



CITY OF WESTFIELD, IN
Board of Public Works_Meeting_Agenda_11_28_2018

Wednesday, November 28, 2018 at 01:00 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Wednesday, November 28, 2018 at 01:00 PM

MEETING PLACE: Westfield Public Works- Large Conference Room

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

AGENDA ITEMS

Meeting Minutes Consideration for Approval

Action Item #1:

Approval of October 29, 2018 Minutes

Documents: [October 29, 2018 Minutes](#)

Contracts/Agreements

Action Item #2:

City of Westfield & INDOT; Kinsey Avenue Over Cool Creek Between 181st & 186th Streets

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

Action Item #3:

Design Contract - 151st & Towne Road Roundabout - RQAW

Documents: [151st & Towne RAB Design Contract](#)

Action Item #4:

Birdie's - Road Impact Fee Credit Agreement

Documents: [RIF Credit Agreement - Birdie's](#)

Action Item #5:

Wheeler Road & SR 32 Intersection Improvements PE Services Contract

Documents: [Contract-AF Engineering & COW](#)

Agreements and/or Memorandum of Understanding (MOU)

NONE

Change Orders

NONE

Consent Agenda

Easement Acceptance

Quit Claim Acceptance

Documents: [Grant of Trail Easement](#) | [Midland Trail Quit Claim](#) | [Midland Trl Quit Clm](#)

November Bond Information

Documents: [Bond Information - November](#)

Approval of 2019 Meeting Schedule

Documents: [Meeting Schedule 2019](#)

Department Reports

Fire

Documents: [October Report - WFD](#)

Police

Documents: [WPD - October Report](#)

Public Works

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY October 29, 2018

The Westfield Board of Public Works and Safety met on October 29, 2018 at the Westfield Public Works Conference Room. Present were, Mayor Cook, Randy Graham, Kim Strang, Records Manager and Rodney Retzer, legal counsel.

Randy Graham called the meeting to order at 1:01 PM

AGENDA ITEMS:

Action Item #1: Meeting Minutes Consideration for Approval:

Mayor Cook made the motion to approve the September 26, 2018 meeting minutes as presented. Randy Graham seconded. Vote: Yes-2; No-0. Motion carried.

AGREEMENTS AND/OR Memorandum of Understanding (MOU):

Action Item #2: Westfield Boulevard Connector from Park Street to David Brown Drive

Jeremy Lollar presented explaining the need for the exchange contract is due to a date revision from the original contract. All other items previously agreed to in the original contract are not affected by this supplement.

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

Action Item #3: North Street Reconstruction Preliminary Engineering Services

Jonathan Nail presented asking that Spiars Engineering be awarded the contract for their services for roadway improvements on North Street to East Street westward to the end at the alley. Contracted amount not to exceed \$33,800.

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

Action Item #4: State Road 32 Reconstruction Preliminary Engineering Service

Jonathan Nail presented giving the details of the reconstruction project utilizing federal monies (INDOT) from east of Poplar Street to East Street. Contract shall not exceed \$1,197,205.00. Project completion estimated date is 11/1/2014.

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

Action Item #5: Contract for Goods & Services between City of Westfield & Merrell Brothers, Inc.

Jeremy Lollar presented stating this is requesting that Merrell Brothers, Inc. be allowed to finish the additional work on the Lagoon Project which they initially started. Details of the cost involved were discussed.

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

Action Item #6: Contract for Goods & Services between City of Westfield & Midwest Paving –Midland Trace Trail Project

Michael Pearce presented stating this would fix existing trail from 171st Street to south of Park Street and added new construction from Mill Street to Poplar Street. There is a completion date of December 31st 2018 with a cost of project being \$190,803.40.

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

CHANGE ORDERS

Action Item #7: 161st & Union Roundabout Phase 2 Environmental Assessment

Jonathan Nail presented stating is a Phase II archaeological testing for the 161st and Union Street Roundabout project. This is a requirement with MPO and INDOT.

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

CONSENT AGENDA:

Crew Carwash- Road Impact Fee Payment Agreement

Approval to Promote Two Officers-Eric Grimes/Lieutenant & Josh Harrell/Sergeant

October Bond Information

Chief Rush reported on the promotion of the two officers and gave a brief update on hiring of future officers.

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

DEPARTMENT REPORTS:

Fire- Chief Reed

Police- Chief Rush

Public Works- Jeremy Lollar

With no further business Randy Graham made the motion to adjourn. Mayor Cook seconded.
The meeting was adjourned at 1:45 PM

Deputy Clerk-Treasurer

Board of Public Works and Safety

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of _____, 2018 ("Effective Date") by and between _____, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and RQAW Corporation ("the CONSULTANT"), a corporation organized under the laws of the State of Indiana.

Des. No.: 1702765

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

RECITALS

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

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

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

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

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

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

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

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

SECTION III TERM. The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be September 2020. 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 **\$252,383**.

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

SECTION VI GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

7. **Compliance with Laws.**

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

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

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

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

9. Confidentiality of LPA Information.

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

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

11. DBE Requirements.

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

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

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

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

12. Non-Discrimination.

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

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

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

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

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

13. Disputes.

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

14. Drug-Free Workplace Certification.

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

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

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

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

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

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

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

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

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

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

I. Professional Liability Insurance

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

II. Commercial General Liability Insurance

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

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

III. Automobile Liability

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

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

IV. Watercraft Liability (When Applicable)

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

V. Aircraft Liability (When Applicable)

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

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

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

Notices to the LPA shall be sent to:

Johnathon Nail
2728 E 171st Street
Westfield, IN 46074

Notices to the CONSULTANT shall be sent to:

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

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

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

28. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the CONSULTANT:
- i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
 - ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
 - iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.
29. **Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
30. **Status of Claims.** The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:
- Johnathon Nail
2728 E 171st Street
Westfield, IN 46074
31. **Sub-consultant Acknowledgement.** The CONSULTANT agrees and represents and warrants to the LPA, that the CONSULTANT will obtain signed Sub-consultant Acknowledgement forms, from all SUB-CONSULTANTS providing Services under this Contract or to be compensated for Services through this Contract. The CONSULTANT agrees to provide signed originals of the Sub-consultant Acknowledgement form(s) to the LPA for approval prior to performance of the Services by any SUB-CONSULTANT.
32. **Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification or Amendment thereof.
33. **Taxes.** The LPA will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.
34. **Termination for Convenience.**
- A. The LPA may terminate, in whole or in part, whenever, for any reason, when the LPA determines that such termination is in its best interests. Termination or partial termination of Services shall be effected by delivery to the CONSULTANT of a Termination Notice at least fifteen (15) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of termination. The LPA will not be liable for Services performed after the effective date of termination.
 - B. If the LPA terminates or partially terminates this Contract for any reason regardless of whether it is for convenience or for default, then and in such event, all data, reports, drawings, plans, sketches, sections and models, all specifications, estimates, measurements and data pertaining to the project, prepared under the terms or in fulfillment of this Contract, shall be delivered within ten (10) days to the LPA. In the event of the failure by the CONSULTANT to make such delivery

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

35. Termination for Default.

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

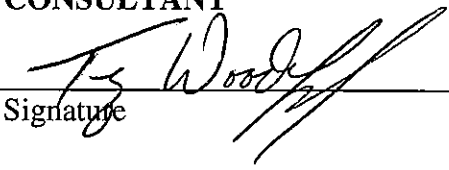
36. **Waiver of Rights.** No rights conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver or excuse is approved in writing and signed by the party claimed to have waived such right. Neither the LPA's review, approval or acceptance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

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Non-Collusion.

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

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

CONSULTANT


Signature

Troy Woodruff, Co-President
(Print or type name and title)

LOCAL PUBLIC AGENCY

Signature

(Print or type name and title)

Signature

(Print or type name and title)

Signature

(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 CONSULTANT shall be responsible for the following activities in order to design a single-lane roundabout at the intersection of 151st Street and Towne Road in Westfield, Indiana.

Task 1 Environmental Services

Task 2 Topographic Survey Data Collection

Task 3 Geotechnical Engineering and Pavement Design

Task 4 Road Design and Plan Development (including Rule 5 permit)

Task 5 Right-of-Way Plan Development

- R/W Engineering
- Title Research
- Legal Plats and Descriptions
- R/W Staking

Task 6 Utility Coordination Services

Task 7 Construction Phase Services

Task 1 Environmental Services

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

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

Task 2 Topographic Survey Data Collection

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

- c. Survey Manual
2. Electronic file including the following shall be prepared and submitted by the CONSULTANT as directed by the LPA:
 - a. Finished plan view of topographic survey in Civil3D 2018 (.dwg format).
 - b. 1-foot contours in Civil3D 2018 (.dwg format).
 - c. TIN used to create contours.
 - d. Electronic points file in .txt coordinate format.
 - e. Toponotes/Sidenotes in .dwg format
 - f. Location Control Route Survey in .pdf and .dwg format.
 - g. Survey Book in .pdf format.
 3. The signature, seal, and registration number of the land surveyor, registered in the State of Indiana, who was in responsible charge of the survey, shall be affixed to the Location Control Route Survey and the survey book submitted. In addition, CONSULTANT shall complete the field survey as summarized below and as directed by the LPA. The project area to be field surveyed is described as follows:
 - a. 1000' along Towne Rd (500' N & 500' S) and 1000' along 151st St (500' E & 500' W). The survey width will be 125' Rt/Lt of the centerline for Towne Rd (250' total width) and 100' Rt/Lt of the centerline for 151st St (200' total width).
 4. Obtain last deed of record, subdivision plats, and section or auditor plats for all properties within the project limits from local and state agencies. The property owner information shall include parcel number, property owner's name, mailing address and property location. CONSULTANT shall provide a listing of all property information, deeds, plats and maps.
 5. Send out survey notices together with questionnaires (if applicable) to all property owners within the project area. All survey notices and questionnaires shall be approved by LPA prior to distribution.
 6. Establish Primary Horizontal Control within the project limits such that the survey base line(s) can be re-established during construction. A local ground coordinate system will be established and tied to the Indiana Geographical System for Knox County.
 7. Elevation datum based upon INCORS GPS elevation. Set temporary bench marks within the project limits such that elevation datum can be re-established during construction.
 8. Tie in the survey base lines to available USPLSS section corners and/or existing property/right-of-way monumentation. All necessary section corners will be located or re-established to adequately define property lines along the limits of the project during the Right-of-way Engineering or Easement Acquisition phase.
 9. Re-establish existing roadway alignments from plans for previous projects.
 10. Plot right-of-way and property lines based on observed physical evidence and record documents acquired from local government agencies.
 11. Coordinate with utility companies to locate and mark their utilities in field. CONSULTANT shall notify the utilities via the call before you dig notification system (Indiana Underground Plant Protection Service (I.U.P.P.S.)). CONSULTANT shall verify that each utility has field located their facilities

during the course of the design survey. The existing facilities located, at the time of the field survey, shall be incorporated into the design survey.

12. Perform design survey in sufficient detail to obtain topographic data, utilities, buildings, walls, walks, signs, vaults, and natural and man-made features, as evidenced by facilities at the ground surface and marks by others, necessary for the development of project plans, including all potentially affected trees, 4 inches in diameter and greater, identified by size.
13. Take cross-sections at specified intervals across the right-of-way of public roadways and or the project limits (as described above) whichever is further out. Additional cross sections shall be taken at intersection of streets, roads, railroads, driveways, etc. Obtain elevations of all existing structures such as drainage culverts, utilities and other structures. Spot elevation data will be provided at:
14. Indicate spot elevations at all finish floors, at each threshold, building edges, insets and projections, exterior platforms, steps (top and bottom treads), corners, building entrances, break in grade, ramps, area ways, tree grates, etc. within the project limits, and at top and bottom of curb.
15. Provide a listing of all symbols, notations and legends used in the field survey. CONSULTANT shall furnish all field survey information collected on electronic media. CONSULTANT shall also prepare master drawings (1-foot contours) from data collected in topographic survey using Civil 3D and shall submit in electronic format. CONSULTANT shall delineate and label the location of all buildings, structures, fences, railings, signs, walls, walks, paved areas, curbs and other permanent structures and existing improvements. CONSULTANT shall outline all building edges, insets and projections, and below-grade structures such as vaults, basements, and areaways where applicable, as evidenced by facilities at the ground surface and marked by others.
16. Prepare and record a Location Control Route Survey Plat depicting existing alignments and right-of-way. Property lines and owner information for adjoining properties will be shown, but not dimensioned.
17. All survey information will be provided in English units. All topographic features shall be shown in X, Y, Z method.

Task 3 Geotechnical Engineering and Pavement Design

The CONSULTANT shall perform or cause to be performed a geotechnical survey and pavement design services as described in Exhibit 1, attached hereto and incorporated herein. The CONSULTANT shall obtain the final approved pavement design from the LPA, initialed by the ERC.

Task 4 Road Design and Plan Development

1. The CONSULTANT shall prepare preliminary plans, an economic analysis with proposed economic solutions and preliminary estimates of cost, which shall be in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the plans or reports are submitted: American Association of State Highway and Transportation Officials' "A Policy on Geometric Design of Highways and Streets"; American Railway Engineering Association's "Manual for Railway Engineering"; Indiana Department of Transportation's Standard Specifications; Manual on Uniform Traffic Control Devices; Road, Bridge and Traffic memoranda and INDOT Design Manuals, except as modified by supplemental specifications and special provisions. Such preliminary plans and economical analysis shall be completed to the point required to fulfill the requirements for a Design Public Hearing, and no further work shall be done on the plans, unless and until specifically directed by INDOT.
2. Following approval of the hearing plans, approval of the Environmental Document, and completion of the Public Hearing requirements, the CONSULTANT shall complete the final design and prepare contract plans, special provisions for the specifications and final opinion of probable cost for the construction of the project.

3. The opinion of probable construction cost and unit prices for construction will be prepared according to INDOT's current practices and shall include all items of work required for the complete construction of the work, including temporary work.
4. The CONSULTANT shall arrange and attend such hearings and/or meetings with officials of LPA/INDOT and other interested agencies, as required. The CONSULTANT shall prepare presentation materials for hearings and/or meetings and shall prepare and distribute minutes. Four meetings are included in CONSULTANT's scope.
5. The responsible registered professional engineer shall affix his/her seal to all plans, specifications and reports.
6. The CONSULTANT shall review the contract bid package and coordinate necessary corrections with the Contracts Administration Division.
7. 401/404 permitting is not included in Consultant's scope. If required, it can be provided as an Additional Service.

Task 5 Right-of-Way Plan Development

The following right-of-way engineering services will be provided to secure the permanent and temporary right-of-way needed for this project. A parcel shall be defined as all temporary and permanent right-of-way being acquired from a single existing parcel of land. This means a single parcel could have several legal descriptions based on its configuration.

1. Determine the owners of all properties located adjacent to and in the immediate area of the project alignment, along with the legal descriptions of those properties (Preliminary Abstracting). Preliminary abstracting shall include a title search, including a search for all mortgages, easements, liens, contract sales, judgments, other encumbrances and the current legal owner.
2. Prepare final Right-of-Way Plans.
 - a. Parcel boundaries in the project area.
 - b. Names of owners in the parcels shown.
 - c. Project centerlines and S-lines.
 - d. Existing and proposed right-of-way lines.
 - e. Land section lines.
 - f. Prepare Parcel Listing Summary Sheet showing parcel numbers, property owners, total area of property and type of taking
3. Provide legal descriptions for all parcel takings. The descriptions shall be prepared and certified by a registered land surveyor.
4. Provide individual plats for each parcel. Each plat shall include the following:
 - a. Legal descriptions.
 - b. Total area before taking.
 - c. Existing Right-of-Way.
 - d. Area of taking.
 - e. Areas of residue.
 - f. Existing Right-of-Way to be reacquired.
 - g. Sketch of the parcel, drawn to scale, with the above data indicated thereon.

Also, a complete Parcel Listing Summary Sheet included in Right-of-Way Plans showing items (d) and (e).

5. Provide Legal Instruments required for Transfer of Title and Recording. The preliminary abstracting/title search prepared initially shall be updated immediately prior to sending out offers to purchase right-of-way.
6. Provide separate folders for each parcel containing information obtained above to be utilized by appraisers, negotiators and attorneys to provide the required right-of-way services.
7. Provide in the field a stake-out locating the new right-of-way line for the partial takings included in the parcels. The stake-out shall be made using wooden hubs located at appropriate property lines and at other changes in bearing.
8. The CONSULTANT shall provide Appraisal Problem Analysis for each parcel in accordance with INDOT standards.
9. The CONSULTANT shall be available for assistance in interpretation of the right-of-way documents.

Task 6 Utility Coordination Services

1. Utility Coordination with all utilities potentially affected by the proposed work. Coordination will include:
 - a. Update Utility Contact List
 - b. Initial Notification of Improvements
 - c. Verification of Existing Utilities
 - d. Conflict Review and Analysis (60%)
 - e. Utility Work Plan Requests and Review (90%)
 - f. Utility Certification and Utility Recurring Special Provision (100%)
 - g. Active Field Utility Relocation Coordination
2. CONSULTANT's fee assumes active coordination will be ongoing for a period of nine months.
3. CONSULTANT will research existing records to confirm the names of utility companies with facilities in or near the project limits. Initial notice letters will be prepared and sent to all utilities in the area. All utility replies will be documented upon receipt.

Task 7 Construction Phase Services

Following the award of the construction Contract, the CONSULTANT will be responsible for attending the pre-construction meeting. During the course of construction, the CONSULTANT shall be available at reasonable times during normal working hours to respond to reasonable inquiries concerning the accuracy or intent of the CONSULTANT's plans. All such inquiries shall be made only by persons designated by the LPA to interpret the plans and Contract documents for the benefit of the contractors and subcontractors performing the work. The CONSULTANT shall not be required to respond to inquiries by persons other than the LPA's designated representative and shall not be required to engage in exhaustive or extensive analysis or interpretation of the plans.

The CONSULTANT shall review all shop drawings on projects involving Mechanically Stabilized Earth retaining walls, culvert structures, traffic control work, signing, lighting, signals or other items as outlined in Chapter 14 of the Indiana Design Manual.

If during the construction phase it is determined that unforeseen or unusual conditions arise, the CONSULTANT shall revise the plans with INDOT approval.

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. Plans of existing roadway, bridge, signals etc. within the project limits.
4. All written views pertinent to the location and environmental studies that are received by LPA/INDOT.
5. Traffic assignments, Traffic Signal Warrants (New Signal), Traffic Lighting Warrants (New Lighting).
6. Necessary permit forms and permit processing (US Army Corps of Engineers, US Coast Guard, and/or Indiana Department of Natural Resources).
7. Available data from the transportation planning process.
8. Utility plans available to LPA/INDOT covering utility facilities govern the location of signals and underground conduits throughout the affected areas.
9. Provide access to enter upon public and private lands as required for the CONSULTANT to perform work under this Contract.
10. Existing water quality data.
11. Assistance to the CONSULTANT by placing at his disposal all available information pertinent to the project.
12. Designate a person as project coordinator to coordinate activities between CONSULTANT, INDOT, LPA, utilities and adjacent communities.

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:

- Topographic Survey and Route Survey Plat – 60 calendar days from Notice to Proceed.
- Stage 1 Plans – 60 calendar days from completion of Topographic Survey.
- Preliminary Field Check – 30 calendar days from acceptance of Stage 1 Plans.
- Stage 2 Plans – 60 calendar days from acceptance of Preliminary Field Check.
- Public Hearing and Design Approval – 90 calendar days from acceptance of Stage 2 Plans.
- Stage 3 Plans – 60 calendar days before Tracings Submittal (to be determined)
- Tracings – 14 weeks prior to INDOT Letting (to be determined).
- Anticipated Ready for Contracts (to be determined).
- Anticipated Letting (to be determined).

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

1. The CONSULTANT shall receive as payment for the work performed under this Contract the total fee not to exceed **\$252,383**, unless a modification of the Contract is approved in writing by the LOCAL PUBLIC AGENCY and the Indiana Department of Transportation.
2. The CONSULTANT will be paid for the following services performed under this Contract on a lump sum basis in accordance with the following fees:

Task 1 Environmental	\$27,800
Task 2 Topographic Survey Data Collection and Location Control Route Survey Plat	\$34,950
Task 4 Design and Plan Development	
1. Roadway Design (including Rule 5 Permit)	\$122,000
Task 6 Utility Coordination Services	\$28,366
Total:	<u>\$213,116</u>
3. CONSULTANT's fee for Task 3, geotechnical engineering and pavement design, will be an amount equal to the units of work performed on the Project times the unit costs shown in Exhibit 1, not to exceed **\$17,462**.
4. CONSULTANT's fees for Task 5, right-of-way engineering, will be an amount equal to the parcels required for the Project (assumed 3) times unit costs as shown in Exhibit 2, not to exceed **\$11,805**.
5. CONSULTANT's fee for Task 7, Construction Phase Services, will be invoiced on an hourly rates basis, not to exceed **\$10,000**.
6. The CONSULTANT shall not be paid for any service performed by the LPA or not required to develop this project.
7. For those services performed by other than the CONSULTANT, the CONSULTANT will be reimbursed for the actual invoice for the services performed by other than the CONSULTANT, provided that each invoice shall be subject to approval as reasonable by INDOT prior to any reimbursement therefore.

B. Method of Payment

1. The CONSULTANT may submit a maximum of one invoice voucher per calendar month for work covered under this Agreement. The invoice vouchers shall represent the value, to the LPA, of the partially complete work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of each task in Section A of this Appendix, including percentage completed and prior payments.
2. The LPA, for and in consideration of the rendering of the services provided for in Appendix "A", agrees to pay to the CONSULTANT for rendering such services the fees established above in the following manner:
 - a. For each task, and upon receipt of invoices from the CONSULTANT and the approval thereof by the LPA, payments covering the work performed shall be

due and payable to the CONSULTANT, such payments to be equal to an amount arrived at by multiplying the percentage of the specified work by the fee heretofore set forth. From the partial payment thus computed, there shall be deducted all previous partial fee payments made to the CONSULTANT.

