



CITY OF WESTFIELD, IN
Board of Public Works Meeting Agenda_01_22_2020

Wednesday, January 22, 2020 at 01:00 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Wednesday, January 22, 2020 at 01:00 PM

MEETING PLACE: Westfield Public Works- Large Conference Room

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

AGENDA ITEMS

Meeting Minutes Consideration for Approval

Action Item #1:

Approval of December 11, 2019 Minutes

Documents: [Minutes - December 11, 2019](#)

Bid Approval

NONE

Construction Standards & Specifications Changes

NONE

Change Orders

NONE

Contracts/Agreements

Action Item #2:

WSP USA - City of Westfield - 169th & Spring Mill Roundabout Right-of-Way Task Order #20

Documents: [Task Order #20](#)

Action Item #3:

United Consulting - City of Westfield - Kinsey Avenue Over Grassy Creek - Professional

Services Agreement

Documents: [United Consulting Agreement](#)

Action Item #4:

Midland Trace Trail/Sanders Glen Property - Grant of Trail Easement

Documents: [Trail Easement Exhibits](#) | [Grant of Easement](#)

Action Item #5:

City of Westfield & White Construction LLC - North Street Roadway & Drainage Improvements - Contract for Goods & Services

Documents: [Contracts for Goods & Services](#)

Action Item #6:

BirJax Group - Puddle Jumpers & City of Westfield - Stormwater Maintenance - Contract for Services

Documents: [Contract for Services](#)

Action Item #7:

VS Engineering & City of Westfield - VS Trail Connectors Proposal

Documents: [156th Street & Westfield Boulevard Trail Design](#)

Action Item #8:

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

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

Action Item #9:

Cardno - Mill Street Mitigation Supplemental for DNR Compliance

Documents: [Mill Street Mitigation Supplemental](#)

Action Item #10:

GAI 2020 On-Call Contract

Documents: [2020 Contract](#)

Action Item #11:

GAI On-Call Task Order #1

Documents: [GAI Task Order #1](#)

Action Item #12:

GAI On-Call Task Order #2

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

Action Item #13:

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

Documents: [INDOT LPA Contract](#)

Agreements and/or Memorandum of Understanding (MOU)

NONE

Consent Agenda

Conflict of Interest - Cindy Gossard & Kerri Gagnon

WPD - Approval to Hire Officers: Charles Terry, Josiah Parr, Christopher Wolak, & David Dugger (Conditional Requirements)

January Bond Information

Documents: [Bond Information - January](#)

Department Reports

Fire

Police

Documents: [WPD November Report](#) | [WPD December Report](#)

Public Works

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY December 11, 2019

The Westfield Board of Public Works and Safety met on December 11, 2019 at the Westfield Public Works Conference Room. Present were Randy Graham, Mayor Cook, Kim Strang Records Manager, and Brian Zaiger Legal Counsel.

Randy Graham called the meeting to order at 1:03 PM

AGENDA ITEMS:

Action Item #1: Meeting Minutes Consideration for Approval:

Mayor Cook made the motion to approve the November 13, 2019 meeting minutes as presented. Randy Graham seconded. Vote: Yes-2; No-0. Motion carried.

CONTRACTS/AGREEMENTS

Action Item #2: Practical Property Group & City of Westfield-Snow Contract 2019-2022

Jeremy Lollar presented stating the city subdivisions are divided into sections and Practical Property Group will be doing snow removal (no salting) for half of the neighborhoods. This contract locks in the price for 3 years.

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

Action Item #3: Brightview & City of Westfield Snow Contract

Jeremy Lollar presented stating Brightview will be doing the other part of the City's subdivisions for snow removal. This contract will lock in prices until November 30, 2022.

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

Action Item #4: CCD Harmony & City of Westfield First Amendment to Development Agreement.

Jeremy Lollar presented this is a request by the developer to adjust the timing of construction of the 151st Street R-A-B to have a completion date on or before October 31, 2020.

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

Action Item #5: Platinum Properties & City of Westfield-Park Impact Fee Agreement

Jeremy Lollar presented stating the developer wants to construct a portion of the Midland Trace Trail and wishes to receive park impact fee credits to offset the cost of construction. Upon completion the City agrees the developer shall receive park impact credits not to exceed \$48,562.00.

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

CONSENT AGENDA:

WPD-Approval to Hire Officers (Conditional Requirements)

2020 Board of Public Works & Safety Schedule of Meetings

December Bond Information

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

DEPARTMENT REPORTS:

Fire- Chief Reed

Police-Chief Rush

Public Works- Jeremy Lollar

With no further business Randy Graham made the motion to adjourn. Mayor Cook seconded.
The meeting was adjourned at 1:28 PM

Deputy Clerk-Treasurer

Board of Public Works and Safety

PROFESSIONAL SERVICES TASK ORDER AGREEMENT

**WSP Agreement No. - 185360
Task Order No. 20**

This Task Order No. 20 is made and entered into this ___th day of December, 2019, 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 the 169th Street and Spring Mill Road Roundabout Project with a total of 3 parcels. These services shall include: right-of-way management, appraising and buying services.

2. Schedule

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

Appraisal Problem Analysis -	10 days from Appraiser Notice to Proceed
Appraising –	30 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 \$15,910.00.

Title	Unit Rate per parcel	# of parcels	Total Cost
Right-of-Way Management	\$1,100	3	\$3,300
Appraisal Problem Analysis	\$240	3	\$720
Appraisal – Waiver Valuation	\$645	2	\$1,290
Appraisal – Short Form	\$2,690	1	\$2,690
Review Appraisal – Waiver Valuation	\$380	2	\$760
Review Appraisal – Short Form	\$1,290	1	\$1,290
Buying - Permanent	\$1,930	1	\$1,930
Buying - Temporary	\$1,605	2	\$3,210

4. Both parties agree that this Task Order No. 20 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. 20 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

Duane McKinney
Area Manager

PROFESSIONAL SERVICES AGREEMENT



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

WITNESSETH



WHEREAS, UNITED CONSULTING desires to provide, and CLIENT desires for UNITED CONSULTING to provide, certain professional services to be performed with respect to **R-39680 Small Structure Replacement on Kinsey Avenue over Grassy Creek** ("Project"), subject to the terms and conditions set forth in this Agreement;

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

Section I – Services by UNITED CONSULTING

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

Section II – Information and Services to be furnished by CLIENT

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

Section III – Commencement of Services and Schedule

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

Section IV - Compensation

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

Section V – Term and Termination

1. Term

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

2. Termination

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

Section VI - General Provisions

1. Subcontracting

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

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

2. Ownership of Documents

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

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

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

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

3. Access to Records

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

4. Liability for Damages

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

5. General Liability Insurance

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

6. Workmen's Compensation

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

7. Changes in Work

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

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

8. Non-Discrimination and Code of Ethics

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

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

9. Safety

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

10. Independent Contractor

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

11. Indemnification

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

12. Notification

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

CLIENT:

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

UNITED CONSULTING:

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

13. Authority to Bind United Consulting

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

14. Successors and Assignees

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

15. Entire Agreement; Amendments

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

16. Governing Law

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

17. Non-Waiver

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

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

18. Invalid Provisions

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

19. Dispute Resolution

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

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

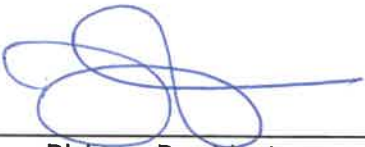
[Signature page follows]

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



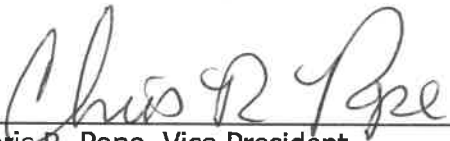
UNITED CONSULTING

CLIENT

BY: 

Dave Richter, President

BY: _____

BY: 

Chris R. Pope, Vice President

BY: _____

DATE: December 18, 2019

BY: _____

DATE: _____

ATTEST: _____

Appendices

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

Services by UNITED CONSULTING

A. CONSTRUCTION INSPECTION

1. For the fulfillment of all services outlined in Section A and B below, UNITED CONSULTING will provide a Part-time Construction Manager I anticipating working 7 hours per week to provide the following services (for Site Manager entries and for concrete and misc. testing), to serve as the CLIENT'S Site Manager and Testing Specialist working principally through the CLIENT'S inspector or such other person in authority as designated by the CLIENT. A summary of the work to be performed by UNITED CONSULTING is outlined below:
 - a. Site Manager entries
 1. Daily Diary and Pay Quantity Entry. CLIENT will have a full-time inspector on-site that will provide UNITED CONSULTING with paper daily reports of work activities and pay items measured and calculated/sketches and UNITED CONSULTING will enter into Site Manager once a week.
 2. Material Record Entry. Enter material certifications and any concrete tests taken by UNITED CONSULTING into Site Manager.
 3. Concrete and LWD Testing. UNITED CONSULTING'S Construction Manager I will take required concrete and LWD tests to certify material records.
 - b. Project Closeout
 1. Assembly of Final Construction Record suitable to be turned into INDOT.
2. UNITED CONSULTING shall report to the CLIENT on matters concerning contract compliance and administration. UNITED CONSULTING shall coordinate Site Manager work entries related to the construction with the CLIENT.
3. UNITED CONSULTING will provide a Final Construction Record suitable to INDOT along with Material Record Certification to the CLIENT.

Information and Services Provided by CLIENT

The CLIENT shall furnish the UNITED CONSULTING with the following:

1. The CLIENT shall designate an employee as Project Coordinator as a primary point of contact for this project administration.
2. The CLIENT shall provide a Project Inspector responsible for:
 - a. Daily reports
 - b. Documentation of Pay Quantities, including but not limited to; field sketches and location/justification of pay items.
 - c. Be thoroughly familiar with the Contract plans and specifications in order to monitor the work.
 - d. Reporting to the CLIENT any deviations observed by the CLIENT'S inspector.

Schedule

For purposes of contract control any work required to be submitted by the UNITED CONSULTING to the CLIENT for review and approval within the following approximate time periods:

A. CONSTRUCTION INSPECTION

1. UNITED CONSULTING shall provide part time Site Manager specialist for a construction time of **6** weeks.
2. UNITED CONSULTING shall provide a Final Construction Record within 45 days of Final Acceptance of the project by the CLIENT.

B. CONSTRUCTION SCHEDULE – The inspection budget was based on providing an RPR for 7 hours per week over the following project schedule:

1. INDOT Contract Letting Date: January 15, 2020
2. Start of construction on or after March 15, 2020
3. Final completion date of April 27, 2020

Compensation

A. Amount of Payment

1. UNITED CONSULTING shall receive as payment for the work performed under this Agreement the fee not to exceed **\$21,900.00** unless a modification of the Agreement is approved in writing by the CLIENT.
2. All work under this Agreement shall be paid to UNITED CONSULTING on the basis of actual hours of work performed by essential personnel working exclusively on this project at the billing rates as set forth in the Billing Rates by Classification Table on page 2 of this Appendix.

B. Method of Payment

1. UNITED CONSULTING may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the CLIENT. The invoice voucher shall represent the value, to the CLIENT, of the partially completed work as of the date of the invoice voucher.
2. In the event of a substantial change in the scope, character or complexity of the work on the project, the maximum fee payable shall be adjusted in accordance with item 7, (changes in work) of the General Provisions, set out in this Agreement.

UNITED Consulting
2020 Billing Rates by Classification

CLASSIFICATION		HOURLY BILLING RATES
1	Department Manager	\$208.00
2	Field Operations Manager	\$138.30
3	Construction Manager I	\$118.60
	OT	\$154.15
4	Construction Manager II	\$96.75
	OT	\$125.75

NOTES:

- (1) *Billing Rate Includes Overhead and Profit Margin*
- (2) *Mileage shall be reimbursed at \$0.60 per mile*
Other direct costs such as Permit Fees, Recording Fees, Legal Fees,
- (3) *Advertising Fees, Hotel Cost, Etc. shall be reimbursed at their actual costs.*
- (4) *These rates shall be increased by 4% on January 1 of each year subsequent to 2020.*
- (5) *Work performed by Subconsultants shall be reimbursed at their actual cost.*

APPENDIX E



Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/24/2019

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

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

PRODUCER WalkerHughes Insurance 6510 N Shadeland Ave Indianapolis IN 46220	CONTACT NAME: Brenda Russell PHONE (A/C No, Ext): (317) 353-8000 FAX (A/C, No): (317) 351-7149 E-MAIL ADDRESS: b.russell@walkerhughes.com
INSURED United Consulting Engineers Inc., dba United Consulting 8440 Allison Pointe Blvd, Ste 200 Indianapolis IN 46250	INSURER(S) AFFORDING COVERAGE INSURER A: Sentinel Insurance Co. Ltd INSURER B: Hartford Accident & Indemnity Co INSURER C: Hartford Ins Co of the Midwest INSURER D: INSURER E: INSURER F:

COVERAGES

CERTIFICATE NUMBER: CL19101026202

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☒ LOC OTHER:			84SBWUI8421	11/01/2019	11/01/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			84UEGVV8861	11/01/2019	11/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			84SBWUI8421	11/01/2019	11/01/2020	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	84WEGCB8685	11/01/2019	11/01/2020	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

CERTIFICATE HOLDER

CANCELLATION

CITY OF WESTFIELD
130 PENN STREET

WESTFIELD

IN 46074

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Brenda Russell

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/16/2019

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

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

PRODUCER SterlingRisk 135 Crossways Park Drive P.O. Box 9017 Woodbury NY 11797		CONTACT NAME: PHONE (A/C, No, Ext): 800-767-7837 FAX (A/C, No): 516-487-0372 E-MAIL ADDRESS: request@sterlingrisk.com	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Starr Surplus Lines Insurance Company	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 1121300285 **REVISION NUMBER:**

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

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

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

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

E

A

Group

Land Surveyors ▲ Civil Design
Construction Layout

494 Gradle Drive Carmel, Indiana 46032
Phone: 317.844.3333 infocarmel@v3co.com
a V3 Company

EXHIBIT & DESCRIPTION

PT NW 1/4 OF S6-T18N-R4E



DRAWING PREPARED BY: HMS

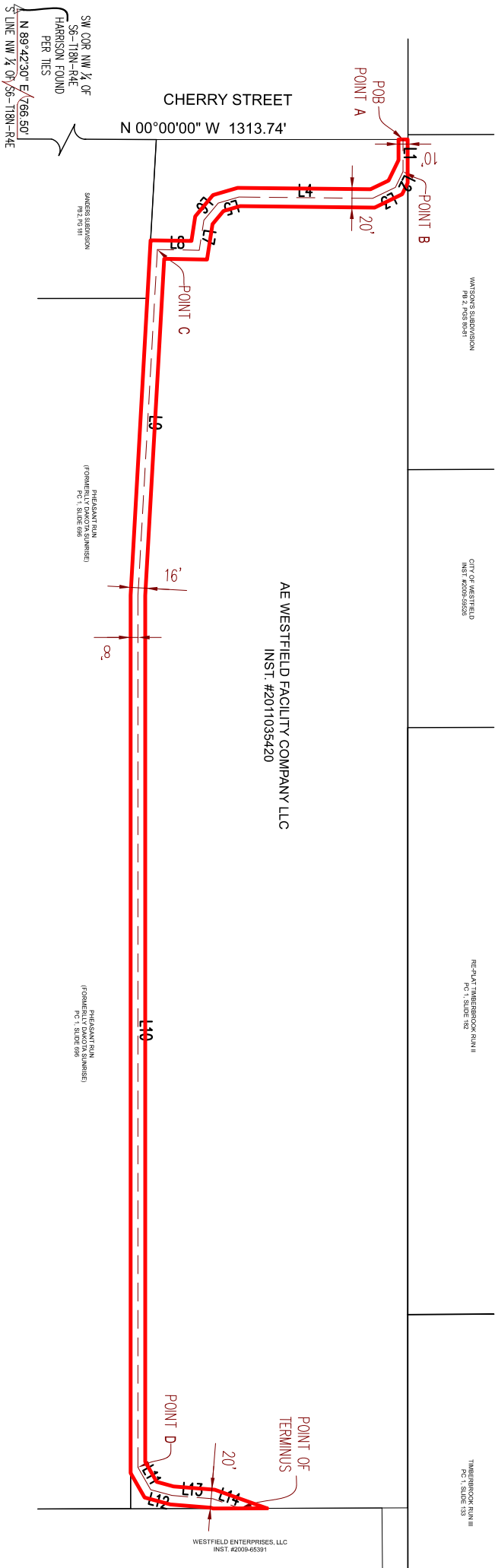
DRAWING SCALE: 1" = 160'

DRAWING DATE: 12/2/2019

PROJECT #: 19443

PROPERTY ADDRESS:
334 S. CHERRY STREET
WESTFIELD, IN 46074

DRAWING PREPARED FOR:
AMERICAN EAGLE SANDERS GLEN, LLC
3819 HAWK CREST ROAD
ANN ARBOR, MI 48103



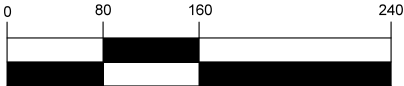
CENTERLINE EASEMENT DESCRIPTION: PART OF INST. #2008051112
A PART OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 18 NORTH,
RANGE 4 EAST OF THE SECOND PRINCIPAL MERIDIAN, WASHINGTON
TOWNSHIP, HAMILTON COUNTY, INDIANA, THE CENTERLINE OF WHICH IS MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER;
THENCE NORTH 89 DEGREES 42 MINUTES 30 SECONDS EAST (BEARING FROM
INSTRUMENT NUMBER 2011035420 AS RECORDED IN THE OFFICE OF THE
RECORDER OF HAMILTON COUNTY, INDIANA) ALONG THE SOUTH LINE OF SAID
QUARTER 766.50 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00
SECONDS WEST 1313.74 FEET TO A 10-FOOT WIDE EASEMENT, THE
CENTERLINE OF WHICH BEGINS AT A POINT MARKED "A" AND THE POINT OF
BEGINNING OF THE CENTERLINE: THENCE SOUTH 89 DEGREES 58 MINUTES
04 SECONDS EAST 25.00 FEET TO A POINT MARKED "B" AND BEGINS THE
20-FOOT WIDE EASEMENT; THENCE SOUTH 63 DEGREES 52 MINUTES 10
SECONDS EAST 30.64 FEET; THENCE SOUTH 25 DEGREES 54 MINUTES 28
SECONDS EAST 27.64 FEET; THENCE SOUTH 00 DEGREES 37 MINUTES 57
SECONDS WEST 146.60 FEET; THENCE SOUTH 16 DEGREES 16 MINUTES 25
SECONDS EAST 23.55 FEET; THENCE SOUTH 50 DEGREES 08 MINUTES 52
SECONDS EAST 24.53 FEET; THENCE SOUTH 81 DEGREES 05 MINUTES 08
SECONDS EAST 33.29 FEET; THENCE SOUTH 00 DEGREES 59 MINUTES 50
SECONDS WEST 45.83 FEET TO A POINT MARKED "C" AND BEGINS THE
16-FOOT WIDE EASEMENT; THENCE SOUTH 86 DEGREES 45 MINUTES 00
SECONDS EAST, SAID CENTERLINE BEING 8-FOOT OFFSET NORTH AND
PARALLEL TO THE SOUTH LINE OF THE GRANTOR'S REAL ESTATE, A
DISTANCE OF 379.55 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 54
SECONDS EAST BEING 8-FOOT OFFSET NORTH AND PARALLEL TO THE
SOUTH LINE OF THE GRANTOR'S REAL ESTATE, A DISTANCE OF 955.50 FEET
TO A POINT MARKED "D" AND BEGINS THE 20-FOOT WIDE EASEMENT;
THENCE NORTH 60 DEGREES 25 MINUTES 18 SECONDS EAST 28.11 FEET;
THENCE NORTH 15 DEGREES 13 MINUTES 12 SECONDS EAST 24.23 FEET;
THENCE NORTH 04 DEGREES 33 MINUTES 16 SECONDS EAST 44.94 FEET;
THENCE NORTH 19 DEGREES 37 MINUTES 15 SECONDS EAST 31.63 FEET TO
A POINT ON THE GRANTOR'S EAST LINE AND THE POINT OF TERMINUS OF
THE OVERALL CENTERLINE.

LINE TABLE

	LINE	BEARING	DISTANCE	
A	L1	S 89°58'04" E	35.21'	B
B	L2	S 63°52'10" E	19.27'	
	L3	S 25°54'28" E	27.64'	
	L4	S 00°37'57" W	146.60'	
	L5	S 16°16'25" E	23.55'	
	L6	S 50°08'52" E	24.53'	
	L7	S 81°05'08" E	33.29'	
	L8	S 00°59'50" W	45.83'	C
C	L9	S 86°45'00" E	379.55'	D
	L10	S 89°57'54" E	955.50'	
D	L11	N 60°25'18" E	28.11'	
	L12	N 15°13'12" E	24.23'	
	L13	N 04°33'16" E	44.94'	
	L14	N 19°37'15" E	31.63'	

GRAPHIC SCALE



1 inch = 160 Feet



CONTRACT FOR GOODS AND SERVICES

This Contract for Goods and Services (“Vendor Contract”) is made and entered into as of the 22nd day of January, 2020, by and between City of Westfield (“Contracting Party”) and White Construction, LLC (“Vendor”).

