



CITY OF WESTFIELD, IN
Board of Public Works Meeting Agenda_12_14_2016

Wednesday, December 14, 2016 at 01:00 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Wednesday, December 14, 2016 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:
November 30, 2016 Meeting Minutes
Documents: [11/30/16 Minutes](#)

Bid Approval

Construction Standards & Specifications Changes

Change Orders

Contracts/Leases

Action Item #2:
Contract between City of Westfield & Shrewsberry & Associates re: Small Culvert Replacement on Kinsey Avenue
Documents: [Unexecuted LPA Contract - Kinsey Culvert](#)

Action Item #3:
Construction Agreement - Myers Construction - Event Center Tenant Improvement, Suites G & H
Documents: [Myers Construction Agreement](#)

Agreements and/or Memorandum of Understanding (MOU)

Action Item #4:

Conflict of Interest - Michael Blech

Documents: [Conflict of Interest](#)

Consent Agenda

December Bond Information

Documents: [December Bond Information \(updated\)](#)

2017 Meeting Schedule

Documents: [2017 Meeting Schedule](#)

Department Reports

Fire

Documents: [WFD November Report](#)

Police

Documents: [WPD November Report](#)

Public Works

Documents: [PW November Report](#)

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY November 30, 2016

The Westfield Board of Public Works and Safety met on November 30, 2016 at the Westfield Public Works Conference Room. Present were, Mayor Cook, and, Kate Snedeker, Deputy Clerk Treasurer, Kim Strang, and Paul Reis, representing legal counsel.

Mayor Cook called the meeting to order at 1:00 P.M.

AGENDA ITEMS:

Action Item #1: Meeting Minutes Consideration for Approval:

Kate Snedeker made the motion to approve the October 26, 2016 meeting minutes as presented and this was seconded by Mayor Cook. Vote: Yes-2; No-0. Motion carried.

BID APPROVAL:

None

CONSTRUCTION STANDARDS & SPECIFICATIONS CHANGES:

None

CHANGE ORDERS

None

CONTRACTS/LEASES:

Action Item #2: Contract Between State of Indiana/INDOT & City of Westfield

Phil Sundling presented stating this agreement would commit the City to a 10% match on new road construction on Westfield Blvd. (Popular and Jersey St intersection south to 169th Street). The project is not to exceed \$4,500,000.00.

Kate Snedeker made the motion to approve the contract. Mayor Cook seconded. Vote: 2; No-0. Motion carried.

Action Item#3: Sleepy Hollow Drainage Improvement

Phil Sundling presented stating this contract would update the existing drainage and swale systems for this neighborhood.

Mayor Cook made the motion to approve the contract. Kate Snedeker seconded. Vote 2; No-0. Motion carried.

MISCELLANEOUS:

Action Item #4: Stormwater User Fee Credits

Jeremy Lollar presented stating this would allow for Private Elementary and Secondary Education institutions to be eligible to earn a maximum 50% credit towards reducing their stormwater user fee.

Kate Snedeker made the motion to approve the Stormwater User Fee Credits. Mayor Cook seconded. Vote: Yes-2; No-0. Motion carried.

Action Item #5: Approval for Conditional Offer of Employment of Taylor McCorkle for Position of Police Officer

Joel Rush presented detailing the conditions of offer.

Mayor Cook made the motion to approve the offer. Kate Snedeker seconded. Vote: Yes- 2; No-0. Motion carried.

AGREEMENTS AND/OR MEMORANDUM OF UNDERSTANDING (MOU):

Action Item #6: Conflict of Interest Disclosure Statement for Michael Blech

This item was tabled.

Action Item #7: Dedication of Public ROW

Jeremy Lollar stated that this would allow Sommerville Drive (privately owned by Centennial HOA) to be made a public ROW. The City would accept the dedication with the Instrument of Dedication being recorded in the Recorder's Office of Hamilton County.

Mayor Cook made the motion to accept the ROW dedication. Kate Snedeker seconded. Vote Yes- 2; No-0. Motion carried.

Action Item #8: MREC EH Harmony Agreement

Jeremy Lollar presented explaining the original construction drawings for Harmony Sec. 4 included the passing blisters required by the Westfield UDO. Since then the owner has not been able to purchase the land required to build the passing blisters. Owner agrees to pay the City \$54,000 for when the land does become available for the City to build these.

Mayor Cook made the motion to approve the agreement. Kate Snedeker seconded. Vote Yes-2; No-0. Motion carried.

CONSENT AGENDA:

November Bond Information

Kate Snedeker made the motion to approve the Consent Agenda. Mayor Cook seconded.
Vote: Yes-2; No-0. Motion carried.

DEPARTMENT REPORTS:

- **Fire** – Chief Reed
- **Police-** Chief Rush
- **Public Works-** Jeremy Lollar

With no further business Mayor Cook made the motion to adjourn. Kate Snedeker seconded. The meeting was adjourned at 1:35 P.M.

Deputy Clerk-Treasurer

Board of Public Works and Safety



**City of Westfield Fire Department
Board of Public Works & Safety Report
November 1st – November 30th, 2016**

**Contact: Fire Chief
Marcus Reed
or Nikki Hartman
804-3304**

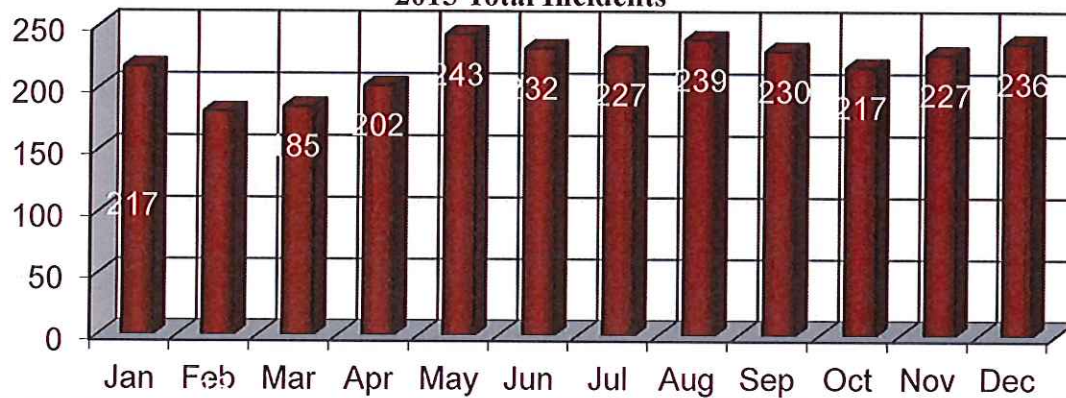


Westfield Fire Department 2015 Incident Statistics By Fire / Medical Groups

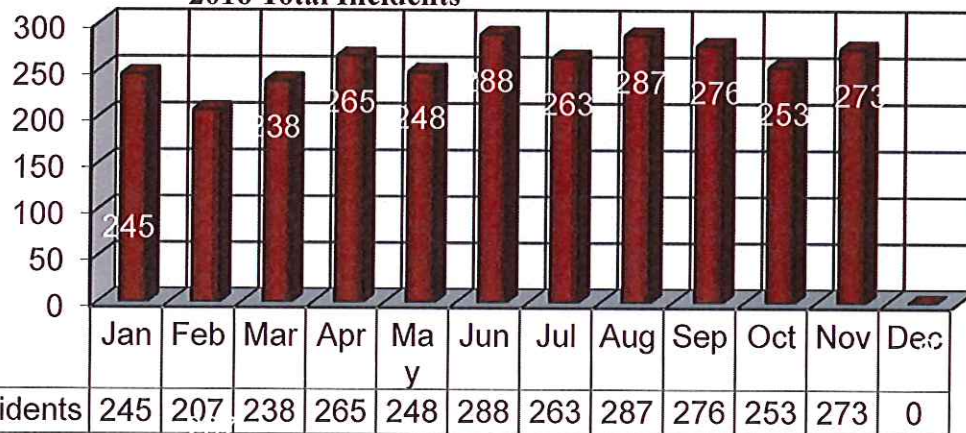


	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
Total WFD Fire Incidents	84	83	91	115	94	129	109	119	101	97	106		1128	39.7%
Total WFD Medical Incidents	161	124	147	150	154	159	154	168	175	156	167		1715	60.3%
Total WWFD Incidents	245	207	238	265	248	288	263	287	276	253	273	0	2843	100%

Westfield Fire Department
2015 Total Incidents

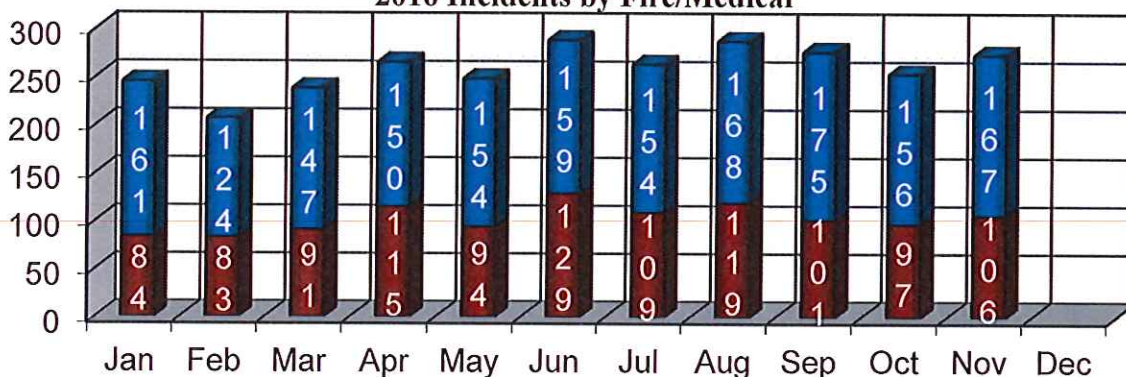


Westfield Fire Department
2016 Total Incidents



■ Total WWFD Incidents	245	207	238	265	248	288	263	287	276	253	273	0
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Westfield Fire Department
2016 Incidents by Fire/Medical



■ Total WFD Fire Incidents	■ Total WFD Medical Incidents
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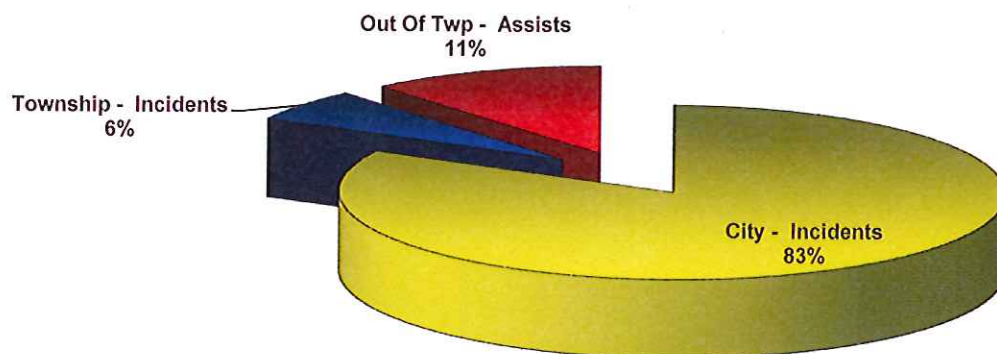


Westfield Fire Department 2016 Fire/Medical Incidents By Governmental Area



2015 Incidents	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Totals	%
City - Incidents	204	177	212	216	213	229	209	236	217	210	224		2347	82.6%
Township - Incidents	7	7	5	14	12	29	17	16	16	20	28		171	6.0%
Out Of Twp - Assists	34	23	22	33	23	30	37	35	43	23	21		324	11.4%

