal funding within the twelve (12) month period, INDOT must receive a billing within nine (9) months. See <https://www.in.gov/indot/2833.htm>.

III. Repayment Provisions.

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