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

- A. **Basic Terms.** This Vendor Contract is on the following basic terms and conditions:
- (a) Goods and/or services provided by Vendor: (See Exhibit B attached hereto and made a part hereof).
 - (b) Location: North Street, Westfield, Indiana 46074 (the “City Property”)
 - (c) Date by which the Services shall be completed: To start January 23rd, 2020 and complete by June 30th, 2020 (the “Completion Date”).
 - (d) Purchase Price: Four Hundred Eighty-One Thousand Dollars and 00/100, \$481,000.00 (see Proposal dated 12/19/19 - 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 North Street Roadway & Drainage Improvements Project” dated November 26, 2020 inclusive of all sections and appendixes.

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: Michael Pearce
2706 East 171st Street
Westfield, Indiana 46074

mpearce@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:

White Construction, LLC
3900 East Clinton Ave
Clinton, IN 47842

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

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

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

CONTRACT TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

10. **REQUIRED INSURANCE AND INDEMNIFICATION:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXECUTED this _____ day of _____, 2020.

Contracting Party:

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

Vendor:

White Construction, LLC
3900 East Clinton Ave
Clinton, IN 47842

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

EXHIBIT A

Project Rules

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

SITE ACCESS

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

LIMITED CITY OCUPANCY (If Applicable)

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

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

MATERIAL MANAGEMENT PLAN

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

CLEAN UP

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

WORK HOURS

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

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

PUBLIC ACCESS AND SAFETY

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

SITE DECORUM

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

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

PARKING

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

UTILITY COORDINATION

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

USE OF ROADWAYS AND PATHS

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

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

TRAFFIC CONTROL

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

CRANES & HOISTING

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

TEMPORARY SHORING AND BRACING

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

TEMPORARY BARRICADES

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

CONSTRUCTION SIGNAGE

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

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

TEMPORARY FACILITIES

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

RUBBER TIRED EQUIPMENT

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

REMOVAL OF TEMPORARY FACILITIES

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

VIOLATIONS

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

GENERAL SAFETY PRECAUTIONS

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

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

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

EXHIBIT B

See attached Proposal dated 12/19/2019

SECTION 3

PROPOSAL

CITY OF WESTFIELD, INDIANA

NORTH STREET ROADWAY & DRAINAGE IMPROVEMENTS

To: Westfield Public Works
2706 E. 171st Street
Westfield, Indiana 46074

Pursuant to the published "Advertisement for Bids", the undersigned has investigated the conditions affecting the cost of the proposed North Street Roadway & Drainage Improvements and having examined the site and understanding the requirements set forth in the Contract Documents, hereby proposes to provide and furnish all labor, materials, tools, equipment and all utility and transportation services necessary to perform and complete, in a workmanlike manner, all the above work as required by said Contract Documents, including any and all addenda now on file in the Westfield Public Works office, City of Westfield, Indiana.

The project generally includes removing the existing pavement and base and constructing a new asphalt roadway with concrete curb and gutter.

The project will be awarded to the lowest and most responsible bidder based on the combined total base bid plus any accepted alternates as selected by the Owner. The program will be located throughout the Westfield corporate limits.

The undersigned proposes to furnish all work for the construction of the North Street Roadway & Drainage Improvements, including all labor, materials, supplies, equipment and all appurtenances necessary to complete the work as per the drawings and the specifications for the following unit prices, to wit:

Schedule – The undersigned agrees to be complete with the base bid work by June 30, 2020 or by 30 days after initiating the work, whichever is sooner. If work is not completed by the specified dates above, liquidated damages will be assessed at \$1,000.00 per day.

Bidder acknowledges the schedule of this contract (initial): WM

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BASE BID ITEMIZED PROPOSAL
(SEE BREAKDOWN AT THE END OF THIS SECTION FOR FURTHER INFORMATION)

ID	ITEM NO.	DESCRIPTION	UNIT	Estimated Quantities	Unit Prices	Total
1	105-06845	CONSTRUCTION ENGINEERING	LS	1	\$ 68,566.00	\$ 68,566.00
2	110-01001	MOBILIZATION/DEMOBILIZATION	LS	1	\$ 24,000.00	\$ 24,000.00
3	201-52370	CLEARING RIGHT OF WAY	LS	1	\$ 10,000.00	\$ 10,000.00
4	201-02255	TREE 18 IN., REMOVE	EACH	1	\$ 1,000.00	\$ 1,000.00
5	202-02240	SAWCUT/REMOVE PAVEMENT, DRIVE, WALK, AND BASE MATERIAL	SYS	1704	\$ 15.00	\$ 25,560.00
6	202-02279	CURB AND GUTTER, SAWCUT & REMOVE	LFT	2	\$ 100.00	\$ 200.00
7	202-02772	CASTING, REMOVE	EACH	2	\$ 400.00	\$ 800.00
8	202-94747	REMOVE EXISTING BOLLARD	EACH	2	\$ 300.00	\$ 600.00
9	202-96133	PIPE, REMOVE (OPTION: GROUT IN PLACE)	LFT	140	\$ 20.00	\$ 2,800.00
10	205-06933	TEMPORARY INLET PROTECTION	EACH	12	\$ 250.00	\$ 3,000.00
11	205-06937	TEMPORARY SILT FENCE	LFT	1032	\$ 2.00	\$ 2,064.00
12	301-12234	COMPACTED AGGREGATE NO. 53	CYS	410	\$ 85.00	\$ 34,850.00
13	305-09786	PCC BASE, 6 IN.	SYS	5.5	\$ 100.00	\$ 550.00
14	401-07321	QC/QA-HMA, 2, 64, SURFACE, 9.5 mm	TON	164	\$ 80.00	\$ 13,120.00
15	401-07390	QC/QA-HMA, 2, 64, INTERMEDIATE, 19.0 mm	TON	274	\$ 65.00	\$ 17,810.00
16	401-07423	QC/QA-HMA, 2, 64, BASE, 19.0 mm	TON	274	\$ 65.00	\$ 17,810.00
17	502-11564	PCCP, 7 IN.	SYS	5.5	\$ 250.00	\$ 1,375.00
18	502-05402	CONCRETE DRIVEWAY, 6" AND 6" #53 BASE (INCLUDED)	SYS	260	\$ 125.00	\$ 32,500.00
19	502-11564	CONCRETE VALLEY GUTTER	LFT	92	\$ 90.00	\$ 8,280.00
20	604-06070	CONCRETE SIDEWALK W/ COMPACTED #53 BASE, KEYWAY AND THICKENED EDGE	SYS	416	\$ 120.00	\$ 49,920.00
21	604-08086	CURB RAMP, CONCRETE	SYS	3	\$ 300.00	\$ 900.00
22	604-12083	DETECTABLE WARNING SURFACES	SYS	4	\$ 400.00	\$ 1,600.00
23	605-08636	CURB AND GUTTER, TURNOUT COMBINED	LFT	6	\$ 125.00	\$ 750.00
24	605-96305	CURB AND GUTTER, CONCRETE DEPRESSED	LFT	20	\$ 100.00	\$ 2,000.00
25	605-97937	CONCRETE MOUNTABLE CURB & GUTTER, TYPE A	LFT	1245	\$ 30.00	\$ 37,350.00

26	605-97937	CONCRETE MOUNTABLE CURB & GUTTER, TYPE B	LFT	97	\$ 40.00	\$ 3,880.00
27	611-06497	MAILBOXES – REMOVE EXISTING, INSTALL TEMPORARY, INSTALL NEW	LS	1	\$ 2,500.00	\$ 2,500.00
28	616-06451	RIPRAP, UNIFORM	TON	0.6	\$ 1,000.00	\$ 600.00
29	621-04258	SEEDING/SITE RESTORATION	SYS	300	\$ 15.00	\$ 4,500.00
30	621-06570	TOPSOIL	SYS	210	\$ 20.00	\$ 4,200.00
31	715-05147	8" DBL WALL HDPE PIPE (W/BEDDING & NATIVE BACKFILL)	LFT	17	\$ 50.00	\$ 850.00
32	715-05147	6" UNDERDRAIN W/CONNECTIONS & TRENCH, GEOTEXTILE, BEDDING & AGGREGATE	LFT	1164	\$ 20.00	\$ 23,280.00
33	720-44000	CASTING, ADJUST TO GRADE	EACH	2	\$ 750.00	\$ 1,500.00
34	720-01894	INSTALL STORM INLET CASTING	EACH	2	\$ 1,000.00	\$ 2,000.00
35	720-03905	STORM INLET TYPE A	EACH	1	\$ 2,200.00	\$ 2,200.00
36	720-04499	MODIFY CONCRETE INLET HEIGHT UP TO 12"	EACH	2	\$ 1,000.00	\$ 2,000.00
37	720-44000	CLEANOUT CASTING, RESET WITHIN PROPOSED PAVEMENT	EACH	2	\$ 1,000.00	\$ 2,000.00
38	801-06640	CONSTRUCTION SIGN, A	EACH	1	\$ 195.00	\$ 195.00
39	801-06775	MAINTAINING TRAFFIC	LS	1	\$ 25,000.00	\$ 25,000.00
40	802-03896	STEEL BOLLARD	EACH	2	\$ 750.00	\$ 1,500.00
41	802-07060	SIGN, RELOCATE	EACH	2	\$ 500.00	\$ 1,000.00
42	808-03439	TRANSVERSE MARKING, THERMOPLASTIC, CROSSWALK LINE, WHITE, 24 IN.	LFT	51	\$ 20.00	\$ 1,020.00
43	808-06713	LINE, PAINT, SOLIDE, WHITE, 4 IN	LFT	32	\$ 15.00	\$ 480.00
44	808-75297	TRANSVERSE MARKING, THERMOPLASTIC, STOP LINE, WHITE, 24 IN STOP LINE, 24 IN.	LFT	32	\$ 20.00	\$ 640.00
45	808-75998	SNOWPLOWABLE BLUE RAISED PAVEMENT MARKER	EACH	3	\$ 750.00	\$ 2,250.00
Total 1-45						\$ 439,000.00

SUBGRADE TREATMENT ALTERNATIVES (CHOOSE ONE)						
ALTERNATIVE 1: SUBGRADE TREATMENT TYPE 1B						
46	207-09934	SUBGRADE TREATMENT TYPE 1B	SYS	2,400	\$ -	\$ -
ALTERNATIVE 1: SUBGRADE TREATMENT TYPE 1C						
47	207-09935	SUBGRADE TREATMENT TYPE 1C	SYS	2,400	\$ 17.50	\$ 42,000.00
ALTERNATIVE TOTAL						\$ 42,000.00
PROJECT TOTAL (ITEMS 1-45 + SUBGRADE ALTERNATIVE)						\$ 481,000.00

Base Bid Amount in words for North Street Roadway & Drainage Improvements:

Four Hundred Eighty One Thousand Dollars and No /100

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

The undersigned encloses herewith a certified check or cashier's check payable to the City of Westfield, Indiana or a bidder's bond binding the undersigned and surety to the City of Westfield, Indiana, in the amount of

Bid Bond Attached - 5%

Dollars

which amount is not less than five percent (5%) of the base bid as set out above, guaranteeing that the undersigned will enter into Contract for the performance of the work once the Proposal is accepted. Form 96, Contractors Bid for Public Works, of the Indiana State Board of Accounts is also properly executed and attached hereto. A Non-collusion Affidavit, as required by the statutes of the State of Indiana, is properly executed and attached hereto, if not included on the Form 96.

It is hereby agreed that this proposal shall remain in full force and effect and may not be withdrawn for a period of 90 days from the date of receiving proposals by the City of Westfield, Indiana.

Receipt of Addenda No. N/A is hereby acknowledged

Respectfully submitted,

White Construction LLC

Contractor

(Individual ☐) (Partnership ☐)

or (Corporation ☒)

By

William A. Lang
WILLIAM A. LANG

Title General Manager - Civil

Dated:

Address 3900 East Clinton Ave

December 19, 20 19

Clinton, IN 47842

NOTE: The legal status of the Bidder, whether as an individual, partnership, or corporation, must be indicated above, and all pertinent information as required by the Specifications must be furnished.

CITY OF WESTFIELD, INDIANA

By Own Forces

Section 3 – Page 6

Attachment 1

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

Attachment 2

The Affidavit of Employee Status shall be signed and notarized.

AFFIDAVIT OF EMPLOYEE STATUS

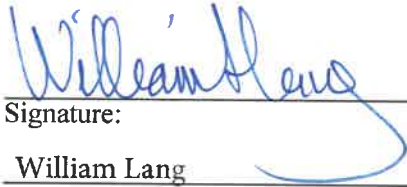
Re: Project – North Street Roadway & Drainage Improvements

WHEREAS, the City of Westfield, Hamilton County, Indiana, hereinafter referred to as the “City” is in the process of construction work on the North Street Roadway & Drainage Improvements, hereinafter referred to as the “Project”;

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

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

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



Signature:
William Lang

Printed Name:

Signature:

Printed Name:

STATE OF INDIANA:

COUNTY OF Delaware :

SS:

Before me the undersigned, a Notary Public in and for said State and County, personally appeared William Lang of White Construction, LLC (Construction Company), the general contractor, and acknowledges before me today the execution of the foregoing Affidavit of Employee Status to be a free and voluntary act and deed and for the purposes stated therein, being duly sworn, stated that any representations contained therein are true.

Witness my hand and Notarial Seal this 19 day of December, 2019

Signature [Signature]

Printed Name Jennifer Michelle Grove

My Commission expires 05/13/2020

I am a resident of Delaware County.



CITY OF WESTFIELD BY:

_____, Director of Public Works

STATE OF INDIANA:

COUNTY OF HAMILTON:

SS:

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

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

Signature _____

Printed Name _____

My Commission expires _____

I am a resident of _____ County.

This instrument prepared by: Brian J. Zaiger, Attorney, Krieg-Devault Attorneys at Law, 12800 N. Meridian St. Ste. 300, Carmel, IN 46032

Attachment 3

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



Invoice Date:	
Invoice or App Number:	

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

Westfield Project Name:	North Street Recon
Westfield Project Number:	18-10078
Westfield Project Manager:	Michael Pearce
Westfield PO Number:	
Vendor Name:	White Construction

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

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

PROFESSIONAL CONSULTING AGREEMENT

This **Professional Consulting Agreement** (the "**Agreement**") is made and entered into this _____ day of _____, 2020, by and between BirJax Group dba Puddle Jumpers, Inc., an Indiana Corporation, ("**Puddle Jumpers**") with an address of PO BOX 971, Westfield, Indiana 46074, and The City of Westfield, ("**The City of Westfield**") with an address of 2706 East 171st St, Westfield, IN 46074 (collectively, the "**Parties**").

WHEREAS, the Parties have identified various stormwater maintenance areas which they wish to lend their various expertise, relationships and acumen in an effort to manage those areas in the best management practices.

WHEREAS, the Parties desire to enter into a written agreement for the terms and conditions under which Puddle Jumpers will provide professional consulting services to The City of Westfield.

NOW THEREFORE in consideration of the foregoing and the mutual agreements and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Term.** This Agreement shall be for the term of 2020 year, with a commencement date of April 1, 2020 ("**Commencement Date**"). Unless otherwise terminated in accordance with the terms and conditions hereof, the Agreement may be renewed each anniversary of the Commencement Date with the written mutual agreement of the Parties.
2. **Professional Services.**
 - a. **Scope.** Puddle Jumpers shall, as an independent contractor of The City of Westfield, provide to The City of Westfield the professional consulting services listed on the proposal. Puddle Jumpers shall assist The City of Westfield with maintenance areas in their stormwater management plan that have been agreed upon between the Parties, which shall include, but not be limited to those provided in the proposal.
3. **Compensation.**
 - a. **Compensation:** This is a not to exceed amount of \$49,025. The "Wet" services will be due April 15th in the amount of \$14,250. The "Dry" services will be billed after each spray occurrence in the total amount of \$34,775.
4. **Mutual Termination.** The Parties may, upon mutual agreement, agree to terminate this Agreement with thirty (30) days advance notice.

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective the date written above.

BirJax Group dba Puddle Jumpers

City of Westfield

By: Shane Floyd, Managing Member

By: Jeremy Lollar, Director Public Works

City of Westfield-Stormwater

Site 8.5: Bio Retention/Wet Basin (In front of Culvers) Every 2 weeks.

.5 acre site

Spray Inlets/Outlets: Kill weeds, clean area, per visit.	\$500
Spray Cattails: Manage Cattails in area.	\$1000
Spray Invasives: Kill invasive species in area, per visit.	\$1000
Spray Rip Rap: Kill weeds in rip rap areas, per visit.	\$500
Trash: Pickup all trash on site per visit.	\$750
Treat Pond: Based on 10 treatments, April-October.	<u>\$1750</u>
Total:	<u>\$5500</u>

Site 9: Wet Basin 181st/US 31 (Old TSC) 2X

1.2-acre site

Spray Inlets/Outlets: Kill weeds, clean area, per visit.	\$350
Trash: Pickup all trash on site per visit.	\$150
Treat Pond: Based on 10 treatments, April-October	<u>\$1000</u>
Total:	<u>\$1500</u>

Site 9.5: Wet Basin (Small pond north of Site 9) 2X

.2 acres

Spray Inlets/Outlets: Kill weeds, clean area, per visit.	\$350
Trash: Pickup all trash on site per visit.	\$150
Treat Pond: Based on 10 treatments, April-October.	<u>\$1000</u>
Total:	<u>\$1500</u>

Site 10: Wet Basin 171st/Ditch (Across from Maple Glen Elementary) 2X

5.3-acre site

Spray Inlets/Outlets: Kill weeds, clean area, per visit.	\$750
Spray Cattails: Manage Cattails in area.	\$1250
Trash: Pickup all trash on site per visit.	\$500
Treat Pond: Based on 5 treatments, 1x per month June-October.	<u>\$2500</u>
Total:	<u>\$5000</u>

City of Westfield-Stormwater

Site 11: Bio Retention Freedom Park 1X

.12-acre site

Spray Inlets/Outlets.	\$800
Trash: Pickup all trash on site per visit.	\$500
Bush hog and Spray Invasives. 1x	<u>\$2000</u>
Total:	<u>\$3300</u>

Site 12: 151st/Target AND small area on Westfield Blvd. 2x

Spray Inlets/Outlets.	\$750
Spray Rip Rap areas: Spray for weeds and grasses.	<u>\$750</u>
Total:	<u>\$1500</u>

Site 13: 151st/US 31 Behind Firehouse. 2X

.4-acre site.

Spray Cattails-Manage.	\$500
Treat Pond-Season based on 10 treatments.	\$3000
Trash-Pickup all trash on site per visit.	\$300
Spray Inlets/Outlets.	<u>\$300</u>
Total:	<u>\$4100</u>

Site 14: Area out front of Washington Woods Elementary and Fire Station. 2x

Spray Inlets/Outlets.	\$750
Spray Rip Rap areas: Spray for weeds and grasses.	<u>\$750</u>
Total:	<u>\$1500</u>

Total Project Not to Exceed \$49,025

Westfield Police Department
Monthly Performance Measures Report



Board of Public Works & Safety

November 2019

Table of Contents

	Page
1. Field Activity Performance Measures	
a) Events by Nature/Calls for Service	1
b) Calls by Day of Week	2
c) Calls by Hour of Day	3
d) Total Calls by Month Chart	4
e) UCR Offenses	5
f) Arrests & Traffic	6
g) Traffic Stops by Day of Week	7
h) Traffic Stops by Hour of Day	8
i) Traffic Stops by Monty Chart	9
2. Community Events	10
3. Training	11

Westfield Police Department

November 2019

Events by Nature

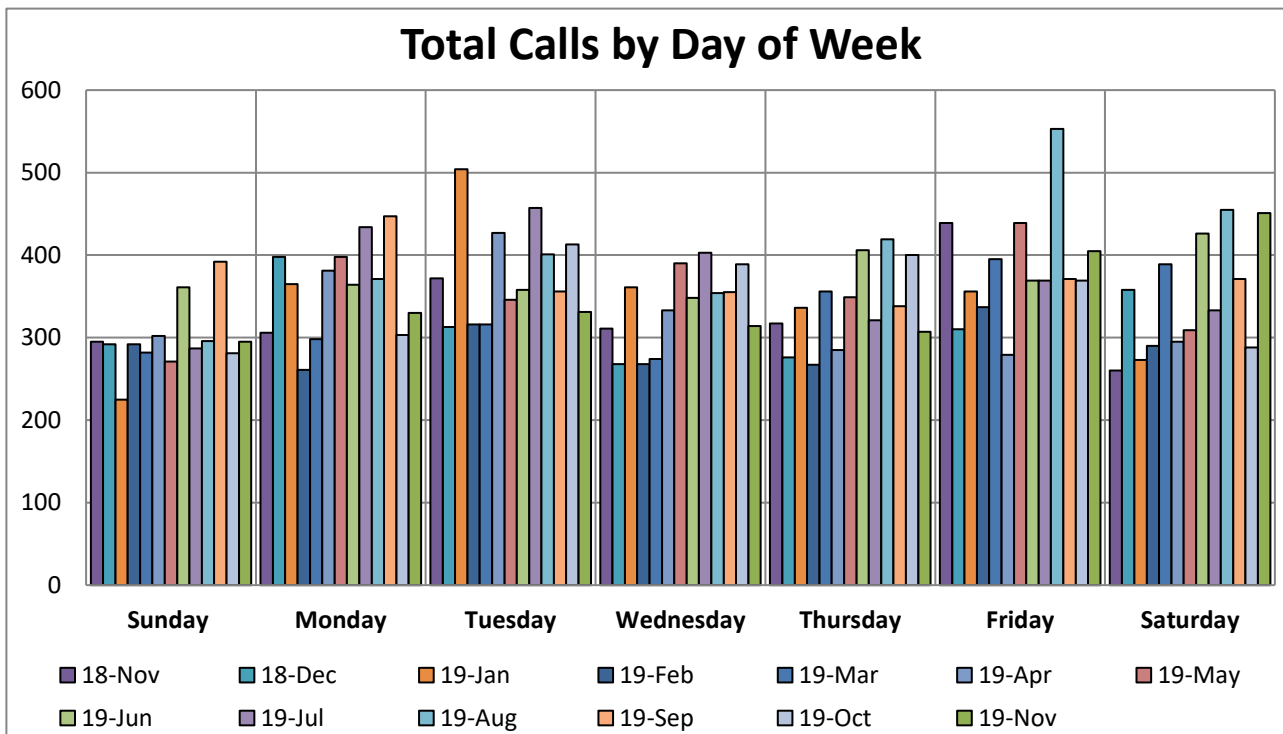
911 Hang Up	33
Abandoned Vehicle	5
Abandonment	0
Abuse / Neglect	0
Accident - Hit & Run PD	7
Accident - Hit & Run PI	0
Accident - Other	2
Accident - Property Damage	89
Accident - Personal Injury	9
Accident - Sinking Vehicle	0
Accident - Unknown	0
Accelerator Stuck	0
Active Assailant	0
Alarm - Other	1
Alarm - Vehicle	2
Alarm - Burglar	107
Alarm - Hold Up	19
Animal Bite / Attack	1
Animal Complaint	15
Assist Fire	43
Assist Other Department	23
Assist Public	16
Battery	2
Bomb Device Found	0
Bomb Threat	0
Burglary	4
Carjacking	0
Case Follow Up	71
Child Seat Inspection	0
Civil Dispute	20
Criminal Mischief	22
Damage to Property	0
Death Investigation	1
Directed Patrol	6
Disturbance	17
Driving Complaint	58
Drug Complaint	3
Drug Lab	0
Escort	0
Fight	0
Firearms Shots Fired	0
Found / Lost Property	14
Found Person	0
Fraud Prescription	0
Fraud / Deception	25
Harassment	16
Intoxicated Person	2