Westfield Fire Department 2016 Incidents by Governmental Areas



■ City - Incidents
 ■ Township - Incidents
 ■ Out Of Twp - Assists



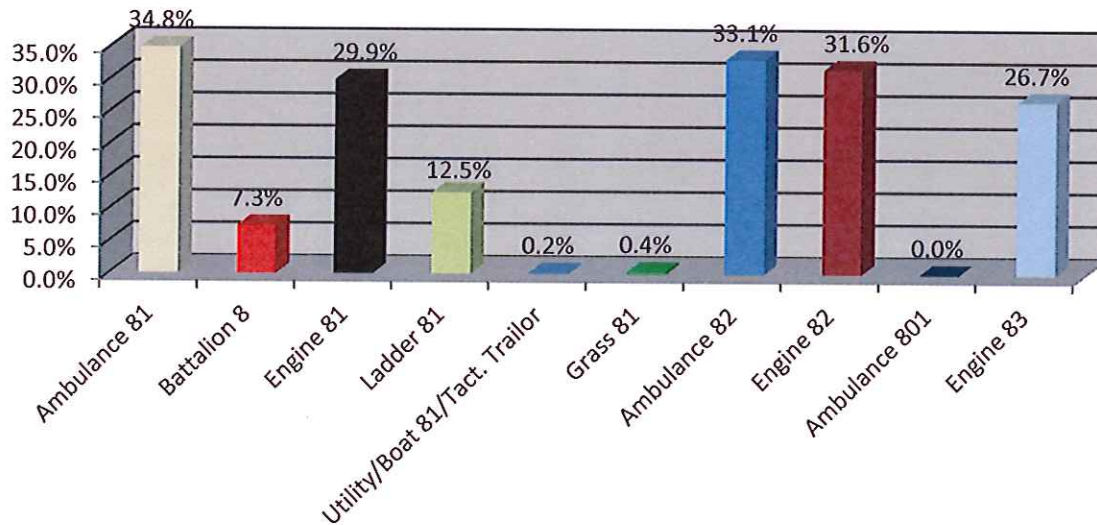
Westfield Fire Department 2016 Total Apparatus Responses By Unit & Station

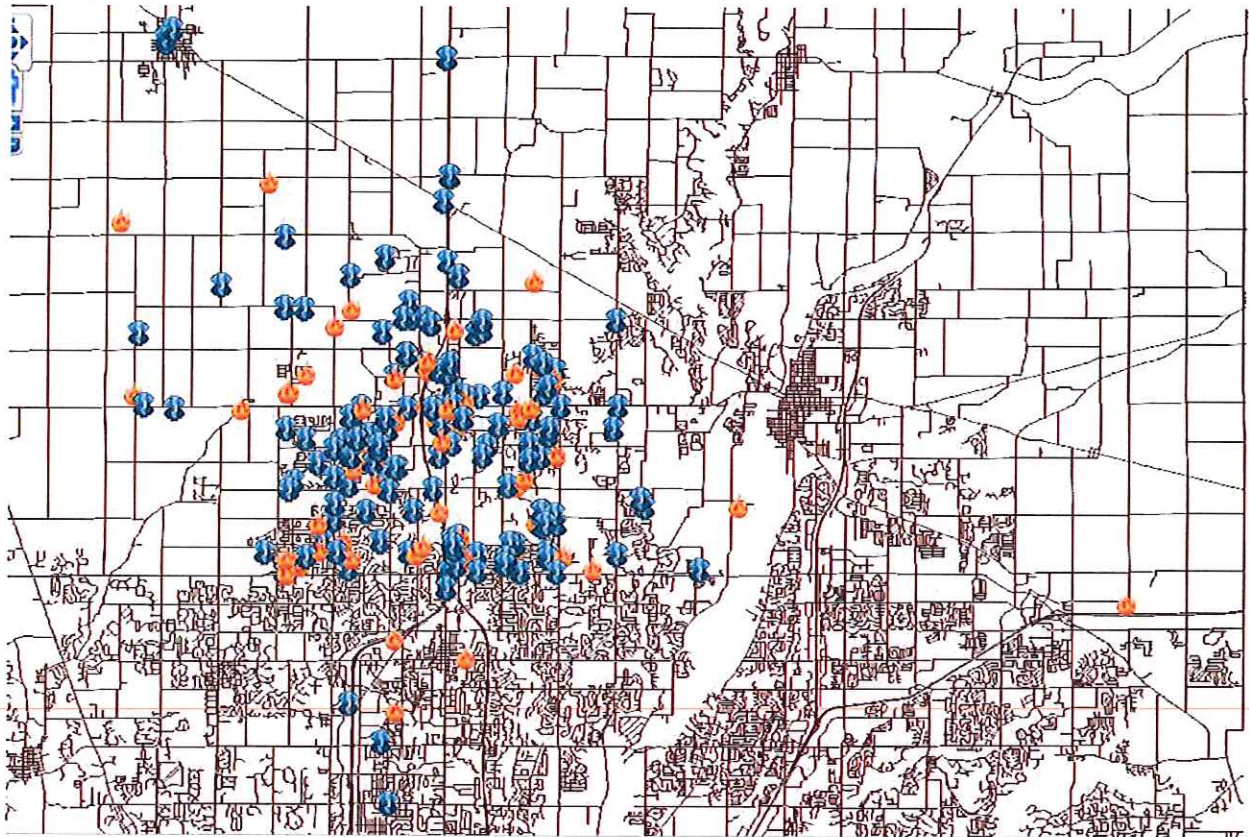


<u>Station 81 Responses</u>														Totals	%
Ambulance 81	87	59	80	90	95	109	81	94	108	91	96			990	34.8%
Battalion 8	15	25	14	13	16	27	18	21	18	22	19			208	7.3%
Engine 81	63	58	55	80	85	96	73	83	85	83	90			851	29.9%
Ladder 81	20	33	32	36	36	40	28	41	32	30	28			356	12.5%
Utility/Boat 81/Tact. Trailer	0	-	-	1	1	1	1	-	-	1	-			5	0.2%
Grass 81	0	1	-	1	1	1	-	1	-	5	1			11	0.4%
EMS 80	0	-	-	-	-	-	1	-	-	1	-			2	0.1%

<u>Station 82 Responses</u>														Totals	%
Ambulance 82	82	84	91	75	76	83	97	91	80	86	97			942	33.1%
Engine 82	73	76	81	81	75	86	90	93	86	75	82			898	31.6%
Ambulance 801	0	-	-	-	-	-	1	-	-	-	-			1	0.0%
<u>Station 83 Responses</u>														Totals	%
Engine 83	61	57	60	74	60	84	71	74	64	76	79			760	26.7%

Westfield Fire Department 2016 Total Apparatus Responses





FIRE AND MEDICAL RUNS FOR THE MONTH OF NOVEMBER, 2016

Westfield Fire Department

Kristen Custom Report

Alarm Date Between {11/01/2016} And {11/30/2016}

Incident Type	Count	Pct of Incidents	Total Est Loss	Pct of Losses
	1	0.36%	\$0	0.00%
	1	0.36%	\$0	0.00%
1 Fire				
100 Fire, Other	1	0.36%	\$2,000	1.31%
111 Building fire	3	1.09%	\$150,300	98.68%
142 Brush or brush-and-grass mixture fire	1	0.36%	\$0	0.00%
150 Outside rubbish fire, Other	1	0.36%	\$0	0.00%
151 Outside rubbish, trash or waste fire	1	0.36%	\$0	0.00%
	7	2.56%	\$152,300	100.00%
2 Overpressure Rupture, Explosion, Overheat(no fire)				
251 Excessive heat, scorch burns with no	1	0.36%	\$0	0.00%
	1	0.36%	\$0	0.00%
3 Rescue & Emergency Medical Service Incident				
300 Rescue, EMS incident, other	1	0.36%	\$0	0.00%
320 Emergency medical service, other	14	5.12%	\$0	0.00%
321 EMS call, excluding vehicle accident with	143	52.38%	\$0	0.00%
322 Motor vehicle accident with injuries	8	2.93%	\$0	0.00%
323 Motor vehicle/pedestrian accident (MV Ped)	1	0.36%	\$0	0.00%
324 Motor Vehicle Accident with no injuries	3	1.09%	\$0	0.00%
352 Extrication of victim(s) from vehicle	3	1.09%	\$0	0.00%
	173	63.37%	\$0	0.00%
4 Hazardous Condition (No Fire)				
412 Gas leak (natural gas or LPG)	2	0.73%	\$0	0.00%
424 Carbon monoxide incident	1	0.36%	\$0	0.00%
440 Electrical wiring/equipment problem, Other	1	0.36%	\$0	0.00%
444 Power line down	1	0.36%	\$0	0.00%
445 Arcing, shorted electrical equipment	1	0.36%	\$0	0.00%
481 Attempt to burn	1	0.36%	\$0	0.00%
	7	2.56%	\$0	0.00%
5 Service Call				
500 Service Call, other	1	0.36%	\$0	0.00%
510 Person in distress, Other	3	1.09%	\$0	0.00%

Westfield Fire Department

Kristen Custom Report

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LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of _____, 20____ ("Effective Date") by and between City of Westfield, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and Shrewsbury & Associates ("the CONSULTANT"), [an individual residing in the State of Indiana] [a corporation/limited liability company organized under the laws of the State of Indiana].

Des. No.: 1600640

Project Description: Small Culvert Replacement on Kinsey Ave.

RECITALS

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

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

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

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

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

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

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

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

SECTION III TERM. The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be end of 2021. A schedule for completion of the Services and deliverables is set forth in Appendix "C" which is herein attached to and made an integral part of this Contract.

SECTION IV COMPENSATION. The LPA shall pay the CONSULTANT for the Services performed under this Contract as set forth in Appendix "D" which is herein attached to and made an integral part of this Contract. The maximum amount payable under this Contract shall not exceed **\$ 56,213.**

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

SECTION VI GENERAL PROVISIONS

1. **Access to Records.** The CONSULTANT and any SUB-CONSULTANTS shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Contract, and shall make such materials available at their respective offices at all reasonable times during the period of this Contract and for five (5) years from the date of final payment under the terms of this Contract, for inspection or audit by the LPA, INDOT and/or the Federal Highway Administration (“FHWA”) or its authorized representative, and copies thereof shall be furnished free of charge, if requested by the LPA, INDOT, and/or FHWA. The CONSULTANT agrees that, upon request by any agency participating in federally-assisted programs with whom the CONSULTANT has contracted or seeks to contract, the CONSULTANT may release or make available to the agency any working papers from an audit performed by the LPA, INDOT and/or FHWA of the CONSULTANT and its SUB-CONSULTANTS in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2. **Assignment; Successors.**
 - A. The CONSULTANT binds its successors and assignees to all the terms and conditions of this Contract. The CONSULTANT shall not assign or subcontract the whole or any part of this Contract without the LPA’s prior written consent, except that the CONSULTANT may assign its right to receive payments to such third parties as the CONSULTANT may desire without the prior written consent of the LPA, provided that the CONSULTANT gives written notice (including evidence of such assignment) to the LPA thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

 - B. Any substitution of SUB-CONSULTANTS must first be approved and receive written authorization from the LPA. Any substitution or termination of a Disadvantaged Business Enterprise (“DBE”) SUB-CONSULTANT must first be approved and receive written authorization from the LPA and INDOT’s Economic Opportunity Division Director.

3. **Audit.** The CONSULTANT acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with 48 CFR part 31 and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Contract.

4. **Authority to Bind Consultant.** The CONSULTANT warrants that it has the necessary authority to enter into this Contract. The signatory for the CONSULTANT represents that he/she has been duly authorized to execute this Contract on behalf of the CONSULTANT and has obtained all necessary or applicable approval to make this Contract fully binding upon the CONSULTANT when his/her signature is affixed hereto.