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

May 14, 2018

Mr. Jack Stocks, P.E.
RQAW Corporation
jstocks@rqaw.com



7770 West New York Street
Indianapolis, IN 46214
(317) 273 1690
(317) 273 2250 (FAX)

Re: Proposal for Professional Services
Geotechnical Evaluation
Towne Road and 151st Street Intersection Improvements
Westfield, Hamilton Co., Indiana
EEI Proposal No. PCJ185329

Dear Greg:

We understand that representatives of the City of Westfield are planning to construct a roundabout at the intersection of Towne Road and 151st Street with the assistance of federal funds. Based on our experience with similar projects, we propose the following scope of services:

- Completing five borings using ATV-mounted equipment to a depth of up to 15 ft each. One pavement core will be taken on each leg of the intersection. A bag sample will be collected for the purpose of resilient modulus testing, and topsoil testing will be performed considering a Rule 5 permit is required;
- Completing a laboratory testing program;
- Preparing a geotechnical report. The report will summarize our observations and test results and provide geotechnical recommendations for the planned construction; and
- Performing a pavement design in accordance with Ch. 304 of the INDOT Design Manual and applicable memoranda.

For the scope above, we propose to provide our services on a unit rate basis in accordance with the attached Cost Estimate. The total fee is estimated to be up to \$17,465 (\$13,465 for the geotechnical evaluation and \$4,000 for the pavement design).

We look forward to providing our services on this project. Feel free to contact us should you have any questions.

Sincerely,
EARTH EXPLORATION, INC.

Michael S. Wigger, P.E.
Principal

Attachment: Cost Estimate

Exhibit 1

Cost Estimate

Towne Road and 151st Street Intersection Improvements
Westfield, Hamilton Co., Indiana

	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
<u>GEOTECHNICAL FIELD</u>			
1. Mobilization and Field Coordination			
a. SPT Rig	1 ea	\$270.00	\$270.00
b. CPT	ea	\$450.00	
c. Field and utility coordination	1 LS	\$720.00	\$720.00
d. Field coordination with property owners			
i. 1 - 10	1 LS	\$320.00	\$320.00
ii. 11 - 25	LS	\$510.00	
iii. Over 25	LS	\$710.00	
e. Mileage	60 mi	\$3.50	\$210.00
2. Truck mounted borings with split spoon sampling	ft	\$19.00	
3. Truck mounted borings with drilling fluid	ft	\$19.00	
4. Truck mounted core drilling	ft	\$39.00	
5. Truck mounted borings			
a. Truck mounted borings through bedrock or boulders or concrete pavement	ft	\$39.00	
b. Bridge deck coring and restoration	ea	\$350.00	
6. Cone penetrometer testing			
a. Set up	ea	\$80.00	
b. Subsurface profiling	ft	\$12.25	
c. Profiling with pore pressure measurement			
i. Piezometric Saturation	ea	\$93.00	
ii . Penetration	ft	\$14.50	
iii. Pore water dissipation test	hr	\$190.00	
iv. Hydraulic conductivity and consolidation	ea	\$75.00	
d. Profiling with Shearwave Velocity Measurement	ft	\$15.75	
e. Sample	ea	\$24.00	
7. Hand or truck soundings	ft	\$12.50	
8. Hand auger drilling	ft	\$13.00	
9. Skid mounted borings with split spoon sampling	75 ft	\$30.00	\$2,250.00
10. Skid mounted borings using drilling fluid	ft	\$30.00	
11. Skid mounted core drilling	ft	\$43.00	
12. Skid mounted boring through bedrock or boulders	ft	\$45.00	
13. Skid mounted soundings	ft	\$17.50	
14. Skid Mounted Cone Penetrometer Testing (CPT)			
a. Set up	ea	\$115.00	
b. Subsurface profiling	ft	\$17.75	
c. Profiling with pore pressure measurement			
i. Piezometric Saturation	ea	\$110.00	
ii. Penetration	ft	\$20.50	
iii. Pore Water Dissipation Test	hr	\$220.00	
iv. Hydraulic Conductivity and Consolidation	ea	\$85.00	
d. Profiling with Shearwave Velocity Measurement	ft	\$25.00	

Exhibit 1

	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
e. Sample	ea	\$32.00	
15. Furnishing of a boat		Actual Cost	
16. Barge set-up expenses			
a. Navigable water			
i. Barge set-up	ea	\$6,000.00	
ii. Rental of support equipment and/or boat		Actual Cost	
iii. Drill rig down time	hr	\$150.00	
b. Non-navigable water barge set-up	ea	\$5,000.00	
17. Additional disassembly and reassembly			
a. Navigable water	ea	\$2,100.00	
b. Non-navigable water	ea	\$1,900.00	
18. Barge mounted borings with split spoon sampling	ft	\$33.00	
19. Barge mounted core drilling	ft	\$45.00	
20. Barge mounted boring through bedrock or boulders	ft	\$45.00	
21. Barge mounted soundings	ft	\$20.00	
22. Casing through water	ft	\$8.50	
23. Uncased sounding through water	ft	\$5.50	
24. Set up for borings and machine soundings			
a. Borings and machine soundings less than 20 ft deep	5 ea	\$70.00	\$350.00
b. Rock core borings	ea	\$120.00	
25. Additional 2-in. split spoon sampling	2 ea	\$21.00	\$42.00
26. 3-in. split spoon samples	ea	\$23.00	
27. 3-in. Shelby tube samples	3 ea	\$63.00	\$189.00
28. Bag samples			
a. 25-lb sample	1 ea	\$51.00	\$51.00
b. 5-lb sample	4 ea	\$33.00	\$132.00
29. Field vane shear test	ea	\$115.00	
30. 4½-in. cased hole	ft	\$12.50	
31. Installation of Geotechnical Instruments			
a. Inclinator casing installation	ft	\$15.00	
b. Piezometer installation up to 25 ft below surface	ea	\$270.00	
c. Piezometer installation deeper than 25 ft below surface	ea	\$300.00	
d. Metal protective outer cover for inclinometer and piezometer casings	ea	\$125.00	
32. Geotechnical engineer	8 hr	\$120.00	\$960.00
33. Railroad expenses		Actual Cost	
34. Twenty-four hour water levels			
a. Field measurements per borehole	5 ea	\$38.00	\$190.00
b. PVC slotted pipe	ft	\$6.00	
35. Special borehole backfilling			
a. 0 to 30 ft			
i. SPT	5 ea	\$110.00	\$550.00
ii. CPT	ea	\$46.00	
b. More than 30 ft			
i. SPT	ft	\$6.50	
ii. CPT	ea	\$1.90	
c. Pavement restoration	ea	\$60.00	

Exhibit 1

	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
36. Dozer rental		Actual Cost	
37. Traffic control			
a. Flag crew	day	\$1,300.00	
b. Equipment Rental		Actual Cost	
c. Flag crew with equipment	0.5 day	\$1,550.00	\$775.00
38. Centerline surveying		Actual Cost	
Subtotal (Geotechnical Field)			\$7,009.00

GEOTECHNICAL LABORATORY

39. Sieve analysis for soils	5 ea	\$49.00	\$245.00
40. Hydrometer analysis	5 ea	\$58.00	\$290.00
41. Sieve analysis for Aggregates			
a. Analysis by Washing (AASHTO T-11)	ea	\$77.00	
b. Analysis by Using (AASHTO T-27)	ea	\$135.00	
42. Liquid limit	5 ea	\$39.00	\$195.00
43. Plastic limit & plasticity index	5 ea	\$28.00	\$140.00
44. Liquid Limit Ratio	ea	\$75.00	
45. pH test	5 ea	\$15.50	\$77.50
46. Loss on Ignition Test			
a. Loss on Ignition Test (Conventional)	4 ea	\$24.00	\$96.00
b. Loss on Ignition Test (Sequential)	ea	\$52.00	
c. Organic content based on Clorimeter	ea	\$24.00	
47. Topsoil Tests			
a. Phosphorus tests	1 ea	\$21.00	\$21.00
b. Potassium tests	1 ea	\$21.00	\$21.00
48. Moisture Content Tests			
a. Moisture Content Test (Conventional)	50 ea	\$6.75	\$337.50
b. Moisture Content Test (Microwave)	ea	\$8.20	
49. Expansion Index of Soils	ea	\$235.00	
50. Specific Gravity Test	5 ea	\$36.00	\$180.00
51. Unit weight determination	4 ea	\$17.50	\$70.00
52. Hydraulic Conductivity Test			
a. Constant Head	ea	\$235.00	
b. Falling Head	ea	\$285.00	
53. a. Unconfined Compression Test	4 ea	\$45.00	\$180.00
b. Remolding of soil samples with chemical admixtures in chemical soil modification/stabilization (3 samples is equal to 1 unit)	ea	\$115.00	
c. Point Load Strength Index of Rock	ea	\$43.00	
54. Compressive Strength and Elastic Moduli of Intact Rock			
a. Compressive Strength of Intact Rock	ea	\$110.00	
b. Elastic Moduli of Intact Rock	ea	\$430.00	
55. Consolidation Test	ea	\$450.00	
56. Triaxial test			
a. Unconsolidated - Undrained (UU)	ea	\$350.00	
b. Consolidated - Undrained (CU)	ea	\$520.00	

Exhibit 1

		<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
	c. Consolidated - Drained (CD)	ea	\$725.00	
	d. Pore Pressure measurement with a. or b. and use of back pressure for saturation	ea	\$250.00	
57	Direct Shear Test	ea	\$530.00	
58	Moisture-Density Relationship Test			
	a. Standard Proctor	1 ea	\$140.00	\$140.00
	b. Modified Proctor	ea	\$155.00	
59	Soil Support Testing			
	a. California Bearing Ratio Test	ea	\$525.00	
	b. Subgrade Resilient Modulus	2 ea	\$620.00	\$1,240.00
60	Collapse Potential Evaluation Test			
	a. Silty Soil (Loess)	ea	\$380.00	
	b. Cohesive or Expansive Soils	ea	\$450.00	
61	Water Soluble Sulfate Test	4 ea	\$105.00	\$420.00
62	Water Soluble Chloride Test	ea	\$105.00	
63	Soil Resistivity Test	ea	\$135.00	
64	a. Slake Durability Index Test	ea	\$125.00	
	b. Jar Slake Test	ea	\$13.25	
Subtotal (Geotechnical Laboratory)				\$3,653.00
<u>GEOTECHNICAL ENGINEERING</u>				
65	Geotechnical report			
	a. Without soil subgrade investigation			
	First mile	1 LS	\$1,800.00	\$1,800.00
	Each additional mile	mi	\$750.00	
	b. With soil subgrade investigation			
	First mile	LS	\$2,000.00	
	Each additional mile	mi	\$850.00	
	c. Soil subgrade investigation (only)			
	First mile	LS	\$650.00	
	Each additional mile	mi	\$400.00	
	d. Soil profile drawing			
	First mile	LS	\$1,170.00	
	Each additional mile	mi	\$540.00	
65	a. Geotechnical data report for design build projects			
	First mile	LS	\$900.00	
	Each additional mile	mi	\$400.00	
	b. Technical memo			
	First mile	LS	\$600.00	
	Each additional mile	mi	\$400.00	
67	Settlement analysis and recommendations for embankment			
	a. Proposed embankment	ea	\$510.00	
	b. Proposed and existing embankment	ea	\$570.00	
68	Ground modification design	ea	\$1,500.00	
69	Slope stability analysis			
	a. C, Ø or C & Ø analysis	ea	\$800.00	
	b. Corrective measures	ea	\$800.00	

Exhibit 1

	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
c. Stage construction corrective method	ea	\$1,400.00	
70 Bridge foundation analysis and recommendations			
a. Shallow foundation	ea	\$500.00	
b. Deep foundation			
i. Deep foundation analyses	ea	\$875.00	
ii. Wave equation analyses	ea	\$335.00	
iii. Liquefaction analysis	ea	\$270.00	
iv. Group - 3D analysis	ea	\$430.00	
c. Settlement analysis for bridge pier foundation			
i. Bridge pier	ea	\$400.00	
ii. Embankment plus pier	ea	\$440.00	
iii. Embankment plus pier plus all other loads	ea	\$510.00	
d. Foundation on bedrock	ea	\$380.00	
71 Retaining structure analysis recommendations			
a. Conventional retaining structures and other types such as MSE Walls and Bin walls			
i. Shallow foundation	ea	\$880.00	
ii. Deep foundation	ea	\$1,160.00	
iii. Settlement analysis for retaining wall foundation	ea	\$380.00	
b. Pile retaining structure analysis and recommendations			
i. Free standing structure	ea	\$1,050.00	
ii. Retaining structure with tie-back system	ea	\$1,500.00	
c. Drilled-in-pier retaining structure analysis			
i. Free standing structure	ea	\$1,050.00	
ii. Retaining structure with tie-back system	ea	\$1,500.00	
d. Soil nailing wall analysis	ea	\$1,000.00	
72 Seepage analysis	ea	\$1,450.00	
73 Deep dynamic compaction analysis	ea	\$1,450.00	
	Subtotal (Geotechnical Engineering)		\$1,800.00
<u>CONSTRUCTION INSPECTION AND MONITORING</u>			
74 Pressuremeter testing services	day	\$1,650.00	
75 Mobilization of testing equipment	LS	\$165.00	
76 a. Monitoring geotechnical instrumentation	hr	\$80.00	
b. Field Inspector	hr	\$80.00	
77 Integrity testing		Actual Cost	
78 Field Compaction Testing			
a. Dynamic Cone Penetration Test (DCPT)	hr	\$80.00	
b. Light Weight Deflectometer Test (LWD)	hr	\$80.00	
79 Dynamic pile analysis	ea	\$1,050.00	
80 Static load test	ea	\$1,050.00	
81 Dynamic pile load test		Actual Cost	
82 CAPWAP-C analysis	ea	\$550.00	
83 Final construction inspection report	ea	\$1,000.00	
	Subtotal (Construction Inspection and Monitoring)		

FOUNDATION EVALUATION BY NON-DESTRUCTIVE METHODS

Exhibit 1

	<u>Unit</u>	<u>Unit Price</u>	<u>Total</u>
84 a. Surface test/Pier or foundation		Actual Cost	
b. Borehole test/Pier or foundation		Actual Cost	
<u>GEOPHYSICAL INVESTIGATION</u>			
85 Geophysical Investigations		Actual Cost	
<u>GEOTECHNICAL PROJECT MANAGEMENT</u>			
86 Project Management			
a. Project Coordination	mi	\$1,650.00	
b. Project Website	LS	\$3,500.00	
87 Geotechnical Review			
a. Structure Report	ea	\$350.00	
b. Roadway Report	mi	\$290.00	
Subtotal (Non-Destructive, Geophysical and Project Management)			
<u>PAVEMENT INVESTIGATION</u>			
1. Mobilization of coring equipment	LS	\$210.00	
2. Mobilization mileage for coring equipment	mi	\$1.90	
3. Pavement core (partial depth)	ea	\$130.00	
4. Pavement core (full depth)	4 ea	\$200.00	\$800.00
5. Sub-base sample	ea	\$62.00	
6. Cement concrete pavement core density determination	ea	\$34.00	
7. Cement concrete core compressive strength test	ea	\$33.00	
8. Bituminous extraction test	ea	\$185.00	
9. Sieve analysis of extracted aggregate test	ea	\$85.00	
10. Recovery of asphalt from solution by Abson method	ea	\$360.00	
11. Theoretical maximum specific gravity test	ea	\$85.00	
12. Bulk specific gravity test	ea	\$35.00	
13. Air voids calculation	ea	\$35.00	
14. Core report for partial depth core	ea	\$50.00	
15. Core report for full depth core	4 ea	\$50.00	\$200.00
16. Pavement analysis and report	ea	\$800.00	
Subtotal (Pavement Investigation)			\$1,000.00
<u>Summary of Fees</u>			
Geotechnical Field		\$7,009.00	
Geotechnical Laboratory		\$3,653.00	
Geotechnical Engineering		\$1,800.00	
Construction Inspection and Monitoring			
Non-Destructive, Geophysical and Project Management			
Pavement Investigation		\$1,000.00	
Geotechnical Total		\$13,462.00	
Pavement Design		\$4,000.00	
Estimated Total		\$17,462.00	

Exhibit 2

						
PROJECT:		Towne Road & 151st Street Roundabout				
DESCRIPTION		Services Provided By		Unit Cost/ Parcel	# of Parcels	TOTAL DOLLARS
Right of Way Engineering - Existing Property Line Layout - Parcel Plats - Legal Descriptions - Right of Way Plans - Area Computations - Transfer Documents		WSP Permanent Taking		\$3,200	3	\$9,600.00
Right of Way Acquisition Management		WSP				\$0.00
Title Work - Title & Encumbrance Report		Woodco Enterprises		\$375	4	\$1,500.00
Appraisal Problem Analysis				\$235	3	\$705.00
Appraisal - Waiver Valuation - Short Form - Special - Value Finding - Long Form - Residential - Short Form - Long Form - Commercial/Industrial						\$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00
Appraisal Review - Waiver Valuation - Short Form - Special - Value Finding - Long Form - Short Form - Long Form - Commercial/Industrial						\$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00
Buying						\$0.00
					TOTAL:	\$11,805.00
Note: Appraisal and Appraisal Review fees are estimated from the information available at this time. Actual fees will be billed.						
Note: For Title Work, parcels with multiple tax parcel numbers were counted as multiple reports as the title researcher charges per title search. This amount could be less once the title research is actually performed. Actual fees will be billed.						



General Assumptions:

- The client will provide the project plans in a digital format. The project boundaries will be evident to field crew
- Filed work is dependent on conducive weather conditions, i.e. no heavy rain, snow, or frozen ground.
- Prior to initiating and conducting any field studies, the client will send Notice of Survey (NOS) letters to identified property owners on Cardno's behalf notifying them of INDOT's intent to enter their property to conduct the necessary environmental investigations. Cardno will not begin fieldwork until reasonable access is obtained.
- Indiana Department of Natural Resources permitting is not required.
- This scope assumes that the level of environmental documentation will be a Categorical Exclusion (CE)-3 or lower. If INDOT thresholds for a CE-3 are exceeded, additional work would be completed under a new contract.

Cardno

3901 Industrial Boulevard
Indianapolis, IN 46254
USA

Phone: +1 317 388 1982
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www.cardno.com

Task 1 – Regulated Waters Delineation

Cardno will complete a regulated waters delineation within the Study Area. Wetlands will be delineated using the procedure described in the U.S. Army Corps of Engineers' (Corps) "Wetland Delineation Manual (1987)" and the "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (Version 2.0) 2010". The wetland delineation procedure involves examining three technical criteria: soils, hydrology, and vegetation to determine if the wetland standards established by the Corps are present. Streams, ponds and other waters will also be assessed. The delineation report and documentation will include Routine Onsite Determination Method data forms, photographs of wetlands and other waters, a site plan showing location of the waters, and detailed descriptions. The report will also discuss the associated permitting and mitigation requirements for proposed impacts to regulated waters. The report will follow the current requirements and guidance from Indiana Department of Transportation (INDOT).

Cardno will locate and map any wetland boundaries located within the Study Area using a Global Positioning System (GPS) mapping device and will provide Client with a map, generated by ArcView GIS, locating the wetland boundaries and stream centerlines. Cardno will provide a digital file with the boundaries of the wetlands and waterways to the Client for inclusion in the design plans. Cardno will flag the boundaries of the wetlands if requested by the Client.

As required by INDOT, for projects having involvement with waters where compensatory mitigation is required, quality shall be determined using Floristic Quality Index (FQI) for wetlands and the Ohio Headwater Habitat Evaluation Index (HHEI) for streams or other approved assessment methods. Information regarding site quality shall be summarized in the transmittal letter and data sheets shall be included in the report.

NOTE: GPS mapping is intended to meet Corps accuracy requirements but is not intended to represent a legal boundary survey.

Task 2- Cultural Resources and Section 106

Based on our understanding, the project consists of the construction of a roundabout and will require new right-of-way (ROW). As a result, per INDOT requirements, full Section 106 consultation is necessary for the project. This includes completion of a Phase Ia Archaeological Reconnaissance, Historic Property Report, and 800.11



documentation and Consulting Party coordination. Cardno will complete the following tasks to comply with Section 106 of the National Historic Preservation Act (NHPA):

- Phase Ia Archaeological Reconnaissance: Cardno will conduct a Phase Ia Archaeological Records Review and Reconnaissance (Phase Ia) to meet project needs under Section 106 of the NHPA and conform to the INDOT- Cultural Resource Office (CRO) and Indiana Department of Natural Resources-Division of Historic Preservation and Archaeology (IDNR-DHPA) guidelines. Based on our understanding, the project will require new ROW, which necessitates completing a Phase Ia prior to ground disturbance. Cardno will conduct a Phase Ia survey to identify sites that may be eligible for the NRHP, and determine the proposed project's effects on any NRHP-eligible sites. For the purposes of this proposal, Cardno assumes that up to one (1) acre of new ROW will be acquired, and as a result up to 16 shovel test units will be excavated. Cardno anticipates that no other archaeological sites will be identified as a result of the project.
 - o A draft technical report will be submitted to the client following completion of field survey. The report will include the results of the records review, field methods, survey results, analysis and recommendations. Cardno will produce electronic copies of the draft Phase Ia report and submit to the INDOT-CRO for review and approval. Following approval from INDOT-CRO, we will prepare one (1) hard copy of the report for submittal to the IDNR-DHPA for their review and concurrence. Cardno assumes a 30-day period for IDNR-DHPA response. The concurrence letter from IDNR-DHPA will be included in the Section 106 consultation documentation.
- History/Architecture Investigation and Documentation: Cardno will complete a history/architecture survey and prepare an associated Historic Property Report for the project, this Task will include all of the following:
 - o *Determine Area of Potential Effects (APE)*. Cardno will coordinate with the INDOT-Cultural Resource Office (CRO) to identify the appropriate APE for this project. For projects of this variety, the APE usually consists of properties immediately adjacent to the proposed improvements.
 - o *History Architecture Fieldwork*. Cardno will complete background research to identify any potential historic buildings prior to conducting fieldwork. Research will focus on using the Hamilton County, Indiana Assessor's website and the Hamilton County Interim Report. Cardno will then conduct fieldwork to identify historic properties within the APE as identified above. During the fieldwork, Cardno will gather data (field notes and photographs) necessary for identification of historic properties, in order to prepare the Historic Property Report (HPR).
 - o *Historic Property Report*. Cardno will prepare the HPR based on the data obtained during fieldwork. We assume that the project's APE will not contain any properties rated "Contributing" or higher in the Hamilton County Interim Report and as a result, we anticipate completing a Historic Property Short Report (HPSR). Cardno will prepare all documentation following the Indiana Department of Transportation's Cultural Resource Manual (2014, 2017) to ensure that statutory and policy requirements are met. The HPSR will be submitted to INDOT-CRO for review and approval.
- Section 106 Consultation: Based on the preliminary project information, the project will require review under Section 106 of the NHPA (36 CFR Part 800). Cardno will prepare the appropriate 800.11 documentation and will complete Consulting Party coordination. Based on preliminary project information, Cardno anticipates that the Section 106 finding for the project will be "No Historic Properties Affected". Documentation will be prepared following the Indiana Department of Transportation's Cultural Resource Manual (2014) to ensure that all statutory and policy requirements are met. Section 106 Consultation will include up to two (2) conference calls with INDOT-CRO, but does not currently include a Consulting Party meeting.