Investigation	6
Juvenile Complaint	10
K9 Detail	2
Kidnapping	0
Lock Out	54
Loud Party	1
Mental Emotional - Violent	3
Mental Person	4
Miscellaneous	17
Missing Person	1
Missing Person - PLS	0
Nuisance	1
Ordinance Misc.	9
Parking Complaint	18
Physical Disturbance	9
Product Contamination	0
Reckless Activity	0
Road Rage	4
Robbery	1
Runaway	3
School Patrol	213
Security Check	18
Sex Offense	3
Shooting	1
Solicitor	0
Special Detail	1
Stabbing	0
Suicide	0
Suspicious Activity	78
Suspicious Package	0
Test	1
Theft	20
Theft - From a Vehicle	5
Theft - of a Vehicle	1
Threat to Life	1
Threatening Suicide	7
Tow Release	4
Traffic Hazard	66
Transport	1
Trespassing	9
Traffic Stop	1162
Unknown Call for Police	1
VIN Check	13
Wanted	0
Warrant Service	6
Weapons Complaint	0
Welfare Check	46
Total	2433

Westfield Police Department
November 2019

Total # of Calls by Day of Week

DAY	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov
Sunday	295	292	225	292	282	302	271	361	287	296	392	281	295
Monday	306	398	365	261	298	381	398	364	434	371	447	303	330
Tuesday	372	313	504	316	316	427	346	358	457	401	356	413	331
Wednesday	311	268	361	268	274	333	390	348	403	354	355	389	314
Thursday	317	276	336	267	356	285	349	406	321	419	338	400	307
Friday	439	310	356	337	395	279	439	369	369	553	371	369	405
Saturday	260	358	273	290	389	295	309	426	333	455	371	288	451
TOTAL	2300	2215	2420	2031	2310	2302	2502	2632	2604	2849	2630	2443	2433



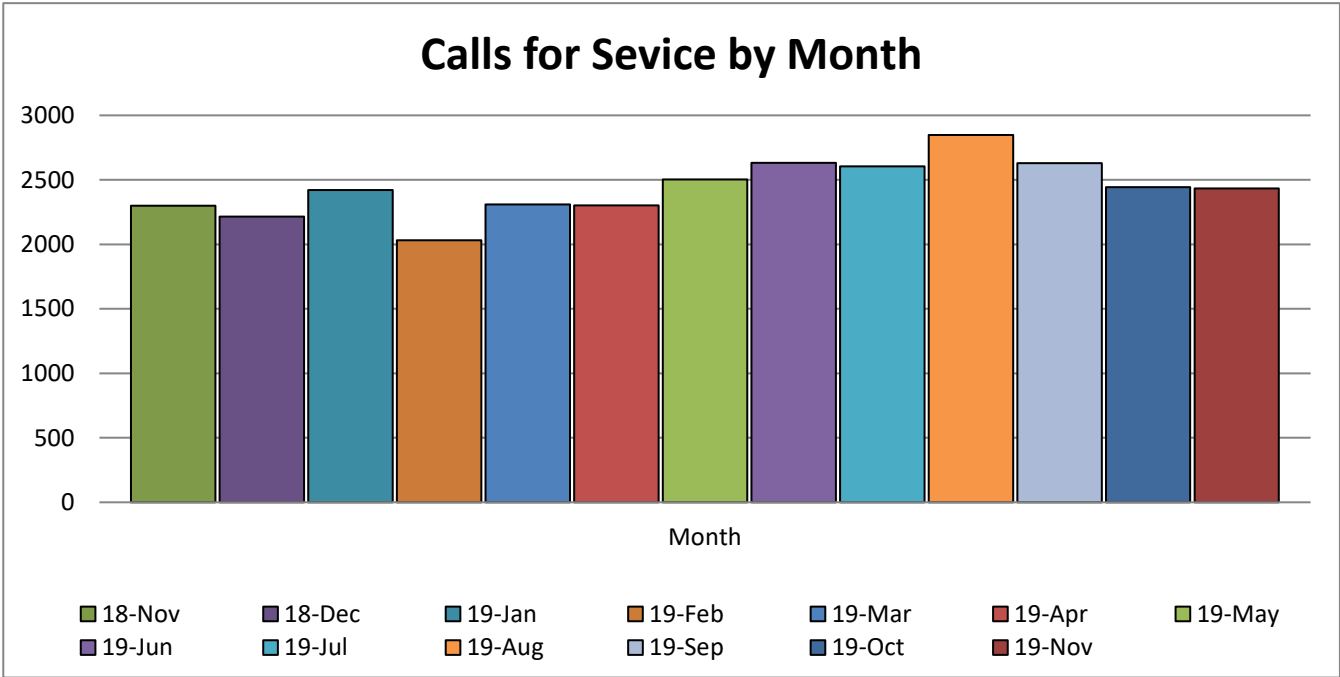
Westfield Police Department

November 2019

Total # of Calls by Hour of Day

HOURL	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov
0	70	83	76	57	105	85	121	106	99	119	116	93	102
1	49	47	56	51	71	56	85	56	80	73	83	64	55
2	38	49	47	40	45	44	59	45	42	49	59	62	49
3	47	35	44	27	61	38	39	34	39	32	62	58	35
4	30	23	29	26	32	28	18	16	20	25	32	24	26
5	30	19	33	23	25	17	25	22	23	37	40	30	43
6	40	27	46	36	36	36	24	53	57	45	42	42	27
7	65	70	71	57	49	43	84	103	71	116	90	68	77
8	141	137	142	109	111	129	160	181	136	134	128	137	142
9	166	158	189	128	139	158	173	176	160	171	155	155	172
10	146	139	156	133	128	135	155	189	152	165	175	140	144
11	134	123	118	103	96	96	135	108	127	149	132	118	141
12	109	110	128	97	104	87	120	113	127	138	108	105	123
13	143	108	134	111	133	150	120	121	123	148	106	127	131
14	131	129	144	122	118	135	128	131	159	164	126	134	131
15	118	126	139	105	110	117	121	127	131	161	120	124	99
16	97	97	106	84	109	111	131	111	117	148	132	110	99
17	83	101	93	89	106	108	144	134	96	132	109	101	100
18	149	161	169	159	180	174	137	165	182	187	176	155	196
19	132	115	137	148	161	144	121	168	161	159	154	153	171
20	70	84	65	49	89	69	82	86	79	67	90	90	60
21	97	73	80	75	68	94	94	105	120	136	108	103	98
22	115	101	123	104	107	138	109	146	172	152	139	152	100
23	100	100	95	98	127	110	117	136	131	142	148	98	112
TOTAL	2300	2215	2420	2031	2310	2302	2502	2632	2604	2849	2630	2443	2433

Westfield Police Department
November 2019



Westfield Police Department
November 2019

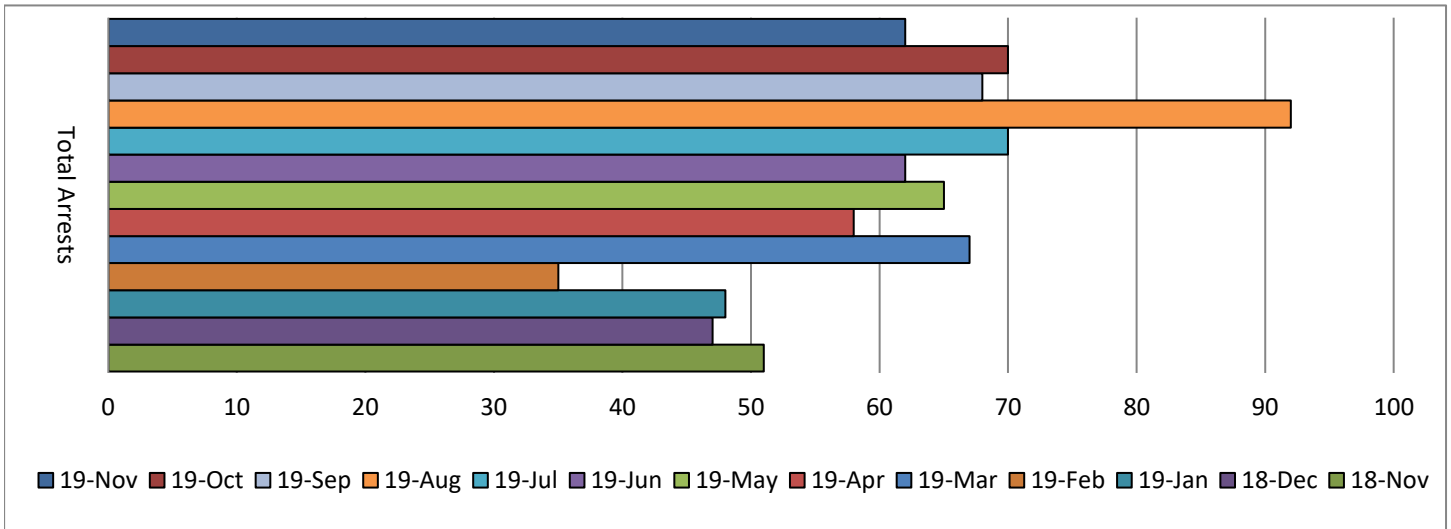
UCR OFFENSES

OFFENSE	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov
Arson	0	0	0	0	0	0	0	0	0	1	0	0	0
Homicide	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	1	-1	0	2	0	0	2	0	1	0	0	0	0
Robbery	0	0	0	0	1	2	0	0	0	0	0	0	2
Battery - Aggravated	0	0	1	0	1	0	0	0	0	0	1	0	1
Battery - Simple	11	11	12	12	12	8	13	16	17	11	19	8	11
Burglary	0	1	0	2	2	2	1	0	4	3	0	1	0
Theft	18	33	30	21	30	26	30	20	25	30	24	32	16
Motor Vehicle Theft	0	3	0	0	2	1	0	1	2	1	0	1	1
TOTAL	30	47	43	37	48	39	46	37	49	46	44	42	31

Westfield Police Department

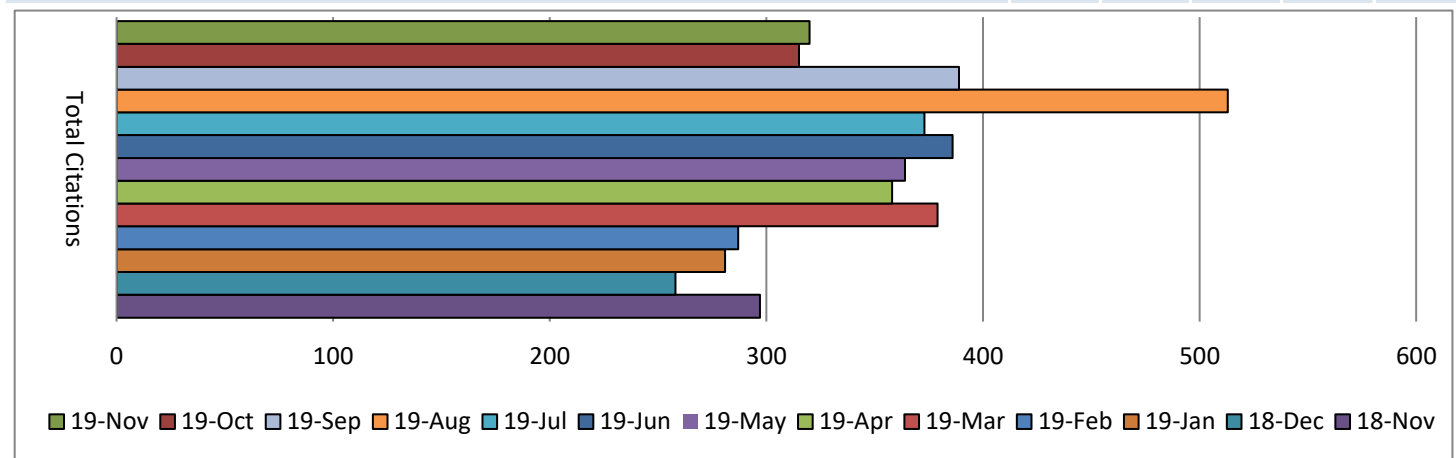
November 2019

Arrest Reports Taken	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov
Alcohol/ Drug Related	12	18	17	17	20	20	19	28	35	35	27	22	23
Felony Charges	15	8	14	8	35	14	15	11	29	20	31	19	13
Misdemeanor Charges	52	63	55	50	70	75	81	77	89	90	86	82	84
Total Arrests	51	47	48	35	67	58	65	62	70	92	68	70	62



Traffic	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov
Total Citations	297	258	281	287	379	358	364	386	373	513	389	315	320
Total Written Warning	997	1008	1083	909	979	976	973	1202	1057	1232	1167	1051	1263
Total Traffic Accidents	60	66	68	45	48	46	88	63	69	55	68	47	77
Property Damage	51	52	54	41	39	40	76	52	62	44	62	37	69
Personal Injury	9	14	12	4	9	6	12	11	7	10	6	10	8
Fatality	0	0	2	0	0	0	0	0	0	1	0	0	0
Hit and Run*	8	6	5	3	5	5	2	5	6	2	9	5	5

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



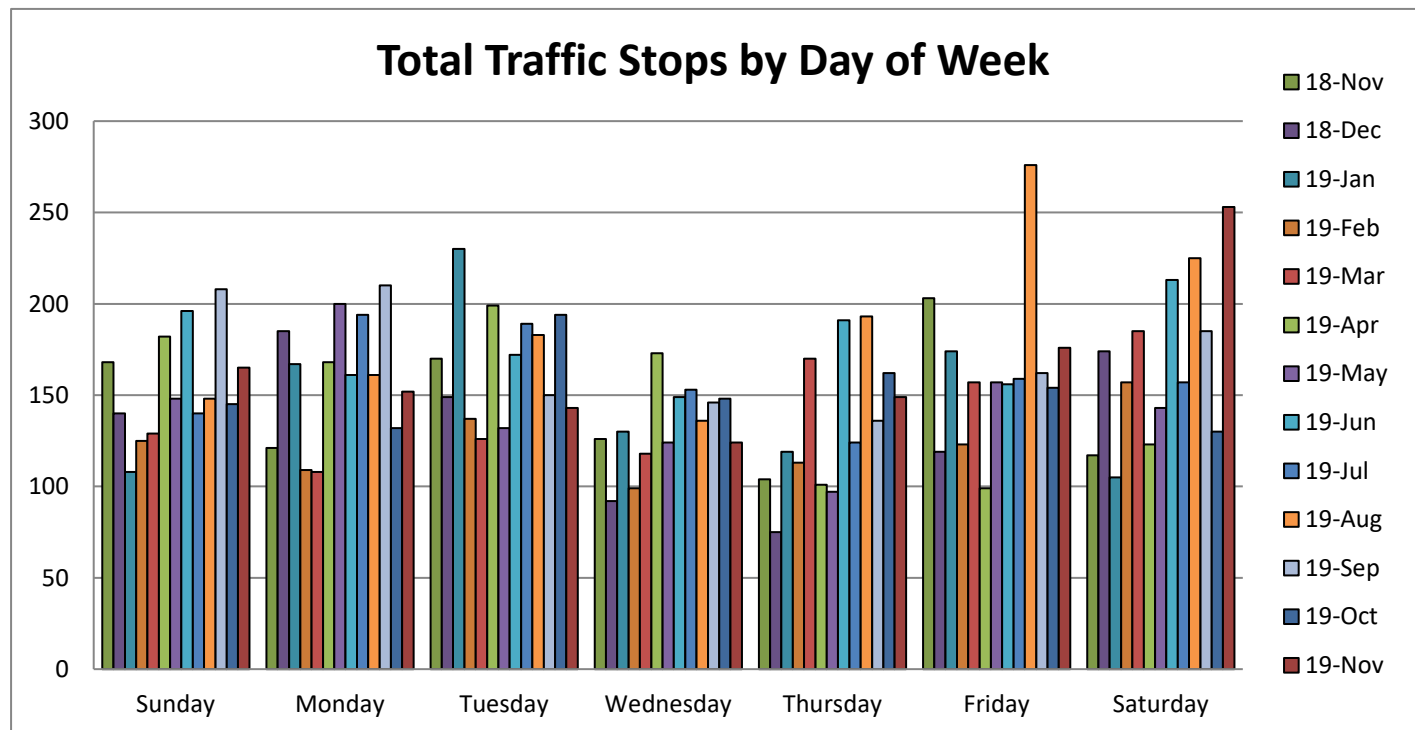
Westfield Police Department

November 2019

Traffic Stops by Day of Week

Day:	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov
Sunday	168	140	108	125	129	182	148	196	140	148	208	145	165
Monday	121	185	167	109	108	168	200	161	194	161	210	132	152
Tuesday	170	149	230	137	126	199	132	172	189	183	150	194	143
Wednesday	126	92	130	99	118	173	124	149	153	136	146	148	124
Thursday	104	75	119	113	170	101	97	191	124	193	136	162	149
Friday	203	119	174	123	157	99	157	156	159	276	162	154	176
Saturday	117	174	105	157	185	123	143	213	157	225	185	130	253
TOTAL	1009	934	1033	863	993	1045	1001	1238	1116	1322	1197	1065	1162