5. **Certification for Federal-Aid Contracts Lobbying Activities.**
 - A. The CONSULTANT certifies, by signing and submitting this Contract, to the best of its knowledge and belief after diligent inquiry, and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT, the CONSULTANT has complied with Section 1352, Title 31, U.S. Code, and specifically, that:
 - i. No federal appropriated funds have been paid, or will be paid, by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contracts, the making of any federal grant, the making of any federal loan, the

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

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

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

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

7. **Compliance with Laws.**

- A. The CONSULTANT shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. If the CONSULTANT violates such rules, laws, regulations and ordinances, the CONSULTANT shall assume full responsibility for such violations and shall bear any and all costs attributable to the original performance of any correction of such acts. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Contract shall be reviewed by the LPA and the CONSULTANT to determine whether formal modifications are required to the provisions of this Contract.

- B. The CONSULTANT represents to the LPA that, to the best of the CONSULTANT'S knowledge and belief after diligent inquiry and other than as disclosed in writing to the LPA prior to or contemporaneously with the execution and delivery of this Contract by the CONSULTANT:

- i. *State of Indiana Actions.* The CONSULTANT has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending and agrees that it will immediately notify the LPA of any such actions. During the term of such actions, CONSULTANT agrees that the LPA may delay, withhold, or deny work under any supplement or amendment, change order or other contractual device issued pursuant to this Contract.
- ii. *Professional Licensing Standards.* The CONSULTANT, its employees and SUBCONSULTANTS have complied with and shall continue to comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the CONSULTANT pursuant to this Contract.

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

9. Confidentiality of LPA Information.

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

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

11. DBE Requirements.

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

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

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

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

12. Non-Discrimination.

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

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

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

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

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

13. Disputes.

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

14. Drug-Free Workplace Certification.

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

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

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

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

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

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

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

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

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

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

I. Professional Liability Insurance

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

II. Commercial General Liability Insurance

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

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

III. Automobile Liability

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

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

IV. Watercraft Liability (When Applicable)

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

V. Aircraft Liability (When Applicable)

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

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

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

Notices to the LPA shall be sent to:

Gary Pence, Project Manager
City of Westfield Public Works
2706 E. 171st Street
Westfield, Indiana 46074

Notices to the CONSULTANT shall be sent to:

Blake Wilson - Principal
Shrewsbury & Associates
7321 Shadeland Station, Suite 160
Indianapolis, Indiana 46256

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

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

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

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

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

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

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

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

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

34. Termination for Convenience.

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

35. **Termination for Default.**

- A. With the provision of twenty (20) days written notice to the CONSULTANT, the LPA may terminate this Contract in whole or in part if
 - (i) the CONSULTANT fails to:
 - 1. Correct or cure any breach of this Contract within such time, provided that if such cure is not reasonably achievable in such time, the CONSULTANT shall have up to ninety (90) days from such notice to effect such cure if the CONSULTANT promptly commences and diligently pursues such cure as soon as practicable;
 - 2. Deliver the supplies or perform the Services within the time specified in this Contract or any amendment or extension;
 - 3. Make progress so as to endanger performance of this Contract; or
 - 4. Perform any of the other provisions of this Contract to be performed by the CONSULTANT; or
 - (ii) if any representation or warranty of the CONSULTANT is untrue or inaccurate in any material respect at the time made or deemed to be made.
- B. If the LPA terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the LPA considers appropriate, supplies or services similar to those terminated, and the CONSULTANT will be liable to the LPA for any excess costs for those supplies or services. However, the CONSULTANT shall continue the work not terminated.
- C. The LPA shall pay the contract price for completed supplies delivered and Services accepted. The CONSULTANT and the LPA shall agree on the amount of payment for manufactured materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause (see Section 14). The LPA may withhold from the agreed upon price for Services any sum the LPA determine necessary to protect the LPA against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the LPA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. **Default by the LPA.** If the CONSULTANT believes the LPA is in default of this Contract, it shall provide written notice immediately to the LPA describing such default. If the LPA fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses, provided that if such cure is not reasonably achievable in such time, the LPA shall have up to one hundred twenty (120) days from such notice to effect such cure if the LPA promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the LPA.

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

[Remainder of Page Intentionally Left Blank]

Non-Collusion.

The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

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

CONSULTANT**LOCAL PUBLIC AGENCY**

 Signature

 Signature

 (Print or type name and title)

 (Print or type name and title)

Attest:

 Signature

 (Print or type name and title)

 Signature

 Signature

 (Print or type name and title)

 (Print or type name and title)

APPENDIX "A"

SERVICES TO BE FURNISHED BY CONSULTANT:

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

The scope of work is described below.

The CONSULTANT shall be responsible for performing the following activities:

Task 1 Culvert Replacement on Kinsey Avenue - Des. No. 1600640

1.) Field Survey and Property Line Determination

- A. The CONSULTANT shall provide the field survey required for preparation of design plans in conformance with the requirements of the "Survey Manual, Location Survey, Indiana State Highway Commission," a copy of which is on file with the Indiana Department of Transportation (INDOT), and same is incorporated herein by reference and made a part hereof.

The limits of the field survey shall be an approximate 150' strip 250' east and 250' west from the culvert crossing. Additional areas to be surveyed include the stream crossing cross sections for a distance of 200' upstream and downstream of the culvert crossing.

2.) Environmental

- A. The CONSULTANT shall carry out environmental analyses and develop the appropriate level of Categorical Exclusion for the project in accordance with INDOT environmental procedures as determined by the anticipated project impacts and the Categorical Exclusion level thresholds per the Environmental Screening/CE-1 Form included in the Indiana Categorical Exclusion Manual dated March 2009. A Level 2 Categorical Exclusion is anticipated for this project. The environmental services required to develop this project shall be in accordance with the "Procedural Manual for Preparing Environmental Documents," dated 2008 and the "INDOT LPA Process Guidance Document for Local Federal-Aid Projects dated January 2009 and revisions thereto. A copy of this document is on file with INDOT and is incorporated by reference and is made a part hereof.
- B. The CONSULTANT shall provide necessary specialized studies required to complete the environmental document. This shall include Wetland Delineation; Historic Properties Report, archaeological investigations, Section 106 documentation; a Red Flag Summary, an Initial Site Assessments relative to hazardous material as required. The environmental services required to develop this project shall be in accordance with the "Procedural Manual for Preparing Environmental Documents," dated 2008 and the "INDOT LPA Process Guidance Document for Local Federal-Aid Projects dated January 2009 and revisions thereto. A copy of this document is on file with INDOT and is incorporated by reference and is made a part hereof.
 - 1. Based upon the scope of work, this project appears to fall under Category B-9 of the *Programmatic Agreement (PA) among the FHWA, the INDOT, the Advisory Council on Historic Preservation (ACHP), and the Indiana State Historic Preservation Officer (Indiana SHPO) regarding the implementation of the Federal Aid Highway Program in the State of Indiana*. Shrewsbury will consult with the INDOT Cultural Resources Staff to verify the details of this project in relation to the guidelines of the PA.
 - 2. An Archaeological Records Check and an Archaeology Phase Ia Report will be prepared. If the archaeological investigation determines that no National Register of Historic Places (NRHP) eligible or listed archaeological resources are present within the project area, then the

project may be reviewed as a minor project. If the archaeological investigation locates NRHP eligible or listed archaeological resources, then the project must complete full Section 106 review. Accidental Discoveries, LLC will conduct the Archaeological Records Check and prepare the Phase Ia Report.

3. The Archeological investigation will be conducted in accordance and compliance with the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716), the current version of the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology (IDNR, DHPA) *Guidebook: Indiana Historic Sites and Structures Inventory - Archaeological Sites*, recent amendments to the Indiana Historic Preservation Act (IC 14-21-1), and INDOT *Cultural Resources Manual*. Investigations and recommendations will be completed or directly supervised by a Qualified Professional meeting the standards set forth in 36 CFR 61 or the National Historic Preservation Act and 312-IAC-21 of the Indiana Administrative Code.
- C. The CONSULTANT shall prepare a Wetland Delineation Report including Qualitative Habitat Evaluation Index for streams to determine the presence of wetlands and other aquatic resources that are regulated by USACE and/or IDEM. The Wetland Delineation Report will include location of wetlands or waterways on the topographic survey and coordination with the Design Engineers regarding avoidance alternatives for the proposed project.
 - D. The CONSULTANT shall prepare and submit the appropriate permit applications for the project including Section 401 Water Quality Certification to the Indiana Department of Environmental Management (IDEM) and the Section 404 Water Quality Permit to the United States Army Corps of Engineers (USACE). CONSULTANT will develop and evaluate potential avoidance alternatives, determine whether any alternatives are feasible and prudent, and analyze impacts from identified avoidance alternatives, as required for individual evaluations. Impacts greater than 0.1 acre are not anticipated as part of this project, and mitigation is therefore not anticipated to be necessary. If mitigation becomes necessary, additional or supplemental services will be required to complete the Section 401 Water Quality Certification and Section 404 Permitting process. If the CONSULTANT is required to provide an environmental service not listed above, the work to provide such additional service shall be considered a change in the scope of work.
 - E. The CE documentation includes gathering and documenting information applicable to the scope of the project and the resulting impacts to the natural and man-made environment. The draft CE Document will be submitted to the City of Westfield for initial review and comment and then to the INDOT Greenfield District for review, approval, and signature. The signature would serve as the final approval of the document, as the project is not expected to exceed the guidelines for required public involvement of the *INDOT Public Involvement Manual*.
 - F. Environmental Services Exclusions:
 1. Services which would be subject to a contract addendum include: Waters and/or Wetlands Mitigation; Any documentation regarding a Section 4(f) or Section 6(f) use; Cemetery Development Plan; Investigations of an Above Ground Historical Feature, ex. Historic Property Report; Drafting of a Memorandum of Agreement; Consulting Party Coordination and/or Meeting/s; Archaeological Phase 1b, 1c, Phase II, or Phase III Investigations or any tasks associated with the discovery of human remains; Coordination and/or documentation regarding a "Likely to Adversely Effect" an endangered or threatened species; Detailed assessment of a sole source aquifer; Coordination and/or documentation regarding karst investigations; Noise Analysis; Coordination and/or documentation regarding a "significant impact" to Prime Farmland; Coordination and/or documentation Floodplain Impacts Category 3, 4, or 5; Hot Spot Analysis; Mobile Source Air Toxics Analysis; Phase I Environmental Site Assessment; Phase II Subsurface Investigations; Public Involvement; Public Hearing; CE Exceeding Level 2

3.) Road Design

- A. The CONSULTANT shall prepare preliminary plans and preliminary opinions of probable construction 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 (AASHTO) "A Policy on Geometric Design of Highways and Streets," INDOT's Standard Specifications, Road Memoranda, and Design Manuals except as modified by supplemental specifications and special provisions, if any, and shall be completed to the point required to fulfill the requirements for a Design Public Hearing. No further work shall be done on the plans unless and until specifically directed by the LPA.
- a. The CONSULTANT shall perform hydraulic computations of proposed culvert structures utilizing Hy8 software.
 - b. The CONSULTANT shall perform guardrail length of need calculations utilizing current INDOT approved methodology.

Following approval of the preliminary plans, the CONSULTANT shall prepare contract plans, special provisions for the specifications, and final opinion of probable cost for the construction of the project. The opinion of probable cost for construction shall be prepared according to the current practices of INDOT and shall include all items of work required for the complete construction of the work, including all temporary work necessary in connection therewith. The unit prices to be used shall be in accordance with those used by INDOT

- B. The CONSULTANT shall prepare and submit a Rule 5 Erosion Control Plan to procure appropriate Notice of Intent for construction if required.
- C. Upon completion and final approval of the work by the LPA, the CONSULTANT shall deliver to the LPA the following.