Assumptions:

- Up to one (1) acre will be surveyed through the excavation of no more than 16 shovel test units.
- No archaeological sites will be identified.
- Phase II evaluation and/or Phase III mitigation is outside of the current scope.
- This proposal does not include Tribal consultation or inventory of properties of religious and cultural significance (including TCP's).
- The APE will not exceed the depth of one parcel on each side of the existing ROW.



- Fieldwork will not commence until the APE is approved by INDOT-CRO.
- Up to three (3) properties will be documented during the investigation.
- The Historic Property investigation will not identify any above-ground resources that are eligible for inclusion in the NRHP.
- The 800.11 documentation and finding will consist of “No Historic Properties Affected”.
- A Consulting Party meeting will not be required.

Task 3 – Categorical Exclusion

The environmental documentation will be completed in general accordance with Indiana Department of Transportation’s 2008 Procedural Manual for Preparing Environmental Documents, the Categorical Exclusion (CE) Preparation Manual (July 2013) and the Local Public Agency (LPA) Project Development Process Guidance Document for Local Federal-Aid Projects (December 22, 2016 version). The following subtasks are associated with the compilation of the environmental documentation:

- Red Flag Investigation: Cardno will prepare the Red Flag Investigation (RFI) to identify any potential environmental concerns and once reviewed by the Client will submit to INDOT for review. The RFI will be conducted in compliance with the current INDOT – Hazardous Materials Unit Operating Manual.
- Early Agency Coordination - Cardno will issue an early coordination letter to solicit input from federal, state, and local agencies. The objective of Early Agency Coordination is to coordinate with federal, state and local agencies involved in the project, identify issues and concerns, and collect baseline data from the various resource agencies. During the environmental analysis, Cardno will coordinate with resource agencies through phone calls and email for details concerning issues that agencies and other recipients of the early coordination package may have during the study.
- Completion of INDOT CE/EA Documentation Form - Cardno will identify the proposed project impacts on the natural and human environment based on information gathered during the investigation process.
- Public Involvement - Upon INDOT’s release of the CE for public involvement, Cardno will prepare a public notice for the opportunity for a public hearing in the local newspaper. The legal notice will appear twice and will also be sent to adjacent landowners or other stakeholders identified during the NEPA process. After the public notice comment period ends and with the cooperation from the Client, the Team will fill out the public involvement section of the CE, obtain the public involvement certification from the Office of Public Involvement and upload the full CE document to Electronic Records Management System (ERMS) for INDOT final review and approval.
- Commitment Database - Once the final signatures have been obtained on the CE, Cardno will compile the commitments and send to INDOT- Greenfield District for review and upload into INDOT’s commitment database.

Assumptions:

- This scope of work does not include any additional hazardous materials investigations that may be warranted, such as Phase I or Phase II Environmental Site Assessments.
- Scope does not include a Section 4(f) *de minimis*, individual, or programmatic evaluation.
- The project is assumed not be controversial and not require a Community Advisory Committee or public informational meetings.
- A Biological Assessment and Section 7 Consultation are not included within this Scope of Services. The Section 7 Consultation process is triggered by a proposed action involving a federal agency’s authorization of a major construction activity and the proposed action has the potential to affect listed species or species proposed for listing. Specific Threatened and Endangered (T&E) species assessments will not be conducted by Cardno under this Scope of Services. Special species field surveys, such as mist netting for Indiana Bat, fish/mussels or other T&E field surveys are not included in this Scope of Services.

Cardno - J1632330A0										PROJECT #		151st and Towne Rd Roundabout																																			
FORM REV. 1/12										FEE CALCULATIONS										CLIENT:		RQAW																									
EST. BY: TPM										TOTAL FEE										27,767.64																											
EST.DATE:																																															
										Project Scientist		CADD/Drafting GIS		Senior Consultant		Project Coordinator		Senior Project Scientist		Project Assistant		Senior Staff Scientist																						Total Hours		Total Labor	
Project Tasks										105.19		91.89		153.15		72.75		112.52		58.40		91.64																									
Phase 1 - Regulated Waters Delineation																																															
Task 1 - Field Survey										6																												6		\$631							
Task 2 - Mapping												4																								4		\$368									
Task 3 - Report										7						1																				8		\$849									
Task 4 - Project Administration														2		2																				4		\$452									
Phase 2 - Cultural Resources and Section 106																																															
Task 1 - Phase Ia Archeological										8		4						1		32																		45		\$3,190							
Task 2 - Historic Property Report										7		5				1		1		25																39		\$3,658									
Task 3 - 800.11 Documentation										44		2				4		4																		54		\$5,496									
Task 4 Project Administration										7						2																				9		\$882									
Phase 3 - Categorical Exclusion																																															
Task 1 - Red Flag Investigation												4				16																						20		\$2,168							
Task 2 - Early Coordination												4				8																				12		\$1,268									
Task 3- CE Form												4		8		54																				66		\$7,669									
Task 4 Project Administration														4		2																				6		\$758									
TOTAL HOURS										79		27		14		6		85		37		25		0		0		0		0		0		0		0		0		0		189		\$27,388			
COMMENTS:										2018 Services																																					
										Des #																																					
Itemized Expenses										\$\$\$																																					
Direct Expenses																																															
1. Wetland Seed \$31/pound																																															
2. Garmin GPS Unit \$150/day										300																																					
3. No-till Seed Drill \$ 220/day																																															
4. Skid Steer Rental \$ 325/day																																															
5. ATV (seed prep, tank sprayer) \$ 75/day																																															
6. Herbicide (broadleaf specific) \$ 77.20/gallon																																															
7. Herbicide (broad spectrum) \$ 40.30/gallon																																															
8. Mileage (2 mobilizations) \$1.00/mile										80																																					
9. Mileage w/ trailer \$1.50/mile																																															
10. Postage/Shipping																																															
11. Communication Fee 3% on labor																																															
Subtotal										380.00																																					
Reimbursible Expenses																																															
1. Maps/Aerial																																															
2. Container Grown Trees (3 gallon)										Trees																																					
3. Coir Logs										LF																																					
4. ECB - C-125BN										SY																																					
5. Stone										LS																																					
6. Straw										Bales																																					
7. Equipment Rental - Tractor																																															
8. Travel/Meals/Lodging										LS																																					
9. Contract Partners										LS																																					
Subtotal										0.00																																					
Mark up on Reimbursibles										NA																																					
Total Expenses										380.00																																					

Westfield Board of Public Works & Safety

Meeting 2019 Schedule

Monthly Meeting Date	Deadline to Submit Agenda items
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January 23, 2019	January 16, 2019
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February 27, 2019	February 20, 2019
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March 27, 2019	March 20, 2019
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April 24, 2019	April 17, 2019
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May 22, 2019	May 15, 2019
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June 26, 2019	June 19, 2019
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July 24, 2019	July 17, 2019
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August 28, 2019	August 21, 2019
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September 25, 2019	September 18, 2019
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October 23, 2019	October 16, 2019
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*November 13, 2019	November 6, 2019
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*December 11, 2019	December 4, 2019
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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 begin at 1:00 pm.

*Special dates due to the holiday schedule.

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

EDS #: A249-19-L180166

Des. No.: 1600640

CFDA No.: 20.205

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

NOTICE TO PARTIES

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

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

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

With a copy to:

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

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

Greenfield District Office
32 South Broadway
Greenfield, Indiana 46140

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

City of Westfield
130 Penn Street
Westfield, Indiana 46074

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

SECTION V TERM AND SCHEDULE.

- A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract), between **July 1, 2019 and June 30, 2020**, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible, and provided the federal funds shown in section I.B. of Attachment D are available.
- B. In the event that federal funds for the Project are not obligated during the time listed in section V.A, but the LPA has the plans, special provisions, and cost estimate for the Project ready such that federal funds can be obligated between **July 1, 2020 and June 30, 2022**, INDOT will schedule the contract for letting, provided the Project is eligible, and provided the federal funds shown in section I.B of Attachment D are available.

- C. In the event that federal funds for the Project are not obligated during the period listed in section V.A. or section V.B, the federal funds allocated to the Project may be obligated in the fiscal year chosen by INDOT or the federal funds allocated to the Project will lapse.
- D. If the Program shown on Attachment A is Group I or Group II, Sections V.A, V.B and V.C do not apply, but will be obligated according to the fiscal year programmed in the most current MPO TIP, provided the MPO funding is within their fiscal year allocation or within the agreed upon use of the MPO's prior year balances.

SECTION VI GENERAL PROVISIONS

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

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

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

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

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 Contract, 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.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal 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.
3. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

E. Compliance with Laws.

1. The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."

4. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ig/>. If the LPA or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44.1-1-4 and under any other applicable State or Federal laws.
5. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and 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 under this agreement. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.
6. As required by I.C. 5-22-3-7:
 - (1) The LPA and any officials of the LPA certify that:
 - (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines]; in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the LPA will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
 - (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

F. Debarment and Suspension.

1. The LPA certifies by entering into this Contract that neither it 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 of Indiana. The term “principal” for purposes of this Contract means an officer, director, key employee or other person with primary management or supervisory responsibilities, or a person who has critical influence on or substantive control over the operations of the LPA.
2. The LPA certifies that it will verify the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred

subcontractor. The LPA shall immediately notify INDOT if any subcontractor becomes debarred or suspended, and shall, at INDOT's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

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

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

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

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

H. Disputes.

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.
3. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the PARTIES have ten (10) working days, unless the PARTIES mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:
4. The PARTIES agree to resolve such matters through submission of this dispute to the Commissioner of INDOT. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the LPA within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the PARTIES concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If a party is not satisfied with the

Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

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

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

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

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
3. Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;
5. Within thirty (30) days after receiving notice under subdivision (3)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.

- J. Force Majeure.** In the event either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- K. Funding Cancellation Clause.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- L. Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
- M. Indemnification.** The LPA agrees to and shall indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:
- (a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
 - (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
 - (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
 - (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

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

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

- N. Merger & Modification.** This Contract constitutes the entire agreement between the PARTIES. No understandings, agreements, or representations, oral or written, not specified within this

Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary PARTIES.

O. Non-Discrimination.

1. This Contract is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LPA or any subcontractor.

Under IC 22-9-1-10 LPA covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, or status as a veteran.

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

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

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
 - a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - b. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and

leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.
- d. Information and Reports: The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
- f. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

- P. Payment. All payments made by INDOT, if any, shall be made in arrears in conformance with State fiscal policies and procedures and, as required by I.C. 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by I.C. 4-13-2-20.

- Q. Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.
- R. Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:
1. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
 2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
 3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.
- S. Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
- T. Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

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

The remainder of this page is intentionally left blank.

Non-Collusion

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

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

LPA: City of Westfield**STATE OF INDIANA
Department of Transportation**_____
Print or type name and title**Recommended for approval by:**_____
Signature and date_____
Steven Duncan, Director
Contract Administration Division_____
Print or type name and title

Date: _____

Signature and date**Executed by:**_____
Print or type name and title_____
Joseph McGuinness, Commissioner (FOR)_____
Signature and date

Date: _____

Department of Administration**LPA DUNS #** 962590683_____
Lesley A. Crane, Commissioner

Attest

Date: _____

State Budget Agency_____
Auditor or Clerk Treasurer_____
Jason D. Dudich, Director

Date: _____

Approved as to Form and Legality:

This instrument prepared by:

Ellen HiteOctober 26, 2018_____
Curtis T. Hill, Jr., Attorney General of Indiana (FOR)

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: **1600640**
Program: **Group I Safety**
Type of Project: **Safety Revisions**
Location: **Kinsey Ave**

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

A project for safety revisions for Kinsey Avenue over Cool Creek between 181st Street and 186th Street, in the City of Westfield, Hamilton County, Indiana.

ATTACHMENT B

LPA'S RIGHTS AND DUTIES

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

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

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

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

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

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

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

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

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

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

ATTACHMENT D

PROJECT FUNDS

I. Project Costs.

A. If the Program shown on Attachment A is receiving Group I Safety federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP, or any increase or decrease in the funding from a prior year, authorized by the MPO that may not be reflected in the current TIP, are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay 90% of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is dependent upon the current TIP allocation. As of this date, October 26, 2018, the maximum amount according to the TIP dated, August 22, 2018 is \$ 86,400.00. The most current MPO TIP page, or MPO authorization, is uploaded into INDOT's Scheduling Project Management System (SPMS).

OR

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

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

II. Billings.

A. Billing:

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

B. Other Costs:

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

III. Repayment Provisions.

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



**City of Westfield Fire Department
Board of Public Works & Safety Report
October 2018**

Contact: Fire Chief

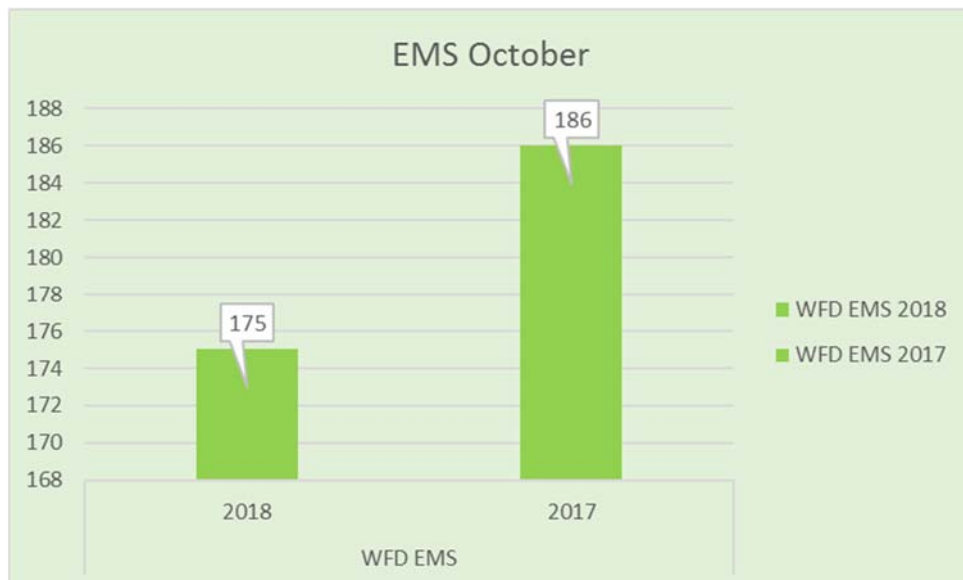
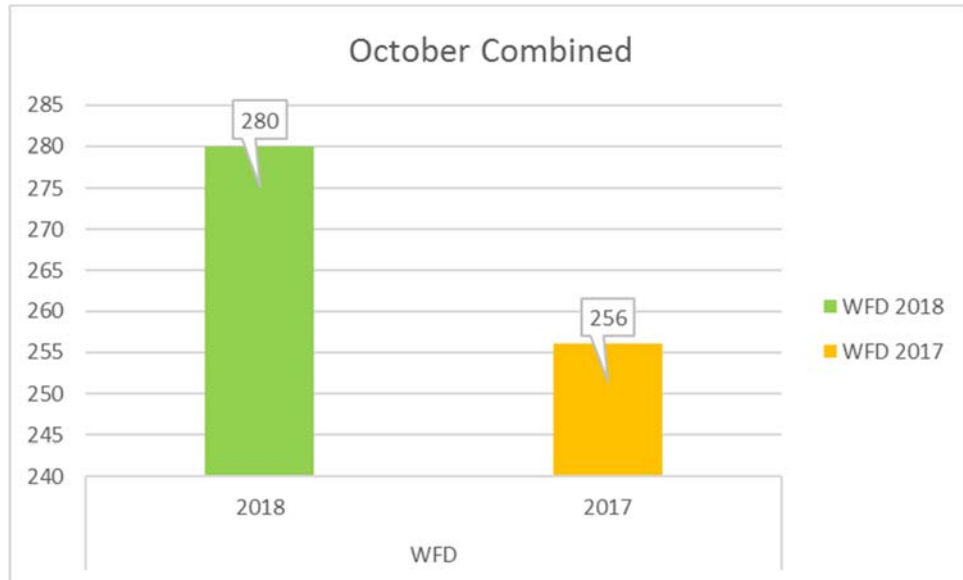
Marcus Reed

Or Nikki Hartman

804-3304

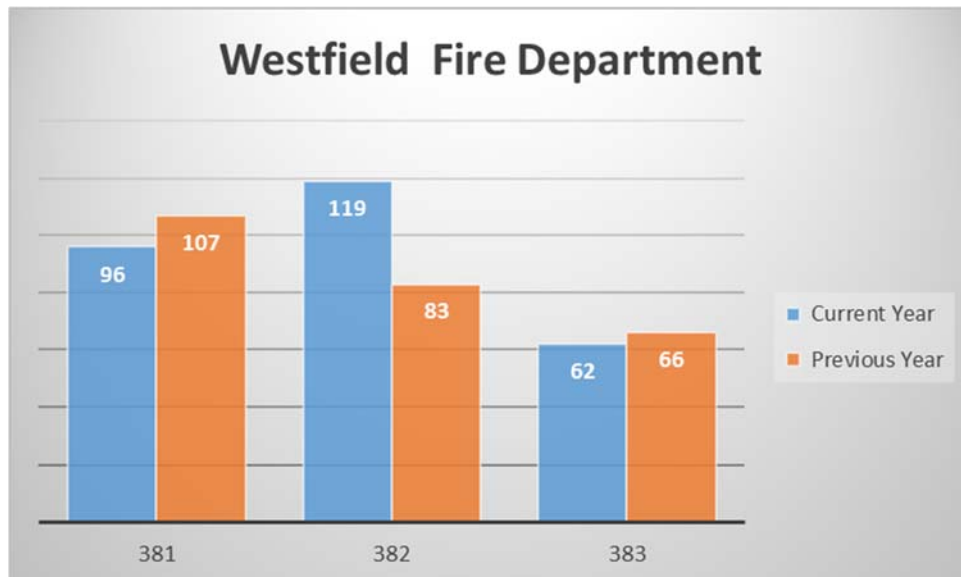
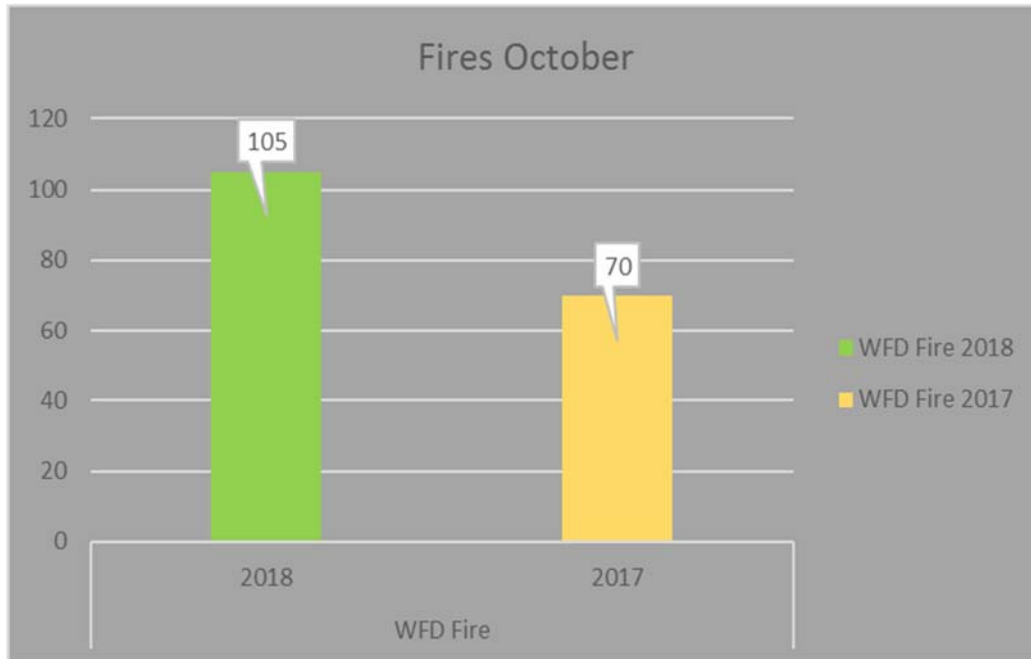