Total Traffic Stops by Day of Week

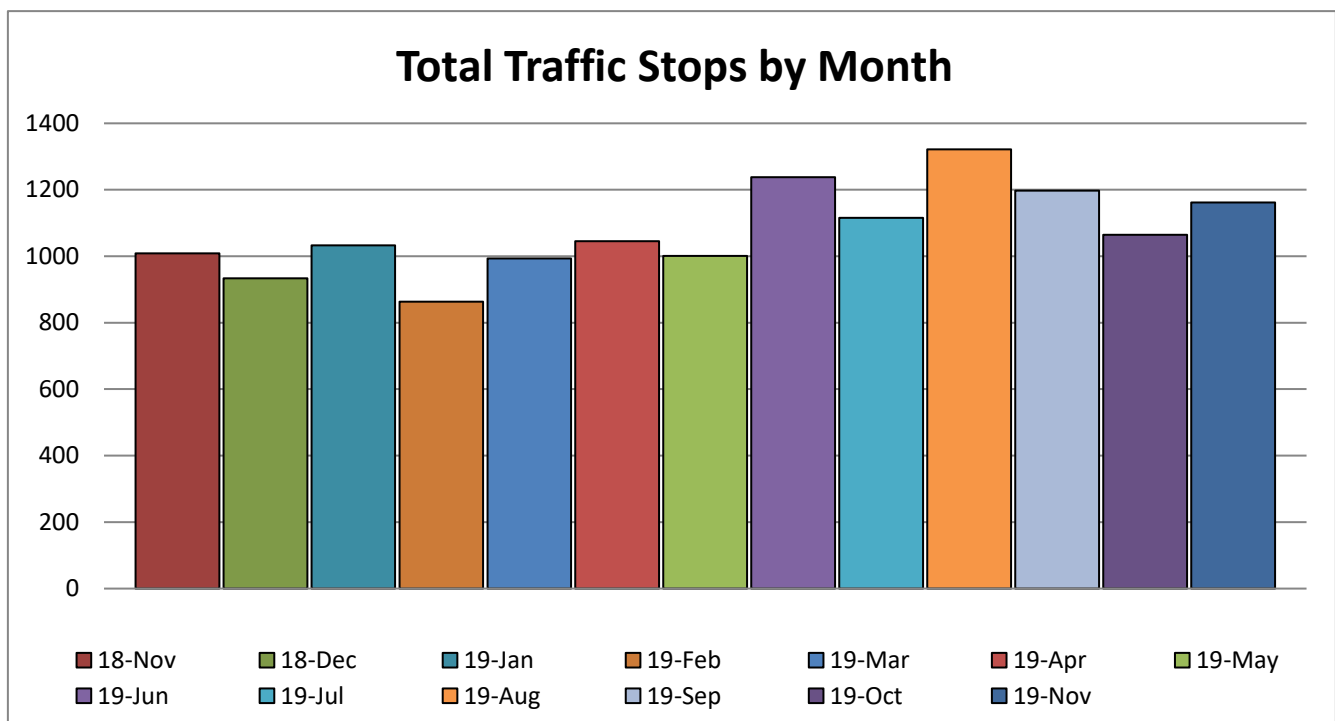


Westfield Police Department
November 2019

Traffic Stops by Hour of the Day

Hour:	18-Nov	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov
0	41	42	46	37	70	50	83	77	65	73	82	51	48
1	23	24	29	25	44	32	58	32	49	46	53	29	31
2	19	27	20	16	16	24	38	29	21	29	34	30	22
3	22	17	18	10	26	12	18	20	19	14	27	23	11
4	5	9	10	8	6	10	7	3	10	8	17	4	2
5	11	4	12	8	10	7	8	11	9	17	18	10	13
6	17	11	26	15	18	14	9	27	28	26	25	22	8
7	29	24	22	23	19	11	36	48	37	54	40	37	34
8	63	59	67	43	39	61	77	105	71	69	62	75	75
9	88	76	81	54	54	78	82	112	84	71	68	73	90
10	59	65	70	50	50	61	60	104	72	76	72	59	74
11	53	39	36	26	33	37	40	36	45	60	40	50	68
12	23	30	45	29	31	33	29	28	37	59	31	45	41
13	48	43	51	34	47	55	27	41	34	55	27	43	48
14	52	43	49	40	44	50	38	51	41	73	43	49	58
15	43	38	40	33	29	42	31	38	49	69	44	47	45
16	26	34	35	28	38	30	43	25	26	55	36	25	29
17	23	21	24	13	26	30	31	25	17	28	16	21	20
18	72	91	91	99	109	96	53	76	86	81	85	72	112
19	73	63	85	80	76	81	38	101	77	76	81	83	119
20	26	30	14	24	30	19	19	22	14	16	30	25	19
21	55	18	32	30	22	50	39	45	48	63	61	49	52
22	73	59	77	69	64	91	62	86	96	98	91	81	61
23	65	67	53	69	92	71	75	96	81	106	114	62	82
TOTAL	1009	934	1033	863	993	1045	1001	1238	1116	1322	1197	1065	1162

Westfield Police Department
November 2019



Westfield Police Department
November 2019

Community Events

11/1/19	Primerose WestClay Police Department Visit - Officer Mitchell
11/8/19	Westfield Police Department Blood Drive
11/25/19	Daisy Troop Police Department Visit - Nights B

Westfield Police Department
November 2019

Training

11/4/19	CISM - Sgts. Carter & Swiatkowski and Officer Rebollar
11/7/19	Monthly K9
11/14/19	Monthly ESU

Westfield Police Department
Monthly Performance Measures Report



Board of Public Works & Safety

December 2019

Table of Contents

	Page
1. Field Activity Performance Measures	
a) Events by Nature/Calls for Service	1
b) Calls by Day of Week	2
c) Calls by Hour of Day	3
d) Total Calls by Month Chart	4
e) UCR Offenses	5
f) Arrests & Traffic	6
g) Traffic Stops by Day of Week	7
h) Traffic Stops by Hour of Day	8
i) Traffic Stops by Monty Chart	9
2. Community Events	10
3. Training	11

Westfield Police Department

December 2019

Events by Nature

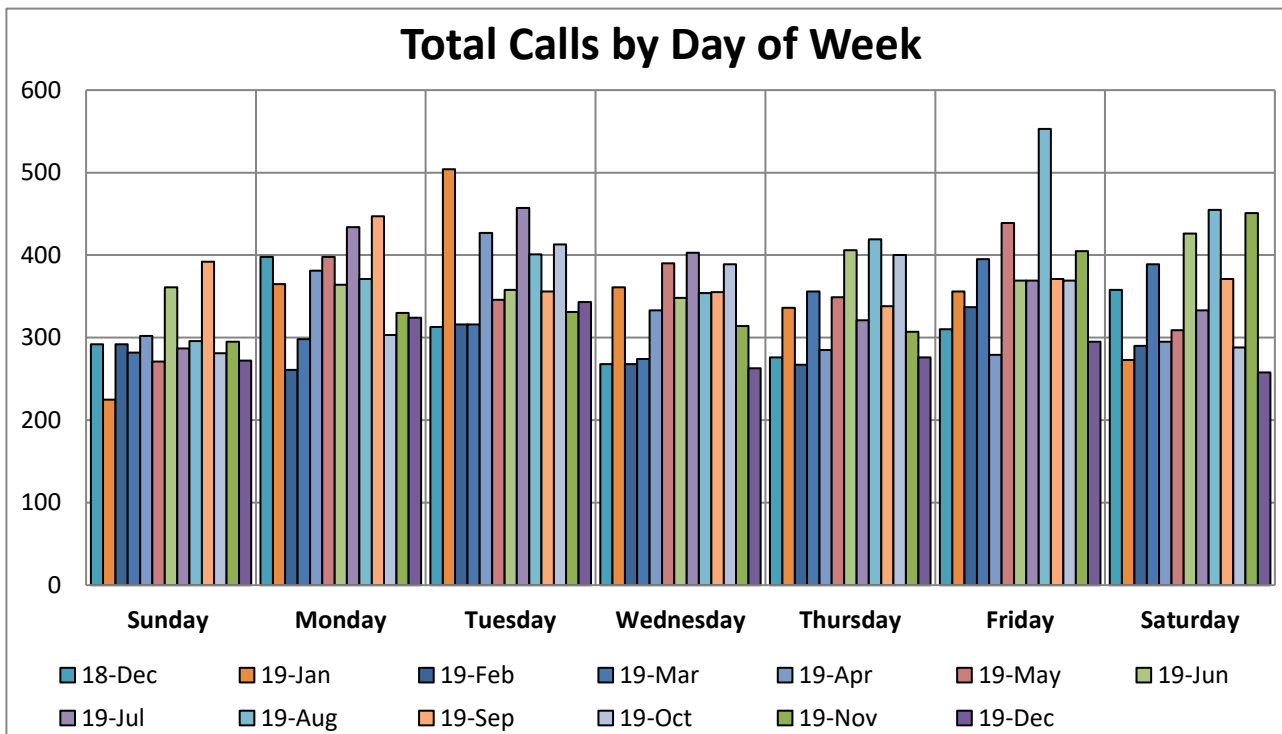
911 Hang Up	27
Abandoned Vehicle	8
Abandonment	0
Abuse / Neglect	1
Accident - Hit & Run PD	5
Accident - Hit & Run PI	2
Accident - Other	0
Accident - Property Damage	96
Accident - Personal Injury	6
Accident - Sinking Vehicle	0
Accident - Unknown	3
Accelerator Stuck	0
Active Assailant	0
Alarm - Other	0
Alarm - Vehicle	2
Alarm - Burglar	147
Alarm - Hold Up	12
Animal Bite / Attack	1
Animal Complaint	32
Assist Fire	42
Assist Other Department	22
Assist Public	15
Battery	1
Bomb Device Found	0
Bomb Threat	0
Burglary	4
Carjacking	0
Case Follow Up	76
Child Seat Inspection	0
Civil Dispute	24
Criminal Mischief	15
Damage to Property	0
Death Investigation	2
Directed Patrol	8
Disturbance	12
Driving Complaint	68
Drug Complaint	3
Drug Lab	0
Escort	0
Fight	0
Firearms Shots Fired	4
Found / Lost Property	10
Found Person	0
Fraud Prescription	0
Fraud / Deception	29
Harassment	15
Intoxicated Person	3

Investigation	7
Juvenile Complaint	4
K9 Detail	4
Kidnapping	0
Lock Out	56
Loud Party	3
Mental Emotional - Violent	4
Mental Person	3
Miscellaneous	22
Missing Person	3
Missing Person - PLS	0
Nuisance	2
Ordinance Misc.	11
Parking Complaint	20
Physical Disturbance	6
Product Contamination	0
Reckless Activity	0
Road Rage	8
Robbery	0
Runaway	1
School Patrol	127
Security Check	0
Sex Offense	4
Shooting	0
Solicitor	5
Special Detail	0
Stabbing	0
Suicide	2
Suspicious Activity	76
Suspicious Package	1
Test	0
Theft	33
Theft - From a Vehicle	6
Theft - of a Vehicle	2
Threat to Life	1
Threatening Suicide	5
Tow Release	2
Traffic Hazard	82
Transport	0
Trespassing	9
Traffic Stop	762
Unknown Call for Police	0
VIN Check	18
Wanted	5
Warrant Service	4
Weapons Complaint	0
Welfare Check	38
Total	2031

Westfield Police Department
December 2019

Total # of Calls by Day of Week

DAY	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov	19-Dec
Sunday	292	225	292	282	302	271	361	287	296	392	281	295	272
Monday	398	365	261	298	381	398	364	434	371	447	303	330	324
Tuesday	313	504	316	316	427	346	358	457	401	356	413	331	343
Wednesday	268	361	268	274	333	390	348	403	354	355	389	314	263
Thursday	276	336	267	356	285	349	406	321	419	338	400	307	276
Friday	310	356	337	395	279	439	369	369	553	371	369	405	295
Saturday	358	273	290	389	295	309	426	333	455	371	288	451	258
TOTAL	2215	2420	2031	2310	2302	2502	2632	2604	2849	2630	2443	2433	2031

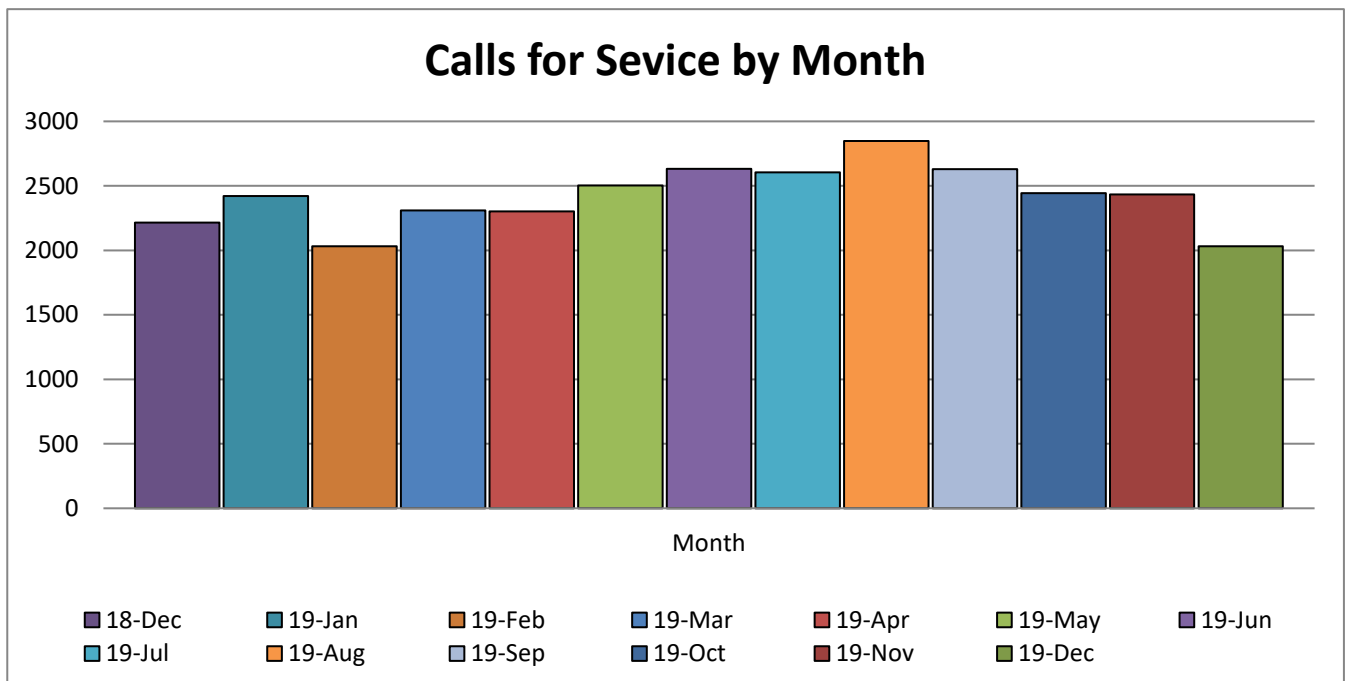


Westfield Police Department
December 2019

Total # of Calls by Hour of Day

HOURL	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov	19-Dec
0	83	76	57	105	85	121	106	99	119	116	93	102	85
1	47	56	51	71	56	85	56	80	73	83	64	55	33
2	49	47	40	45	44	59	45	42	49	59	62	49	33
3	35	44	27	61	38	39	34	39	32	62	58	35	19
4	23	29	26	32	28	18	16	20	25	32	24	26	33
5	19	33	23	25	17	25	22	23	37	40	30	43	42
6	27	46	36	36	36	24	53	57	45	42	42	27	49
7	70	71	57	49	43	84	103	71	116	90	68	77	54
8	137	142	109	111	129	160	181	136	134	128	137	142	104
9	158	189	128	139	158	173	176	160	171	155	155	172	126
10	139	156	133	128	135	155	189	152	165	175	140	144	129
11	123	118	103	96	96	135	108	127	149	132	118	141	123
12	110	128	97	104	87	120	113	127	138	108	105	123	89
13	108	134	111	133	150	120	121	123	148	106	127	131	101
14	129	144	122	118	135	128	131	159	164	126	134	131	94
15	126	139	105	110	117	121	127	131	161	120	124	99	109
16	97	106	84	109	111	131	111	117	148	132	110	99	87
17	101	93	89	106	108	144	134	96	132	109	101	100	79
18	161	169	159	180	174	137	165	182	187	176	155	196	144
19	115	137	148	161	144	121	168	161	159	154	153	171	108
20	84	65	49	89	69	82	86	79	67	90	90	60	76
21	73	80	75	68	94	94	105	120	136	108	103	98	89
22	101	123	104	107	138	109	146	172	152	139	152	100	122
23	100	95	98	127	110	117	136	131	142	148	98	112	103
TOTAL	2215	2420	2031	2310	2302	2502	2632	2604	2849	2630	2443	2433	2031

Westfield Police Department
December 2019



Westfield Police Department
December 2019

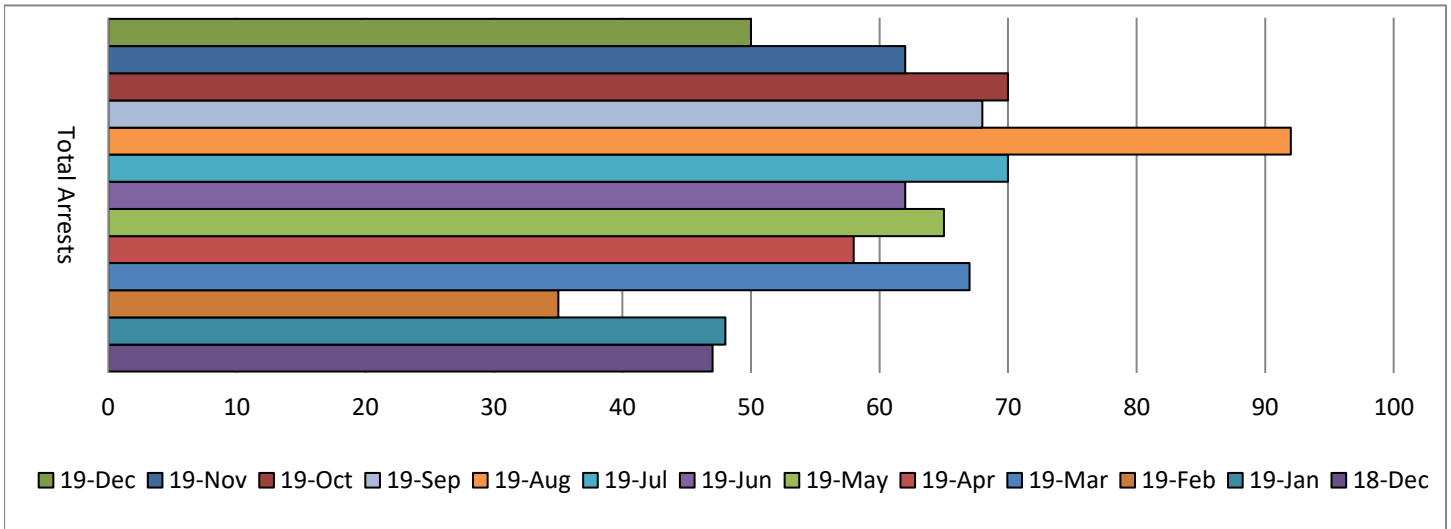
UCR OFFENSES

OFFENSE	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov	19-Dec
Arson	0	0	0	0	0	0	0	0	1	0	0	0	0
Homicide	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	-1	0	2	0	0	2	0	1	0	0	0	0	1
Robbery	0	0	0	1	2	0	0	0	0	0	0	2	0
Battery - Aggravated	0	1	0	1	0	0	0	0	0	1	0	1	0
Battery - Simple	11	12	12	12	8	13	16	17	11	19	8	11	10
Burglary	1	0	2	2	2	1	0	4	3	0	1	0	0
Theft	33	30	21	30	26	30	20	25	30	24	32	16	26
Motor Vehicle Theft	3	0	0	2	1	0	1	2	1	0	1	1	2
TOTAL	47	43	37	48	39	46	37	49	46	44	42	31	39

Westfield Police Department

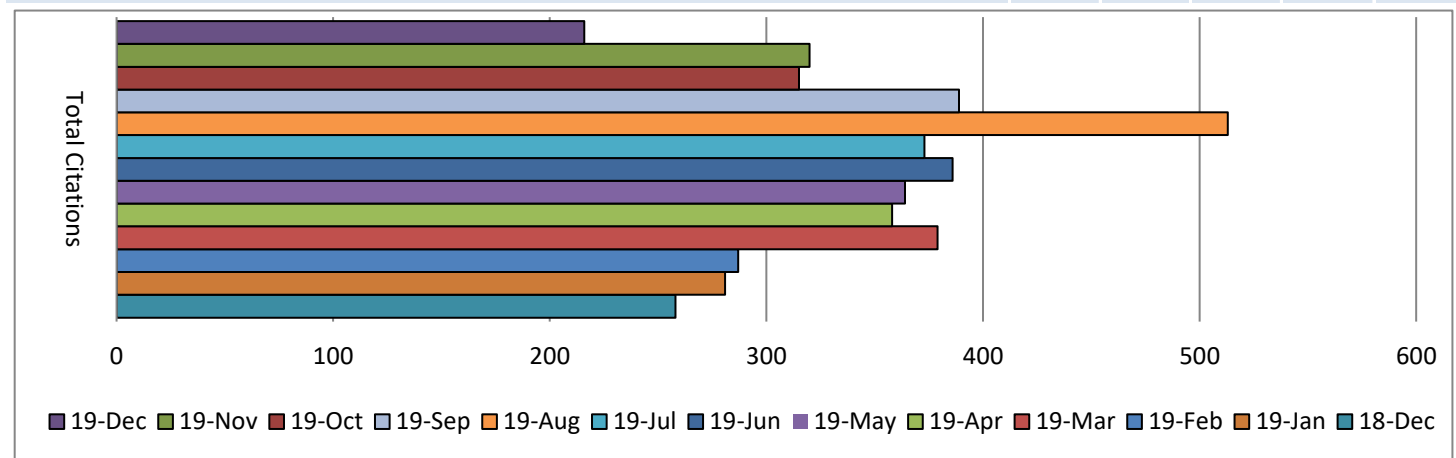
December 2019

Arrest Reports Taken	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov	19-Dec
Alcohol/ Drug Related	18	17	17	20	20	19	28	35	35	27	22	23	18
Felony Charges	8	14	8	35	14	15	11	29	20	31	19	13	12
Misdemeanor Charges	63	55	50	70	75	81	77	89	90	86	82	84	77
Total Arrests	47	48	35	67	58	65	62	70	92	68	70	62	50



Traffic	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov	19-Dec
Total Citations	258	281	287	379	358	364	386	373	513	389	315	320	216
Total Written Warning	1008	1083	909	979	976	973	1202	1057	1232	1167	1051	1263	805
Total Traffic Accidents	66	68	45	48	46	88	63	69	55	68	47	77	78
Property Damage	52	54	41	39	40	76	52	62	44	62	37	69	72
Personal Injury	14	12	4	9	6	12	11	7	10	6	10	8	6
Fatality	0	2	0	0	0	0	0	0	1	0	0	0	0
Hit and Run*	6	5	3	5	5	2	5	6	2	9	5	5	3