For Final Road Plans:

1. One (1) set of final approved tracings of the contract plans drawn to a suitable scale on standard 24" x 36" sheets prepared with the following process: Ink on approved ink medium for all sheets.
2. One (1) set (original) of all survey field notes (Transit and Level Notes), section plats, and subdivision plats for all surveys the CONSULTANT has performed on the project. The field notes are to be in approved Engineer Field Books.
3. One (1) set of Special Provisions for the Specifications
4. One (1) copy of the opinion of probable construction cost
5. One (1) copy of all design computations, indexed, paged, and bound

4.) Right-of-Way Services

- A. Right-of-Way Management and Supervision
1. CONSULTANT shall be responsible for administering, scheduling, and coordinating all activities necessary to certify right-of-way has been acquired and the project is clear for construction letting. This responsibility shall include:
 - a. Meetings, conferences, and communications with property owners, relocatees, attorneys, engineers, appraisers, buyers, LOCAL PUBLIC AGENCY, INDOT, and FHWA

- b. Revisions to construction plans, plats, legal descriptions, and right-of-way stake-outs that may be required

B. Abstracting

- 1. Parcels with a fair market value of \$5,000 or more
 - a. A documented preliminary title search is required covering an interval of time including one valid transfer of fee title beyond a 20-year period from the date of the search.
 - b. Each title search shall be updated, if necessary, and a Guaranty of Title issued in the amount of \$5,000.
- 2. Parcels with a fair market value of \$5,000 or less or Temporary Right-of-Way
 - a. A documented minimal title search by a title company, or
 - b. A verified last-deed-of-record search by SUBCONSULTANT

C. Plats, Legal Descriptions, and Staking

- 1. The CONSULTANT shall prepare metes and bounds legal descriptions and land plats for all acquisitions according to the INDOT Right-of-Way Engineering Manual and all applicable state of Indiana Codes, including, but not limited to, the following as applicable:
 - IC 32-1-2-37
 - IC 32-5-2-2
 - IC 36-2-19 Sections 4, 5, and 6
- 2. The interpretation as to the specific requirements of these laws and regulations will be at the discretion of the LOCAL PUBLIC AGENCY and the CONSULTANT.
 - a. The legal descriptions shall be prepared and certified by an Indiana Registered Surveyor.
 - b. Each plat shall include the following.
 - i) Total area before taking
 - ii) Area of existing right-of-way
 - iii) Area of all residue

D. Right-of-Way Staking

- a. The CONSULTANT shall provide right-of-way stakeouts locating the new right-of-way line. The stakeout shall be made using wooden hubs located at changes in bearing and other points necessary to indicate the location of the right-of-way takings (including permanent and temporary right-of-way).

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

The LPA shall furnish the CONSULTANT with the following:

1. Criteria for design and details for signs, signals, lighting, highway and structures such as grades, curves, sight distances, clearances, design loading, etc.
2. Standard Specifications and standard drawings applicable to the project
3. All written views received by the LPA pertinent to the location and environmental
4. Traffic assignments, Traffic Signal Warrants (New Signal), Traffic Lighting Warrants (New Lighting)
5. Available data from the transportation planning process
6. Utility plans available to LPA covering utility facilities govern the location of signals and underground conduits throughout the affected areas
7. Provide access to enter upon public and private lands as required for the CONSULTANT to perform work under this Contract

APPENDIX "C"

SCHEDULE:

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

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

- A. Field Survey complete within 45 calendar days after receipt of notice to proceed from the LOCAL PUBLIC AGENCY.
- B. Environmental Services
 - 1. Preliminary submittal of the DRAFT Categorical Exclusion document within 180 days of notice to proceed by the LOCAL PUBLIC AGENCY.
 - 2. Revised Categorical Exclusion document within 30 calendar days after receipt of comments from the LOCAL PUBLIC AGENCY on the preliminary submittal of the document.
 - 3. Any necessary revisions within 20 calendar days after receipt of INDOT comments on the document.
 - 4. Furnish copies of the approved Categorical Exclusion document within ten calendar days after receipt of INDOT Concurrence.
 - 5. Submittal of the necessary permit applications to IDEM and USACE will occur within 30 days of the acceptance of Stage II plans or within ten days of final design considerations involving impacts to wetlands and/or "waters of the State."
- C. Roadway Design
 - 1. Stage I Plans for grade review and utility coordination within 90 calendar days after survey is complete.
 - 2. Stage III Plans approximately 120 calendar days before the scheduled Ready For Contracts dates.
 - 3. Final Tracings with Cost Estimates and Special Provisions within 60 calendar days after receipt from the LOCAL PUBLIC AGENCY of approval of the Stage III Plans.

APPENDIX "D"**Compensation****A. Amount of Payment**

1. The CONSULTANT shall be compensated a total amount of **\$56,213** for the following services to be performed under this Agreement on a lump-sum basis.

Culvert Replacement Kinsey Avenue - Des. No. 1600640

a)	Field Survey and Property Line Determination	\$10,013.00
b)	Environmental Services	\$15,600.00
c)	Permits	
1.	401	\$2,000.00
2.	404	\$2,000.00
d)	Road Design and Plan Development	
1.	Hydraulic Analysis & Culvert Design	\$8,000.00
2.	Guardrail Design & Road Plans	\$6,000.00
e)	Right of Way Services (Assume 3 Parcels)	
1.	Abstracting (\$400 each)	\$1,200.00
2.	Abstracting Updates (\$200 each)	\$600.00
3.	Plats and Legal Descriptions (\$2500 each)	\$7,500.00
4.	Right of Way Plan Sheets (\$300 each)	\$900.00
5.	Right of Way Plan LRS submittal (\$100 each)	\$300.0
6.	Right of Way Staking (\$700 each)	\$2,100.00

Task 1 Total **\$56,213.00**

2. The CONSULTANT shall not be paid for any service performed by the LOCAL PUBLIC AGENCY or not required to develop this project.

B. Method of Payment

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice voucher shall be submitted to the LOCAL PUBLIC AGENCY.

The invoice voucher shall represent the value, to the LOCAL PUBLIC AGENCY, of the partially completed work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of each pay item in Section A.1 of this Appendix, percentage completed and prior payments. From the partial payment thus computed, there shall be deducted all previous partial fee payments made to the CONSULTANT.

2. In the event of a substantial change in the scope, character or complexity of the work on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with item 6, Changes In Work, of the General Provisions set out in this Agreement.

Westfield Board of Public Works & Safety

Meeting 2017 Schedule

Monthly Meeting Date	Deadline to Submit Agenda items
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January 25, 2017	January 18, 2017
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February 22, 2017	February 15, 2017
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March 22, 2017	March 15, 2017
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April 26, 2017	April 19, 2017
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May 24, 2017	May 17, 2017
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June 28, 2017	June 21, 2017
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July 26, 2017	July 19, 2017
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August 23, 2017	August 16, 2017
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September 27, 2017	September 20, 2017
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October 25, 2017	October 18, 2017
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*November 15, 2017	November 8, 2017
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*December 13, 2017	December 6, 2017
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Meetings are held at the Westfield Public Works Large Conference Room, 2706 E. 171st Street Westfield, IN 46074. They are the 4th Wednesday of each month and being at 1:00 pm.

*Special dates due to the holiday schedule.

CONTRACT FOR GOODS AND SERVICES

This Contract for Goods and Services is made and entered into as of the 18th day of November, 2016, by and between City of Westfield ("Contracting Party") and Myers Construction Management, Inc. ("Vendor").

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

A. **Basic Terms**. This Contract is on the following basic terms and conditions:

- (a) Goods and/or services provided by Vendor: Myers Construction Management, Inc. (See Exhibit B attached hereto and made a part hereof).
- (b) Location: Event Center 19000 Grand Park Blvd., Westfield, IN, 46074 (the "City Property")
- (c) Date by which the Services shall be completed: February 5, 2017 (the "Completion Date")
- (d) Purchase Price: One Hundred Eight-Six Thousand, Eight Hundred Thirty-One and 00/100, \$186,831.00, (see Bid dated 11.10.16 - Exhibit B) Payments per approved invoiced amount and payable within forty-five (45) days following Contracting Party's receipt of an invoice at the address specified below.
- (e) Addresses:

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

City of Westfield
Attn: John Rogers
2728 East 171st Street
Westfield, Indiana 46074

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

If to Vendor:

Myers Construction Management, Inc.
13518 Myrtle Lane
Fishers, IN 46038

B. **Contract Terms and Conditions**. This Contract for Goods and Services is subject to the Contract Terms and Conditions set forth in paragraphs 1-25 attached hereto and made a part hereof, the Project Changes, Attachment 1, and Exhibit A and Exhibit B 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.

C. **Amendment**. No alteration, addition, deletion or modification of the Contract shall be valid or binding unless made in accordance with the provisions of paragraph 23 hereof.

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

CONTRACT TERMS AND CONDITIONS

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

2. **PERFORMANCE**: Vendor hereby agrees to provide all products, goods and services necessary to perform the requirements of this 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, 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 require.

3. **WARRANTIES**: Vendor expressly warrants that all goods and services covered by this Contract will conform to the specifications, drawings, samples, instructions, directions or descriptions furnished to or by Contracting Party, and will be performed in a timely manner, in a good and workmanlike manner and free from defect. In addition, Vendor acknowledges that Vendor knows of Contracting Party's intended use and expressly warrants that all goods and services covered by this Contract have been selected, provided or performed by Vendor based upon Contracting Party's stated use, and will be fit and sufficient for the particular purposes intended by Contracting Party. All goods and services product and workmanship warranty periods start at Substantial Completion.

4. **TIME AND PERFORMANCE**: The work and services under this Contract shall be completed no later than the Completion Date. 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 submission by Vendor. Time limits established by this detailed schedule shall be consistent with the Completion Date. Time is of the essence of this Contract. If the Vendor fails to comply with Section A; Basic Terms, Paragraph c, [Completion Date], the Contractor shall be subject to delay damages of .5% of the Contract value per day.

5. **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 goods and services under the same material term and conditions. Vendor agrees that it will pass on to Contracting Party any discounts or savings for prompt payments or rebates for quantity purchasing it receives.

6. **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 in the goods purchased hereunder, including the quality or concentration thereof and any other information relating thereto. Prior to and with the delivery of the goods 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 part 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 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.

7. **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.

8. **LIENS:** Vendor shall not cause or permit the filing of any lien. 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, claims, costs and expenses, including attorneys' fees, incurred by Contracting Party in connection with any such lien.

9. **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 warranties; (b) fails to perform services or deliver goods as specified by Contracting Party; (c) fails to make progress so as to endanger timely and proper completion of services or delivery of goods, 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 goods and services which were to be provided by Vendor and Vendor shall be liable to Contracting Party for any excess costs of Contracting Party in performing or obtaining such similar goods and services; and (3) to exercise any other right or remedy available to Contracting Party at law or in equity.

10. **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.

11. **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	\$2,000,000 each accident, \$2,000,000 disease each employee, and \$2,000,000 disease policy limits.
Commercial General Liability (CG0001) , including Personal Injury, Premises Operations, Completed Operations and Products coverages (for a minimum period of two (2) years after substantial completion), including (1) explosion, collapse or underground property damage hazards, and (2) damages or injury arising from defective work, including costs to repair or replace damaged work. (The Commercial General Liability Insurance may be 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).	\$5,000,000 Per Occurrence and \$5,000,000 General Aggregate.

Commercial Automobile Liability, including Owned, Non-Owned and Hired Car coverages.	\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage.
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- (b) The insurance shall be procured from companies licensed to do business in the state in which the City property is located. Except as otherwise expressly set forth herein, coverage shall be on an occurrence basis. All insurance procured or maintained by Vendor 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.
- (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 where the City property is located 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 City of Westfield as an additional insured with respect to all but the Worker's Compensation 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 attorneys' fees) resulting or arising from any act or omission of Vendor, its agents, employees or subcontractors, 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 11, the following additional insurance coverage limits are required for survey, right-of-way services, the design; including site planning, and MEP services: \$2,000,000 per claim professional liability, with retroactive coverage to the earlier of date of execution of Contract and commencement of any work.
- (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 against any payments due Vendor.

12. **SAFETY**: Vendor shall 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 Rules of Conduct, 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 12, 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 abatement procedures recommended by such safety representative or insurer.