Westfield Fire Department 2018 Incident Statistics





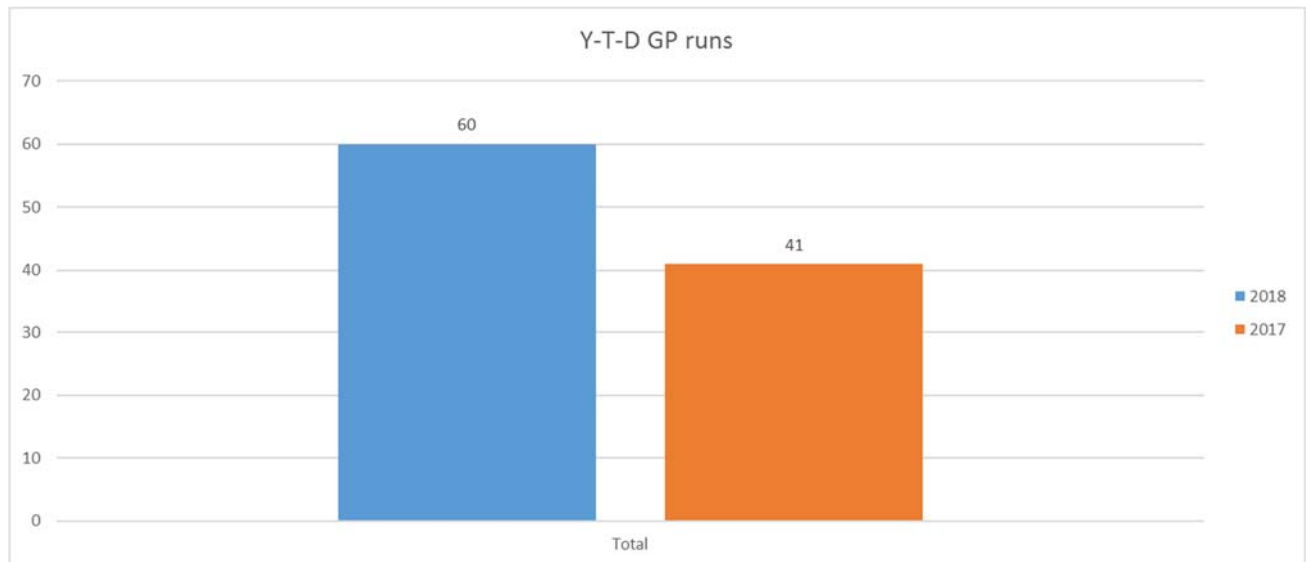
Westfield Fire Department 2018 Incident Statistics



Runs per station this year and last year comparison



Westfield Fire Department 2018 Incident Statistics

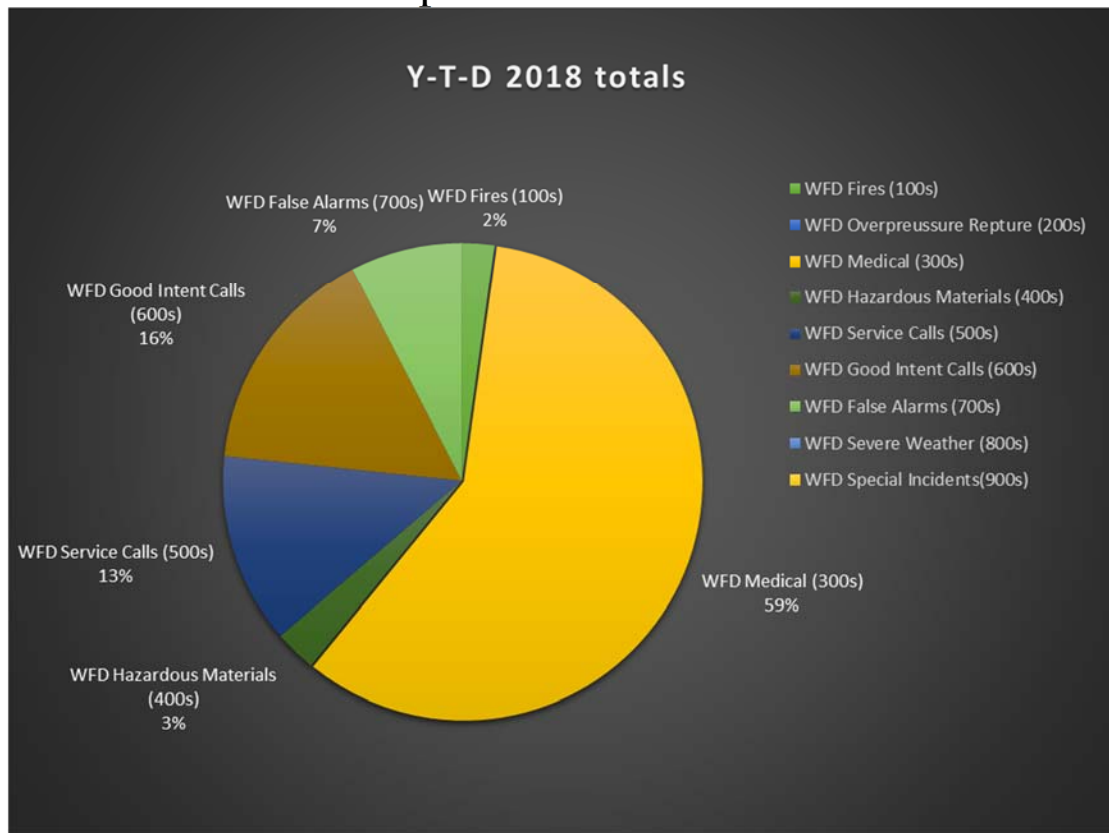


Grand Park

60 calls to GP this year through October



Westfield Fire Department 2018 Incident Statistics



YTD	2,774
Fires	72
Overpressure	3
Medical	1,794
Hazmat	94
Service Calls	291
Good Intent	365
False Alarms	146
Severe Weather	7
Special Incidents	2

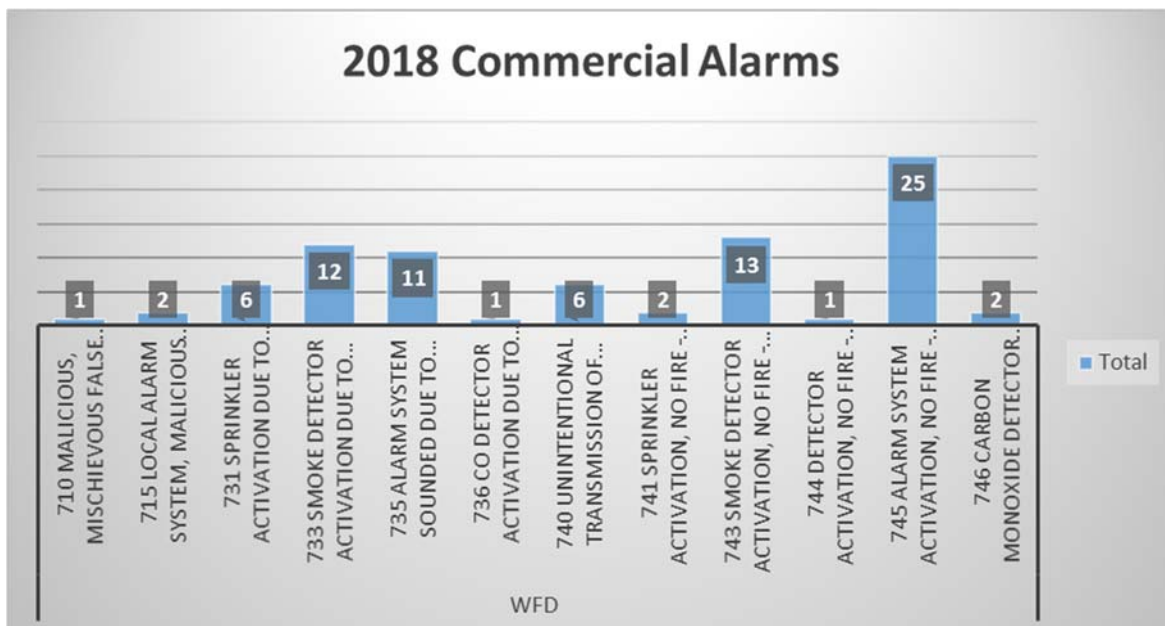


Westfield Fire Department 2018 Incident Statistics

Alarm Data



64 Residential Alarms

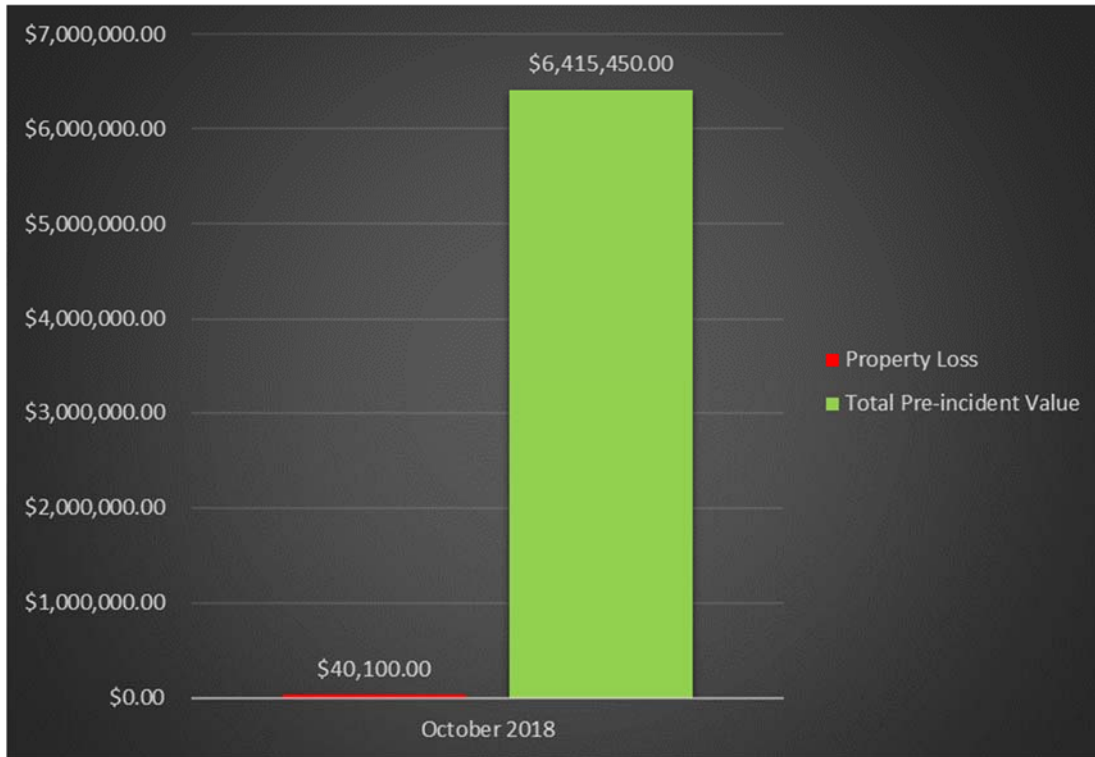


82 Commercial Alarms

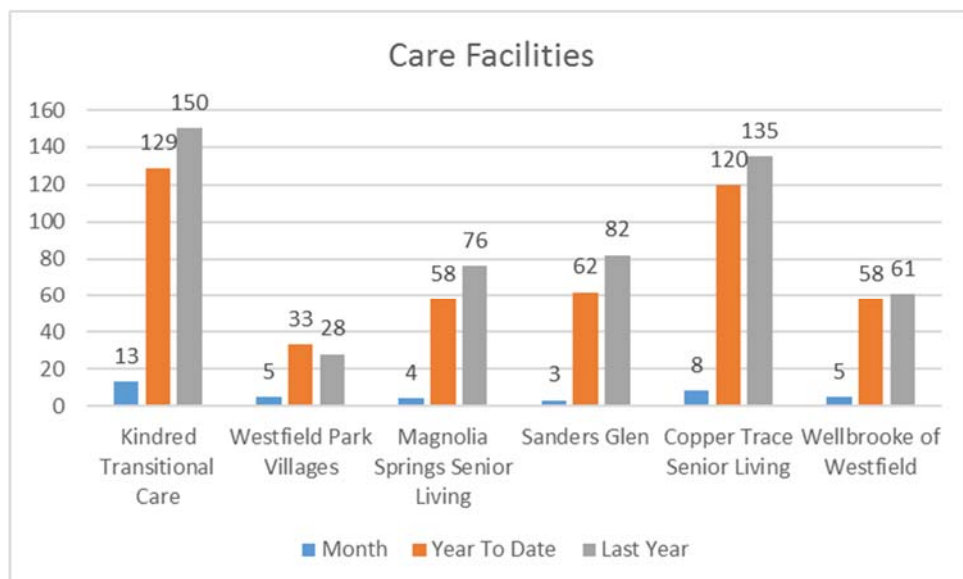


Westfield Fire Department 2018 Incident Statistics

Property Saved



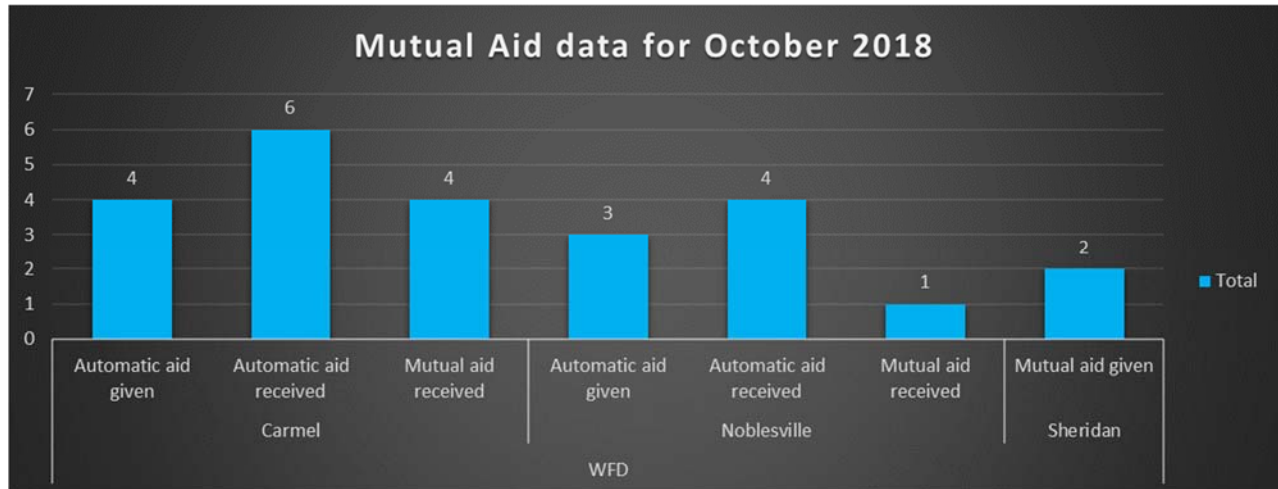
Care Facility



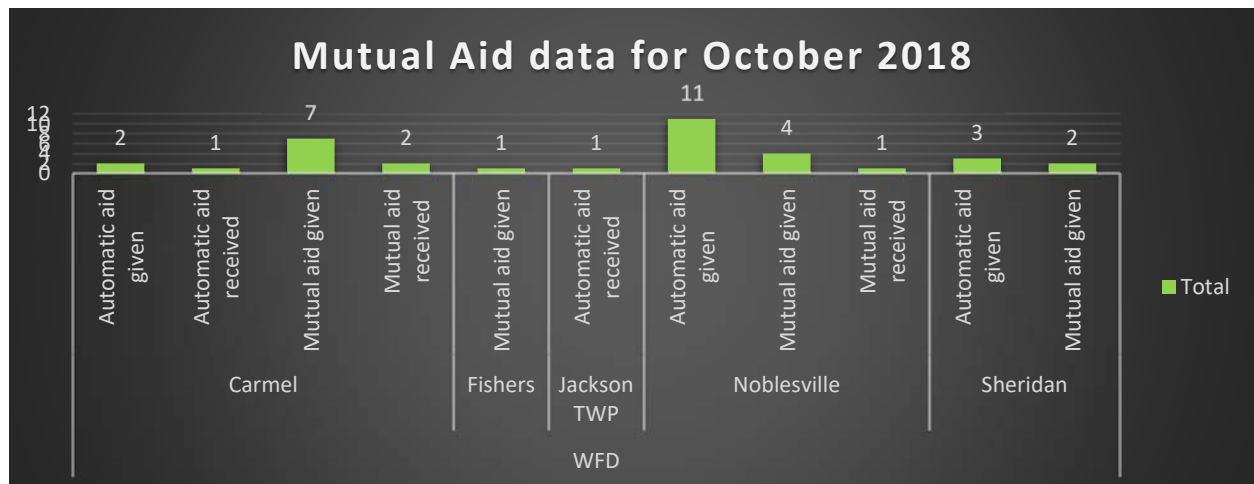


Westfield Fire Department 2018 Incident Statistics

Mutual Aid data



Total MA for EMS calls 24



Total MA for Fire Incidents 31

ROAD IMPACT FEE CREDIT AGREEMENT

THIS DEVELOPMENT AGREEMENT is entered this 28th day of November, 2018, by and between the **CITY OF WESTFIELD, INDIANA**, an incorporated municipality (the “City”), and **TIME FINANCIAL CORPORATION**, (“Developer”) (collectively, the “Parties”) to provide for the subdivision and development of real estate generally located at 632 E. State Road 32 (the “Development Project”).

WHEREAS, the City desires to assist development and integrate improvements of complementary right-of-way infrastructure collaboratively with the development community;

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

WHEREAS, the City has adopted the Westfield-Washington Township Comprehensive Plan which provides for the future development and expansion of certain roadways within the City’s planning and zoning jurisdiction (the “Thoroughfare Plan”);

WHEREAS, the Developer is required to dedicate right-of-way and provide connectivity of streets with existing or planned streets with adjacent properties pursuant to the Westfield-Washington Township Unified Development Ordinance (the “Unified Development Ordinance”) and the Thoroughfare Plan; and,

WHEREAS, the Developer intends to develop the real estate generally located between Oak Ridge Road (to the east) and the Anna Kendall drain (to the west), and State Highway 32 (to the south), and more particularly identified in Exhibit A (the “Real Estate”); and,

WHEREAS, the Developer intends to develop the Real Estate’s infrastructure in accordance with the Development Plan, attached hereto as Exhibit D (the “Development Plan”), and the Secondary Plat, attached hereto as Exhibit C (the “Secondary Plat”) (collectively, “Birdie’s Entertainment”); and,

WHEREAS, as part of the development of the Real Estate, the City requires the Developer to construct and dedicate to the City an access road in accordance with Article 5.3(F) of the Unified Development Ordinance (“Tournament Trail”); and,

WHEREAS, as part of the development of the Real Estate, road impact fees are assessed and required to be paid to the City in accordance with City Ordinance 17-43 (the “Road Impact Fees”); and,

WHEREAS, in accordance with Indiana Code § 36-7-4-1335 et. seq., the City has agreed to Road Impact Fee credits or disbursements in exchange for the Developer constructing Tournament Trail; and,

NOW THEREFORE, in consideration of the foregoing and of mutual covenants and agreements herein contained, and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

- 1) Design and Construction of Infrastructure.
 - a) Developer shall construct Tournament Trail (the “Infrastructure”), in accordance with the Development Plans reviewed and accepted by the City on October 17, 2018 (“Approved Plans”). Construction of the Infrastructure shall be subject to any applicable permits, financial guarantees and inspections by the City.
 - b) Developer shall, at no cost to the City, dedicate or deed the right-of-way for Tournament Trail (the “Right-of-Way”). Developer shall bear the costs of preparing such documentation.
- 2) Road Impact Fee Credits.
 - a) Developer has prepared and submitted an estimated cost and value for the Infrastructure, attached hereto as **Exhibit B** (the “Cost of Infrastructure”)
 - b) In consideration for the dedication and construction of the Infrastructure, the City agrees to issue a road impact fee credit or disbursements to Developer in the amount of \$113,336.00 (the “RIF Credit”).
 - c) The RIF Credit may be used and applied by Developer or its assignees as a credit against road impact fees payable to the City in connection with the construction of buildings on the Real Estate. The Road Impact Fee Assessment for Birdie’s Entertainment was provided to the Developer on 10/23/2018 in the amount of \$205,719.00. The Developer shall pay \$92,383.00 in remaining Road Impact Fees to the City prior to the issuance of an improvement location permit for a building on the Real Estate.
- 3) Conditions Precedent to Obligations. The obligations of City and Developer contained in this Agreement are expressly conditioned upon the enactment and approval of the secondary plat(s) and construction plans of Birdie’s Entertainment, by the Developer, or its successors and assigns and, absent occurrence of all of the foregoing conditions, the Agreement shall be null and void and the parties shall have no further responsibilities or obligation to each other under this Agreement.
- 4) Authority. Each undersigned person signing certifies that (a) he has had ample time and opportunity to research, consult with experts and investigate all aspects of this Agreement, (b) that non information has been withheld from the other party, (c) he is fully empowered and duly authorized by any and all necessary action or consent to execute and deliver this Agreement for and on behalf of the party for which he signs, (d) that the party for which he signs has full capacity, power, and authority to carry out and enter into the obligations under this Agreement, and (e) that this Agreement has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of the party for which he signs.
- 5) Remedies. In the event of either the City's or Developer’s failure to perform any of its obligations hereunder, the other party shall notify, in writing, the non-performing party of such default. If the non-performing party is unable to cure such default within thirty (30) days, then the other party may pursue any remedy available at law or in equity. The substantially prevailing party in any litigation arising as a result of a default by a party hereto shall be entitled to recover costs of the action, including reasonable attorneys' fees.

The parties stipulate that the only appropriate venue shall be the Hamilton County Indiana Circuit or Superior courts. Developer waives any and all recourse should the City file a lien for all amounts due on the subject property still owned or controlled by the Developer should the Developer be in default of this Agreement.

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

If to City of Westfield:
City of Westfield
Attn: Jeremy Lollar
Director of Public Works
2706 E. 171st Street
Westfield, IN 46074

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

If to Developer:
Time Financial Corporation
Ted Gelov
14300 Clay Terrace Blvd Ste 249
Carmel, IN 46032

With a Copy to:

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

By: _____

J. Andrew Cook, Member

Board of Public Works and Safety

Date: _____

By: _____

Kate Snedeker, Member

Board of Public Works and Safety

Date: _____

By: _____

Randell Graham, Member

Board of Public Works and Safety

Date: _____

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

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

Subscribed and Sworn before me this ____ day of _____, 20__.