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

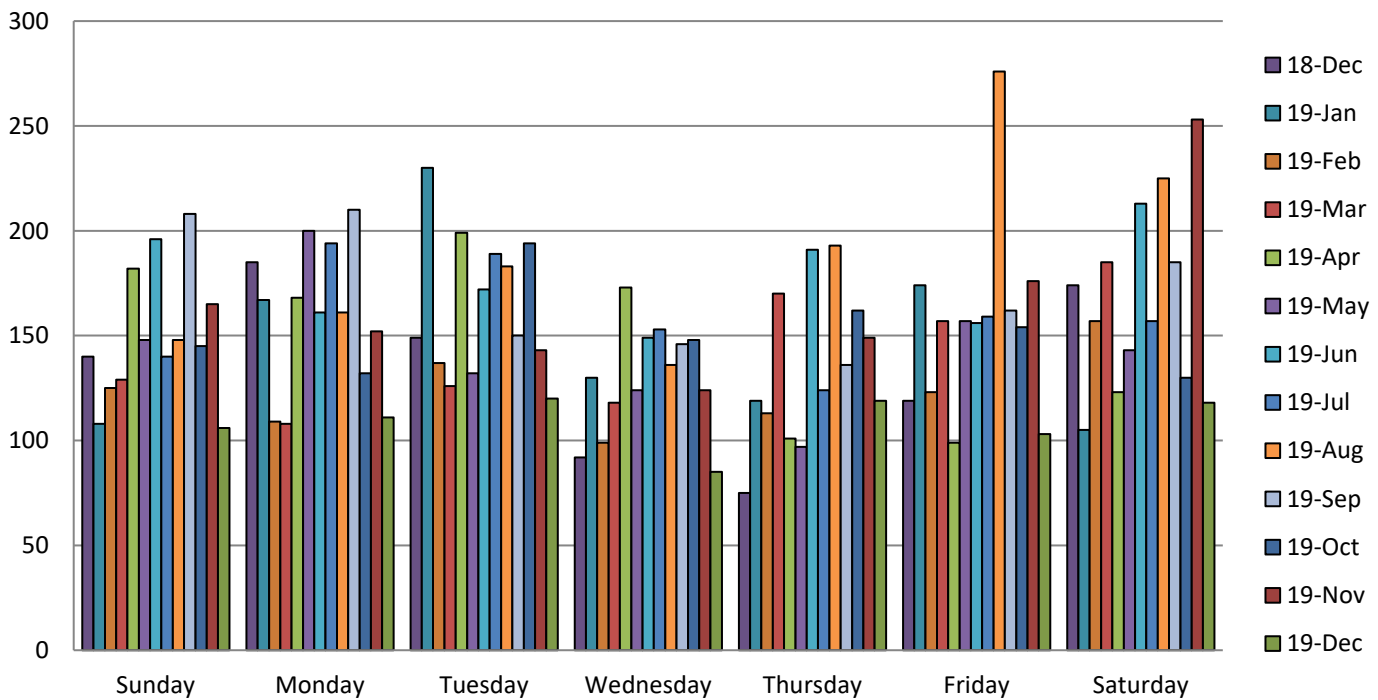


Westfield Police Department
December 2019

Traffic Stops by Day of Week

Day:	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov	19-Dec
Sunday	140	108	125	129	182	148	196	140	148	208	145	165	106
Monday	185	167	109	108	168	200	161	194	161	210	132	152	111
Tuesday	149	230	137	126	199	132	172	189	183	150	194	143	120
Wednesday	92	130	99	118	173	124	149	153	136	146	148	124	85
Thursday	75	119	113	170	101	97	191	124	193	136	162	149	119
Friday	119	174	123	157	99	157	156	159	276	162	154	176	103
Saturday	174	105	157	185	123	143	213	157	225	185	130	253	118
TOTAL	934	1033	863	993	1045	1001	1238	1116	1322	1197	1065	1162	762

Total Traffic Stops by Day of Week

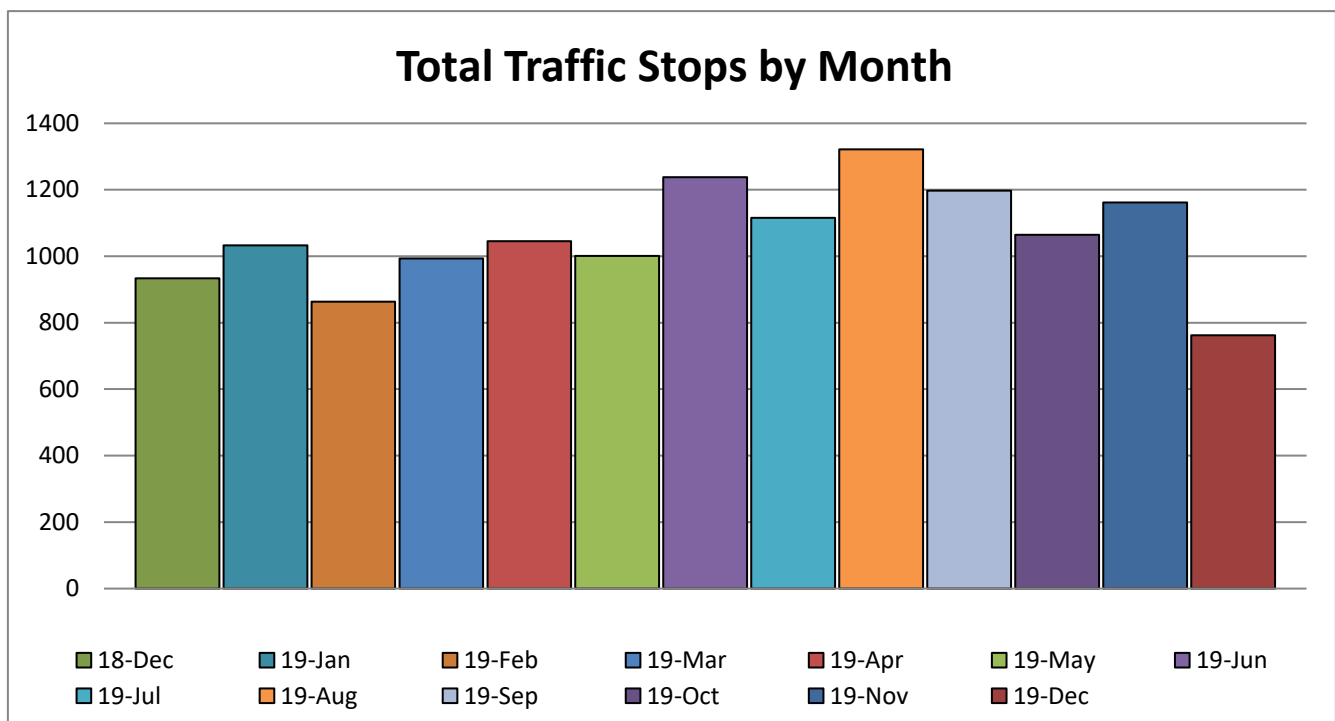


Westfield Police Department
December 2019

Traffic Stops by Hour of the Day

Hour:	18-Dec	19-Jan	19-Feb	19-Mar	19-Apr	19-May	19-Jun	19-Jul	19-Aug	19-Sep	19-Oct	19-Nov	19-Dec
0	42	46	37	70	50	83	77	65	73	82	51	48	43
1	24	29	25	44	32	58	32	49	46	53	29	31	20
2	27	20	16	16	24	38	29	21	29	34	30	22	9
3	17	18	10	26	12	18	20	19	14	27	23	11	5
4	9	10	8	6	10	7	3	10	8	17	4	2	4
5	4	12	8	10	7	8	11	9	17	18	10	13	22
6	11	26	15	18	14	9	27	28	26	25	22	8	18
7	24	22	23	19	11	36	48	37	54	40	37	34	11
8	59	67	43	39	61	77	105	71	69	62	75	75	46
9	76	81	54	54	78	82	112	84	71	68	73	90	52
10	65	70	50	50	61	60	104	72	76	72	59	74	52
11	39	36	26	33	37	40	36	45	60	40	50	68	44
12	30	45	29	31	33	29	28	37	59	31	45	41	25
13	43	51	34	47	55	27	41	34	55	27	43	48	23
14	43	49	40	44	50	38	51	41	73	43	49	58	26
15	38	40	33	29	42	31	38	49	69	44	47	45	30
16	34	35	28	38	30	43	25	26	55	36	25	29	21
17	21	24	13	26	30	31	25	17	28	16	21	20	16
18	91	91	99	109	96	53	76	86	81	85	72	112	70
19	63	85	80	76	81	38	101	77	76	81	83	119	54
20	30	14	24	30	19	19	22	14	16	30	25	19	21
21	18	32	30	22	50	39	45	48	63	61	49	52	31
22	59	77	69	64	91	62	86	96	98	91	81	61	66
23	67	53	69	92	71	75	96	81	106	114	62	82	53
TOTAL	934	1033	863	993	1045	1001	1238	1116	1322	1197	1065	1162	762

Westfield Police Department
December 2019



Westfield Police Department
December 2019

Community Events

12/11/20	Caring Christmas Project
12/18/20	Christmas Shopping for kids

Westfield Police Department

December 2019

Training

12/5/20 Monthly K9

12/12/20 Monthly ESU

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

EDS #: A249-19-L190075

Des. No.: 1700729

CFDA No.: 20.205

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

NOTICE TO PARTIES

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

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

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

With a copy to:

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

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

Greenfield District Office
32 South Broadway
Greenfield, Indiana 46140

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

City of Westfield
133 Penn Street
Westfield, Indiana 46074

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

SECTION V **TERM AND SCHEDULE.**

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

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

SECTION VI **GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

F. Compliance with Laws.

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

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

G. Debarment and Suspension.

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

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

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

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

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

I. Disputes.

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

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

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

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

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

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

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

K. Employment Eligibility Verification.

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

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

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

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

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

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

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

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

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

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

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

Q. **Non-Discrimination.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The remainder of this page is intentionally left blank.

Non-Collusion

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

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

LPA: City of Westfield

Print or type name and title

Signature and date

Print or type name and title

Signature and date

Print or type name and title

Signature and date

LPA DUNS # _____

Attest

Auditor or Clerk Treasurer

This instrument prepared by:

Autumn Castro
July 19, 2019

STATE OF INDIANA
Department of Transportation

Recommended for approval by:

Steven Duncan, Director
Contract Administration Division

Date: _____

Executed by:

Joseph McGuinness, Commissioner (FOR)

Date: _____

Department of Administration

Lesley A. Crane, Commissioner

Date: _____

State Budget Agency

Zachary Q. Jackson, Director

Date: _____

Approved as to Form and Legality:

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

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

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

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

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

ATTACHMENT B

LPA'S RIGHTS AND DUTIES

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

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

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

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

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

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

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

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

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

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

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

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

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

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

Otherwise, this contract covers all phases.

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

OR

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

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

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

II. Billings.

A. Billing:

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

B. Other Costs:

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

III. Repayment Provisions.

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

Scope Change Order Form

Project Name: City of Westfield FW-27605 Mill Street Mitigation

Project Number / Phase: J163233001 / 51B, 17*20, 56*20

Date: 01/14/2020

Change Order Number: 02

Prepared By: Crystal Renskers

Project Manager: Jeff Spicer

Change Requested:

See Attachment A: Scope of Services

Fixed Fee: \$ 16,550.00

Change Approved By:

Signature

Printed Name/Title

City of Westfield

Company

Authorization Date

Cardno, Inc.

2020 Supplemental Tree & Shrub Planting (Phase 51B)

Cardno will provide and install native trees and shrubs in accordance with the approved mitigation plan for the Mill Street Basin mitigation site and the Little Eagle Creek mitigation site. No supplemental planting is needed at the Monon Trail mitigation site.

- Mill Street Basin – 250 bare root seedlings and 100 container grown seedlings will be installed in the spring of 2020.
- Little Eagle Creek – 2400 bare root seedlings and 100 container grown seedlings will be installed in the spring of 2020.

Fixed Fee: \$ 8,600.00

Phase 2020 Monitoring and Maintenance (Phase 17*20 and 56*20)

Cardno, Inc. will monitor the success of the mitigation area according to the approved mitigation and monitoring plan as permitted by the regulatory agencies. The monitoring report will address all performance standards in these permits. Based on the initial review of the permits and the mitigation plan, success criteria is defined by the Indiana Department of Natural Resources (IDNR) and mitigation plan. The mitigation site includes three areas referred to as Mill Street on-site stream restoration, off-site Little Eagle Creek and off-site Monon Trail. The DNR requires 75% survival of tree and shrub survival whereas the mitigation plan requires 80% coverage of native vegetation with a maximum of 10% non-native or invasive species. To accurately gauge the survival and coverage of woody and herbaceous material, tree plots and quadrat sampling will be conducted on an annual basis. Cardno, Inc. will provide recommendations within the report to address problems observed during monitoring inspections. Annual written reports will be submitted to you for review prior to submitting to the regulatory agencies by December 31st.

Cardno, Inc. will provide a crew of trained and licensed pesticide applicators to treat noxious and invasive plant species during the 2020 growing season. Targeted species that will be treated include non-native species particular to each mitigation site but will include thistle, fescue and clover. Other species may be managed as deemed necessary to meet permit standards. The maintenance activities will utilized spot spraying with aquatic approved and site appropriate herbicide as well as other methods. Timing of treatments will be based on target species, site conditions and weather conditions.

Fixed Fee: \$ 7,950.00

GAI CONSULTANTS, Inc.
Master Services Agreement for Professional Services

Project Number: **R200075.00**

THIS AGREEMENT, made and entered into this _____ day of _____, 2020 is by and between GAI Consultants, Inc., its directors, officers and employees located at 201 North Illinois Street, Suite 1700, Indianapolis, Indiana 46204, (hereinafter collectively referred to as "GAI") and City of Westfield, located at 2728 East 171st Street, Westfield, Indiana 46074, (hereinafter referred to as "CLIENT").

WHEREAS, CLIENT is desirous of engaging GAI to provide certain professional services from time-to-time on a *Work Order Basis*, and

WHEREAS, GAI is agreeable to performing the professional services on a *Work Order Basis* under these terms and conditions,

WHEREFORE, the parties hereto do mutually agree as follows:

Article 1. Scope of Services - GAI shall perform its Services pursuant to the terms of this AGREEMENT. Upon receipt of a request for services from CLIENT, GAI shall prepare and submit to CLIENT a proposed WORK ORDER.

Article 2. Compensation – GAI agrees to accept and CLIENT agrees to pay the compensation on either a time (hourly) and expense basis or a lump sum basis as set forth in GAI's WORK ORDER. Refer to Exhibit A for the hourly rates. Total fees for this Master Services Agreement shall not exceed \$5,000 without written authorization from the City of Westfield.

Article 3. Invoicing/Payment

1. GAI will submit invoices periodically, but not more frequently than every two weeks, for Project services performed during the period or upon completion of the Project, whichever is earlier.
2. Invoices are due and payable in U.S. dollars within 30 days from date of invoice. All charges not paid within 30 days are subject to a service charge of 1-1/2 percent per month or a fraction thereof, plus all costs and expenses of collection, including without limitation, attorneys' fees. In addition, should CLIENT fail to pay any invoice within 45 days of the invoice date, GAI may, in its sole discretion, upon 3 days written notice to CLIENT, stop work and recover from CLIENT payment for all services performed prior to the work stoppage, plus all amounts for interest, penalties and attorney's fees that may be recoverable under applicable law, including without limitation, prompt payment and/or lien laws. GAI will resume performance once CLIENT pays all outstanding amounts due plus any advance payment(s) or other security in GAI's sole discretion deemed necessary.
3. CLIENT will be invoiced for all internal expenses, such as photocopy and photographic reproductions, postage, mileage, company vehicle rental, etc., on a per diem rate for all personnel required by the work to remain away from their normal residence and for the cost of transporting materials, equipment, and/or personnel as required for proper performance of the project on a mileage basis. If one of GAI's field vehicles is required for the execution of the work, CLIENT will be invoiced for the vehicle on a rental basis or on a mileage basis, depending upon the vehicle.
4. CLIENT will be invoiced for external expenses, such as travel, lodging, sub-contracted services, etc., at direct cost plus a 10% handling and administrative fee.
5. Payments shall include the GAI invoice number and be mailed to 385 East Waterfront Drive, Homestead, PA, 15120, to the attention of Accounts Receivable.

Article 4. Changes - CLIENT and GAI may make additions to the scope of work by written Change Order. CLIENT may omit work previously ordered by written instructions to GAI. The provisions of this AGREEMENT, with appropriate changes in GAI's Compensation and Project Schedule, shall apply to all additions and omissions.

Article 5. CLIENT Responsibilities - CLIENT represents, with the intent that GAI rely thereon, that it has sufficient financial resources to pay GAI as agreed to in this AGREEMENT and, as applicable and necessary for GAI to perform its services. CLIENT will:

GAI CONSULTANTS, Inc.
Master Services Agreement for Professional Services

1. Provide all criteria and full information as to its requirements for GAI's services, including design or study objectives, constraints, third party certification requirement(s), standards or budget limitation(s).
2. Assist GAI by placing at its disposal all available information pertinent to the Project and/or GAI's services including the actual or suspected presence of hazardous waste, materials or conditions at or beneath the Project site, record ("As-Built") drawings, surveys, previous reports, exploration logs of adjacent structures and any other data relative to the Project. Unless otherwise noted, GAI may rely upon such information.
3. Upon identification by GAI and approval by CLIENT of the necessity and scope of information required, furnish GAI with data, reports, surveys, and other materials and information required for this Project, all of which GAI may rely upon in performing its services, except those included in GAI's scope of services.
4. Guarantee access to the property and make all provisions for GAI to enter upon public and private lands and clear all exploration location(s) for buried utilities/piping/structures as required for GAI to perform its services under this AGREEMENT.
5. Examine all studies, reports, sketches, opinions of the construction costs, specifications, drawings, *WORK ORDERS* and other documents presented by GAI to CLIENT and promptly render in writing the decisions pertaining thereto within a period mutually agreed upon.
6. Designate in writing a person to act as CLIENT'S representative with respect to the services to be rendered under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT's policies and decisions with respect to materials, equipment, elements and systems pertinent to GAI's services.
7. Give prompt written notice to GAI whenever CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of GAI'S services, or any defect in the Project or work of Contractor(s).
8. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
9. Furnish such legal and insurance counseling services as CLIENT may require for the Project.

Article 6. Schedule/Delays - GAI shall commence performance upon receipt of the CLIENT's written authorization to proceed and shall perform its professional services in accordance with the mutually agreed schedule, **provided however**, the performance under this AGREEMENT, shall be excused in the event performance is prevented or delays are occasioned by factors beyond GAI's control, or by factors which could not reasonably have been foreseen at the time this AGREEMENT was prepared and executed. The delayed party's performance shall be extended by the period of delay plus a reasonable period to restart operations.

Article 7. Document Ownership and Reuse

1. All reports, drawings, specifications, manuals, learning and audiovisual materials, boring logs, field data, laboratory test data, calculations, estimates, and other documents (collectively "Work Product") prepared by GAI are instruments of service and shall remain the property of GAI. Unless otherwise notified by CLIENT, GAI will retain all pertinent records relating to the Services performed for a period of two (2) years following submission of the report, design documents or other project deliverables, during which period the records will be made available at GAI's office to the CLIENT at reasonable times.
2. Any reuse of the Work Product described above without written verification or adaptation by GAI, as appropriate, for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to GAI. CLIENT shall indemnify and hold harmless GAI from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting there from. Any future verification or adaptation of such Work Product will entitle GAI to further compensation at rates to be agreed upon by CLIENT and GAI.
3. Unless specified otherwise in GAI's WORK ORDER, GAI will dispose of all materials and samples obtained in the investigation portion of the project 90 days after completion of the report. Further storage or transfer of samples will be made at CLIENT's expense.

GAI CONSULTANTS, Inc.
Master Services Agreement for Professional Services

4. CLIENT recognizes that site conditions where samples and data are gathered do vary with time and that particularly subsurface conditions may differ from those encountered at the time and location where explorations or investigations are made and, therefore, the data, interpretations, and recommendations of GAI are based solely on the information available at the time of the investigation. GAI shall not be responsible for the interpretation by others of the information it develops.

Article 8. Standard of Performance - GAI will perform its Services with that level of care and skill ordinarily exercised by other professionals practicing in the same discipline(s), under similar circumstances and at the time and place where the Services are performed, and makes no warranty, express or implied, including the implied by law warranties of MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Article 9. Insurance

1. GAI shall procure and maintain such insurance as is required by law as of the date first written above and during the performance of the AGREEMENT, and subject to the terms and conditions of the policies keep in force the following insurance:
 - A. Worker's Compensation Insurance with Other States' endorsement, including Employer's Liability Insurance for its employees in the amount of \$500,000;
 - B. Comprehensive General Liability Insurance, including Contractor's Protective and Completed Operations, covering bodily injuries with limits of \$2,000,000 per occurrence and aggregate, and property damage with limits of \$2,000,000 per occurrence and aggregate;
 - C. Comprehensive Automobile Liability Insurance, including operation of owned, non-owned and hired automobiles, with combined single limits for bodily injury and property damage of \$1,000,000 per occurrence;
2. If CLIENT requires additional types or amounts of insurance coverage, GAI, if specifically directed by CLIENT, will purchase additional insurance (if procurable) at CLIENT's expense; but GAI shall not be responsible for property damage from any cause, including fire and explosion, beyond the amounts and coverage of GAI's insurance specified above.
3. CLIENT will require that any Contractor(s) performing work in connection with GAI's Services will name GAI as an additional insured on their insurance policies. In addition, in any hold-harmless agreements between CLIENT or Owner and any contractor who may perform work in connection with any professional services rendered by GAI, CLIENT will require such contractor(s) to defend and indemnify GAI against third party suits.
4. It is agreed that GAI shall have no responsibility: 1) To supervise, manage, direct, or control CLIENT or its Contractors', subcontractors' or their employees; 2) For any of CLIENT's or its Contractors, subcontractors or agents or any of their employees' safety practices, policies, or compliance with applicable federal, state and/or local safety and health laws, rules or regulations; 3) For the adequacy of their means, methods, techniques, sequencing or procedures of performing their services or work; or 4) For defects in their work.