13. **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 from Vendor to Contracting Party and its affiliates and subsidiaries from any sums due or to become due from Contracting Party to Vendor.

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 or 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 goods or services covered by this Contract and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

15. **GOVERNMENT COMPLIANCE**: Vendor agrees to comply with all present and future 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.

16. **NO IMPLIED WAIVER**: The failure of either party at any time to require performance by the other party of any provision of this 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 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.

19. **GOVERNING LAW**: This Contract is to be construed in accordance with and governed by the laws of the state where the City property is located.

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 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 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 Contract, together with any attachments, exhibits, or supplements, specifically referenced in this 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 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.

EXECUTED this _____ day of _____, 20_____.

Contracting Party:
City of Westfield
2728 East 171st Street
Westfield, Indiana 46074

Vendor:
Myers Construction Management, Inc.
13518 Myrtle Lane
Fishers, IN 46038

Signature

Signature

John Rogers
Printed Name

Printed Name

Director of Enterprise Development
Title

Title

Date

Date

EXHIBIT A

Rules of Conduct

In an effort to have **COMPLETE CUSTOMER SATISFACTION**, we have prepared the following Rules of Conduct. Your personnel's compliance with these rules will help us collectively acquire **COMPLETE CUSTOMER SATISFACTION**.

- ☐ Conduct yourselves in a professional manner in all areas of the City. Radios or audio equipment, other than communication, are strictly **prohibited**.
- ☐ **No** Graffiti.
- ☐ Be neat, clean and **QUIET** while in or **NEAR** occupied City spaces. Protect hallway and entries with temporary carpet runners.
- ☐ **No** vehicles shall be brought or parked in the buildings, or are to be parked in parking spaces outside allotted for handicapped parking.
- ☐ Proper work attire shall be required at all times.
- ☐ Only authorized personnel shall be permitted in work areas. Identification or uniforms may be required.
- ☐ **Always check in with appropriate City officials prior to beginning work in a new work area.**
- ☐ **Do not use City equipment.**
- ☐ Housekeeping is paramount. Remove all dirt and debris created by your activity. Project to be broom swept and trash removed on a daily basis and as needed by each applicable trade.
- ☐ **Smoking and the use of smokeless tobacco are prohibited on City properties.**
- ☐ Loud and/or foul language is prohibited.
- ☐ Food and drink shall **not** be permitted in carpeted City spaces.
- ☐ Material storage and/or debris shall not be left in unsecured areas.
- ☐ Exits and entrances shall be maintained clear and unobstructed. Securing of the work area is the responsibility of the vendor and shall be locked at night.
- ☐ Thermostats shall not be adjusted unless the City has granted permission.
- ☐ Loading and unloading shall be in permitted area of the work site only.
- ☐ When dealing with citizens, be courteous at all times, keep all negative comments to yourself or discuss them with the City personnel.
- ☐ Special care shall be taken at all times to protect the surroundings of the work area. Dust, fumes and vapors controls shall be employed.
- ☐ **City officials shall be made aware of work that creates noxious odors. Any odiferous work is to be coordinated with the City to allow for proper advanced notification with the affected citizens.**
- ☐ **Any work that will compromise the existing utilities shall be coordinated with the City. Arrangements shall be made with the City if special access is required.**
- ☐ **No use of power actuated tools or hammer drills is permitted at an occupied City building between the hours of 7:00 AM and 5:00 PM, or as directed by City officials.**
- ☐ Only designated freight elevators that are properly protected shall be used by the contractors and vendors.
- ☐ 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.
- ☐ Fall protection shall be worn, observed or employed when working in articulating boom lifts, scissors lifts, ladders, scaffolding and any other activity where workers are exposed to a fall and shall comply 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.**

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

EXHIBIT B

See attached Bid dated 11.10.16



Proposal Form for Tenant Improvements for Suite G & H

Myers Construction Management Inc.
13518 Myrtle Lane
Fishers, Indiana 46038

Attn: John Rogers
City of Westfield
2728 East 171st Street
Westfield, IN 46074

The following is a summary of the Scope-Of-Work and pricing for the completion of the project at the above location. This quote is based on the preliminary layout emailed to us on November 4, 2016.

Budget Scope-Of-Work

General Conditions

- Supervision
- Architectural design fees
- Construction Cleanup
- Dumpsters

Thermal/Moisture Protection:

- Caulking as required

Openings:

- Install three (3) hollow metal frames and prefinished flush white birch wood doors with locksets to receive Best cores (by others)
- Install eleven (11) hollow metal frames and prefinished white birch wood doors with 22x64 window lights and locksets to receive Best cores (by others)
- Install one (1) hollow metal frame with side light and prefinished white birch wood door with 22x64 window light and locksets to receive Best cores (by others)

Finishes:

- Install new 10' tall walls as shown using 3-5/8" 20 ga metal stud framing
- Install 5/8" drywall on all new metal stud walls and existing as needed
- Install Armstrong Cortega #2767 second look II ceiling tile with Prelude 15/16" white grid
- Polish the concrete floors in the Reception, copier, storage and hallways
- Install carpet (\$30/SY installed allowance) in Tenant, Conference, and Board rooms
- Supply and install standard 4" vinyl wall base throughout
- Prime and finish paint drywall walls and hollow metal frames

Fire Sprinkler

- Add new and relocate existing sprinkler heads as necessary to accommodate remodel of existing area
- Existing head is figured to be re-used and new heads to match existing as close as possible

HVAC

- Install three (3) fan powered boxes with electric heat
- Install two (2) terminal boxes
- Install ductwork distribution system
- Install grilles and diffusers
- Install temperature controls
- Provide air balance
- Provide engineered drawings for state

Electrical

- Install fifty-seven (57) receptacles
- Install fourteen (14) data stubs
- Install thirty-eight (38) T8 lay in lights
- Install one (1) can light above copier and coffee pot
- Install six (6) ceiling motion sensors
- Install ten (10) wall motion sensors
- Stamped drawings for state submittal

Total price = \$186,831.00

Exclusions:

- Performance & Payment bond
- Bid Bond
- Building permit fee (assume it will be waived)
- Tap, user, assessment, road cut, or road impact fees
- Removal or abatement of hazardous material
- Unforeseen conditions

All the above pricing was based on the preliminary layout emailed to us on November 4, 2016. We thank you again for the opportunity to bid this project. Please feel free to contact us if you have any questions.

Sincerely,



Chad D Arnold
Project Coordinator

Attachment 1

No Project Specific Changes at this time.

From: Michael D. Blech mblech@westfield.in.gov
Subject: uniform conflict of interest disclosure statement
Date: August 25, 2016 at 4:42 PM
To: Diana Peyton dpeyton@westfield.in.gov

MB

Is there anything else you need with this? Thanks Blech

(2/93)

Form 236

UNIFORM CONFLICT OF INTEREST DISCLOSURE STATEMENT

Indiana Code 35-44-1-3

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant who is under the direct or indirect administrative control of the public servant; or receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in I.C. 31-3-4-1) of a public servant who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The foregoing consists only of excerpts from I.C. 35-44-1-3. Care should be taken to review I.C. 35-44-1-3 in its entirety.

1. Name and Address of Public Servant Submitting Statement: Michael Blech
2001 Cheyenne Cir Westfield, IN 46074
2. Title or Position With Governmental Entity: firefighter
3. a. Governmental Entity: City of Westfield
b. County: Hamilton
4. This statement is submitted (check one):
 - a. ☐ as a "single transaction" disclosure statement, as to my financial interest in a specific contract or purchase connected with the governmental entity which I serve, proposed to be made by the governmental entity with or from a particular contractor or vendor; or
 - b. ☒ as an "annual" disclosure statement, as to my financial interest connected with any contracts or purchases of the governmental entity which I serve, which are made on an ongoing basis with or from particular contractors or vendors.
5. Name(s) of Contractor(s) or Vendor(s): Five Point Emergency Lighting
6. Description(s) of Contract(s) or Purchase(s) (Describe the kind of contract involved, and the effective date and term of the contract or purchase if reasonably determinable. Dates required if 4(a) is selected above. If "dependent" is involved, provide dependent's name and relationship):
Sale of upfiring Emergency lights in city vehicles.

7. **Description of My Financial Interest** (Describe in what manner the public servant or "dependent" expects to derive a profit or financial benefit from, or otherwise has a pecuniary interest in, the above contract(s) or purchase(s); if reasonably determinable, state the approximate dollar value of such profit or benefit.):

Will charge labor rate of up to my vehicle for
prob. I am president of company doing work.
I will bid for jobs at City of Westfield.

(Attach extra pages if additional space is needed)

8. **Approval of Appointing Officer or Body** (To be completed if the public servant was appointed by an elected public servant or the board of trustees of a state-supported college or university):

I (We) being the _____ of
(Title of Officer or Name of Governing Body)

_____ and having the power to appoint
(Name of Governmental Entity)

the above named public servant to the public position to which he or she holds, hereby approve the participation to the appointed disclosing public servant in the above described contract(s) or purchase(s) in which said public servant has a conflict of interest as defined in Indiana Code 35-44-1-3; however, this approval does not waive any objection to any conflict prohibited by statute, rule, or regulation and is not to be construed as a consent to any illegal act.

Elected Official

Office

9. **Effective Dates** (Conflict of interest statements must be submitted to the governmental entity prior to final action on the contract or purchase.):

8-25-2016

Date Submitted

8-29-2016

Date of Action on Contract or Purchase

10. **Affirmation of Public Servant:** This disclosure was submitted to the governmental entity and accepted by the governmental entity in a public meeting to the governmental entity prior to final action on the contract or purchase. I affirm, under penalty of perjury, the truth and completeness of the statements made above, and that I am the above named public servant.

Signed: _____

(Signature of Public Servant)

Date: _____

8-25-2016

Within 15 days after final action on the contract or purchase, copies of this statement must be filed with the State Board of Accounts, Indiana Government Center South, 302 West Washington Street, Room E418, Indianapolis, Indiana, 46204-2765 and the Clerk of the Circuit Court of the county in which the governmental entity executed the contract or purchase. A copy of this disclosure will be forwarded to the Indiana State Ethics Commission.

Westfield Police Department

Monthly Performance Measures Report



Board of Public Works & Safety

November 2016

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WESTFIELD POLICE DEPARTMENT

November 2016

Events by Nature: Calls For Service (Non-Self-Initiated)

Abduction/ Kidnapping	0
Abuse/ Abandonment/Neglect	0
Admin- K-9 Detail	0
Admin- Log Information	0
Admin-Public Relations	3
Admin- Special Detail	0
Admin- Test Calls	0
Admin- Tow Release	3
Admin- Warning Correction	0
Alarm- Bank	1
Alarm- Business	54
Alarm- Residence	69
Animal- Complaints	34
Assault- Battery	7
Assault- Sexual	1
Assist- Fire Incident	4
Assist- Medical Incident	21
Assist- Other Agencies	23
Bomb Found/ Suspicious Pkg	1
Burglary/ Home Invasion	4
Damage/ Vandalism/ Mischief	9
Deceased- All Others	0
Disturbance	34
Drugs- Complaint	8
Fight	0
Fireworks Complaint	0
Fraud- Criminal Deception	1
Fraud- Forgery	20
Fraud- Prescription	0
Harassment/ Stalking/ Threat	23
Indecency / Lewdness	1
Intoxicated- Possible DUI	8
Loud Party	2
Mental/ Emotional	16
Miscellaneous	5
Noise Complaint	11
Nuisance	1
Person - Missing	5