Printed Name of Notary Public _____

My Commission Expires _____

JRF Construction, Inc. (“Developer”)

By: _____

Name: _____

Title: _____

Date: _____

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

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

Subscribed and Sworn before me this _____ day of _____, 20__.

Printed Name of Notary Public _____

My Commission Expires _____

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

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Brian J. Zaiger

EXHIBIT A
REAL ESTATE

LAND DESCRIPTION

RECORD LEGAL DESCRIPTION (recited from Instrument #2017029485)

Part of the Southeast Quarter of Section 35, Township 19 North, Range 3 East, in Hamilton County, Indiana, and part of the Southwest Quarter of Section 36, Township 19 North, Range 3 East, in Hamilton County, Indiana described as follows:

Commencing at the Southeast corner of said Southeast Quarter of Section 35; thence North 00 degrees 32 minutes 28 seconds East (assumed bearing), along the East Line of the Southeast Quarter of said Section 35, 398.61 feet to a 5/8 inch rebar with red cap stamped FIRM 0066, (hereinafter referred to as rebar) at the POINT OF BEGINNING; thence South 89 degrees 50 minutes 00 seconds West, parallel with the South line of said Southeast Quarter Section, 510.49 feet to the centerline of the Evan Kendall Ditch as now located; thence North 09 degrees 08 minutes 18 Seconds East along said centerline, 32.63 feet; thence North 05 degrees 04 minutes 32 seconds East, along said centerline, 30.63 feet; thence North 10 degrees 44 minutes 11 seconds East, along said centerline, 29.11 feet; thence North 03 degrees 57 minutes 48 seconds East, along said centerline, 25.09 feet; thence North 89 degrees 50 minutes 00 seconds East, parallel with the South line of said Southeast Quarter Section, 496.54 feet to a point on the East line of said Southeast Quarter Section; thence South 89 degrees 58 minutes 00 seconds East, parallel with the South line of said Southwest Quarter Section, 181.50 feet to a rebar; thence South 00 degrees 32 minutes 28 seconds West, parallel with the West line of said Southwest Quarter Section, 60.00 feet to a rebar; thence North 89 degrees 58 minutes 00 seconds West, parallel with the South line of said Southwest Quarter Section, 181.50 feet to a point on the West line of said Southwest Quarter Section; thence South 00 degrees 32 minutes 28 seconds West, along said West line of said Southwest Quarter Section, 56.34 feet to the point of beginning and containing 1.593 acres, more or less.

AND

Part of the East Half of the Southeast Quarter of Section 35, Township 19 North, Range 3 East, in Hamilton County, Indiana, described as follows:

Commencing at the southeast corner of said Half-Quarter Section; thence South 89 degrees 50 minutes 00 seconds West (assumed bearing) along the south line thereof 102.00 feet to the southwest corner of a 2.841 acre tract of real estate described in a Warranty Deed recorded as Instrument Number 200300096364 in the Office of the Recorder of Hamilton County, Indiana; thence North 00 degrees 05 minutes 00 seconds East along the west line of said 2.841 acre tract 50.00 feet to the north right of way line of State Road 32 per Dedication of Public Right-Of-Way recorded in Instrument Number 9809810527 in the Office of the Recorder of Hamilton County, Indiana, and the POINT OF BEGINNING; thence South 89 degrees 50 minutes 00 seconds West along said right of way line 50.00 feet to a 5/8 inch rebar with red cap; thence South 00 degrees 05 minutes 00 seconds West parallel with the west line of said 2.841 acre tract 50.00 feet to the south line of said Half-Quarter Section; thence South 89 degrees 50 minutes 00 seconds West along said south line 366.00 feet, more or less, to the centerline of the Evan Kendall Ditch; thence Northerly along the centerline of said ditch 400.00 feet, more or less; thence North 89 degrees 50 minutes 00 seconds East parallel to the south line of said Half-Quarter 405.31 feet, more or less, to the Northwest corner of the aforesaid 2.841 acre tract; thence South 00 degrees 05 minutes 00 seconds West along the west line of said 2.841 acre tract 348.61 feet to the Point of Beginning, and containing 3.745 acres, more or less; EXCEPTING THEREFROM that tract of land being 0.793 acres, more or less, identified as "Parcel 24, Fee Simple" and as described in EXHIBIT A" in Agreed Finding and Judgement in favor of the State of Indiana, the transcript of which is recorded March 24, 2011 as Instrument Number 2011012514 in the Office of the Recorder of Hamilton County, Indiana.

EXHIBIT B
COST OF INFRASTRUCTURE



CITY WORK BREAKOUT PRICING - Birdie's Restaurant & Mini Golf

Subject	Label	Length	Area	Depth	Wall Area	Quantity Totals	Unit Cost	TOTAL
ASPHALT	PATHWAY					373 SY	\$ 27.00 SY	\$ 10,071.00
ASPHALT	TOURNAMENT TRAIL PAVEMENT					1130 SY	\$ 36.51 SY	\$ 41,260.00
ASPHALT	ROAD ENDS SIGN					0 EA	\$ 375.00 SF	\$ -
CONCRETE	CITY SIDEWALK	292	691	0		1859 SF	\$ 5.00 SF	\$ 9,295.00
CONCRETE	CITY SIDEWALK	118	264	0				
CONCRETE	CITY SIDEWALK	366	904	0				
CONCRETE	CURB & GUTTER	285		0		550 LF	\$ 20.00 LF	\$ 11,000.00
CONCRETE	CURB & GUTTER	299		0				
CONCRETE	HC RAMP					0 EA	\$ 750.00 EA	\$ -
CONCRETE	CONCRETE APRON	194.01	525	0		0 SF	\$ 6.00 SF	\$ -
CONCRETE	CONCRETE APRON	91.41	42	0				
CONCRETE	STAMPED APRON	120.03	253	0		0 SF	\$ 12.00 SF	\$ -
FENCING	PATHWAY	106		0		170 LF	\$ 50.00 LF	\$ 8,500.00
FENCING	PATHWAY	60		0				
DIRTWORK/STORM/LIMING FOR TOURNAMENT TRAIL								\$ 24,395.00
DIRTWORK/LIMING FOR PATHWAY								\$ 8,815.00
TOTAL: \$ 113,336.00								

EXHIBIT C
SECONDARY PLAT

PREPARED BY:
JAMES D. HALL
JD HALL LAND SURVEYING
803 S. OHIO STREET
SHERIDAN, IN. 46069
PHONE: (317) 696-3594

DEVELOPER/SUBDIVIDER:
TIME FINANCIAL CORPORATION
14300 CLAY TERRACE BLVD, Ste 249
CARMEL, IN 46032
(317) 566-9750
TED GELOV, PRESIDENT

SOURCE OF TITLE:
INSTRUMENT NO. 2017029485

SECONDARY PLAT FOR
BIRDIES ENTERTAINMENT
A PART OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 19 NORTH, RANGE 3 EAST, AND
A PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST
CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA

LAND DESCRIPTION

RECORD LEGAL DESCRIPTION (recited from Instrument #2017029485)

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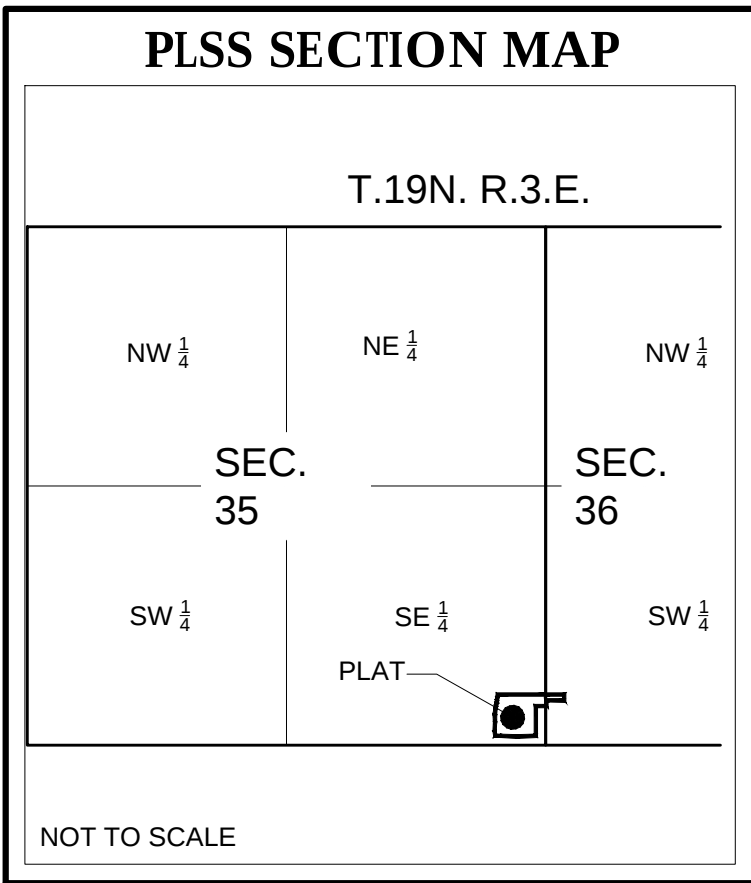
AND

Part of the East Half of the Southeast Quarter of Section 35, Township 19 North, Range 3 East, in Hamilton County, Indiana, described as follows:

Commencing at the southeast corner of said Half-Quarter Section; thence South 89 degrees 50 minutes 00 seconds West (assumed bearing) along the south line thereof 102.00 feet to the southwest corner of a 2.841 acre tract of real estate described in a Warranty Deed recorded as Instrument Number 200300096364 in the Office of the Recorder of Hamilton County, Indiana; thence North 00 degrees 05 minutes 00 seconds East along the west line of said 2.841 acre tract 50.00 feet to the north right of way line of State Road 32 per Dedication of Public Right-Of-Way recorded in Instrument Number 9809810527 in the Office of the Recorder of Hamilton County, Indiana, and the POINT OF BEGINNING; thence South 89 degrees 50 minutes 00 seconds West along said right of way line 50.00 feet to a 5/8 inch rebar with red cap; thence South 00 degrees 05 minutes 00 seconds West parallel with the west line of said 2.841 acre tract 50.00 feet to the south line of said Half-Quarter Section; thence South 89 degrees 50 minutes 00 seconds West along said south line 366.00 feet, more or less, to the centerline of the Evan Kendall Ditch; thence Northerly along the centerline of said ditch 400.00 feet, more or less; thence North 89 degrees 50 minutes 00 seconds East parallel to the south line of said Half-Quarter 405.31 feet, more or less, to the Northwest corner of the aforesaid 2.841 acre tract; thence South 00 degrees 05 minutes 00 seconds West along the west line of said 2.841 acre tract 348.61 feet to the Point of Beginning, and containing 3.745 acres, more or less; EXCEPTING THEREFROM that tract of land being 0.793 acres, more or less, identified as "Parcel 24, Fee Simple" and as described in EXHIBIT A" in Agreed Finding and Judgement in favor of the State of Indiana, the transcript of which is recorded March 24, 2011 as Instrument Number 2011012514 in the Office of the Recorder of Hamilton County, Indiana.

MINIMUM SETBACK REQUIREMENTS:
FRONT YARD: 30' FROM SR. 32, 20' FROM TOURNAMENT TRAIL
SIDE YARD: 10' EAST, 20' WEST
REAR YARD: N/A

THE STREETS, TOGETHER WITH ALL EXISTING AND FUTURE PLANTING, TREES AND SHRUBBERY THEREON, AS SHOWN ON THE ATTACHED PLAT ARE HEREBY DEDICATED TO THE PERPETUAL USE OF THE PUBLIC FOR PROPER PURPOSES, RESERVING TO THE DEDICATED, THEIR SUCCESSORS OR ASSIGNS THE REVERSION OR REVERSIONS THEREOF, WHENEVER DISCONTINUED BY LAW.



LEGEND

P.O.B. = POINT OF BEGINNING
B.S.L. = BUILDING SETBACK LINE
S.D.&U.E. = SANITARY, DRAINAGE AND UTILITY EASEMENT
D.&U.E. = DRAINAGE AND UTILITY EASEMENT
D.E. = DRAINAGE EASEMENT
R.D.E. = REGULATED DRAINAGE EASEMENT
V.W. = VARIABLE WIDTH
E.X. = EXISTING
R/W = RIGHT-OF-WAY

▲ SECTION CORNER
● PLAT BOUNDARY & LOT MONUMENTS
● PLAT CENTERLINE MONUMENTS

ADDRESS

SET BOUNDARY & LOT CORNER MONUMENTS TO BE:
24" x 5/8" REBAR WITH STAMPED CAP SET FLUSH WITH GROUND

SET STREET CENTERLINE MONUMENTS TO BE:
5/8" x 7" ALUMINUM STAMPED ROD WITH 1-1/2" ALUMINUM CAP WITH "PUNCH HOLE" MARKING CENTERLINE

STAMPING FOR MONUMENTS:
"FIRM # _____"

PROJECT NUMBER: 1801006	SUBDIVISION NAME:
PLAN DATE: OCTOBER 15, 2018	BIRDIES ENTERTAINMENT
PLAT PRODUCITON BY: AF	
CHECK BY: JDH/AF	
PLAN / SURVEY STATUS:	FINAL
PREPARED BY: JAMES D. HALL JD HALL LAND SURVEING	SHEET #: 1 OF 3

PREPARED BY:
JAMES D. HALL
JD HALL LAND SURVEYING
803 S. OHIO STREET
SHERIDAN, IN. 46069
PHONE: (317) 696-3594

DEVELOPER/SUBDIVIDER:
TIME FINANCIAL CORPORATION
14300 CLAY TERRACE BLVD, Ste 249
CARMEL, IN 46032
(317) 566-9750
TED GELOV, PRESIDENT

SOURCE OF TITLE:
INSTRUMENT NO. 2017029485

SECONDARY PLAT FOR
BIRDIES ENTERTAINMENT
A PART OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 19 NORTH, RANGE 3 EAST, AND
A PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST
CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA

DEDICATIONS AND CERTIFICATES

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

THIS SUBDIVISION SHALL BE KNOWN AND DESIGNATED AS BIRDIES ENTERTAINMENT, IN HAMILTON COUNTY, INDIANA. ALL RIGHTS-OF-WAY SHOWN AND NOT HEREFOR DEDICATED ARE HEREBY DEDICATED TO THE PUBLIC.

BLOCK 'B', IS HEREBY DEDICATED TO THE CITY OF WESTFIELD DEPARTMENT OF PUBLIC WORKS.

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

THERE ARE STRIPS OF GROUND SHOWN ON THIS PLAT AND MARKED "EASEMENT", INCLUDING "SANITARY, DRAINAGE & UTILITY EASEMENTS", "DRAINAGE & UTILITY EASEMENTS", "DRAINAGE EASEMENTS", AND A "REGULATED DRAIN EASEMENT", RESERVED FOR THE USE OF PUBLIC UTILITIES FOR THE INSTALLATION OF WATER AND SEWER MAINS, POLES, DUCTS, LINES AND WIRES, SUBJECT AT ALL TIMES TO THE PROPER AUTHORITIES AND TO THE EASEMENT HEREIN RESERVED. NO PERMANENT OR OTHER STRUCTURES ARE TO BE ERECTED OR MAINTAINED UPON SAID STRIPS OF LAND, BUT OWNERS OF LOTS IN THIS SUBDIVISION SHALL TAKE THEIR TITLES SUBJECT TO THE RIGHTS OF THE PUBLIC UTILITIES.

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

IN TESTIMONY WHEREOF, WITNESS THE SIGNATURES OF OWNER AND DECLARANT THIS ____ DAY OF _____, 20____.

OWNERS:

SIGNATURE _____	SIGNATURE _____
TED GELOV PRINTED NAME	PRINTED NAME
PRESIDENT TITLE	TITLE
TIME FINANCIAL CORPORATION COMPANY	COMPANY
STATE OF INDIANA)) SS COUNTY OF _____)	STATE OF INDIANA)) SS COUNTY OF _____)

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED TED GELOV, AND ACKNOWLEDGED THE EXECUTION OF THIS SECONDARY PLAT AS THEIR VOLUNTARY ACT AND DEED AND AFFIXED HIS SIGNATURE THERETO.

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED _____, AND ACKNOWLEDGED THE EXECUTION OF THIS SECONDARY PLAT AS THEIR VOLUNTARY ACT AND DEED AND AFFIXED HIS SIGNATURE THERETO.

WITNESS MY SIGNATURE AND SEAL THIS ____ DAY OF _____, 20____.	WITNESS MY SIGNATURE AND SEAL THIS ____ DAY OF _____, 20____.
NOTARY PUBLIC _____	NOTARY PUBLIC _____
COUNTY OF RESIDENCE: _____	COUNTY OF RESIDENCE: _____
MY COMMISSION EXPIRES: _____	MY COMMISSION EXPIRES: _____

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

APPROVED BY THE DIRECTOR OF THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT OF THE CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA, PURSUANT TO THE WESTFIELD-WASHINGTON TOWNSHIP UNIFIED DEVELOPMENT ORDINANCE, ON THE ____ DAY OF _____, 20____.

WESTFIELD-WASHINGTON TOWNSHIP PLAN COMMISSION

BY: _____
MATTHEW S. SKELTON, DIRECTOR
ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

BOARD OF PUBLIC WORKS AND SAFETY CERTIFICATE:
THIS PLAT AND THE ACCEPTANCE OF ANY PUBLIC RIGHTS-OF-WAY DEDICATED HEREIN IS HEREBY APPROVED ON THE ____ DAY OF _____, 20____, BY THE DIRECTOR OF THE PUBLIC WORKS DEPARTMENT OF THE CITY OF WESTFIELD, INDIANA, ON BEHALF OF THE BOARD OF PUBLIC WORKS AND SAFETY, PURSUANT TO RESOLUTION 15-120 ENACTED BY THE BOARD OF PUBLIC WORKS AND SAFETY ON AUGUST 26, 2015, AND ARTICLE 7.4(B) OF THE UNIFIED DEVELOPMENT ORDINANCE.

JEREMY LOLLAR, DIRECTOR
PUBLIC WORKS DEPARTMENT

PROJECT NUMBER: 1801006	SUBDIVISION NAME:
PLAN DATE: OCTOBER 15, 2018	BIRDIES ENTERTAINMENT
PLAT PRODUCITON BY: AF	
CHECK BY: JDH/AF	
PLAN / SURVEY STATUS:	FINAL
PREPARED BY: JAMES D. HALL JD HALL LAND SURVEING	SHEET #: 2 OF 3

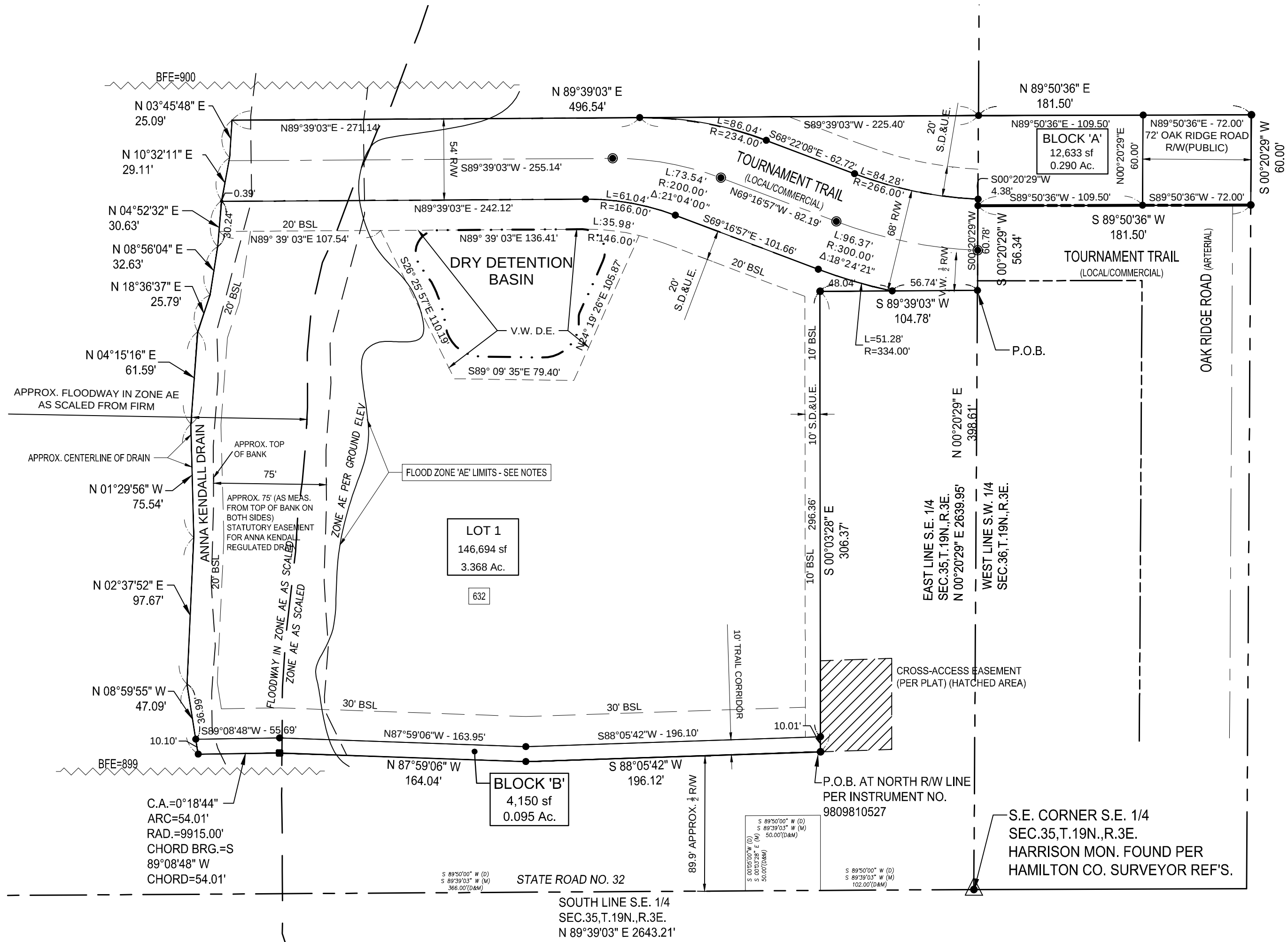
PREPARED BY:
JAMES D. HALL
JD HALL LAND SURVEYING
803 S. OHIO STREET
SHERIDAN, IN. 46069
PHONE: (317) 696-3594

DEVELOPER/SUBDIVIDER:
TIME FINANCIAL CORPORATION
14300 CLAY TERRACE BLVD, Ste 249
CARMEL, IN 46032
(317) 566-9750
TED GELOV, PRESIDENT

SOURCE OF TITLE:
INSTRUMENT NO. 2017029485

SECONDARY PLAT FOR BIRDIES ENTERTAINMENT

A PART OF THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 19 NORTH, RANGE 3 EAST, AND
A PART OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 19 NORTH, RANGE 3 EAST
CITY OF WESTFIELD, HAMILTON COUNTY, INDIANA



PROJECT NUMBER: 1801006	SUBDIVISION NAME:
PLAN DATE: OCTOBER 15, 2018	BIRDIES ENTERTAINMENT
PLAT PRODUCITON BY: AF	
CHECK BY: JDH/AF	
PLAN / SURVEY STATUS:	FINAL
PREPARED BY: JAMES D. HALL JD HALL LAND SURVEING	SHEET #: 3 OF 3

EXHIBIT D
DEVELOPMENT PLAN

BIRDIE'S INFRASTRUCTURE PLANS, STAMPED AS PLANS ACCEPTED ON OCTOBER 17, 2018, MAY BE VIEWED AND ARE ON FILE WITH THE CITY OF WESTFIELD'S DEPARTMENT OF PUBLIC WORKS OFFICE LOCATED AT 2706 EAST 171ST STREET, WESTFIELD, INDIANA 46074.

LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of _____, 20____ ("Effective Date") by and between the City of Westfield, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and A&F Engineering Co., LLC ("the CONSULTANT"), a corporation/limited liability company organized under the laws of the State of Indiana.

Des. No.: N/A

Project Description: Roadway Widening on Wheeler Road near SR 32 and Signalization Improvements at Wheeler and Tournament Trail.

RECITALS

WHEREAS, the LPA may enter 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 December 31, 2019. 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 \$ 127,220.00.

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

SECTION VI GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

7. **Compliance with Laws.**

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

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

9. Confidentiality of LPA Information.

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

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

11. DBE Requirements.

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

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

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

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

12. Non-Discrimination.

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

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

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

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

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

13. Disputes.

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

14. Drug-Free Workplace Certification.

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

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

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

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

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

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

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

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

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

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

I. Professional Liability Insurance

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

II. Commercial General Liability Insurance

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

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

III. Automobile Liability

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

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

IV. Watercraft Liability (When Applicable)

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

V. Aircraft Liability (When Applicable)

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

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

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

Notices to the LPA shall be sent to:

Mr. Johnathon Nail, P.E.
City Engineer
City of Westfield
2706 E. 171st Street
Westfield, Indiana 46074

Notices to the CONSULTANT shall be sent to:

Joseph T. Rengel, P.E., PTOE
Vice President
A&F Engineering Co., LLC
8365 Keystone Crossing, Suite 201
Indianapolis, Indiana 46240

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 13). The LPA may withhold from the agreed upon price for Services any sum the LPA determine necessary to protect the LPA against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the LPA in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- E. **Default by the LPA.** If the CONSULTANT believes the LPA is in default of this Contract, it shall provide written notice immediately to the LPA describing such default. If the LPA fails to take steps to correct or cure any material breach of this Contract within sixty (60) days after receipt of such written notice, the CONSULTANT may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination, including reasonable attorney fees and expenses, provided that if such cure is not reasonably achievable in such time, the LPA shall have up to one hundred twenty (120) days from such notice to effect such cure if the LPA promptly commences and diligently pursues such cure as soon as practicable. The CONSULTANT shall be compensated for Services properly rendered prior to the effective date of such termination. The CONSULTANT agrees that it has no right of termination for non-material breaches by the LPA.

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

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Non-Collusion.

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

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

CONSULTANT


Signature

Joseph T. Rengel, P.E. – Vice President
(Print or type name and title)

Attest:

Signature

(Print or type name and title)

LOCAL PUBLIC AGENCY

Signature

Andy Cook, Mayor
(Print or type name and title)

Signature

Randy Graham
(Print or type name and title)

Signature

Kate Snedeker
(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 CONSULTANT shall be responsible for performing the following activities:

- A. The CONSULTANT shall provide the field survey required from preparation of design plans in conformance with the requirements of Title 865 IAC 1-12 et sequentia and the "Survey Manual, Location Surveys, Indiana State Highway Commission", a copy of which is on file with the Indiana Department of Transportation and same is incorporated herein by reference and is made part hereof. As a minimum the survey shall include locating all wells, utilities, septs and structures within 100 feet of the existing road centerline of 85 feet beyond the proposed future right-of-way whichever is greater. This shall be done to insure the most efficient design can be achieved which will minimize land acquisition and relocation costs.
- B. The CONSULTANT shall prepare preliminary plans and preliminary estimates of cost, which shall be in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the plans or reports are submitted: INDOT 3-R Design Standards, American Association of State Highway and Transportation Officials "A Policy on Geometric Design of Highways and Streets", Indiana Department of Transportation's Standard Specifications, Road and Bridge Memoranda and Road and Bridge 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 Public Meeting, no further work shall be done on the plans, unless and until specifically directed by the LOCAL PUBLIC AGENCY. Plan and profile sheets shall be drawn to a scale of 1"=20' for urban areas or 1"=50' for rural areas. Road detail sheets shall be drawn to a scale of 1"=20'.

Following approval of the preliminary plans, the CONSULTANT shall prepare contract plans, special provisions for the specifications, and final cost estimates for the construction of the signs, road and bridge. The cost estimates for construction shall be prepared according to the current practices of the Indiana Department of Transportation and shall include all types of work required for the complete construction of the work, including all temporary work necessary in connection therewith, but shall not include the cost of such items of work for which the LOCAL PUBLIC AGENCY, through its own forces or through other party or parties will perform the actual construction, or engineering. The unit prices to be used shall be in accordance with the methods used by the LOCAL PUBLIC AGENCY.

The CONSULTANT shall attend all such conferences with the officials of the LOCAL PUBLIC AGENCY and other interested agencies as may be required in connection with the work and to make his services available to the LOCAL PUBLIC AGENCY during construction of the work for the interpretation of the plans where disagreement may arise and for consultation during construction in the event unforeseen or unusual conditions may arise.

- C. The CONSULTANT shall identify and notify all affected Utilities and coordinate plans for utility relocation. The CONSULTANT shall prepare all required utility relocation agreements. The CONSULTANT shall maintain a record of all utility contracts to be submitted to the LPA. The work shall comply with INDOT requirements for utility coordination on federally funded projects. The cost of this work is included in the design fees.

D. Upon completion and final approval of the work by the LOCAL PUBLIC AGENCY, the CONSULTANT shall deliver to the LOCAL PUBLIC AGENCY the following, which shall become the property of the LOCAL PUBLIC AGENCY:

- 1 - Set of final approved tracings of the contract plans drawn to a suitable scale on standard 36" x 24" sheets prepared with the following process: ink or electronic printing on mylar for the Title Sheet and Estimate of Quantity Sheet. All other sheets, except cross-sections, to be electrostatic printing, ink or pen on mylar. The cross-sections for computing earthwork quantities shall be on approved cross-section medium, in ink or electrostatic printing.
- 1 - Set of plan sheets and all right of way plans in Adobe Acrobat® .pdf format (latest version at the time of completion of the plans) on CD-ROM.
- 1 - Set of Special Provisions for Specifications.
- 1 - Copy of construction cost estimates.
- 1 - Copy all design computations, Indexed, Paged and Bound.

Additional general data shall be issued at the mutual agreement of the CONSULTANT and the LOCAL PUBLIC AGENCY. The CONSULTANT does not authorize or assume liability for any reuse of the documents or digital materials described in this section for any purpose other than this project and the specific use intended, unless adapted by and approved by the CONSULTANT.

E. In fulfillment of this Agreement the CONSULTANT shall comply with the requirements of the appropriate regulations and requirements of the LOCAL PUBLIC AGENCY and other public agencies having a legal jurisdiction over the project.

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. Plans of existing bridge within the project limits
4. All written views pertinent to the location and environmental studies that are received by INDOT
5. Traffic assignments, Traffic Signal Warrants (New Signal), Traffic Lighting Warrants (New Lighting)
6. Necessary permit forms and permit processing (US Army Corps of Engineers, US Coast Guard, and/or Indiana Department of Natural Resources)
7. Available data from the transportation planning process
8. Utility plans available to INDOT covering utility facilities govern the location of signals and underground conduits throughout the affected areas
9. Provide access to enter upon public and private lands as required for the CONSULTANT to perform work under this Contract
10. Aerial Survey information
11. Existing water quality data
12. Laboratory tests for pavement investigation
13. Pavement design analysis
14. Geotechnical investigation, if applicable

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. Topographic Survey | Within 30 calendar days after notice to proceed |
| B. Preliminary Design | Within 90 calendar days after notice to proceed |
| C. Final Design | Within 120 calendar days after receipt of comments on preliminary plans by LPA |

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

1. The CONSULTANT shall receive as payment for the work performed under this Agreement the total fee not to exceed \$ 127,220.00 unless a modification of the Agreement is approved in writing by the LOCAL PUBLIC AGENCY.
2. The CONSULTANT will be paid for the work performed under this Agreement in accordance with the following schedule:

a. Supplemental Topographic Survey	\$ <u>8,000.00</u>
b. Preliminary Design	\$ <u>30,100.00</u>
c. Preliminary Utility Coordination	\$ <u>5,635.00</u>
d. Final Design	\$ <u>55,900.00</u>
e. Final Utility Coordination	\$ <u>10,465.00</u>
f. Signal Design – 2 each at \$8,560.00	\$ <u>17,120.00</u>

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.2. of this Appendix, percentage completed and prior payments in a form acceptable to the LOCAL PUBLIC AGENCY.
2. The LOCAL PUBLIC AGENCY for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay the CONSULTANT for rendering such services the fee established above upon completion of the work thereunder, acceptance thereof by the LOCAL PUBLIC AGENCY and upon the CONSULTANT submitting an invoice and claim voucher as described above.
3. 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.



November 28, 2018

Consent Agenda Item:

Performance Bond Acceptance

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

- Citizens Water of Westfield, North Water Tank, Bond #Q94 7270275, \$21,500.00, Erosion Control, Trail
- Millennium Contractors, Community First Bank, Bond #30052378, \$66,000.00, Storm Sewer & Erosion Control
- JRF Construction, Inc., Birdie's, Bond #NIN1552, \$191,499.61, Erosion Control, ROW Improvements, Streets/Curbs, Storm Sewer, Sidewalk, & Trail
- CalAtlantic Homes of Indiana, Liberty Ridge, Section 3, Bond #9297384, \$210,912.00, Asphalt Street
- CalAtlantic Homes of Indiana, Liberty Ridge, Section 3, Bond #9297382, \$13,078.00, Common Sidewalks
- CalAtlantic Homes of Indiana, Liberty Ridge, Section 3, Bond #9297383, \$48,153.00, Concrete Curb
- CalAtlantic Homes of Indiana, Liberty Ridge, Section 3, Bond #9297385, \$317,928.00, Storm Sewer & Subsurface Drain
- CalAtlantic Homes of Indiana, Liberty Ridge, Section 3, Bond #9297386, \$43,757.00, Asphalt Trail

Performance Bond Release

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

- Thompson Thrift, Cool Creek Village Drive Through Improvements, Bond #9285487, \$2,068.00, Erosion Control
- JKES, Inc. d/b/a Smith Projects, William Trace, Section 2, Bond #INC60358, \$651,999.70, Streets/Curbs, Storm Sewer, Sidewalk, Trail, & Erosion Control

Maintenance Bond Acceptance

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

- GT Property Development, William Trace, Section 2, Bond #41387961, \$59,272.70, Streets/Curbs, Storm Sewer, Sidewalk, Trail, & 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

Letters of Credit

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

- NONE

Letters of Credit Release

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

- SAW Development, Wilshire, Section 2, LOC #6258207-82, \$63,027.69, Erosion Control

Cash In Lieu of Bond

The Westfield Public Works Department is recommending that the Board of Public Works and Safety accept the following Cash In Lieu of Bond for the requested developments:

- NONE

Westfield Police Department

Monthly Performance Measures Report



Board of Public Works & Safety

October 2018

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Westfield Police Department

October 2018

Events by Nature

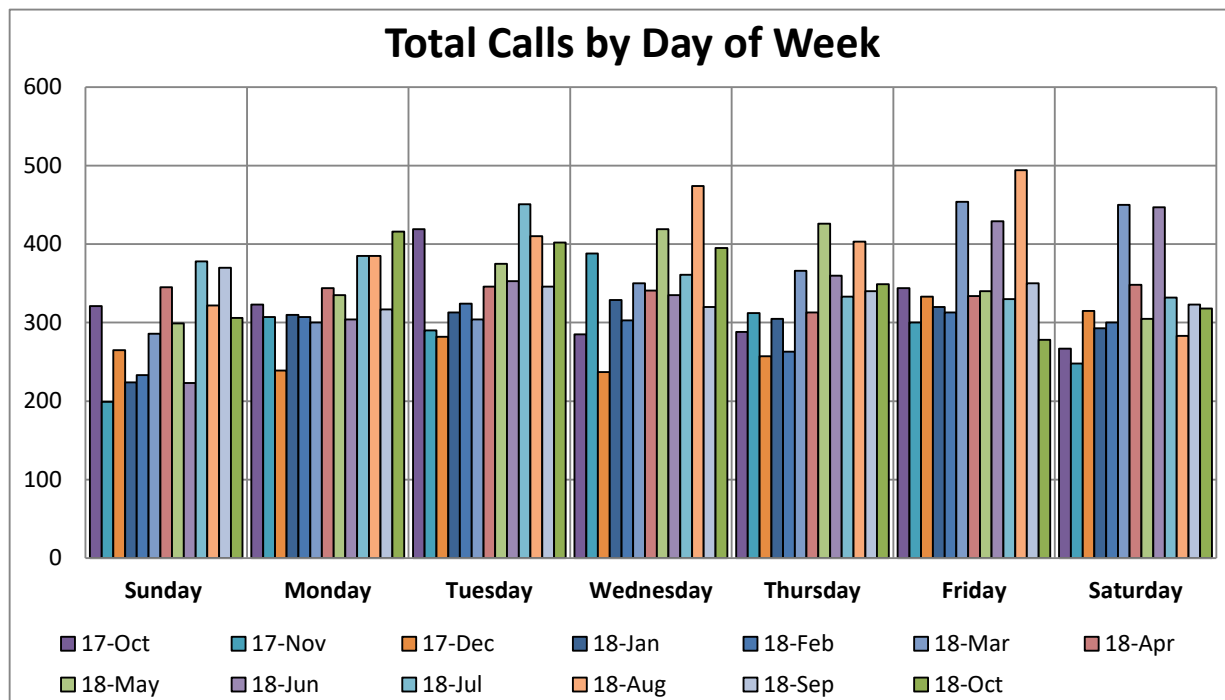
911 Hang Up	23
Abandoned Vehicle	3
Abandonment	1
Abuse / Neglect	0
Accident - Hit & Run	17
Accident - Other	0
Accident - Property Damage	74
Accident - Personal Injury	11
Accident - Sinking Vehicle	0
Accident - Unknown	3
Accelerator Stuck	0
Active Assailant	0
Alarm - Other	0
Alarm - Vehicle	0
Alarm - Burglar	156
Alarm - Hold Up	20
Animal Bite / Attack	0
Animal Complaint	38
Assist Fire	33
Assist Other Department	16
Assist Public	36
Battery	3
Bomb Device Found	0
Bomb Threat	1
Burglary	1
Carjacking	0
Case Follow Up	83
Child Seat Inspection	0
Civil Dispute	21
Criminal Mischief	18
Damage to Property	0
Death Investigation	0
Directed Patrol	7
Disturbance	28
Driving Complaint	59
Drug Complaint	4
Escort	0
Fight	2
Firearms Shots Fired	4
Found / Lost Property	13
Found Person	1
Fraud Prescription	0
Fraud / Deception	27
Harassment	16
Intoxicated Person	6
Investigation	10

Juvenile Complaint	16
K9 Detail	0
Kidnapping	0
Lock Out	45
Loud Party	3
Mental Emotional - Violent	3
Mental Person	4
Miscellaneous	11
Missing Person	2
Missing Person - PLS	0
New Call	3
Nuisance	3
Ordinance Misc.	13
Parking Complaint	20
Physical Disturbance	10
Reckless Activity	0
Road Rage	3
Robbery	0
Runaway	1
School Patrol	167
Security Check	6
Sex Offense	5
Shooting	1
Special Detail	1
Stabbing	0
Suicide	2
Suspicious Activity	85
Suspicious Package	3
Test	0
Theft	24
Theft - From a Vehicle	6
Theft - of a Vehicle	8
Threat to Life	2
Threatening Suicide	3
Tow Release	1
Traffic Hazard	91
Transport	3
Trespassing	13
Traffic Stop	1079
Unknown Call for Police	1
VIN Check	37
Wanted	2
Warrant Service	14
Weapons Complaint	1
Welfare Check	37
	2464

Westfield Police Department
October 2018

Total # of Calls by Day of Week

DAY	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep	18-Oct
Sunday	321	199	265	224	233	286	345	299	223	378	322	370	306
Monday	323	307	239	310	307	300	344	335	304	385	385	317	416
Tuesday	419	290	282	313	324	304	346	375	353	451	410	346	402
Wednesday	285	388	237	329	303	350	341	419	335	361	474	320	395
Thursday	288	312	257	305	263	366	313	426	360	333	403	340	349
Friday	344	300	333	320	313	454	334	340	429	330	494	350	278
Saturday	267	248	315	293	300	450	348	305	447	332	283	323	318
TOTAL	2247	2044	1928	2094	2043	2510	2371	2499	2451	2570	2771	2366	2464

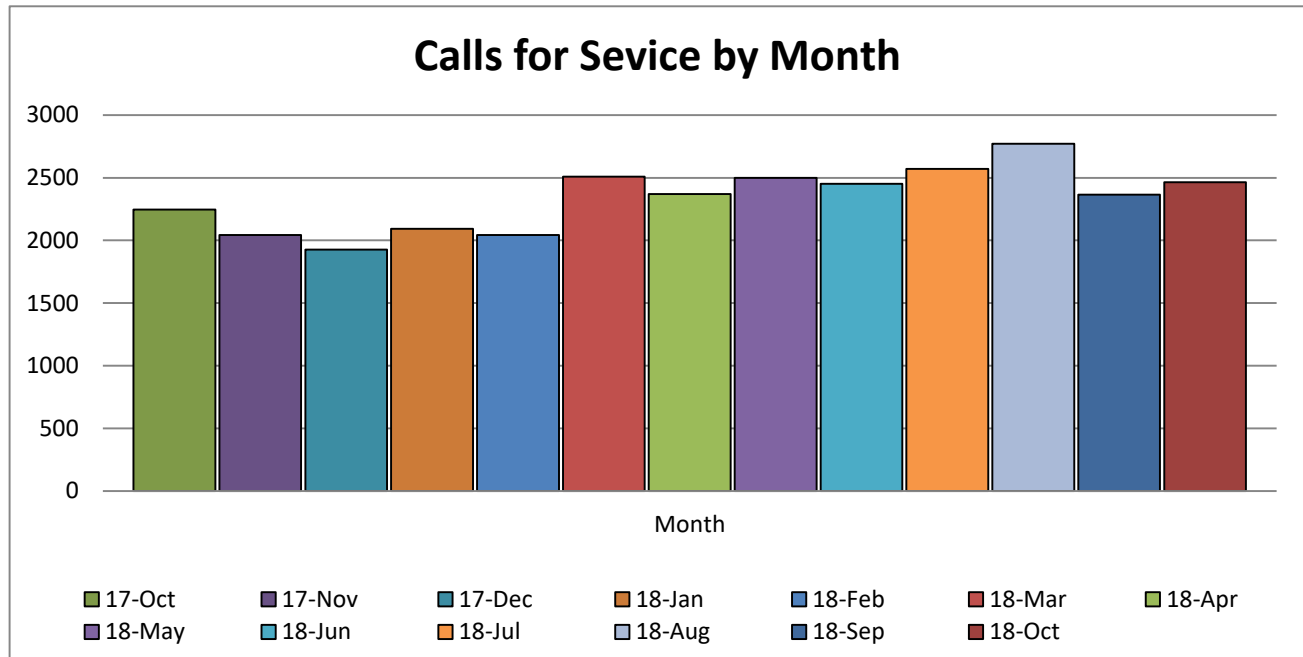


Westfield Police Department
October 2018

Total # of Calls by Hour of Day

HOURL	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep	18-Oct
0	93	74	77	66	73	82	99	90	96	105	78	80	77
1	53	46	44	51	46	62	53	62	78	64	47	68	54
2	40	33	35	37	34	38	56	55	43	50	31	44	37
3	35	17	27	34	23	27	34	30	30	27	21	47	41
4	31	13	18	27	12	11	20	13	29	31	17	17	34
5	16	20	20	24	30	13	20	18	20	32	17	21	17
6	35	38	41	52	50	66	65	64	67	65	46	28	38
7	102	79	77	76	58	99	119	111	128	118	95	79	58
8	149	140	95	72	72	113	106	125	101	123	216	150	134
9	132	116	98	105	106	132	105	142	133	152	180	170	162
10	172	181	123	121	155	157	118	158	158	172	206	162	136
11	123	126	102	93	94	114	118	135	101	129	157	116	114
12	105	134	104	81	74	124	131	99	117	108	127	97	97
13	130	92	102	125	125	159	115	126	140	134	196	106	134
14	140	114	119	135	144	159	133	135	155	142	219	122	164
15	125	125	117	96	122	136	150	139	131	134	189	134	148
16	95	83	84	105	74	130	111	118	122	113	129	130	124
17	81	70	103	106	84	112	124	101	116	111	108	105	113
18	112	126	107	179	143	182	155	168	142	142	164	156	173
19	108	90	122	160	156	186	146	175	120	132	157	149	165
20	79	62	83	71	79	93	89	92	80	79	88	72	96
21	75	62	54	82	69	82	66	93	106	110	89	77	89
22	109	102	87	111	105	122	118	127	132	141	102	111	142
23	107	101	89	85	115	111	120	123	106	156	92	125	117
TOTAL	2247	2044	1928	2094	2043	2510	2371	2499	2451	2570	2771	2366	2464