Article 10. Indemnity - Subject to the Limitation(s) of Liability provision(s) below in Articles 11 AND 12, GAI agrees to indemnify and hold harmless CLIENT, and its officers, directors, and employees from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses including reasonable attorneys' fees, or other loss (collectively "Losses") to the extent caused by GAI's negligent performance of Services.

Article 11. Limitation of Liability - In the event of any loss, damage, claim or expense to CLIENT resulting from GAI's performance or non-performance of the professional services authorized under this AGREEMENT, GAI's liability whether based on any legal theory of contract, tort including negligence, strict liability or otherwise under this AGREEMENT for professional acts, errors, or omissions shall be limited to the extent any such claims, damages, losses or expenses resulting from the negligent act, errors or omissions of GAI or its employees occurring during performance under this AGREEMENT. The total cumulative liability of GAI arising out of professional acts, errors, or omissions shall not exceed the greater of \$50,000 or two times the total compensation GAI receives from CLIENT under the WORK ORDER out of which the claim arose. GAI's

GAI CONSULTANTS, Inc.
Master Services Agreement for Professional Services

aggregate liability for all other acts, errors, or omissions shall be limited to the coverage(s) and amounts of insurance specified in Article 9, above. The limitations stated above shall not apply to the extent any damages are proximately caused by the willful misconduct of GAI and its employees.

Article 12. Disclaimer of Consequential Damages - Notwithstanding anything to the contrary in this AGREEMENT, neither party shall have any liability to the other party for indirect, consequential or special damages including, but not limited to, liability or damages for delays of any nature, loss of anticipated revenues or profits, increased cost of operations or costs of shutdown or startup whether such damages are based on contract, tort including negligence, strict liability or otherwise.

Article 13. Probable Construction Cost Estimates - Where applicable, statements concerning probable construction cost and detailed cost estimates prepared by GAI represent its judgment as a professional familiar with the construction industry. It is recognized, however, that neither GAI nor CLIENT has any control over the cost of labor, materials or equipment, over the contractors' methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, GAI cannot and does not guarantee that bids, proposals, or actual costs will not vary from any statement of probable construction cost or other cost estimate prepared by it.

Article 14. Confidentiality/Non-Disclosure - GAI shall not disclose, or permit disclosure of any information developed in connection with its performance under this AGREEMENT or received from CLIENT or the PROJECT OWNER, or their affiliates, subcontractors, or agents designated by CLIENT as confidential, except to GAI's employees and subcontractors who need such information in order to properly execute the services of this AGREEMENT. GAI shall require its employees and subcontractors and their employees not to disclose or permit disclosure of any of such information, without the prior written consent of CLIENT. The foregoing shall not prohibit GAI from disclosing information in response to any federal, state or local government directive or judicial order, but in the event GAI receives or is threatened with such an order or has actual knowledge that such an order may be sought or be forthcoming, GAI shall immediately notify CLIENT and assist with CLIENT's undertaking such lawful measures as it may desire to resist the issuance, enforcement and effect of such an order. GAI's obligation to resist such an order and assist CLIENT and/or the PROJECT OWNER is contingent upon GAI receiving further compensation for such assistance, including without limitation, a reasonable attorney's fee in assisting CLIENT.

Article 15. Certifications - GAI shall not be required to execute any certification with regard to work performed, tested, and/or observed under this AGREEMENT unless:

1. GAI concludes that it has performed, tested and/or observed sufficient work to provide a sufficient basis for it to issue the certification; and
2. GAI believes that the work performed, tested or observed meets the certification criteria; and
3. GAI gave its written approval of the certification's exact form before executing this AGREEMENT.

Any certification by GAI shall be interpreted and construed as an expression of professional opinion based upon the Services performed by GAI, and does not constitute a warranty or guaranty, either expressed or implied.

Article 16. Miscellaneous Terms of Agreement

1. This AGREEMENT shall be subject to, interpreted, and enforced according to the laws of the state of the GAI office location first written above without giving effect to its conflict of law principles. If any part of this AGREEMENT shall be held illegal, unenforceable, void, or voidable by any court of competent jurisdiction, each of the remainder of the provisions shall nevertheless remain in full force and effect and shall in no way be affected, impaired, or invalidated.
2. Neither the CLIENT nor GAI may delegate, assign, sublet, or transfer their duties or interest as described in this AGREEMENT and GAI's WORK ORDER without the written consent of the other party. Both parties relinquish the power to assign and any attempted assignment by either party or by operation of law shall be null and void.

GAI CONSULTANTS, Inc.
Master Services Agreement for Professional Services

3. This AGREEMENT shall be binding upon the parties hereto, their heirs, executors, administrators, successors, and assignees. In the event that a dispute should arise relating to the performance of the Services to be provided under this AGREEMENT and GAI's WORK ORDER, and should that dispute result in litigation, it is agreed that each party shall bear its own litigation expenses, including staff time, court costs, attorneys' fees, and other claim-related expenses.
4. CLIENT shall not assert any claim or suit against GAI after expiration of a Limitation Period, defined as the shorter of (a) three (3) years from substantial completion of the particular GAI service(s) out of which the claim, damage or suit arose, or (b) the time period of any statute of limitation or repose provided by law. In the event of any claim, suit or dispute between CLIENT and GAI, CLIENT agrees to only pursue recovery from GAI and will not seek recovery from, pursue or file any claim or suit, whether based on contract, tort including negligence, strict liability or otherwise against any director, officer, or employee of GAI.
5. No modification or changes in the terms of this AGREEMENT may be made except by written instrument signed by the parties. CLIENT acknowledges that they have read this AGREEMENT, understands it, agrees to be bound by its terms, and further agrees that it is the complete and exclusive statement of the AGREEMENT between the parties, superseding all work orders, oral or written understandings, or other prior agreements other than those above referred to and all other communications between the parties relating to the subject matter thereof.
6. Either the CLIENT or GAI may terminate or suspend performance of this AGREEMENT without cause upon thirty (30) days written notice delivered or mailed to the other party.
 - A. In the event of material breach of this AGREEMENT, the party not breaching the AGREEMENT may terminate it upon ten (10) days written notice delivered or mailed to the other party, which termination notice shall state the basis for the termination. The AGREEMENT shall not be terminated for cause if the breaching party cures or commences reasonable steps to cure the breach within the ten (10) day period.
 - B. In the event of the termination, other than caused by a material breach of this AGREEMENT by GAI, CLIENT shall pay GAI for the Services performed prior to the termination notice date, and for any necessary services and expenses incurred in connection with termination of the project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination or subcontractor and/or sub-consultant contracts. Such compensation shall be based upon the schedule of fees used by GAI.
 - C. In the event CLIENT delays providing written authorization to proceed within 45 days of the date of GAI's WORK ORDER or suspends GAI's performance for 45 days or more after authorization has been given, GAI reserves the right, in its sole discretion, to revise its cost, compensation and/or hourly rates to its then current rates prior to resuming performance under this AGREEMENT.
7. All notices required to be sent hereunder shall be either hand delivered, with signed receipt of such hand delivery, or sent by certified mail, return receipt requested.
8. The paragraph headings in this AGREEMENT are for convenience of reference only and shall not be deemed to alter or affect the provisions hereof.
9. Unless expressly stated to the contrary, the professional services to be provided by GAI do not include meetings and consultations in anticipation of litigation or arbitration or attendance as an expert witness in any deposition, hearing, or arbitration. If requested, these services will be provided by an amendment to this AGREEMENT, setting forth the terms and rates of compensation to be received by GAI.
10. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CLIENT, the Owner and GAI.
11. GAI is an Equal Opportunity Employer. GAI complies with the Office of Federal Contract Compliance Programs Affirmative Action Programs as outlined in 41 CFR 60-1.4(a)(b), 41 CFR 60-250.5(a)(b), and 41 CFR 60-741.5(a)(b).

GAI CONSULTANTS, Inc.
Master Services Agreement for Professional Services

IN WITNESS WHEREOF, GAI AND CLIENT have executed this AGREEMENT as of the date first above written.

CITY OF WESTFIELD, INDIANA

By _____
Printed
Name _____
Title _____

GAI CONSULTANTS, INC.

By _____
Printed Name Scott F. Hornsby, PE
Title Vice President

Attachments:

Exhibit A- 2020 GAI Consultants Hourly Rate Schedule

END OF AGREEMENT

2020 Corporate Hourly Rate Schedule-CV

Category Contracts

Any changes in hourly rates to reflect increases in cost of living, taxes, benefits, etc. will take place on January 1, 2021. The use of "Engineer" in the titles in the Hourly Rate Schedule applies to professional engineers, geologists, and surveyors. For rate purposes only, the Category also includes other staff members educated and/or trained as engineers, geologists, surveyors, environmental specialists, archaeologists, economists, planners, and others.

Category	Labor Classification	Invoice Rate
E10	Principals, Senior Engineering Directors, Senior Directors, Senior Project Directors	\$240.00
E09	Engineering Directors, Directors, Project Directors	\$219.00
E08	Assistant Directors, Senior Managers, Senior Technical Managers, Senior Engineering Managers, Senior Project Managers	\$208.00
E07	Engineering Managers, Engineering Technical Managers, Engineering Technical Leaders, EIT/EI Leaders, Landscape Architect Managers, Project Managers, Design Managers, Utility Coordination Managers, Senior CEI Managers, Senior Construction Managers, Senior Managers, Senior Scientists, Senior Archaeology Managers, Senior Cultural Resources Managers, Senior Survey Managers, Senior Professional Land Surveyors	\$182.00
E06	Assistant Engineering Managers, Assistant Engineering Technical Managers, Assistant EIT/EI Leaders, Assistant Technical Leaders, Assistant Landscape Architect Managers, CEI Managers, Construction Managers, Assistant Project Managers, Managers, Science Managerial Professionals, Planning Managers, Geological Managers, Hydrogeological Managers, GIS Managers, GIS Technical Leaders, Environmental Managers, Environmental Technical Leaders, Wetlands Technical Leaders, Archaeology Managers, Cultural Resources Managers, Cultural Resources Technical Leaders, CAD Managers, Professional Land Surveyors, Lab Managers	\$172.00
E05	Senior Project Engineers, Senior Project EIT/EIs, Senior Project Technical Specialists, Senior Project Schedulers, Senior Project Landscape Architects, Senior Project Construction Specialists, Field Crew Supervisors, Assistant Survey Managers, Assistant Survey Project Managers, Assistant Hydrogeological Managers, Assistant Technical Leaders (Scientists), Geological Technical Leaders, Assistant Planning Managers, Assistant Planning Technical Leaders, Assistant GIS Managers, Assistant GIS Technical Leaders, Assistant Environmental Managers, Assistant Environmental Technical Leaders, Assistant Cultural Resources Managers, Assistant Cultural Resources Leaders	\$151.00
E04	Project Engineers, Project EIT/EIs, Project Technical Specialists, Project Landscape Architects, Project Schedulers, Project Construction Specialists, Senior Project Hydrogeologists, Senior Project Geologists, Senior Project Materials Specialists, Senior Project GIS Specialists, Senior Project Environmental Specialists, Senior Project Cultural Resources Professionals	\$136.00
E03	Senior Engineers, Senior EIT/EIs, Senior Technical Specialists, Senior Landscape Architects, Senior Schedulers, Senior Construction Support Specialists, Senior Utility Specialists, Senior Utility Rate & Funding Specialists, Project Hydrogeologist, Project Materials Specialists, Project Planners, Project GIS Specialists, Project Environmental Specialists, Project Cultural Resources Professionals, Lab Supervisors	\$115.00
E02	Engineers, EIT/EIs, Technical Specialists, Landscape Architects, Utility & Funding Specialists, Utility Specialists, Construction Support Specialists, Senior Geological Specialists, Senior Materials Specialists, Senior Planners, Senior GIS Specialists, Senior Environmental Specialists, Senior Cultural Resources Specialists, Assistant Lab Supervisors	\$104.00
E01	Geological Specialists, Materials Specialists, Land Specialists, Planners, GIS Specialists, Environmental Specialists, Archeologists, Architectural Historians, Cultural Resources Specialists	\$73.00

The Non-exempt personnel categories shown below are subject to overtime rate.

Category	Labor Classification	Invoice Rate
N08	Senior Lead Project Designers, TCM-2 (CMS) TCIS-3 (CMS)	\$146.00
N07	Senior Lead Designers, TCM-1 (CMS), TCIS-2 (CMS)	\$130.00
N06	CI-2 (CMS), TCI-3 (CMS), Senior CEI - CSS, TCIS-1 (CMS), Lead Designers, Senior Lead Business/Technical Coordinators, Senior Lead Project Administrative Assistants, Senior Lead Office Coordinators	\$125.00
N05	TCI-2 (CMS), CEI - CSS, Senior Inspectors (FL only), Senior Survey Crew Chiefs, Senior Lead Cultural Resources Technician, Senior Designers, Senior Lead CAD Operators, Lead Business & Technical Coordinators, Senior Lead Administrative Assistants, Lead Office Coordinators	\$115.00
N04	TCIS-1 (CMS), Senior Lead Construction Technicians, Senior Lead Technicians, Survey Crew Chiefs, Senior Lead Cultural Resources Technican, Designers, Lead CAD Operators, Lead Administrative Assistants, Senior Office Coordinators, Project Coordinators	\$110.00
N03	Lead Construction Technicians, TA-1 (CMS), Lead Technicians, Lead Survey Technicians, Lead CR Technicians, Senior CAD Operators, Business & Administrative Coordinators, Senior Administrative Assistants, Office Coordinators	\$89.00
N02	Senior Construction Technicians, Senior Technicians, Senior Survey Technicians, Senior Cultural Resources Technicians, CAD Operators, Administrative Assistants, Senior Office Assistants	\$73.00
N01	Construction Technicians, Technicians, Survey Technicians, Cultural Resources Technicians, Office Assistants	\$63.00

GAI CONSULTANTS, Inc.
Work Order for Professional Services

Project Number: **R200075.01** Work Order Number: **001**

Project Name: **Little Eagle Creek Avenue**

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

The terms and conditions of the Master Services Agreement for Professional Services, dated January 15, 2020, (hereinafter referred to as "AGREEMENT") between City of Westfield, Indiana, (hereinafter referred to as "CLIENT") and GAI Consultants, Inc. (hereinafter referred to as "GAI") will govern the performance of the services described in this Work Order Number 001 (hereinafter referred to as "WORK ORDER").

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

GAI Scope of Services: This work order is for services already performed. These services included assistance with development of a concept drawing of Little Eagle Creek Avenue from 146th Street to Shelbourne Road. Completed services included:

- Preliminary design of a centerline alignment on aerial background.
- Aerial display showing proposed roadway widening, proposed right-of-way, and existing right-of-way and property lines (if available).

Schedule: This work was completed on November 27, 2019.

Compensation: Compensation for services rendered by GAI shall be in accordance with the rates agreed to and incorporated into the AGREEMENT between GAI and CLIENT, unless a different basis of compensation is attached hereto as Exhibit A, in which case Exhibit A shall govern the compensation to be paid by CLIENT to GAI for the services performed under this WORK ORDER. A total Not to Exceed amount of \$1,197.50 is allocated for this WORK ORDER for services performed by GAI. Services will be billed as a lump sum equaling the cost of labor performed over the previous contract amount from calendar year 2019. If funds are exhausted and GAI's services are still required, additional funds will be added via an amendment to this WORK ORDER.

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

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

GAI CONSULTANTS, Inc.
Work Order for Professional Services

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

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

By _____

Printed
Name _____

Title _____

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

By _____

Printed Name Scott F. Hornsby, PE

Title Vice President-Midwest Markets

END OF WORK ORDER

GAI CONSULTANTS, Inc.
Work Order for Professional Services

Project Number: **R200075.02** Work Order Number: **002**

Project Name: **171st Street & Carey Road**

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

The terms and conditions of the Master Services Agreement for Professional Services, dated January 15, 2020, (hereinafter referred to as "AGREEMENT") between City of Westfield, Indiana, (hereinafter referred to as "CLIENT") and GAI Consultants, Inc. (hereinafter referred to as "GAI") will govern the performance of the services described in this Work Order Number 002 (hereinafter referred to as "WORK ORDER").

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

GAI Scope of Services: GAI shall assist the CLIENT with development of a concept drawing for a low-cost compact roundabout at the intersection of 171st Street and Carey Road. Services shall include:

- Download and setup aerial background for concept geometric layout.
- Preliminary design of a four-leg roundabout utilizing widening of the existing pavement and re-alignment of outside curb where necessary, a center island with curb and truck apron, and revisions to the existing striping.
- One meeting with the City to discuss the concept drawing, potential impacts, and feasibility.

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

Compensation: Compensation for services rendered by GAI shall be in accordance with the rates agreed to and incorporated into the AGREEMENT between GAI and CLIENT, unless a different basis of compensation is attached hereto as Exhibit A, in which case Exhibit A shall govern the compensation to be paid by CLIENT to GAI for the services performed under this WORK ORDER. A total Not to Exceed amount of \$2,900.00 is allocated for this WORK ORDER for services performed by GAI. Services will be billed hourly plus expenses at actual costs. If funds are exhausted and GAI's services are still required, additional funds will be added via an amendment to this WORK ORDER.

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

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

GAI CONSULTANTS, Inc.
Work Order for Professional Services

- 6) Any of CLIENT's other consultant(s)/contractor(s) will cooperate and coordinate with GAI in a timely and efficient manner.
- 7) GAI's compensation is based on receiving authorization to proceed with the services described in this WORK ORDER within 45 days. If authorization to proceed is not received within 45 days, GAI reserves the right to revise its compensation.

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

By _____

Printed
Name _____

Title _____

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

By _____

Printed
Name Scott F. Hornsby, PE

Title Vice President

END OF WORK ORDER



January 22, 2020

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:

- D. R. Horton-Indiana, LLC dba Westport Homes, Sheffield Park, Section 2, Bond #30087219, \$334,481.00, Streets (Base, Binder & Surface)
- D. R. Horton-Indiana, LLC dba Westport Homes, Sheffield Park, Section 2, Bond #30087220, \$1,452.00, Concrete Sidewalks

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:

- Beazer Homes Indiana, West Rail, Section 2, Bond #60132896, \$7,336.03, Common Area Sidewalks & Truncated Domes
- Beazer Homes Indiana, West Rail, Section 2, Bond #60132902, \$34,914.00, Storm Sewer Drains (Streets)
- Beazer Homes Indiana, West Rail, Section 2, Bond #60132899, \$7,084.00, Monumentation
- Beazer Homes Indiana, West Rail, Section 2, Bond #60132897, \$34,877.28, Asphalt 8' Wide Path
- Beazer Homes Indiana, West Rail, Section 2, Bond #60132898, \$46,304.20, Asphalt Surface & Raised Pavement Markers
- The Peterson Company, LLC, Westfield Business Centre, Bond #30034037, \$351,120.00, Storm Sewer
- The Peterson Company, LLC, Westfield Business Centre, Bond #30034036, \$179,286.80, Streets/Curbs & ROW Improvements
- The Peterson Company, LLC, Westfield Business Centre, Bond #30034035, \$26,770.70, Sidewalk & Trail

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:

- Lennar Homes of Indiana, Liberty Ridge, Section 3, Bond #72BSBIG2406, \$3,977.90, Asphalt Trail
- Lennar Homes of Indiana, Liberty Ridge, Section 3, Bond #72BSBIG2405, \$1,188.90, Concrete Sidewalks
- D&R Excavating, Inc. d/b/a Earth Resources, West Rail, Section 2, Bond #INC61238, \$3,174.00, Storm Sewer
- Sitecrete, LLC, West Rail 2, Bond #30089590, \$666.91, Common Area Sidewalk
- Delello & Sons Asphalt Paving, Inc., West Rail, Section 2, Bond #7662301, \$4,027.96, Surface
- The Peterson Company, LLC, Westfield Business Centre, Bond #30085569, \$50,652.50, Storm Sewer, Streets/Curbs, & ROW Improvements; Sidewalk & Trail.

Letter of Credit

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:

- Grassy Branch Development, Grassy Branch at Bridgewater, LOC #18132771-00-000, \$198,000.00, Trail – 151st Street, West of Carey Road
- Grassy Branch Development, Grassy Branch at Bridgewater, Maintenance LOC #18132770-00-000, \$135,200.00, Storm, ROW

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

- Grassy Branch Development, Grassy Branch at Bridgewater, LOC #18130868-00-000, \$2,568,011.00, Streets, Curbs, Storm, Sidewalk, Trail, Erosion Control & ROW Improvements

January 2, 2020

Jeremy Lollar, Director of Public Works
City of Westfield
2728 East 171st Street
Westfield, IN 46074

Re: 156th St & Westfield Blvd Trail Design
Contract Letter with Standard Terms & Conditions

Dear Mr. Lollar:

VS Engineering, Inc. (VS) is excited to work closely with the City of Westfield on the 156th St and Westfield Blvd Trails Project. Please find below our scope of services and associated fees. Our standard terms and conditions are attached and apply to this work.