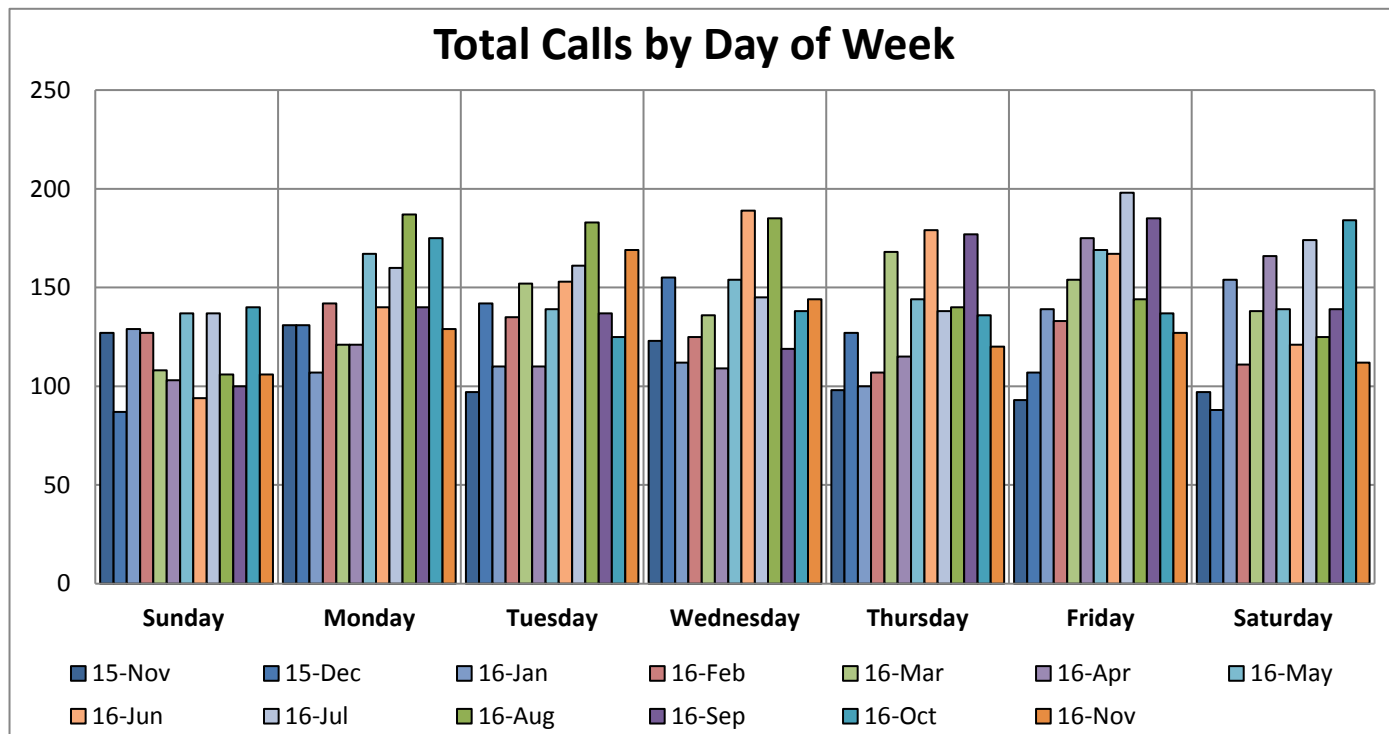
Person- Runaway	2
Robbery-Carjacking	0
Service Call- 9-1-1 Hang Up	23
Service Call- Damage to Property	5
Service Call- Found Property	5
Service Call- Keep the Peace	29
Service Call- Lost Property	4
Service Call- Notification	2
Service Call- Security Check	2
Service Call- Vehicle Lockout	61
Service Call- Vin Check	13
Service Call- Welfare Check	32
Suicidal- Attempted	0
Suicidal- Persons Threatening	2
Supplemental- Case Follow Up	73
Suspicious- Noises	3
Suspicious- Open Door/ Window	4
Suspicious- Person/Prowler	28
Suspicious- Solicitor	1
Suspicious- Vehicle	37
Theft- From a Vehicle	1
Theft- Of a Vehicle	4
Theft- Others	33
Theft- Shoplifting	7
Trespassing/ Unwanted Person	4
Trfc Complaint - Abandoned Veh	4
Trfc Complaint- Driving Issues	23
Trfc Complaint- Parking Issues	18
Trfc Hazard- Debris in Road	12
Trfc Hazard- Disabled Vehicle	20
Trfc Hazard- Trfc Signal Out	0
Trnsprtn Acdnt- MV Hit & Run	12
Trnsprtn Acdnt- MV Prop Damg	43
Trnsprtn Acdnt- MV Prsnl Inj	8
Verbal Argument	0
Warrant Service	1
Weapons- Person Carrying	2
Weapons- Shots Fired	1

WESTFIELD POLICE DEPARTMENT

November 2016

Total # of Calls by Day of Week (non-self initiated)

DAY	15-Nov	15-Dec	16-Jan	16-Feb	16-Mar	16-Apr	16-May	16-Jun	16-Jul	16-Aug	16-Sep	16-Oct	16-Nov
Sunday	127	87	129	127	108	103	137	94	137	106	100	140	106
Monday	131	131	107	142	121	121	167	140	160	187	140	175	129
Tuesday	97	142	110	135	152	110	139	153	161	183	137	125	169
Wednesday	123	155	112	125	136	109	154	189	145	185	119	138	144
Thursday	98	127	100	107	168	115	144	179	138	140	177	136	120
Friday	93	107	139	133	154	175	169	167	198	144	185	137	127
Saturday	97	88	154	111	138	166	139	121	174	125	139	184	112
TOTAL	766	837	851	880	977	899	1049	1043	1113	1070	997	1035	907



WESTFIELD POLICE DEPARTMENT

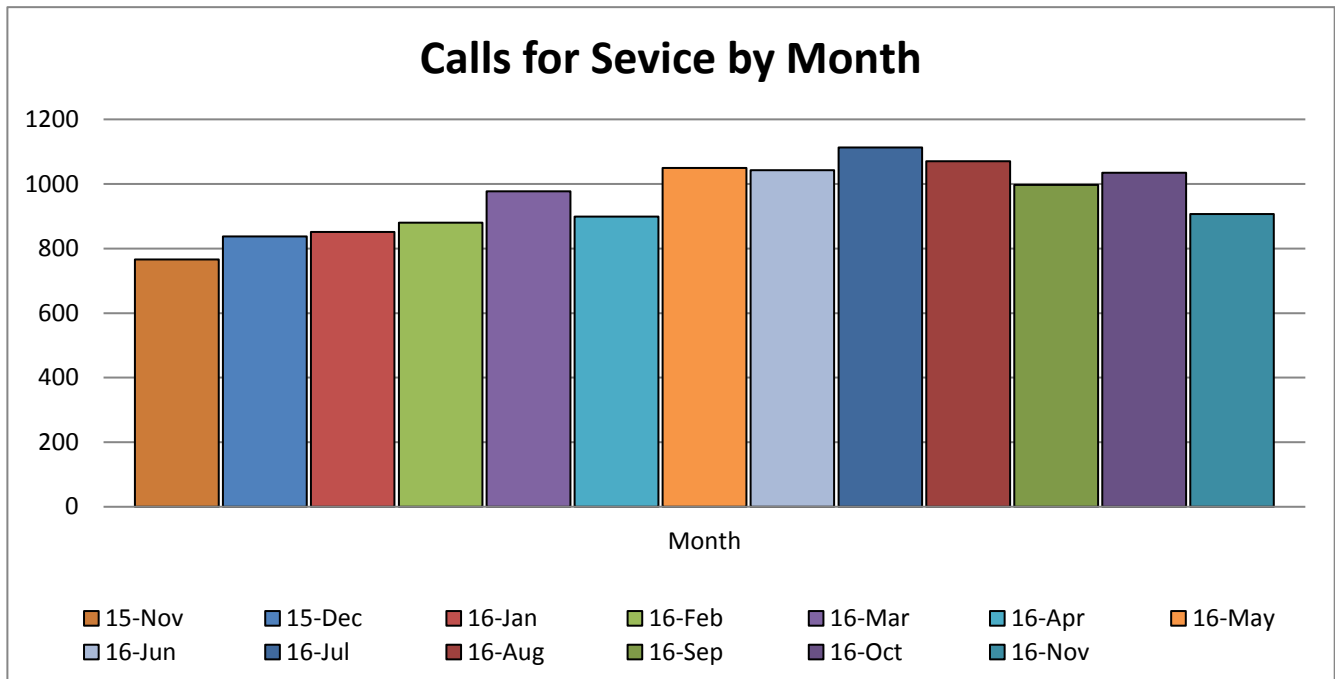
November 2016

Total # of Calls by Hour of Day (non-self initiated)

HOURL	15-Nov	15-Dec	16-Jan	16-Feb	16-Mar	16-Apr	16-May	16-Jun	16-Jul	16-Aug	16-Sep	16-Oct	16-Nov
0	30	25	22	20	26	19	12	26	39	24	23	21	18
1	10	17	14	10	11	11	10	16	26	21	20	15	17
2	9	12	17	9	12	7	12	12	17	11	14	19	9
3	9	15	15	10	10	8	9	15	12	11	13	12	12
4	13	12	10	9	10	9	12	8	14	12	7	7	13
5	6	13	13	8	8	12	9	13	22	11	15	10	8
6	8	18	19	15	13	5	13	17	12	14	28	21	14
7	25	28	30	20	31	34	24	29	32	32	41	32	35
8	25	32	44	39	46	38	40	33	50	51	39	37	35
9	31	41	43	34	47	49	44	47	38	50	37	52	45
10	35	49	50	49	45	49	66	59	54	53	40	53	53
11	41	49	49	49	59	45	69	68	56	70	47	51	44
12	48	57	33	46	46	42	64	70	67	51	61	59	59
13	56	37	48	52	62	64	65	82	60	57	63	63	49
14	44	48	58	69	57	47	70	64	58	51	61	71	60
15	62	56	68	71	69	72	63	63	72	83	47	70	78
16	43	56	51	60	60	56	73	55	71	68	59	54	59
17	50	53	47	69	85	72	73	60	63	71	79	84	52
18	60	48	54	60	81	54	68	61	56	68	76	64	61
19	41	50	38	51	49	47	58	60	64	59	60	68	51
20	29	32	38	39	48	52	48	45	61	58	54	48	50
21	38	38	32	32	36	41	57	52	62	61	50	45	34
22	23	33	29	34	40	37	38	52	65	38	33	46	31
23	30	18	29	25	26	29	52	36	42	45	30	33	20
TOTAL	766	837	851	880	977	899	1049	1043	1113	1070	997	1035	907

WESTFIELD POLICE DEPARTMENT

November 2016



WESTFIELD POLICE DEPARTMENT

November 2016

UCR OFFENSES

OFFENSE	15-Nov	15-Dec	16-Jan	16-Feb	16-Mar	16-Apr	16-May	16-Jun	16-Jul	16-Aug	16-Sep	16-Sep	16-Nov
Arson	0	0	0	0	0	0	0	0	0	0	0	0	0
Homicide	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	0	0	0	0	0	0	1	0	0	0	0	1	0
Robbery	0	0	0	0	0	0	0	0	0	0	0	0	1
Battery - Aggravated	1	5	1	4	3	0	2	0	0	2	0	6	1
Battery - Simple	14	19	14	10	15	11	11	11	13	23	18	10	22
Burglary	3	2	4	2	1	1	2	2	1	5	3	0	1
Theft	25	29	27	19	30	32	44	37	44	30	25	31	36
Motor Vehicle Theft	2	1	2	0	0	2	1	2	1	1	3	1	1
TOTAL	45	56	48	35	49	46	61	52	59	61	49	49	62

WESTFIELD POLICE DEPARTMENT

November 2016

NON UCR OFFENSES (PART II)