Westfield Police Department
October 2018



Westfield Police Department
October 2018

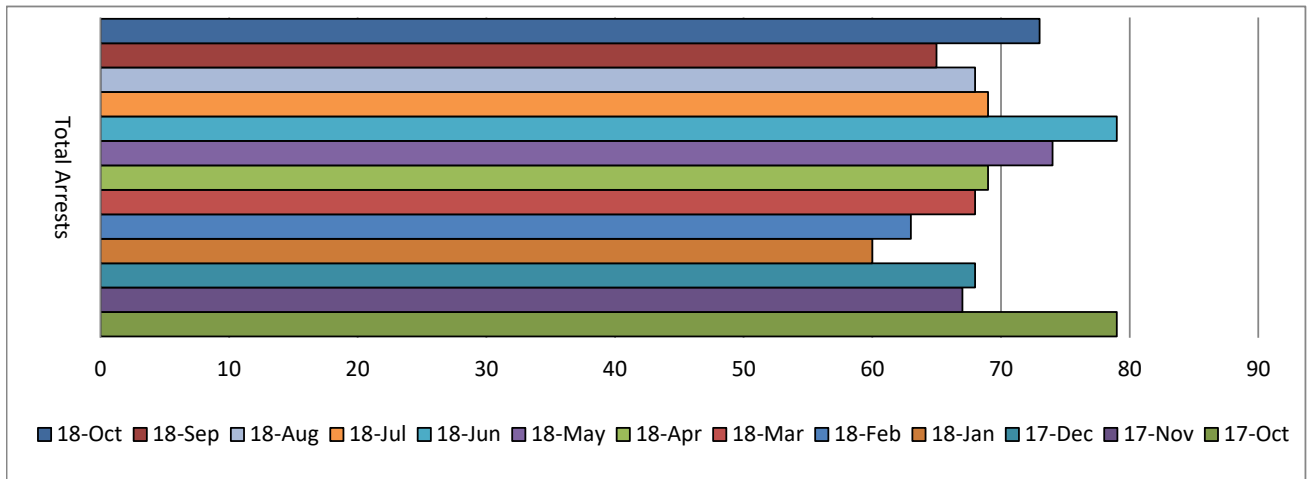
UCR OFFENSES

OFFENSE	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep	18-Oct
Arson	0	0	0	0	1	0	0	0	0	0	0	0	0
Homicide	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	-1	0	0	0	0	1	0	0	1	0	0	0	1
Robbery	1	-1	1	0	1	0	0	0	0	1	0	0	0
Battery - Aggravated	0	1	1	0	1	2	0	0	0	0	0	0	0
Battery - Simple	12	19	14	11	21	11	16	24	11	10	16	11	8
Burglary	0	2	5	1	4	4	4	0	1	1	3	3	0
Theft	17	29	30	26	31	28	24	32	29	51	32	30	24
Motor Vehicle Theft	1	2	0	1	1	0	0	0	2	2	1	1	-1
TOTAL	30	52	51	39	60	46	44	56	44	65	52	45	32

Westfield Police Department

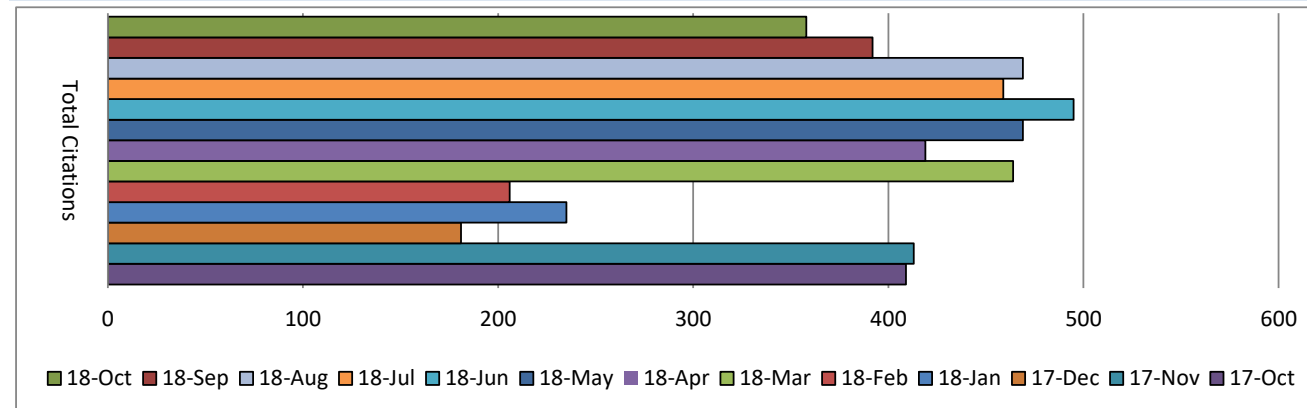
October 2018

Arrest Reports Taken	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep	18-Oct
Alcohol/ Drug Related	16	13	13	15	17	8	19	16	26	24	14	22	28
Felony Charges	7	20	18	5	14	3	10	5	21	8	7	18	10
Misdemeanor Charges	82	58	77	69	69	80	92	78	114	113	109	90	89
Total Arrests	79	67	68	60	63	68	69	74	79	69	68	65	73



Traffic	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep	18-Oct
Total Citations	409	413	181	235	206	464	419	469	495	459	469	392	358
Total Written Warning	1084	989	782	1036	1107	1307	1141	1105	1100	1158	1127	1043	1106
Total Traffic Accidents	49	49	77	54	44	55	60	80	47	71	66	53	76
Property Damage	44	45	68	48	40	46	53	73	40	67	57	43	66
Personal Injury	5	4	9	6	4	9	6	7	7	4	9	10	9
Fatality	0	0	0	0	0	0	1	0	0	0	0	0	1
Hit and Run*	6	2	3	7	3	1	6	2	6	6	6	3	11

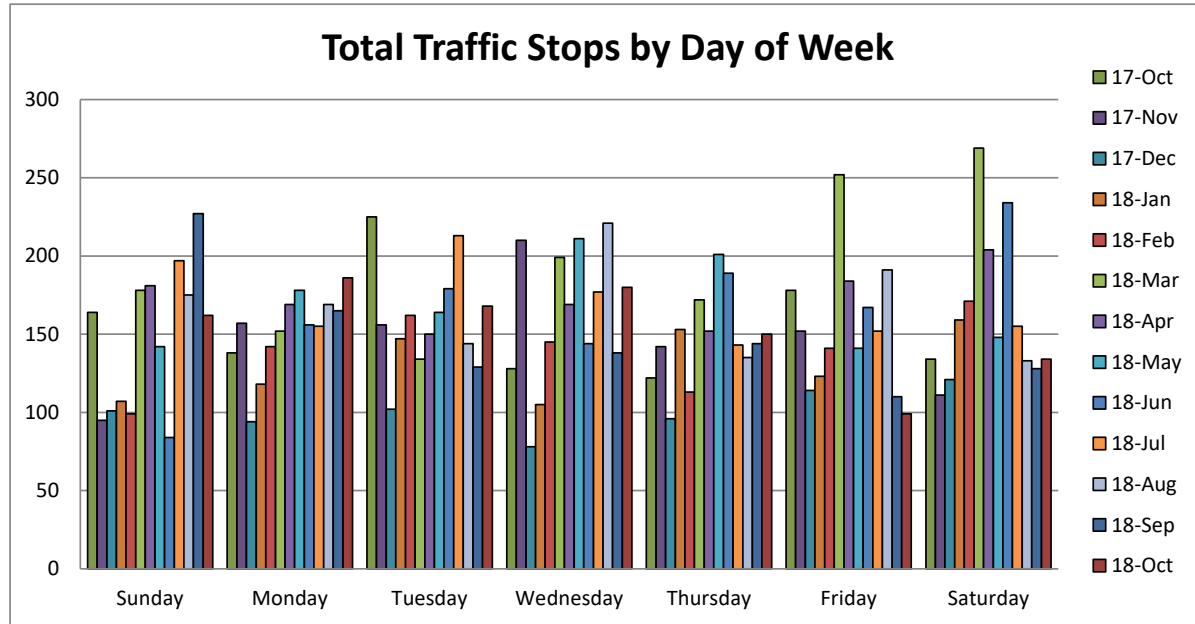
*numbers included in property damage, personal injury, and fatality accidents



Westfield Police Department
October 2018

Traffic Stops by Day of Week

Day:	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep	18-Oct
Sunday	164	95	101	107	99	178	181	142	84	197	175	227	162
Monday	138	157	94	118	142	152	169	178	156	155	169	165	186
Tuesday	225	156	102	147	162	134	150	164	179	213	144	129	168
Wednesday	128	210	78	105	145	199	169	211	144	177	221	138	180
Thursday	122	142	96	153	113	172	152	201	189	143	135	144	150
Friday	178	152	114	123	141	252	184	141	167	152	191	110	99
Saturday	134	111	121	159	171	269	204	148	234	155	133	128	134
TOTAL	1089	1023	706	912	973	1356	1209	1185	1153	1192	1168	1041	1079

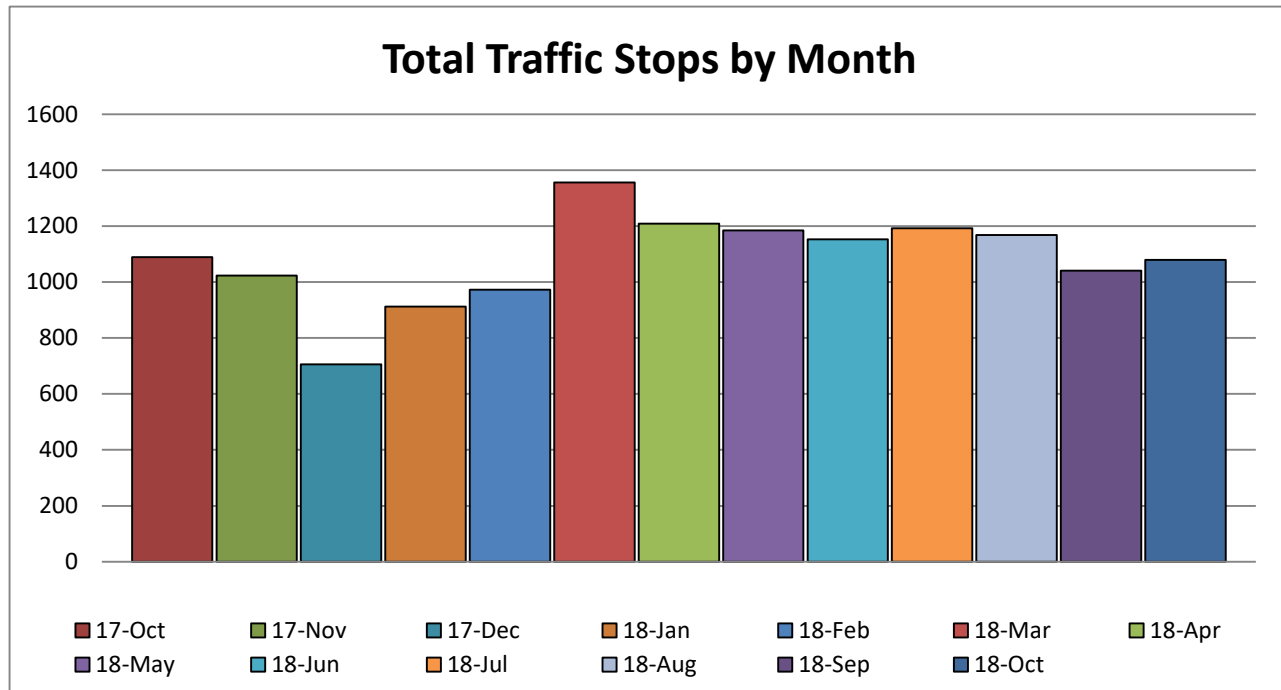


Westfield Police Department
October 2018

Traffic Stops by Hour of the Day

Hour:	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep	18-Oct
0	60	50	47	40	44	59	69	59	63	62	41	49	54
1	30	28	20	24	31	44	36	36	41	35	22	39	28
2	21	21	19	18	23	31	44	35	28	27	10	28	18
3	21	7	11	11	13	12	25	14	15	10	6	27	19
4	13	7	6	9	7	4	7	4	8	12	4	8	20
5	2	5	3	9	13	7	7	7	10	18	4	5	4
6	19	23	19	32	31	42	53	42	44	46	21	10	15
7	72	64	47	34	22	58	86	77	98	67	53	39	20
8	93	84	55	34	25	62	49	57	51	64	97	77	72
9	66	69	21	46	52	67	47	76	74	87	86	87	75
10	85	100	54	58	62	94	71	80	82	104	78	83	60
11	57	67	28	35	34	57	41	51	28	52	68	47	40
12	37	55	25	19	23	43	43	29	32	31	42	25	20
13	59	34	37	44	53	78	62	49	61	41	64	34	40
14	59	59	52	40	69	94	55	60	78	64	106	36	60
15	56	57	30	33	41	73	60	51	62	47	84	65	57
16	26	24	13	18	24	48	37	35	64	50	46	38	28
17	19	18	8	20	13	20	31	18	38	29	23	19	20
18	38	45	41	115	77	109	88	94	58	54	72	59	85
19	58	32	40	99	97	124	74	94	51	51	86	67	93
20	34	17	22	20	32	39	34	28	14	24	18	19	35
21	28	24	13	41	31	35	22	29	30	40	24	26	44
22	63	59	42	51	73	85	80	79	61	73	57	79	86
23	73	74	53	62	83	71	88	81	62	104	56	75	86
TOTAL	1089	1023	706	912	973	1356	1209	1185	1153	1192	1168	1041	1079

Westfield Police Department
October 2018



Westfield Police Department
October 2018
Community Events

10/3/2018	National Coffee with a Cop Day
10/3/2018	Girls Scout Meeting - K9 Officers Swiatkowski & Abney
10/6/2018	Youth Assistance Fall Festival - Sgt. Adams
10/6/2018	Grassy Knoll Community Day - Nights B
10/12/2018	Washington Woods Read to Children - Officer Wheeler
10/22-24/18	Primrose WestClay PD Visit / Tour - Lt. Gorrell
10/23/2018	Daisy Troop PD Visit / Tour - Days A

Westfield Police Department

October 2018

Training

10/4/2018	Montyly K9
10/5-7-18	Nutritional Coaching Level 1 - Officer Heriquez
10/15-19/18	Basic SRO - Officers Ford and Velazquez
10/22-26/18	ESU Weeklong
10/22-24/18	Ground Fighting Instructor Recertification

Cross-Reference

The easement conveyed by this instrument burdens certain real estate located in Hamilton County, Indiana. The most recent deed of record conveying said real estate is recorded as Instrument No. 2018-18897, in the Office of the Recorder of Hamilton County, Indiana.

GRANT OF TRAIL EASEMENT

This Grant of Trail Easement (the "Agreement") is made this 7th day of November, 2018, by BRADFORD T. and AMANDA K. WOCHOMURKA, residing at 2609 Old Vines Drive, Westfield, Hamilton County, Indiana ("Grantor"), in favor of the CITY OF WESTFIELD, an Indiana municipal corporation ("Grantee").

RECITALS

WHEREAS, Grantor is the owner of a tract of land commonly known as 2609 Old Vines Drive in the City of Westfield, Hamilton County, Indiana and described by legal description as Lot 75 of Oak Manor, a residential subdivision located in the City of Westfield, Hamilton County, Indiana (the "Real Estate").

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

GRANT AND AGREEMENT

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

1. Recitals. The foregoing recitals are hereby affirmed by the parties as true and correct and each such recital is incorporated herein by this reference.

2. Grant of Trail Easement. Grantor hereby grants and conveys to Grantee, a non-exclusive right and easement on, in, under, above, over, across and through the Trail Easement Area for the purposes of constructing, reconstructing, maintaining, operating, repairing, replacing, using and inspecting trail facilities and related appurtenances to be used by the public as a

recreational trail. Grantee's rights herein include cutting or trimming trees, bushes, vegetation and saplings growing upon or extending over the Trail Easement Area so far as may be reasonably necessary in the construction, installation, operation, repair, removal, replacement, renewal, inspection and maintenance of the trail facilities. Excluding the removal of vegetation and obstructions as provided herein, any physical damage to the surface area of the Drainage Easement Area or the Real Estate resulting from the exercise of rights granted herein to Grantee shall be promptly repaired or restored by Grantee, at Grantee's sole cost and expense, to a condition substantially similar to the condition prior to the damage.

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

4. Condition of the Easement Areas. Except as expressly set forth herein, it is understood and agreed that Grantor is not making and has not at any time made any representations or warranties of any kind or character, express or implied, with respect to the Easement Areas. Grantor assumes no obligation to make any improvements to, or to provide any security for, the Easement Areas, or to ensure that the Easement Areas comply with applicable zoning ordinances or other laws and regulations. Grantee agrees that all of Grantee's personal property of every kind or description which may at any time be on the Trail Easement Area shall be on the Trail Easement Area at Grantee's sole risk or at the risk of those claiming through or under Grantee, and in no event shall Grantor be liable for the same, except as a result of the gross negligence or intentional misconduct of Grantor or its officers, members, managers, agents, employees, and contractors. Grantee shall maintain the Trail Easement Area in good operating condition and repair at its sole expense.

5. Representations and Warranties. Grantor represents and warrants that (a) to Grantor's knowledge, the Trail Easement Area is encumbered only by easements, agreements and restrictions of record, and the lien of non-delinquent real estate taxes and assessments; and (b) it has the right to grant and convey the Trail Easement and all necessary organizational consents and requirements to execute this instrument have been obtained and satisfied.

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

If to Grantor:

Owner(s) of Lot 75, Oak Manor
2609 Old Vines Drive
Westfield, IN 46074

If to Grantee:

City of Westfield, Indiana
Director of Public Works
2728 E. 171st Street
Westfield, IN 46074

Either party may change its address by giving written notice to the other party at the address above (or to which the above has been validly changed pursuant to this Section 6). All notices shall be sent via U.S. Mail, hand delivery or by email, and shall be deemed given three (3) business days after mailing for U.S. Mail, upon hand delivery (if hand delivered) or upon email confirmation from the recipient (if emailed).

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

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

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

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

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

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

13. Assignment. Grantee may not assign its rights under this Agreement without the prior written consent of Grantor which consent shall not be unreasonably withheld, conditioned or delayed.

IN WITNESS WHEREOF, Grantor has duly executed this Agreement on this 7th
day of November, 2018.

Grantor:

Grantor:

Bradford T. Wochomurka
Bradford T. Wochomurka

Amanda K. Wochomurka
Amanda K. Wochomurka

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for the above County and State, personally appeared BRADFORD T. and AMANDA K. WOCHOMURKA, who acknowledged the execution of the foregoing Grant of Trail Easement, and who, having been duly sworn, stated that any representations contained therein are true.

WITNESS my hand and Notarial Seal this 7th day of
November, 2018.

Signature

Julie Sole

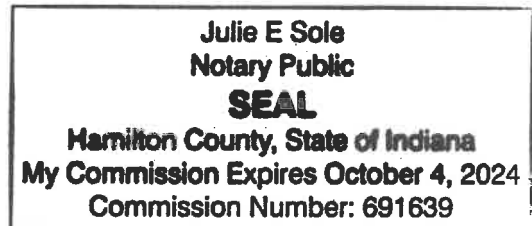
Printed Name

Julie Sole

Notary Public

I am a resident of Hamilton County, Indiana.

My commission expires: 10/04/2024



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Matthew S. Skelton

This instrument was prepared by, and after recording return to, Matthew S. Skelton, 2728 E. 171st Street, Westfield, Indiana 46074.

ACCEPTED BY "GRANTEE":

CITY OF WESTFIELD, INDIANA
BY ITS BOARD OF PUBLIC WORKS AND SAFETY

By: _____ Date: _____
Andy Cook, Presiding Officer

By: _____ Date: _____
Kate Snedeker, Member

By: _____ Date: _____
Randy Graham, Member

ATTEST:

Cindy J. Gossard, Clerk-Treasurer

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Andy Cook, Kate Snedeker, and Randy Graham, by me known to be the members of the City of Westfield Board of Public Works and Safety, and Cindy J. Gossard, Clerk-Treasurer of the City of Westfield, who having been duly sworn upon his/her oath acknowledged the acceptance of the foregoing Trail Easement for and on behalf of the City of Westfield, Indiana.

Witness my hand and Notarial Seal this _____ day of _____, 2018.

(Signature) _____

(Printed Name) _____

Notary Public residing in _____ County

My Commission Expires: _____

Please return recorded instrument to: Director of Public Works, City of Westfield, 2728 E. 171st Street, Westfield, Indiana, 46074.

EXHIBIT A

Exhibit A includes the following three pages consisting of a two page legal description of the Trail Easement Area and a one page easement exhibit graphically depicting the Trail Easement Area on the Real Estate.

[The remainder of this page is intentionally left blank.]