Project Description

This project includes design of an 8-foot asphalt and timber boardwalk multi-use path in two locations. The first location will be along the north side of Westfield Blvd from the end of the existing path at US Highway 31 (US 31) to slightly past the entrance to the Cool Creek Park, where the path will cross and connect with the Natalie Wheeler Trail. The second segment will be along the north side of 156th St. from the end of the existing trail at US 31 to the intersection of 156th St. and Westfield Blvd where it will cross Westfield Blvd and connect with the Natalie Wheeler Trail.

Scope of Services

I. Topographical Survey

- A. VS shall survey the project location and provide one set of original field notes, all field survey data collected via electronic media, and one set of master drawings. VS shall obtain section corner, right-of-way, easement, and state plane coordinate information as necessary to satisfactorily complete the basic field survey services described herein within the project limits. VS shall prepare and record a Location Control Route Survey. VS work shall be in accordance with Indiana Code (I.C. 25-21.5); Indiana Administrative Code (865 I.A.C. 1-12); and the Design Manual, Indiana Department of Transportation, Part III, Location Surveys (Survey Manual), a copy of which is on file with INDOT. If there is any conflict between I.C. 25-21.5, 865 I.A.C. 1-12, or the Survey Manual, the order of precedence shall be:

1. I.C. 25-21.5,
2. 865 I.A.C. 1-12, and
3. Survey Manual

B. Electronic files including the following shall be prepared and submitted by VS as directed by client:

1. Finished plan view of topographic survey in AutoCAD .dwg format
2. 1-foot contours in AutoCAD .dwg format
3. TIN from Civil 3D in .xml format
4. Electronic points file in .txt or .xml coordinate format.
5. Location Control Route Survey Plat in .pdf format.
6. Survey Book in .pdf format.

C. The signature, seal, and registration number of the land surveyor, registered in the State of Indiana, who was in responsible charge of the survey, shall be affixed to the Location Control Route Survey Plat and survey book submitted. In addition, VS shall complete the field survey as summarized below and as directed by the Client. The project area to be field surveyed is described as follows:

Survey Limits (See Attachment No. 1)

156th Street

Beginning at the centerline of Union Street; survey west 440 feet. The width of survey will be from the south edge of pavement of 156th Street north between 60 feet to 100 feet (see Attachment No. 1).

Union Street

Beginning at the centerline of 156th Street, survey north 100 feet. The width of survey will be from the centerline of Union Street east 30 feet.

Westfield Boulevard

Beginning at a point 40 feet northeasterly of the centerline of U.S. 31, survey northeasterly 480 feet. The width of survey will be 60 feet from the south edge of pavement. The width varies at the north end of the survey limits to pick up enough topography to tie in the trail.

Total survey includes 1,020 lineal feet of roadway by the widths described above.

- D. Obtain last deed of record, subdivision plats, and section or auditor plats for all properties within the project limits from local and state agencies. The property information shall include parcel number, property owner's name, mailing address and property location. VS shall provide a listing of all property information, deeds, plats, and maps.
- E. Send out survey notices together with questionnaires (if applicable) to all property owners within the project area. All survey notices and questionnaires shall be approved by Client prior to distribution.
- F. Establish Primary Horizontal Control within the project limits such that the survey base line(s) can be re-established during construction. The coordinate system will be the Johnson County Zone of the Indiana Geospatial Coordinate System (InGCS).

- G. Establish on-site elevation using NGS, DNR benchmarks or Johnson County benchmarks. Set temporary bench marks within the project limits such that elevation datum can be re-established during construction.
- H. Tie in the survey base lines to available USPLSS section corners and/or existing property/right-of-way monumentation. All necessary section corners will be located or re-established to adequately define property lines along the limits of the project during the Right-of-way Engineering or Easement Acquisition phase.
- I. Re-establish existing roadway alignments from plans for previous projects.
- J. Plot right-of-way and property lines based on observed physical evidence and record documents acquired from local government agencies.
- K. Coordinate with all utility companies to locate and mark their utilities in field. VS shall notify the utilities via the call before you dig notification system (Indiana Underground Plant Protection Service (I.U.P.P.S.)). VS shall verify that each utility has field located their facilities during the course of the design survey. The existing facilities located, at the time of the field survey, shall be incorporated into the design survey. In addition, VS shall provide listing of all utilities and all information available for that utility including address, and telephone number.
- L. Perform design survey in sufficient detail to obtain topographic data, buildings, walls, walks, signs, vaults, and natural and man made features, as evidenced by facilities at the ground surface and marks by others, necessary for the development of project plans, including all potentially affected trees, 6 inches in diameter and greater, identified by size. **Individual trees will not be located in heavily wooded areas.**
- M. Take cross sections at specified intervals across the right-of-way of public roadways and or the project limits (as described above) whichever is further out. Additional cross sections shall be taken at intersection of streets, roads, railroads, driveways, etc. Obtain elevations of all existing structures such as drainage culverts, utilities and other structures.
- N. The width from the abutment of the U.S. 31 Bridge over 156th Street to the curb along 156th Street will be measured.
- O. Indicate spot elevations at all breaks in grade, ramps, area ways, tree grates, etc. within the project limits, and at top and bottom of curb.
- P. VS shall furnish a hard copy together with all field survey information collected on electronic media. VS shall also prepare master drawings (1-foot contours) from data collected in topographic survey using Civil 3D and shall submit a hard copy together with electronic format. VS shall delineate and label the location of all buildings, structures, fences, railings, signs, walls, walks, paved areas, curbs and other permanent structures and existing improvements. VS shall outline all building edges, insets and projections, and below grade structures such as vaults,

basements, and areaways where applicable, as evidenced by facilities at the ground surface and marks by others.

- Q. Prepare and record a Location Control Route Survey Plat depicting existing alignments, right-of-way. Property lines and owner information for adjoining properties will be shown, but not dimensioned.

II. Trail Design

- A. VS shall prepare preliminary plans for an 8-foot wide pedestrian trail and preliminary estimates of cost, which shall be in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the plans or reports are submitted: American Association of State Highway and Transportation Officials' "A Policy on Geometric Design of Highways and Streets"; Indiana Department of Transportation's Standard Specifications; Manual on Uniform Traffic Control Devices; Road, Bridge and Traffic memoranda and INDOT Design Manuals, except as modified by supplemental specifications and special provisions.

Following approval of the preliminary plans, and approval of the environmental permitting agencies (wetland delineation, construction in a floodway), VS shall complete the final design and prepare contract plans, special provisions for the specifications, trail design, drainage, utility coordination and final cost estimates for the construction of the project.

Three submittals are anticipated to be made to the City of Westfield.

1. 60% Plan submittal
2. 90% Plan submittal
3. Final Construction Document submittal

III. Timber Boardwalk Structural Design

- A. VS will complete structural design elements necessary for the construction of the timber boardwalk.
 1. VS will complete engineering calculations to ensure that the timber boardwalk can carry an HS20 loading to allow for plowing of the trails.
 2. VS will design the connections and timber requirements for the boardwalk.
 3. VS will prepare detailed construction plans with details for ease of construction.

IV. Geotechnical Investigation

- A. VS shall utilize a sub-consultant to provide soil investigations to determine the existing subsurface conditions at the project site and to develop recommendations necessary for the design and construction of the earth related elements of the proposed project. Geotechnical investigation shall include:

1. Completing up to six test borings to a depth of up to 20 ft each for the trail. The actual location, number, and depth of the borings and cores will be dependent on the plans and the location of the planned elements.
2. Completing a laboratory testing program tailored for pavement subgrade preparation and timber boardwalk support.
3. Prepare a geotechnical report. The report will summarize our observations and test results and provide geotechnical recommendations for subgrade preparation and bridge foundations.

V. Permits

- A. VS shall perform a wetland delineation to determine the extent of and mark the limits of any wetlands within the area. This work includes review of soils maps and other data, site visits to collect soil samples for testing, and site visits to flag the wetland boundaries so they can be included in the survey. This proposal assumes that no waters report is required and that there will be no wetland mitigation. If either of those is not true, an amendment to this contract will be required.
- B. VS will perform the analysis required for IDNR Construction in a Floodway Permit (non-modeling).
 1. If modeling is determined to be necessary, an amendment to this contract will be required.
- C. VS will acquire an IDNR Construction in a Floodway (CIF) permit.
- D. VS will prepare erosion control plans and acquire an IDEM Rule 5/SWPPP permit, if required.

VI. Bidding Related Services

- A. VS shall provide bidding assistance for one (1) construction contract letting. The elements associated with this task are as follows:
 1. Prepare bid advertisement for City of Westfield to publish.
 2. Receive and respond to contractor inquiries regarding bidding documents.
 3. Issue addenda to Bid Documents
 4. Conduct one (1) pre-bid meeting
 - a) Attend pre-bid meeting
 - b) Prepare and distribute addenda and meeting minutes.
 5. Attend bid opening and prepare bid recommendation
 - a) Receive and review bids for responsiveness.
 - b) Prepare bid tabulation and make recommendation to the City of Greenwood regarding award of construction contract.
 6. Attend contract award meeting.
 7. Conduct one (1) pre-construction meeting.
 - a) Attend pre-construction meeting
 - b) Prepare and distribute meeting minutes.

VII. Right of Way Engineering

VS ENGINEERING, INC. (VS) shall provide Right of Way Engineering Services for the above referenced project. VS shall furnish all labor, materials, and equipment to perform the easement preparation services described below for the fee identified per parcel (estimated 2 parcels required).

A. Title Research Services

1. Conduct 20-year chain of title search and prepare T&E Reports and also (if applicable) Title Updates in accordance with INDOT 12.2 Classification Requirements.

B. Right-of-way Plan Development Services

1. Prepare final right-of-way plans, legal descriptions, right-of-way parcel plats, acquisition instruments and other materials to be used in the acquisition of right-of-way, and maintain LRS in accordance with the INDOT 11.1 Classification Requirements, INDOT Right-of-way Engineering Procedure Manual, and 865 I.A.C. 1-12.

C. Right-of-way Staking

1. Stake the proposed Right-of-way at all design bend points and at Property Lines with a 12 in hub and lathe in earthen areas and with 3 Mag Nails in pavement areas unless directed otherwise.

This scope does not include land acquisition services or property owner meetings. Any additional work or variance from of the above services can be addressed through an addendum.

Schedule

VS is committed to the following project schedule:	<u>Days from NTP to Task Completion</u>
1. Notice to Proceed	0
2. Project Kickoff Meeting	14
3. Field Survey and Data Collection	60
4. Preliminary Plans (60% Design)	120
5. Legal Descriptions	160
6. Permit Approvals (IDNR CIF)	230
7. Final Plans & Legal Descriptions (90% Design)	230
8. Final Construction Documents (100% Design)	260
9. Advertise for Bids	TBD

Compensation

A. Amount of Payment

1. VS shall receive as payment for the work performed under this Contract the total amount not to exceed \$72,192.50 unless an amendment is executed by the parties which increases the maximum amount payable.
2. VS shall be paid for engineering services performed on a lump sum basis per the schedule of values below:

Trail Design

Topographic Survey	\$ 13,500.00
Trail Design	\$ 20,100.00
Boardwalk Design	\$ 5,800.00
Permitting (includes fee)	\$ 6,615.00
Wetland Delineation	\$ 3,400.00
Geotechnical Investigation	\$ 6,717.50
Bidding Related Services	\$ 6,000.00
Total	\$ 62,132.50

3. VS shall be paid for easement preparation services performed on a per parcel basis per the schedule of values below:

<u>Task</u>	<u>Rate</u>	<u>Quantity</u>	<u>Fee</u>
T&E Reports (Permanent)	\$475.00	2	\$950.00
R/W Engineering (Permanent).	\$3,105.00	2	\$6,210.00
Additional Description (If Needed)	\$700.00	2	\$1,400.00
R/W Staking	\$750.00**	2	\$1,500.00
TOTAL			\$10,060.00

We look forward to providing our professional services and will begin upon your written authorization below. Please contact us if you should have any questions or require additional information.

Respectfully,

A handwritten signature in black ink that reads "Sanjay B. Patel". The signature is written in a cursive, flowing style.

Sanjay B. Patel, P.E.
President and CEO
VS Engineering, Inc.

Enclosure – Terms & Conditions

Contract Approval

The below acknowledges and approves of the proposed scope of services, associated fees, and standard terms and conditions.

Signature: _____

Name: _____ Date: _____

Title: _____

- 1.1. Compensation for Services.** VS Engineering, Inc. (VS) will submit monthly invoices for partial completion of services. Payment from Client will be due within 30 days of VS's invoice. VS will stop work if account balances become 90 days overdue. Invoices not paid within 120 days will be referred for collection and Client will be responsible for all expenses incurred by VS in the collection, including attorney fees.
- 1.2. Services Outside Scope of Agreement.** Services not set forth or listed in this Agreement are specifically excluded from the scope of services. If circumstances or conditions that were not originally contemplated by or known to VS are revealed, to the extent they affect the scope of services, VS may call for renegotiation of appropriate portions of this Agreement. VS will provide additional services upon written approval from Client or upon verbal approval from Client followed by a confirmation letter from VS. These additional services will be outside the scope of this Agreement and will be billed to Client at VS's standard hourly rates plus expenses.
- 1.3. Standard Hourly Rates.** Unless specifically noted in the written scope, VS shall use the current year standard hourly rates and expenses for all hourly work. The current year shall be the year in which the work is being completed. Any work completed as an Expert Witness shall be done at a rate 2.0 times the standard hourly rates.
- 1.4. Representation and Opinions.** VS represents that all Services provided by its members, employees, agents and representatives are performed in a professional manner in accordance with sound consulting and engineering practices and procedures.
- 1.5. Opinions of Probable Cost.** In providing opinions of probable cost, Client understands VS has no control over the cost or availability of labor, equipment, materials, or market conditions. VS's opinions of probable cost are made on the basis of professional judgment and experience. VS makes no warranty, expressed or implied that the costs will not vary from the opinion of probable cost.
- 1.6. Access.** Client shall arrange for access to and shall make all necessary provisions for VS to enter upon public and private property as required by VS to perform the Services required under this Agreement. Although VS will exercise reasonable care in performing its Services, Client understands that performing some services may unavoidably cause minor disturbance to the Site, the correction of which is not part of this Agreement.
- 1.7. Limited Liability.** VS shall have the first and primary right to remedy any errors, omissions or defective workmanship. VS shall not be liable for any incidental, consequential, indirect or special damages, or for any loss of profits or business interruptions caused or alleged to have been caused, by the performance or nonperformance of Services. Client agrees that Client's sole remedy against VS is limited to a refund of payments made by Client for said Services, less expenses paid to subcontractors or to third parties. VS is not responsible for errors which result from faulty or incomplete information supplied by Client. Client also agrees to not seek damages in excess of the contractually agreed upon limitations directly or indirectly through suits by or against other parties. Client further agrees that Client shall bring no claim against VS or its subcontractors no later than one year after completion of Services.
- 1.8. Indemnification.** VS agrees to indemnify and hold harmless Client and all of its officers, directors and employees against claims, losses, penalties, fines, forfeitures, amounts paid in settlement, judgments, (including reasonable attorneys' fees) which result from any act or

omission constituting gross negligence, willful misconduct or breach of fiduciary duty by any manager, agent or employee of VS in connection with VS's performance under this Agreement. Client agrees to indemnify and hold harmless VS and all of its managers, employees, agents, and other representatives ("Indemnitee") against costs, losses, liabilities, expenses (including reasonable attorneys' fees), and amounts paid in settlement actually incurred in connection with third party claims against any Indemnitee (collectively, "Losses") which result from any act or omission constituting negligence, misconduct, or breach of fiduciary duty by an officer, director or employee of Client in connection with this Agreement, unless such Losses are covered by insurance, in which event VS shall be indemnified only to the extent of any uninsured Losses. It is intended by the parties of this agreement that VS's services in connection with the project shall not subject VS's individual employees, officers, or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, Client agrees that as Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against VS, an Indiana corporation, and not against any of VS's individual employees, officers or directors.

1.9. Force Majeure. Neither party shall be liable to the other for any costs or damages due to causes beyond its control, expressly including weather conditions. Extensions of the performance schedule (if any) shall be deemed to be automatically granted in the case of delays beyond the control of VS.

1.10. Instruments of Service. All plans, drawings, surveys, prints, software, programs, data, specifications, photographs (including aerial) and other related items and documents prepared or furnished by VS pursuant to this Agreement are instruments of service in respect to this Project, and VS shall retain the ownership and property interests therein. Such documents are not intended or represented to be suitable for use by Client or others on extensions of this Project, on any other project, or for completions of this Project should this Agreement be terminated, nor may such documents be so reused without the express written consent of VS. Any reuse or modification of such documents without the consent of VS will be at Client's sole risk and without liability to VS, and Client shall indemnify and hold VS harmless from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting therefrom.

1.11. Governing Law; Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. At VS's election, Client hereby submits to the exclusive jurisdiction and venue of any court (federal, state or local) having situs within the County of Marion, State of Indiana, expressly waives personal service of process and consents to service by certified mail, postage prepaid, directed to the last known address of Client. Client hereby waives any objection to improper venue, forum non conveniens and trial by jury.

1.12. Client Disclosure and Lawfulness. Client agrees to disclose to VS all pertinent information relative to the project including surveys, data, instructions, past reports and/or correspondence. VS may use such information in performing its services and is entitled to rely upon the accuracy and completeness thereof.

1.13. Construction Observation. If VS is not contracted for Construction Observation services associated with design services, it is understood and agreed that such services will be provided for by Client. Client assumes all responsibility for interpretation of the Contract

Documents and for Construction Observation and Client waives any claims against VS that may be in any way connected thereto.

1.14. Termination. This Agreement may be terminated by either party upon 14 days written notice. Client shall nevertheless be responsible for all outstanding balances, including accounts receivable and work in process to the date of termination.

1.15. Assignment. This Agreement is binding upon and inures to the benefit of the respective parties hereto, their legal representatives, successors, and assigns. Neither VS nor Client may assign, sublet, or transfer its interests in this Agreement without first obtaining the written consent of the other.

1.16. Entire Agreement. The terms and conditions set forth herein constitute the entire understanding of the parties relating to the provision of Services as set forth in this Agreement.

1.17. Authorization. All signatories represent they are duly authorized to execute this Agreement.

This agreement represents the entire understanding of parties in respect to projects and can only be modified in writing signed by both parties. Please advise VS immediately in writing if any terms of this agreement need to be altered.