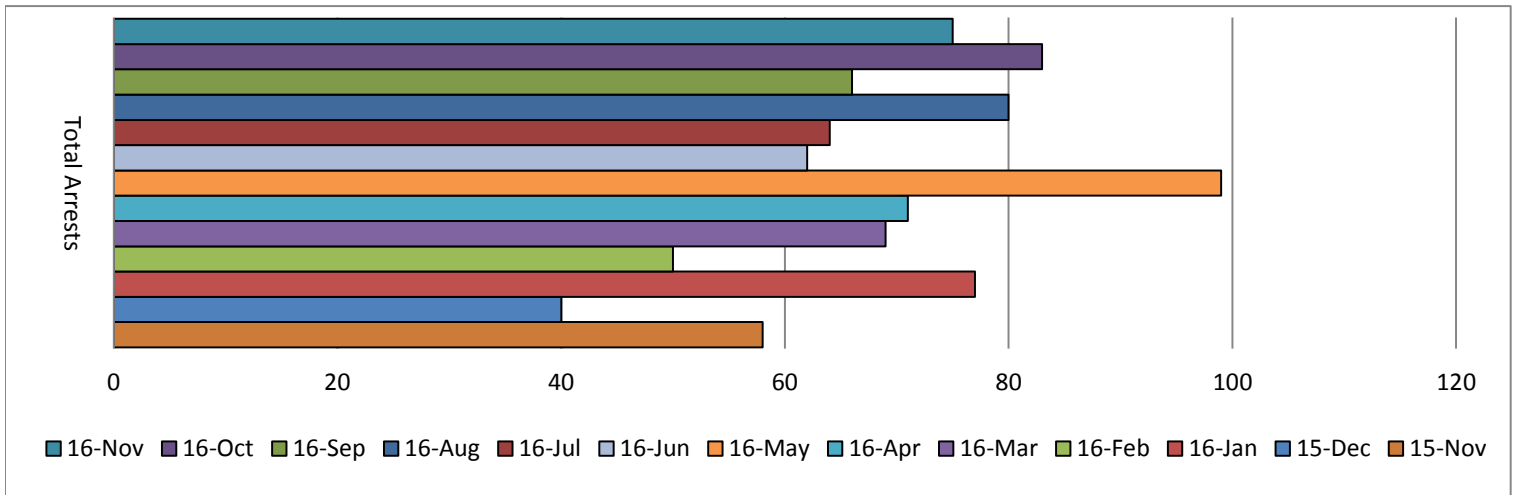
ANIMALS/ INCLUDING DOG BITES	2
ASSIST OTHER AGENCY	7
CHILD ABUSE / NEGLECT REPORTED	17
CHILD CUSTODY DISPUTE	2
CIVIL DISPUTE	8
CRIMINAL MISCHIEF/VANDALISM	9
DAMAGED PROPERTY	5
DEATHS OTHER THAN HOMICIDE/SUICIDE	4
DISORDERLY CONDUCT	5
DISTURBANCE/ARGUMENTS/FIGHTS	12
DRIVING WHILE SUSPENDED	13
DRUG ABUSE VIOLATIONS	0
FIRES / UNDETERMINED	2
FRAUD	14
HARASSMENT	0
IDENTITY THEFT	0
JUVENILE COMPLAINT	3

LEAVING THE SCENE	6
LIQUOR LAW VIOLATIONS	1
MISSING PERSON	3
NOISE COMPLAINT	0
OPERATING WHILE INTOXICATED	12
OPERATING WITH NO LICENSE	6
PROPERTY FOUND	6
PROPERTY LOST	3
RUNAWAY	5
SUICIDE/ATTEMPTS/THREATS OF	2
SUSPICIOUS INCIDENT/PERSON	4
THREATS/INTIMIDATION	0
TRAFFIC VIOLATIONS	1
TRESPASSING	1
WARRANT ARREST	2
WEAPON VIOLATION	2
WELFARE CHECK	7

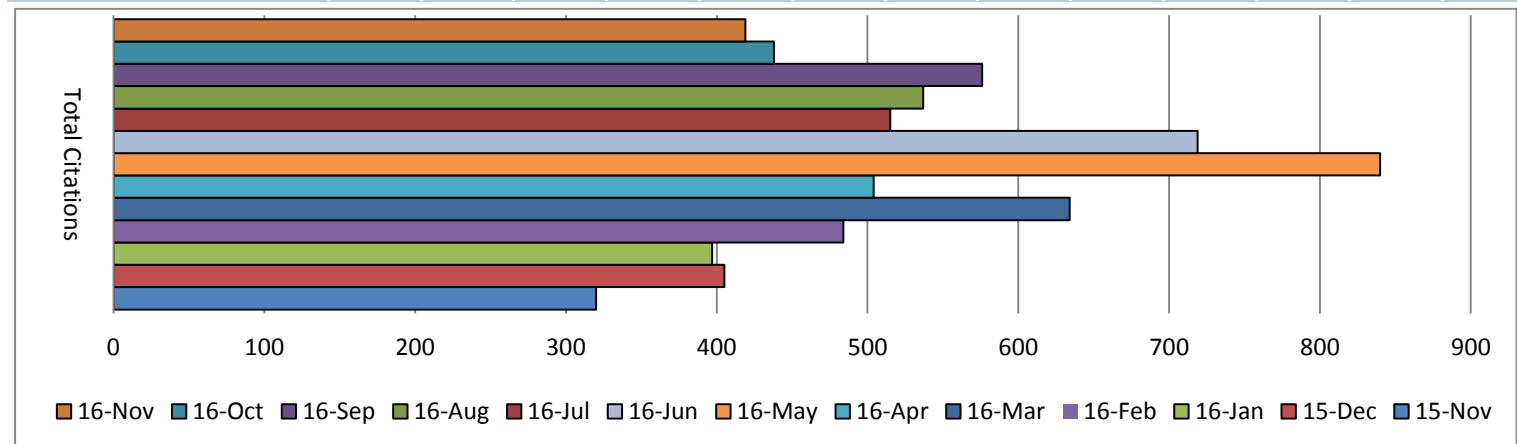
WESTFIELD POLICE DEPARTMENT

November 2016

Arrest Reports Taken	15-Nov	15-Dec	16-Jan	16-Feb	16-Mar	16-Apr	16-May	16-Jun	16-Jul	16-Aug	16-Sep	16-Oct	16-Nov
Alcohol/ Drug Related	18	13	36	21	22	29	50	23	37	32	26	33	32
Felony Charges	8	7	15	14	23	8	27	17	18	17	9	20	27
Misdemeanor Charges	65	52	73	66	81	102	131	86	83	94	74	106	98
Traffic Arrest Charges	33	33	39	40	40	54	56	51	41	51	48	87	52
Total Arrests	58	40	77	50	69	71	99	62	64	80	66	83	75



Traffic	15-Nov	15-Dec	16-Jan	16-Feb	16-Mar	16-Apr	16-May	16-Jun	16-Jul	16-Aug	16-Sep	16-Oct	16-Nov
Total Citations	320	405	397	484	634	504	840	719	515	537	576	438	419
Total Written Warnings	820	927	994	890	1232	1094	1307	1366	1211	1205	1481	1112	932
Total Traffic Accidents	54	52	66	56	46	45	45	60	45	62	65	66	59
<i>Hit and Run</i>	5	3	9	5	4	6	8	8	6	4	4	8	5
<i>Personal Injury</i>	4	14	6	7	7	8	7	9	6	12	10	11	9
<i>*Fatality</i>	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Property Damage</i>	45	35	51	44	35	31	30	43	33	46	51	47	45

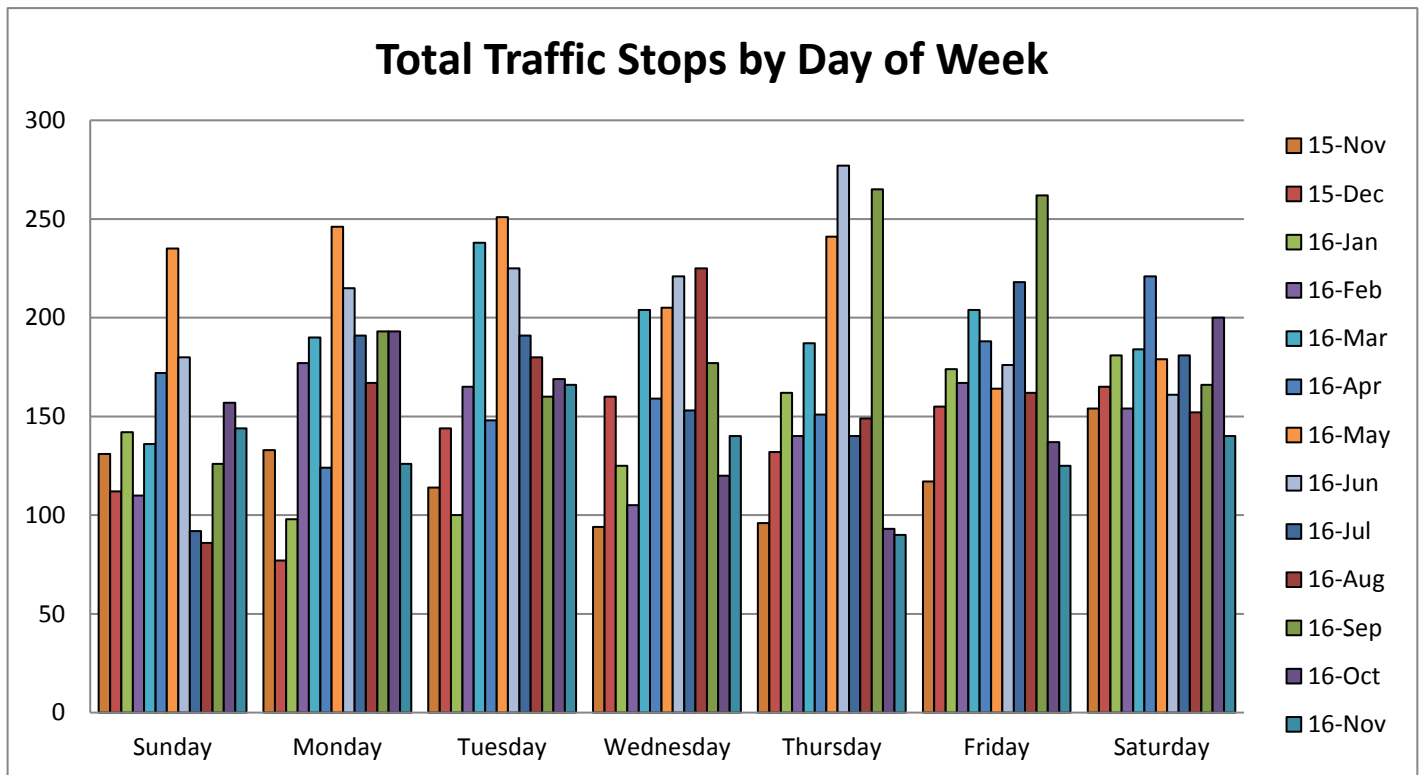


WESTFIELD POLICE DEPARTMENT

November 2016

Traffic Stops: SELF INITIATED by Day of Week

Day:	15-Nov	15-Dec	16-Jan	16-Feb	16-Mar	16-Apr	16-May	16-Jun	16-Jul	16-Aug	16-Sep	16-Oct	16-Nov
Sunday	131	112	142	110	136	172	235	180	92	86	126	157	144
Monday	133	77	98	177	190	124	246	215	191	167	193	193	126
Tuesday	114	144	100	165	238	148	251	225	191	180	160	169	166
Wednesday	94	160	125	105	204	159	205	221	153	225	177	120	140
Thursday	96	132	162	140	187	151	241	277	140	149	265	93	90
Friday	117	155	174	167	204	188	164	176	218	162	262	137	125
Saturday	154	165	181	154	184	221	179	161	181	152	166	200	140
TOTAL	839	945	982	1018	1343	1163	1521	1455	1166	1121	1349	1069	931