TRAIL AREA**WESTFIELD, INDIANA**

A part of Lot 75 in Oak Manor, Section 2, a Subdivision in Hamilton County, Indiana, as per plat thereof recorded September 2, 2004 as Instrument No. 200400061892 in the Office of the Recorder of Hamilton County, Indiana, more particularly described as follows: Beginning at the Southwest corner of said Lot 75; thence North 0 degrees 17 minutes 27 seconds East (per plat) along the west line of said lot 28.21 feet, more or less, to the northern edge of an existing asphalt path; thence, more or less along said northern edge of the asphalt path the following twenty-one (21) courses: 1) Southeasterly 21.21 feet along an arc to the left having a radius of 42.00 feet and subtended by a long chord having a bearing of South 65 degrees 6 minutes 50 seconds East and a length of 20.99 feet; 2) South 79 degrees 34 minutes 54 seconds East 10.69 feet; 3) Easterly 11.97 feet along an arc to the left having a radius of 30.00 feet and subtended by a long chord having a bearing of North 88 degrees 59 minutes 28 seconds East and a length of 11.89 feet; 4) North 77 degrees 33 minutes 50 seconds East 3.31 feet; 5) Easterly 2.71 feet along an arc to the right having a radius of 8.00 feet and subtended by a long chord having a bearing of North 87 degrees 16 minutes 9 seconds East and a length of 2.70 feet; 6) South 83 degrees 01 minute 31 seconds East 4.93 feet; 7) Easterly 2.08 feet along an arc to the right having a radius of 15.00 feet and subtended by a long chord having a bearing of South 79 degrees 3 minutes 28 seconds East and a length of 2.08 feet; 8) South 75 degrees 5 minutes 25 seconds East 4.40 feet; 9) Easterly 2.49 feet along an arc to the left having a radius of 6.00 feet and subtended by a long chord having a bearing of South 86 degrees 58 minutes 23 seconds East and a length of 2.47 feet; 10) North 81 degrees 8 minutes 38 seconds East 4.62 feet; 11) North 85 degrees 45 minutes 31 seconds East 7.01 feet; 12) Easterly 2.04 feet along an arc to the right having a radius of 5.00 feet and subtended by a long chord having a bearing of South 82 degrees 33 minutes 38 seconds East and a length of 2.02 feet; 13) South 70 degrees 52 minutes 47 seconds East 9.43 feet; 14) Easterly 1.86 feet along an arc to the left having a radius of 3.00 feet and subtended by a long chord having a bearing of South 88 degrees 39 minutes 10 seconds East and a length of 1.83 feet; 15) North 73 degrees 34 minutes 28 seconds East 4.17 feet; 16) North 75 degrees 45 minutes 29 seconds East 10.48 feet; 17) Easterly 6.58 feet along an arc to the right having a radius of 13.00 feet and subtended by a long chord having a bearing of South 89 degrees 43 minutes 55 seconds East and a length of 6.51 feet; 18) South 75 degrees 13 minutes 20 seconds East 4.34 feet; 19) South 79 degrees 31 minutes 45 seconds East 18.48 feet; 20) South 82 degrees 8 minutes 45 seconds East 28.86 feet to the beginning of a non-tangent arc; 21) Easterly 4.03 feet along an arc to the left having a radius of 77.50 feet and subtended by a long chord having a bearing of South 74 degrees 48 minutes 48 seconds East and a length of 4.03 feet to the east line of said Lot 75;

TRAIL AREA**WESTFIELD, INDIANA**

thence South 10 degrees 25 minutes 43 seconds West 7.98 feet along the east line of said Lot 75 to the southeast corner thereof; thence South 89 degrees 49 minutes 29 seconds West 159.56 feet along the south line of said lot to the point of beginning and containing 2,580 square feet or 0.059 acres, more or less.

This description was prepared by Tracy L. McGill,
Indiana Registered Land Surveyor, License Number
20500009, on the 27th day of June, 2017.



0 15' 30'
SCALE: 1"=30'



CURVE TABLE

C1: R = 42.00' L = 21.21'
C2: R = 30.00' L = 11.97'
C3: R = 8.00' L = 2.71'
C4: R = 15.00' L = 2.08'
C5: R = 6.00' L = 2.49'
C6: R = 5.00' L = 2.04'
C7: R = 3.00' L = 1.86'
C8: R = 13.00' L = 6.58'
C9: R = 77.50' L = 4.03'

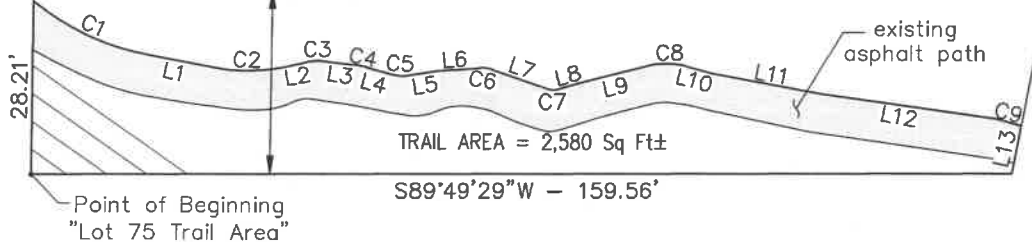
LINE TABLE

L1: S79°34'54"E-10.69'
L2: N77°33'50"E-3.31'
L3: S83°01'31"E-4.93'
L4: S75°05'25"E-4.40'
L5: N81°08'38"E-4.62'
L6: N85°45'31"E-7.01'
L7: S70°52'47"E-9.43'
L8: N73°34'28"E-4.17'
L9: N75°45'29"E-10.48'
L10: S75°13'20"E-4.34'
L11: S79°31'45"E-18.48'
L12: S82°08'45"E-28.86'
L13: N10°25'43"E-7.98'

LOT 75
OAK MANOR - SECTION 2
Inst. No. 200400061892

Address: 2609 Old Vines Dr.
Westfield, IN 46074

EXISTING 30'
DRAINAGE UTILITY &
SEWER EASEMENT



TRAIL AREA = 2,580 Sq Ft±

S89°49'29"W - 159.56'

LOT 75 AREA = 25,039 sq ft±
TRAIL AREA = 2,580 sq ft±
Lot 75 remainder = 22,459 sq ft±

TRAIL AREA - LOT 75, OAK MANOR SEC. 2

AMERICAN
STRUCTUREPOINT
INC.

7260 SHADELAND STATION
INDIANAPOLIS, IN 46256-3957
TEL 317.547.5580 FAX 317.543.0270
www.structurepoint.com

DATE: 6.27.2017
DRAWN BY: TLM
JOB NO. 2017.01386

SHEET NO.
1
of
1

QUITCLAIM DEED

Document Cross Reference Number: 2016-138883

THIS INDENTURE WITNESSETH that GRAND JUNCTION PROPERTIES II, LLC, an Indiana limited liability company, ("Grantor"), **QUITCLAIMS AND DEDICATES** to the CITY OF WESTFIELD, Hamilton County, Indiana ("Grantee"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the real estate in Hamilton County, Indiana described in Exhibit A and shown in Exhibit B (the "Real Estate").

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

The Real Estate may not be owned in its entirety by Grantor and this deed shall serve as a source of title only for that part of the Real Estate owned by Grantor as of the date hereof.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Grantor has caused this deed to be executed this 2nd day of November, 2018.

"GRANTOR":

GRAND JUNCTION PROPERTIES II, LLC

By: [Signature]
Signature

By: Robert C Beauchamp
Print

CEO

Title

STATE OF INDIANA)

COUNTY OF HAMILTON)



Samantha L Wood, Notary Public
Hamilton County, State of Indiana
My Commission Expires
January 09, 2025

Before me, a Notary Public in and for said County and State, personally appeared Robert Beauchamp, as CEO of GRAND JUNCTION PROPERTIES II, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Quitclaim Deed, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 2 day of November, 2018.

(Signature)

[Signature]

(Printed Name)

Samantha L Wood

Notary Public residing in Hamilton County

My Commission Expires: January 9 2025



Samantha L Wood, Notary Public
Hamilton County, State of Indiana
My Commission Expires
January 09, 2025

ACCEPTED BY "GRANTEE":

CITY OF WESTFIELD, INDIANA
BY ITS BOARD OF PUBLIC WORKS AND SAFETY

By: _____ Date: _____
Andy Cook, Presiding Officer

By: _____ Date: _____
Kate Snedeker, Member

By: _____ Date: _____
Randy Graham, Member

ATTEST:

Cindy J. Gossard, Clerk-Treasurer

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Andy Cook, Kate Snedeker, and Randy Graham, by me known to be the members of the City of Westfield Board of Public Works and Safety, and Cindy J. Gossard, Clerk-Treasurer of the City of Westfield, who having been duly sworn upon his/her oath acknowledged the acceptance of the foregoing Quitclaim Deed for and on behalf of the City of Westfield, Indiana.

Witness my hand and Notarial Seal this _____ day of _____, 2018.

(Signature) _____

(Printed Name) _____

Notary Public residing in _____ County

My Commission Expires: _____

Please return recorded instrument to: Director of Public Works, City of Westfield, 2728 E. 171st Street, Westfield, Indiana, 46074.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Matthew S. Skelton.

This instrument was prepared by: Matthew S. Skelton, City of Westfield, 2728 E. 171st Street, Westfield, Indiana, 46074, (317) 804-3170.

Parcel No. 09-09-01-02-07-013.000

EXHIBIT "A"

Sheet 1 of 1

All that part of the former Central Indiana Railroad, lying north of the centerline of the railroad right-of-way and adjoining the following described property:

Acreage .29 Section 1, Township 18, Range 3 I B Anderson Lot 12. Additional Legal Description: Part of Lot 17 Roberts Addition to the Town of Westfield, Hamilton County, Indiana, described as follows: Begin at the Northeast corner of said Lot No. 17, run thence West 48 feet, thence south 147 feet; thence East 48 feet; thence North 147 feet to the place of beginning.

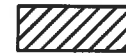
EXHIBIT "B"
PREPARED FOR THE CITY OF WESTFIELD

SHEET 1 OF 1

PROJECT: PARK STREET
COUNTY: HAMILTON
SECTION: 1
TOWNSHIP: 18 N.
RANGE: 3 E.

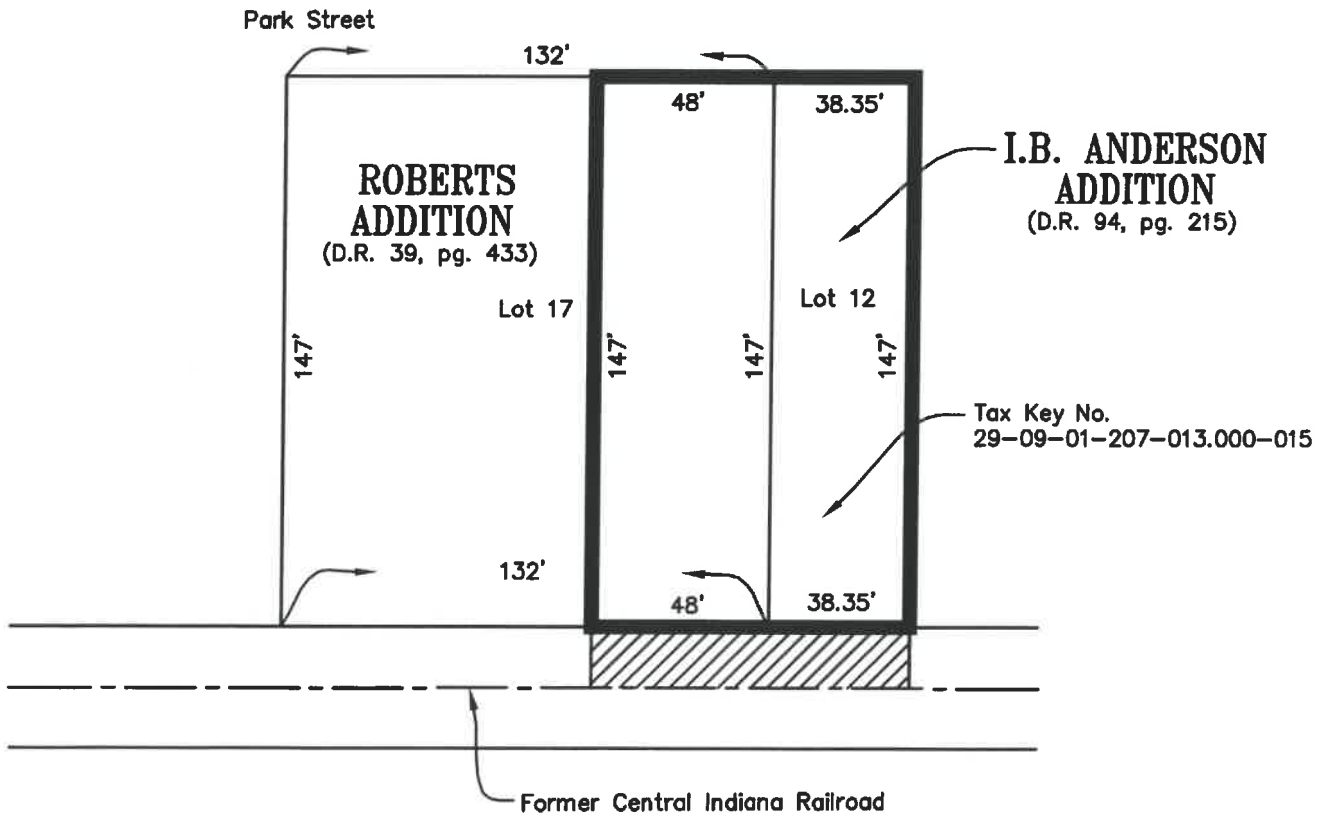
OWNER: GRAND JUNCTION PROPERTIES II, LLC
INSTRUMENT NO. 2016013883 DATED: 3-24-16

Dimensions shown below are from the above listed record documents.



Hatched area is the
approximate rail corridor.

0 50' 100'
SCALE: 1" = 50'



115 W. Washington Street, Suite 1270S
Indianapolis, Indiana
(317) 972-1706

This exhibit was prepared from information obtained from the recorder's office
and other sources which were not checked by a field survey.

QUITCLAIM DEED

Document Cross Reference Number: 2014-37104; 2017-06178

THIS INDENTURE WITNESSETH that GRAND JUNCTION PROPERTIES, LLC, an Indiana limited liability company, ("Grantor"), **QUITCLAIMS AND DEDICATES** to the CITY OF WESTFIELD, Hamilton County, Indiana ("Grantee"), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the real estate in Hamilton County, Indiana described in Exhibit A and shown in Exhibit B (the "Real Estate").

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

The Real Estate may not be owned in its entirety by Grantor and this deed shall serve as a source of title only for that part of the Real Estate owned by Grantor as of the date hereof.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Grantor has caused this deed to be executed this 2nd day of November, 2018.

"GRANTOR":

GRAND JUNCTION PROPERTIES, LLC

By: [Signature]
Signature

By: Robert C Beauchamp
Print

CEO
Title

STATE OF INDIANA)
COUNTY OF HAMILTON)



Samantha L Wood, Notary Public
Hamilton County, State of Indiana
My Commission Expires
January 09, 2025

Before me, a Notary Public in and for said County and State, personally appeared Robert Beauchamp as CEO of GRAND JUNCTION PROPERTIES, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Quitclaim Deed, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal this 2 day of November, 2018.

(Signature) [Signature]

(Printed Name) Samantha L Wood

Notary Public residing in Hamilton County

My Commission Expires: January 9, 2025

ACCEPTED BY "GRANTEE":

CITY OF WESTFIELD, INDIANA
BY ITS BOARD OF PUBLIC WORKS AND SAFETY

By: _____ Date: _____
Andy Cook, Presiding Officer

By: _____ Date: _____
Kate Snedeker, Member

By: _____ Date: _____
Randy Graham, Member

ATTEST:

Cindy J. Gossard, Clerk-Treasurer

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Andy Cook, Kate Snedeker, and Randy Graham, by me known to be the members of the City of Westfield Board of Public Works and Safety, and Cindy J. Gossard, Clerk-Treasurer of the City of Westfield, who having been duly sworn upon his/her oath acknowledged the acceptance of the foregoing Quitclaim Deed for and on behalf of the City of Westfield, Indiana.

Witness my hand and Notarial Seal this _____ day of _____, 2018.

(Signature) _____

(Printed Name) _____

Notary Public residing in _____ County

My Commission Expires: _____

Please return recorded instrument to: Director of Public Works, City of Westfield, 2728 E. 171st Street, Westfield, Indiana, 46074.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: Matthew S. Skelton.

This instrument was prepared by: Matthew S. Skelton, City of Westfield, 2728 E. 171st Street, Westfield, Indiana, 46074, (317) 804-3170.

EXHIBIT "A"

Sheet 1 of 1

All that part of the former Central Indiana Railroad, lying north of the centerline of the railroad right-of-way and being off the south side of the following described property:

A Lot 62 feet in width off the West side of the following described track of land:

Beginning 49.46 rods West and 44.46 rods South of the Northeast corner of Section One (1), Township Eighteen (18) North, Range Three (3) East; thence South 11.27 rods to the middle of the Midland Railway Tract; thence West 8.64 rods; thence North 11.27 rods; thence East 8.64 rods to the place of beginning in Hamilton County, Indiana.

Also;

All that part of the former Central Indiana Railroad, lying north of the centerline of the railroad right-of-way and adjoining the following described property:

Lot No. 17 in Roberts Addition to the Town of Westfield, Indiana, Except a tract beginning at the northeast corner of said lot, running thence West 48 feet, thence South 147 foot, thence East 48 feet, thence 147 feet North, to the place of beginning; Also, a part of the Northeast Quarter of Section 1, Township 18 North, Range 3 East, described as follows, to-wit: Begin at the northwest corner of Lot 17 in Roberts Addition to the Town of Westfield, Indiana, run thence South along the west of said Lot 17 to the southwest corner of said lot, thence West 18 feet, thence North a distance to and equal to the depths of Lot 17, thence East 18 feet to the place of beginning, all in Hamilton County, State of Indiana.

EXHIBIT "B"
PREPARED FOR THE CITY OF WESTFIELD

SHEET 1 OF 1

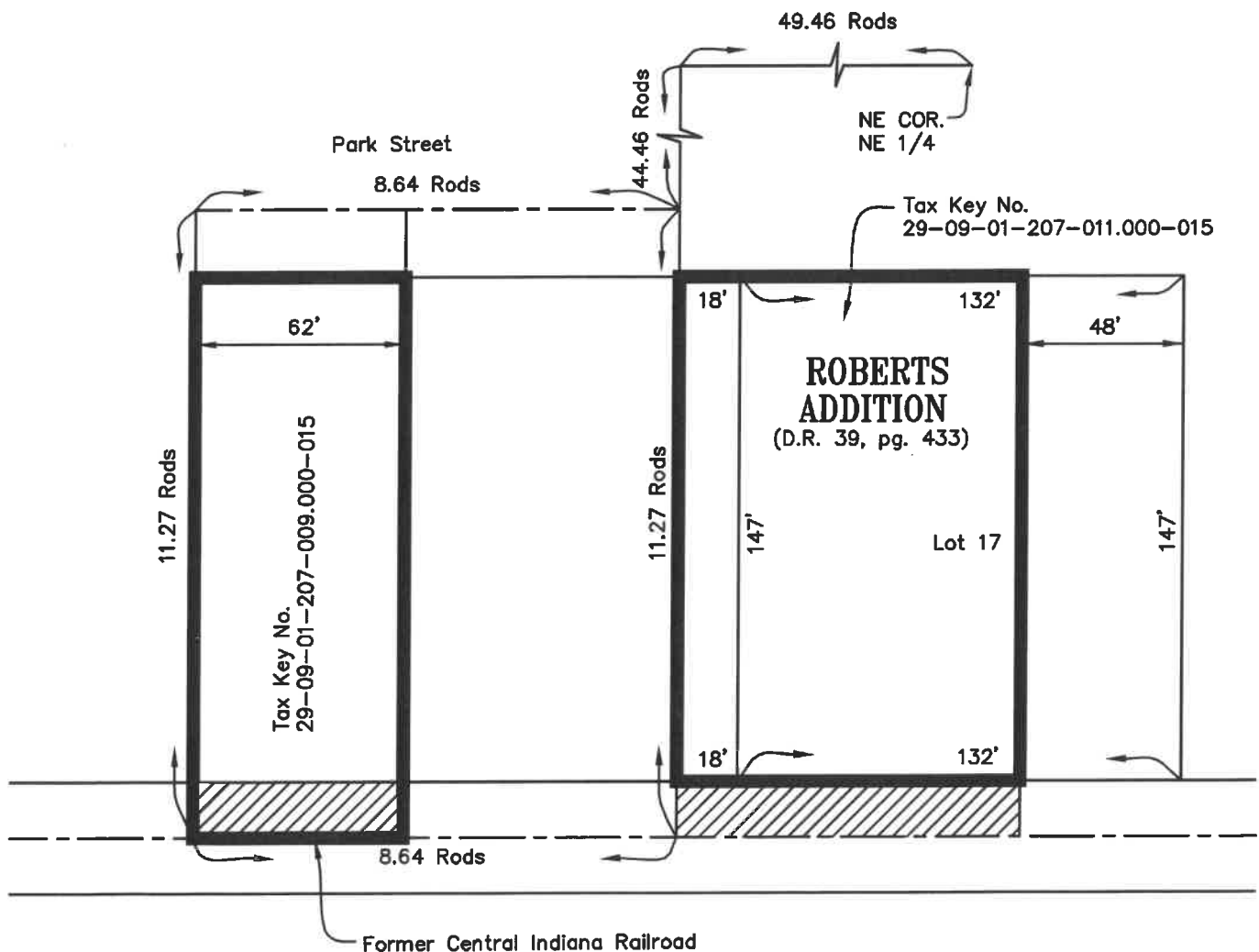
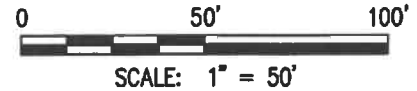
PROJECT: PARK STREET
COUNTY: HAMILTON
SECTION: 1
TOWNSHIP: 18 N.
RANGE: 3 E.

OWNER: GRAND JUNCTION PROPERTIES, LLC
INSTRUMENT NO. 2017006178 DATED: 1-18-17
INSTRUMENT NO. 2014037104 DATED: 6-12-14



Hatched area is the
approximate rail corridor.

Dimensions shown below are from the above listed record documents.



115 W. Washington Street, Suite 1270S
Indianapolis, Indiana
(317) 972-1706

This exhibit was prepared from information obtained from the recorder's office
and other sources which were not checked by a field survey.