**SCOPE OF SERVICES FEE PROPOSAL FOR 156TH ST & WESTFIELD BLVD CONNECTOR TRAILS
MANHOURS AND FEE JUSTIFICATION**

	Project Manager I	Project Engineer III	Project Engineer I	Project Scientist II	CADD Tech. II	CADD Tech. I	Total Hours	Total Fee
BILLING RATE	\$148.04	\$118.41	\$79.17	\$153.34	\$83.41	\$67.94		
Topographic survey								
Topographic Survey	SEE ATTACHED FEE JUSTIFICATION							\$13,500.00
Total Hours	0	0	0	0	0	0	0	
Total Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$13,500.00
Design								
Trail Design	2	10	20					
Plans Preparation		8	12		50			
Specifications and Provisions	2	10	20					
Quantity Calculations	1	8	6		4			
Probable Construction Cost Estimate	1	8						
Utility Coordination	4	8	8		4	4		
Design Review Meetings (2 Meetings)	8	8						
Total Hours	18	60	66	0	58	4	206	
Total Costs	\$2,664.72	\$7,104.60	\$5,225.22	\$0.00	\$4,837.78	\$271.76		\$20,100.00
Wetland Delineation								
Review Map and Field Investigation				10				
Testing and Review of Findings				6				
Development of Report				6				
Total Hours	0	0	0	22	0	0	22	
Total Costs	\$0.00	\$0.00	\$0.00	\$3,373.48	\$0.00	\$0.00		\$3,400.00
Boardwalk Design								
Design Calculations	4	8	8					
Detailed Plan Preparation		10	10		20			
Total Hours	4	18	18	0	20	0	60	
Total Costs	\$592.16	\$2,131.38	\$1,425.06	\$0.00	\$1,668.20	\$0.00		\$5,800.00

**SCOPE OF SERVICES FEE PROPOSAL FOR 156TH ST & WESTFIELD BLVD CONNECTOR TRAILS
MANHOURS AND FEE JUSTIFICATION**

	Project Manager I	Project Engineer III	Project Engineer I	Project Scientist II	CADD Tech. II	CADD Tech. I	Total Hours	Total Fee
BILLING RATE	\$148.04	\$118.41	\$79.17	\$153.34	\$83.41	\$67.94		
Permits								
IDNR Construction in a Floodway	4	10	10		8			
IDEM Rule 5/SWPPP	2	4	14	4	8			
Total Hours	6	14	24	4	16	0	64	
Total Costs	\$888.24	\$1,657.74	\$1,900.08	\$613.36	\$1,334.56	\$0.00		\$6,400.00
Bidding Related Services								
Prepare for and Attend Pre-Bid Meeting	4	4						
Respond to Questions From Bidders	1	2	4		2			
Prepare Addenda as Needed	1	2	4		2			
Review and Tabulate Bids and Make Recommendations to City	1	2	4					
Attend Pre-Construction Conference	4	4						
Total Hours	11	26	12	4	4	0	57	
Total Costs	\$1,628.44	\$3,078.66	\$950.04	\$613.36	\$333.64	\$0.00		\$6,000.00
SUB-TOTAL								\$55,200.00
Direct Costs								
Geotechnical Investigation								\$6,717.50
Construction in Floodway Submittal Fee								\$215.00
Easement Preparation (2 parcels)								\$10,060.00
SUB-TOTAL								\$16,992.50
TOTAL FEE								\$72,192.50

PROJECT: 156th Street and Westfield Boulevard Trail Connectors
Hamilton County, IN

	ESTIMATED TIME			
	Project Surveyor II	Party Chief	Survey Tech II	Total
Engineering Survey				
Research				
Auditor / Assessor Maps	1		1	
Subdivision Plats			N/a	
Owners Names and Addresses				
Mailings			2	
Deeds				
Section Corner Records			1	
Plans & Surveys			1	
Utility Coordination				
Locate Tickets	1		1	
Follow - Up Verification		2		
Primary Control				
Benchmark Reconnaissance	1	1	1	
Establish Horizontal Control		6	6	
Bench Level Circuit				
Property & Alignment Recon				
Alignment Reconnaissance	2	4	4	
Section Corner Recon		4	4	
Property Corner Reconnaissance		2	2	
Topography / Elevations				
Mainline Topography	1	12	12	
Structures and Misc. Details (Abutment to Curb Width)				
Route Survey & Field Book Preparation				
Alignment Calculation	4		8	
Property Line Determination			8	
Topography Compilation (CAD Drawing)	2		10	
Set Alignment and Reference	1	4	4	
Route Survey	4		12	
Field Check		2	2	
Field Book	4		12	
Travel				
Travel Time		6	6	
Total Hours	20	43	96	159
Average Weighted Hourly Rate	\$ 131.23	\$ 89.59	\$ 70.95	
Total Salary Cost	\$ 2,624.60	\$ 3,852.37	\$ 6,811.20	\$ 13,288.17
Direct Cost (See below)				\$ 214.00
Total				\$ 13,502.17
Engineering Survey Fee				\$ 13,500.00

DIRECT COSTS	UNIT COST	QUANTITY	
Travel Mileage	\$0.38/mile	300	\$ 114.00
Lodging (Per Person / Day)	\$90/person		\$ -
Per Diem (Per Person / Day)	\$26/person		\$ -
Reproductions/Copies/Materials/Postage	LS	1	\$ 100.00
		TOTAL	\$ 214.00

Attachment No. 1



156th Street and Westfield Boulevard Trail Connectors - Survey Limits

Mainline Survey Limits —————

GEOTECHNICAL EVALUATION COST ESTIMATE
Trail Extensions
Westfield, Indiana

EXPLORATORY FIELD ACTIVITIES

Mobilization and demobilization	1 LS	\$400.00 / LS	400.00
Test boring with SPT sampling	102.5 ft	\$19.00 / ft	1,947.50
Shelby tube sampling	ea	\$65.00 / ea	
ATV-mounted equipment	1 day	\$600.00 / day	600.00
Truck-mounted equipment	day	\$300.00 / day	
Rock coring	ft	\$32.00 / ft	
Rock core set-ups	ea	\$90.00 / ea	
Soundings	ft	\$8.00 / ft	
Pavement cores	ea	\$150.00 / ea	
Road closure	day	\$125.00 / day	
Traffic control (flagmen)	day	\$1,500.00 / day	
Boring layout, permits and utility coordination	1 LS	\$630.00 / LS	630.00
Per diem	day	\$90.00 / day	
Overnight living expense	night	\$230.00 / night	
		Subtotal	<u>3,577.50</u>

LABORATORY

Visual soil/rock classification, moisture content and hand penetrometer readings	2 hr	\$80.00 / hr	160.00
Atterberg limits	2 ea	\$80.00 / ea	160.00
Grain size analysis	ea	\$120.00 / ea	
Unconfined compression	4 ea	\$80.00 / ea	320.00
Standard Proctor	ea	\$145.00 / ea	
California bearing ratio (CBR)	ea	\$400.00 / ea	
Unit Weight	ea	\$20.00 / ea	
Loss on Ignition	ea	\$38.00 / ea	
Specific Gravity	ea	\$50.00 / ea	
Topsoil Testing	ea	\$400.00 / ea	
		Subtotal	<u>\$640.00</u>

ENGINEERING

Report of results, discussion, and recommendations	1 LS	\$2,500.00 / LS	2,500.00
		Subtotal	<u>\$2,500.00</u>
		Estimated Total	\$ 6,717.50

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

EDS #: A249-19-L190080

Des. No.: 1801433

CFDA No.: 20.205

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

NOTICE TO PARTIES

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

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

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

With a copy to:

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

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

Greenfield District Office
32 South Broadway
Greenfield, Indiana 46140

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

City of Westfield
133 Penn Street
Westfield, Indiana 46074

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

SECTION V TERM AND SCHEDULE.

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

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

SECTION VI **GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

F. Compliance with Laws.

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

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

G. Debarment and Suspension.

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

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

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

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

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

I. Disputes.

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

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

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

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

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

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

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

K. Employment Eligibility Verification.

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

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

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

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

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

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

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

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

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

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

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

Q. **Non-Discrimination.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The remainder of this page is intentionally left blank.

Non-Collusion

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

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

LPA: City of Westfield

Print or type name and title

Signature and date

Print or type name and title

Signature and date

Print or type name and title

Signature and date

LPA DUNS # _____

Attest

Auditor or Clerk Treasurer

This instrument prepared by:

Autumn Castro
July 19, 2019

STATE OF INDIANA
Department of Transportation

Recommended for approval by:

Steven Duncan, Director
Contract Administration Division

Date: _____

Executed by:

Joseph McGuinness, Commissioner (FOR)

Date: _____

Department of Administration

Lesley A. Crane, Commissioner

Date: _____

State Budget Agency

Zachary Q. Jackson, Director

Date: _____

Approved as to Form and Legality:

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

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

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

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

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

ATTACHMENT B

LPA'S RIGHTS AND DUTIES

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

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

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

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

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

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

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

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

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

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

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

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

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

Otherwise, this contract covers all phases.

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

OR

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

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

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

II. Billings.

A. Billing:

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

B. Other Costs:

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

III. Repayment Provisions.

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

Cross-Reference

The easement conveyed by this instrument burdens certain real estate located in Hamilton County, Indiana. The most recent deed of record conveying said real estate is recorded as Instrument No. 2011-35420, in the Office of the Recorder of Hamilton County, Indiana.

GRANT OF TRAIL EASEMENT

This Grant of Trail Easement (the “**Agreement**”) is made effective as of the ____ day of _____, 2020, by QSH/SANDERS GLEN PROPERTY, LLC, an Indiana limited liability company, the successor by merger to AE WESTFIELD FACILITY COMPANY, LLC, an Indiana limited liability company (“**Grantor**”), in favor of the CITY OF WESTFIELD, an Indiana municipal corporation (“**Grantee**”).

RECITALS

WHEREAS, Grantor is the owner of a tract of land commonly known as 334 South Cherry Street in the City of Westfield, Hamilton County, Indiana and described by legal description in Exhibit A, attached hereto and incorporated herein by this reference (the “**Real Estate**”);

WHEREAS, Grantor desires to grant to Grantee and Grantee desires to obtain from Grantor, a perpetual, non-exclusive easement for pedestrian and recreational use (the “**Trail Easement**”) on, in, under, above, over, across and through that portion of the Real Estate described by legal description and illustrated on Exhibit B, attached hereto and incorporated herein by this reference (collectively, the “**Trail Easement Area**”), for purposes of providing and maintaining a recreational alternative transportation trail for public use.

GRANT AND AGREEMENT

NOW, THEREFORE, in consideration of the payment of the sum of Ten Dollars (\$10.00) and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following grants, agreements, covenants and restrictions are made:

1. Recitals. The foregoing recitals are hereby affirmed by the parties as true and correct and each such recital is incorporated herein by this reference.
2. Grant of Trail Easement. Grantor hereby grants and conveys to Grantee, a non-exclusive right and easement on, in, under, above, over, across and through the Trail Easement Area for the purposes of constructing, reconstructing, maintaining, operating, repairing, replacing, using and inspecting trail facilities and related appurtenances to be used by the public as a recreational alternative transportation trail; provided, however, that automobiles, trucks,

recreational vehicles, or motorcycles shall not be permitted on the Trail Easement Area. Notwithstanding the use restrictions contained in the previous sentence, nothing in this Agreement shall prevent or preclude the use of golf carts as permitted by applicable laws and ordinances of the City of Westfield, and the use of motorized wheelchairs, scooters and similar apparatuses for persons with mobility challenges. Grantee's rights herein include cutting or trimming trees, bushes, vegetation and saplings growing upon or extending over the Trail Easement Area so far as may be reasonably necessary in the construction, installation, operation, repair, removal, replacement, renewal, inspection and maintenance of the Trail Easement Area and trail facilities. Excluding the removal of vegetation and obstructions as provided herein, any physical damage to the surface area of the Trail Easement Area or the Real Estate resulting from the exercise of rights granted herein to Grantee shall be promptly repaired or restored by Grantee, at Grantee's sole cost and expense, to a condition substantially similar to the condition prior to the damage.

3. Nature and Assignment of Easements and Rights. The Trail Easement and rights granted herein, and, together with the burdens thereof and obligations associated therewith, shall: (a) run with and burden the Trail Easement Area; (b) inure to the benefit of Grantee and its successors and assigns; and (c) bind and inure to the benefit of the Grantor as the owner of all or any part of the Trail Easement Area and Real Estate and Grantor's respective grantees, successors and assigns. Each instrument which conveys, grants, transfers, creates or assigns any interest in all or any portion of the Trail Easement Area shall be deemed to impose as a limitation or restriction upon the entire or such portion of the Trail Easement Area, the burden of the Trail Easement and rights granted herein and the obligations associated therewith (whether or not the instrument of conveyance expressly imposes such limitation or restriction).

4. Maintenance. Grantee shall maintain the Trail Easement Area in good operating condition and repair at its sole expense.

5. Condition of the Trail Easement Area. Except as expressly set forth herein, it is understood and agreed that Grantor is not making and has not at any time made any representations or warranties of any kind or character, express or implied, with respect to the Real Estate or the Trail Easement Area. Grantor assumes no obligation to make any improvements to, or to provide any security for, the Trail Easement Area, or to ensure that the Trail Easement Area complies with applicable zoning ordinances or other applicable laws and regulations.

6. Risk of Loss. Grantee agrees that all of Grantee's personal property of every kind or description which may at any time be on the Trail Easement Area shall be on the Trail Easement Area at Grantee's sole risk or at the risk of those claiming through or under Grantee, and in no event shall Grantor be liable for the same, except as a result of the gross negligence or intentional misconduct of Grantor or its officers, members, managers, agents, employees, and contractors.

7. Representations and Warranties. Grantor represents and warrants it has the right to grant and convey the Trail Easement and all necessary organizational consents and requirements to execute this instrument have been obtained and satisfied.

8. Address and Notice. All communications directed to the parties shall be sent to the following address:

If to Grantor: Stanley G. Brading
Krevolin Horst
One Atlantic Center
1201 Peachtree Street, NW
Suite 3250
Atlanta, GA 30309
sbrading@khlawfirm.com
sbrading@searstone.com

If to Grantee: City of Westfield
Attn: Director of Public Works
2728 E. 171st Street
Westfield, IN 47074

Either party may change its address by giving written notice to the other party at the address above (or to which the above has been validly changed pursuant to this Section 8). All notices shall be sent via U.S. Mail, hand delivery or by email, and shall be deemed given three (3) business days after mailing for U.S. Mail, upon hand delivery (if hand delivered) or upon email confirmation from the recipient (if emailed).

9. No Partnership. Nothing in this Agreement shall be construed to create a partnership or joint venture between Grantor and Grantee or any other relationship other than as grantor and grantee, nor shall Grantee in any manner act or indicate to any third party that it is acting as agent of the Grantor.

10. Invalidity. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

11. Time of Performance. Time is of the essence of and with respect to each and every term and provision of this Agreement.

12. Entire Agreement. This Agreement, including the Exhibits attached hereto, embodies the entire agreement between the parties hereto with relation to the transaction contemplated hereby, and there have been and are no covenants, agreements, representations, warranties or restrictions between the parties hereto with regard thereto other than those specifically set forth herein.

13. Modifications. Any modification of this Agreement shall be binding only if evidenced in a writing signed by each party hereto and recorded in the office of the Recorder of Hamilton County, Indiana.

14. Governing Law. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of Indiana.

This instrument was prepared by Matthew S. Skelton, Church Church Hittle + Antrim, LLP, Two North Ninth Street, Noblesville, Indiana 46060.

Exhibit A

“Real Estate” Legal Description

Inst. #2011035420

Part of the Northwest Quarter of Section 8, Township 18 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Southwest corner of said Northwest quarter, thence North 89 degrees 42 minutes 30 seconds East (assumed bearing) along the South line of said Northwest Quarter 766.50 feet to the Southwest corner of Sander's Subdivision (Plat Book 2, page 181, Office of the Recorder); thence North 00 degrees 00 minutes 00 seconds East parallel with the west line of said Northwest Quarter; also being along the West line of said Sander's Subdivision 1043.30 feet (measured - 1050.0 feet recorded) to the POINT OF BEGINNING of the herein described parcel, said point of beginning also being the Northwest corner of said Sander's Subdivision; thence continuing North 00 degrees 00 minutes 00 seconds East parallel with the West line of said Northwest Quarter 275.44 feet to the centerline of the Central Indiana Railroad, said point also being the Southwest corner of Watson's Subdivision (Plat Book 2, page 80-81, Office of the Recorder); thence South 89 degrees 57 minutes 54 seconds East along said centerline of the Central Indiana Railroad, also a portion being along the South line of said Watson's Subdivision 1358.55 feet to the point of curvature of a tangent curve whose radius point bears North 00 degrees 02 minutes 06 seconds East 171,887.30 feet from the point of curvature; thence Easterly along said curve and also along said centerline 140.96 feet to a point that is 350.7 feet West, by a parallel line, from the East line of said Northwest Quarter; thence South 00 degrees 07 minutes 39 seconds East parallel with the East line of said Northwest Quarter 303.54 feet; thence North 89 degrees 57 minutes 54 seconds West 1000.99 feet; thence North 86 degrees 45 minutes 00 seconds West 325.72 feet to the Northeast corner of said Sander's Subdivision; thence continuing North 86 degrees 45 minutes 00 seconds West along the North line of said Sander's Subdivision 174.28 feet to the point of beginning.

Exhibit B

“Trail Easement Area”

The legal description of and an exhibit depicting the Trail Easement Area is included on the following page of this Exhibit B.



Land Surveyors • Civil Design
Construction Layout

494 Gradle Drive Carmel, Indiana 46032
Phone: 317.844.3333 infocarmel@v3co.com
a V3 Company

EXHIBIT & DESCRIPTION

PT NW 1/4 OF S6-T18N-R4E



DRAWING PREPARED BY: HMS

DRAWING SCALE: 1" = 160'

DRAWING DATE: 12/2/2019

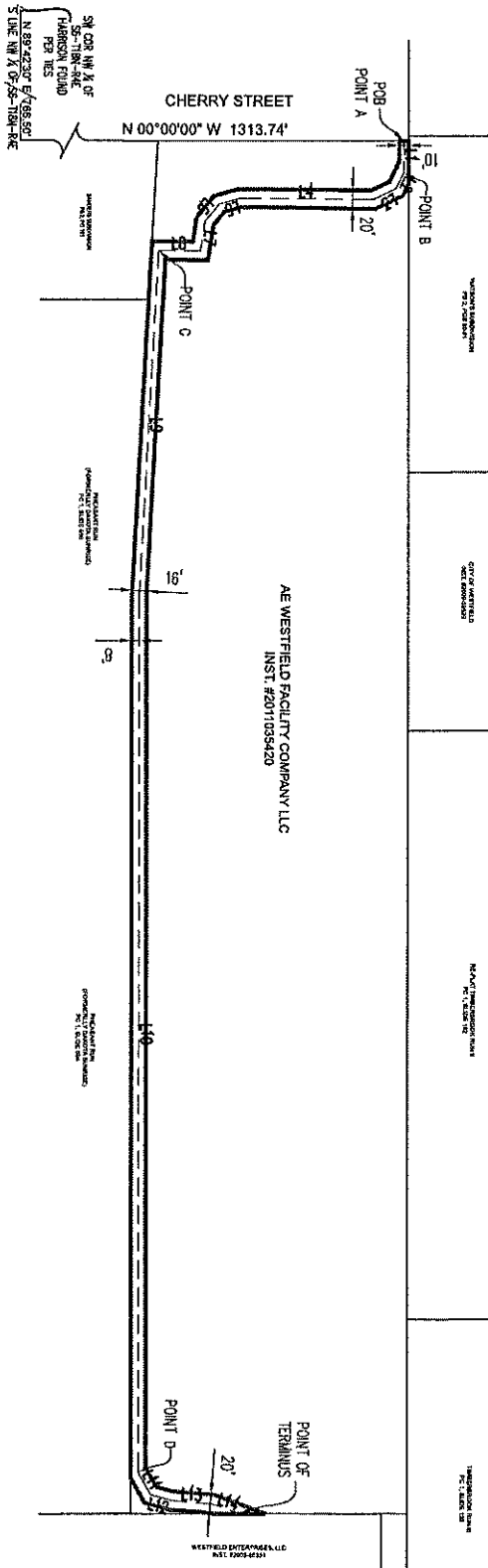
PROJECT #: 19443

PROPERTY ADDRESS:

334 S. CHERRY STREET
WESTFIELD, IN 46074

DRAWING PREPARED FOR:

AMERICAN EAGLE SANDERS GLEN, LLC
3819 HAWK CREST ROAD
ANN ARBOR, MI 48103



CENTERLINE EASEMENT DESCRIPTION: PART OF INST. #2008051112
A PART OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 18 NORTH,
RANGE 4 EAST OF THE SECOND PRINCIPAL MERIDIAN, WASHINGTON
TOWNSHIP, HAMILTON COUNTY, INDIANA, THE CENTERLINE OF WHICH IS MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER;
THENCE NORTH 89 DEGREES 42 MINUTES 30 SECONDS EAST (BEARING FROM
INSTRUMENT NUMBER 2011035420 AS RECORDED IN THE OFFICE OF THE
RECORDER OF HAMILTON COUNTY, INDIANA) ALONG THE SOUTH LINE OF SAID
QUARTER 766.50 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00
SECONDS WEST 1313.74 FEET TO A 10-FOOT WIDE EASEMENT, THE
CENTERLINE OF WHICH BEGINS AT A POINT MARKED 'A' AND THE POINT OF
BEGINNING OF THE CENTERLINE; THENCE SOUTH 89 DEGREES 58 MINUTES
04 SECONDS EAST 25.00 FEET TO A POINT MARKED 'B' AND BEGINS THE
20-FOOT WIDE EASEMENT; THENCE SOUTH 63 DEGREES 52 MINUTES 10
SECONDS EAST 30.64 FEET; THENCE SOUTH 25 DEGREES 54 MINUTES 28
SECONDS EAST 27.64 FEET; THENCE SOUTH 00 DEGREES 37 MINUTES 57
SECONDS WEST 146.60 FEET; THENCE SOUTH 16 DEGREES 16 MINUTES 25
SECONDS EAST 23.55 FEET; THENCE SOUTH 50 DEGREES 08 MINUTES 52
SECONDS EAST 24.53 FEET; THENCE SOUTH 81 DEGREES 05 MINUTES 08
SECONDS EAST 33.29 FEET; THENCE SOUTH 00 DEGREES 59 MINUTES 50
SECONDS WEST 45.83 FEET TO A POINT MARKED 'C' AND BEGINS THE
16-FOOT WIDE EASEMENT; THENCE SOUTH 86 DEGREES 45 MINUTES 00
SECONDS EAST, SAID CENTERLINE BEING 8-FOOT OFFSET NORTH AND
PARALLEL TO THE SOUTH LINE OF THE GRANTOR'S REAL ESTATE, A
DISTANCE OF 379.55 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 54
SECONDS EAST BEING 8-FOOT OFFSET NORTH AND PARALLEL TO THE
SOUTH LINE OF THE GRANTOR'S REAL ESTATE, A DISTANCE OF 955.50 FEET
TO A POINT MARKED 'D' AND BEGINS THE 20-FOOT WIDE EASEMENT;
THENCE NORTH 60 DEGREES 25 MINUTES 18 SECONDS EAST 28.11 FEET;
THENCE NORTH 15 DEGREES 13 MINUTES 12 SECONDS EAST 24.23 FEET;
THENCE NORTH 04 DEGREES 33 MINUTES 16 SECONDS EAST 44.94 FEET;
THENCE NORTH 19 DEGREES 37 MINUTES 15 SECONDS EAST 31.63 FEET TO
A POINT ON THE GRANTOR'S EAST LINE AND THE POINT OF TERMINUS OF
THE OVERALL CENTERLINE.

LINE TABLE

LINE	BEARING	DISTANCE	
A L1	S 89°58'04" E	35.21'	B
B L2	S 63°52'10" E	19.27'	
L3	S 25°54'28" E	27.64'	
L4	S 00°37'57" W	146.60'	
L5	S 16°16'25" E	23.55'	
L6	S 50°08'52" E	24.53'	
L7	S 81°05'08" E	33.29'	
L8	S 00°59'50" W	45.83'	C
C L9	S 86°45'00" E	379.55'	
L10	S 89°57'54" E	955.50'	D
D L11	N 60°25'18" E	28.11'	
L12	N 15°13'12" E	24.23'	
L13	N 04°33'16" E	44.94'	
L14	N 19°37'15" E	31.63'	

GRAPHIC SCALE



1 inch = 160 Feet