WESTFIELD POLICE DEPARTMENT

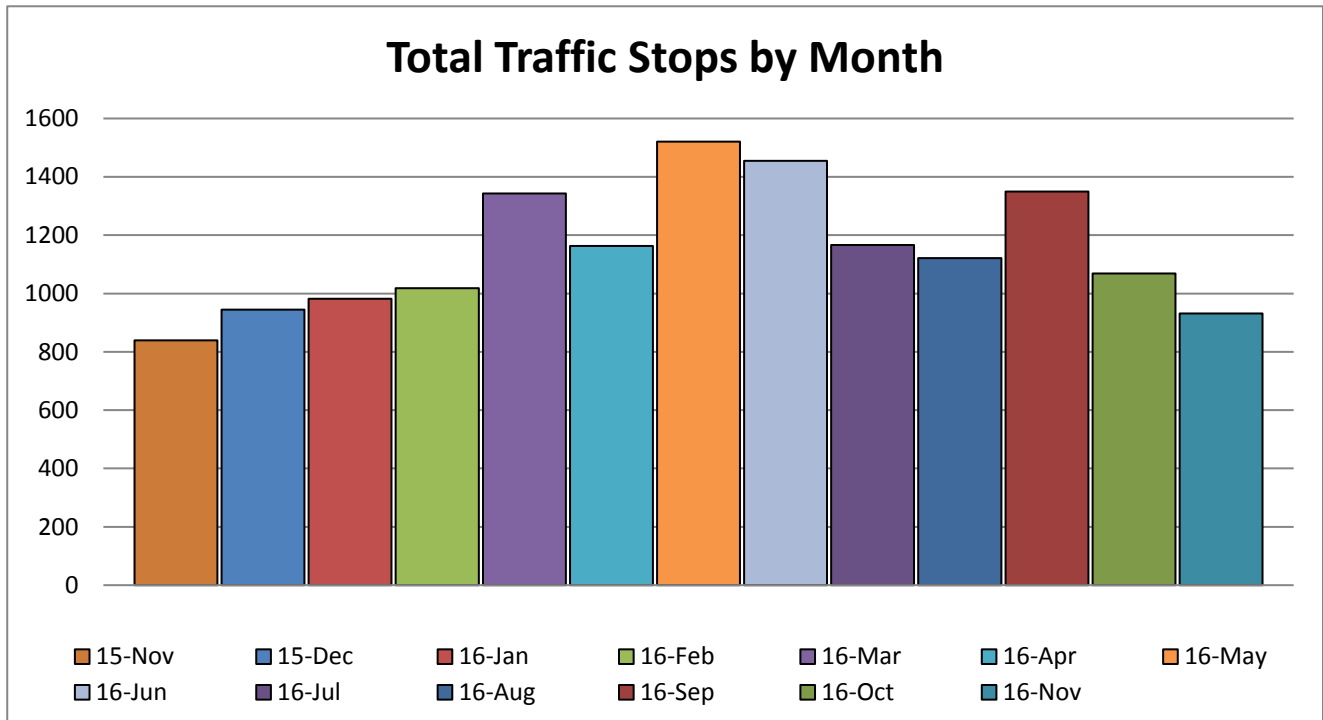
November 2016

Traffic Stops: SELF INITIATED by Hour of Day

Hour:	15-Nov	15-Dec	16-Jan	16-Feb	16-Mar	16-Apr	16-May	16-Jun	16-Jul	16-Aug	16-Sep	16-Oct	16-Nov
0	32	35	39	31	61	37	47	70	61	47	70	57	54
1	16	23	19	22	35	25	40	34	41	38	40	39	49
2	9	9	20	11	15	20	15	19	17	11	21	23	27
3	5	6	11	8	15	12	9	2	6	10	16	19	20
4	0	9	9	11	28	11	20	11	6	8	9	20	11
5	12	9	3	4	9	10	18	22	7	5	17	11	12
6	25	12	22	29	28	22	44	39	47	23	28	22	11
7	58	50	55	57	83	86	103	69	60	77	47	50	48
8	92	75	50	58	93	59	84	90	28	62	80	56	32
9	40	33	33	59	77	70	78	75	76	52	63	48	50
10	64	78	53	78	86	93	120	140	116	97	114	79	68
11	30	50	34	54	57	54	79	82	73	56	56	53	40
12	35	30	27	38	43	33	63	51	39	30	41	31	42
13	44	46	55	57	59	84	96	77	47	68	55	67	43
14	30	55	52	55	81	101	109	71	67	63	72	45	63
15	31	54	46	43	63	54	88	65	60	60	74	44	38
16	39	46	28	38	51	39	67	58	32	26	44	31	16
17	30	42	40	54	53	49	61	55	39	35	48	23	13
18	74	89	118	88	112	86	126	130	96	98	101	61	70
19	59	58	107	63	97	60	102	93	63	54	96	67	58
20	12	15	14	19	18	19	17	6	8	28	49	37	27
21	23	30	25	41	33	45	30	41	29	42	47	50	13
22	42	41	65	55	58	53	55	81	76	71	71	63	58
23	37	50	57	45	88	41	50	74	72	60	90	73	68
TOTAL	839	945	982	1018	1343	1163	1521	1455	1166	1121	1349	1069	931

WESTFIELD POLICE DEPARTMENT

November 2016



**Westfield Police Department
Community Events
November 2016**

11/3 Bridgewater Employee Safety Talk – Chief Rush and Capt. Hollowell

11/3 Tiger Scouts PD Tour and Bicycle Safety – Officer Tribbett

**Westfield Police Department
Monthly Training Summary
November 2016**

11/3 Monthly K-9

11/7-8 Firearms

11/14-15 Indiana School Safety Specialist Academy – Officers Martin and Dougherty

11/16-17 IAPE Property / Evidence management Class for New IAPE Member – CSI Kautzman

11/22 Responding to Veterans and Police Officers in Crisis – Officers Todd and Hopkins



December 14, 2016

Consent Agenda Items:

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:

- Retreat on the Monon – Bond #59BSBHN7938 - \$55,642.00 – Stone Base, HMA Base, Signage, and Street Lights - Section 1
- Retreat on the Monon – Bond #59BSBHN7939 - \$19,977.00 – Storm Infrastructure - Section 1
- Retreat on the Monon – Bond #59BSBHN7941 - \$15,400.00 – Common Area Sidewalks - Section 1
- Retreat on the Monon – Bond #59BSBHN7940 - \$13,398.00 – HMA Surface - Section 1
- OTH Mapleridge – Cash in Lieu of Bond - \$8,946.91 – Streets/Curbs, Stormsewer, Sidewalk
- Circle K – Bond #9229520 - \$180,570.00 – Streets/Curbs, Storm Sewer, Sidewalk, & Erosion Control

Performance Bond Release

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

- AgReliant – Bond #7647507 - \$10,180.39 – Erosion Control
- Villages of Oak Manor, Section 4C – Bond #CMS0291686 - \$22,395.00 – Erosion Control
- Lakes at Grassy Branch, Section 2A – Bond #1145139 - \$22,522.37 – Erosion Control & Sidewalks

Maintenance Bond Acceptance

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

- Villages of Oak Manor, Section 2A – Bond #9234354 - \$6,312.92 – Stone Base, Asphalt Binder, & Asphalt Surface Course Improvements
- AgReliant – Bond #268008161 - \$37,618.45 – Streets/Curbs, Storm Sewer, Sidewalk, Trail, Erosion Control

Public Works

Jeremy Lollar, Director
Angie Smitherman, Administration
Phil Sundling, Project Mgmt.
Adam Essex, Inspections
Travis Stetnish, Streets
Chris McConnell, Parks & Trails

Board of Works

Andy Cook
Randy Graham
Kate Snedeker

Clerk Treasurer

Cindy J. Gossard

Public Works Department

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(317) 804-3190 fax
2706 East 171st Street
Westfield, IN 46074
westfield.in.gov

- Villages of Oak Manor, Section 4C – Bond #BMID112038 - \$2,369.25 – Curbs & Sidewalks
- Villages of Oak Manor, Section 4C – Bond #CMS0324473 - \$2,035.90 – Erosion Control
- Villages of Oak Manor, Section 4C – Bond #9237687 - \$8,315.00 – Asphalt Pavement & Path
- Villages of Oak Manor, Section 4C – Bond #S309457 - \$5,280.70 – Storm Sewer including SSD & Curb underdrains
- Maple Village (Sonoma), Section 10 – Bond #SU14902 - \$2,631.70 – Erosion Control
- Maple Village (Sonoma), Section 10 – Bond #929644370- \$2,626.70 – Concrete Curb & Common Area Sidewalks
- Maple Village (Sonoma), Section 10 – Bond #B1233539 - \$8,374.00 – Stone Base Binder & Surface
- Maple Knoll, Section 8 – Bond #929644377 - \$11,512.70 – Onsite Stone Base, Asphalt Binder & Surface
- Maple Knoll, Section 8 – Bond #BMID098261 - \$3,037.00 – Concrete Curb, Eyebrow & Sidewalk
- Maple Knoll, Section 8 – Bond #SU14900 - \$3,081.80 – Erosion Control
- Maple Knoll, Section 9 – Bond #929644378 - \$7,952.90 – Onsite Stone Base, Asphalt Binder & Surface
- Maple Knoll, Section 9 – Bond #BMID098322 - \$5,688.30 – Concrete Curb & Eyebrows
- Maple Knoll, Section 9 – Bond #SU14901 - \$2,797.40 – Erosion Control
- Lakes at Grassy Branch, 2A – Bond #1147004 - \$24,783.00 – Streets/Curbs, Storm Sewer, Sidewalks & Erosion Control

Maintenance Bond Release

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

NONE

Bond Reduction/Letter of Credit Extension

The Westfield Public Works Department is recommending that the Board of Public Works and Safety accept the following Bond reduction by the requested developer:

NONE



Board of Works

Andy Cook
Randy Graham
Kate Snedeker

Clerk Treasurer

Cindy J. Gossard

Public Works Department

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westfield.in.gov

Memorandum

To: Westfield Board of Public Works & Safety

Date: December 14, 2016

Re: Public Works Project Report

Memo to Board Members

Dear Board Members, I would like to take this opportunity to update you regarding the current status of our Public Works Departments.

Westfield Public Works Executive Summary Progress Report

Street Maintenance

Because we now have the ability to produce hot mix asphalt, we have been maintaining our pothole repair program. Additionally, there have been two snow/ice events since our last meeting.

Park Maintenance

Maintenance staff has been assisting with street maintenance activities.

Notable changes since 11/30/16

1. 2016 Trail Connections

All sections are complete with exception of the Monon/Midland Loop, which is usable but on hold for a utility relocation.

2. Mill Street Extension

The Mill Street project is on-going and the north section and additional parking are open to traffic.

3. Westfield Boulevard Extension (West Access Rd.)

This is a new roadway project, which runs from Westfield Blvd., under US 31 and terminates at a new roundabout on 151st. The bid was awarded to Millennium Contractors. Mass earthwork has begun and will continue throughout the winter.

5. Ditch Road Extension

This project involves the construction of a new roadway that extends Ditch Rd. from SR32 north and culminates with a roundabout connection at the 18100 block of Casey Rd. Construction has begun and will continue through November of 2017.

Other Notable Projects

1. Towne Road from 156th Street to 166th Street

This project is for sight distance improvements, roadway widening and 3 culvert replacements on Towne Road from 156th to 166th Streets. This project is INDOT funded (all phases are 70/30 split). Currently waiting for design contract to be approved by INDOT. Plan to have consultant start survey and design work this spring. Let expected July 2017.

2. Westfield Boulevard Connector (South Poplar Extension)

- Des. No. awarded from INDOT
- Currently waiting on additional funding to be awarded by the State.
- Current plan to go from Park St. to 169th

3. 186th and Springmill RAB

- Approved by MPO
- 2017/2018 construction
- \$2-mil reimbursement from MPO (CN, CE)
- City will fund remaining portion

4. Red Line Mass Transit

- City committing \$146k match for PE and ENV services
- Multiple stops from 146th, Village Park, Downtown Westfield, Grand Park
- Construction in 2020 at the earliest

Public Works Department

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