



CITY OF WESTFIELD, IN
Board of Public Works Meeting Agenda_10_29_2018

Monday, October 29, 2018 at 01:00 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Monday, October 29, 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:

Minutes- September 26, 2018

Documents: [September 26, 2018 Minutes](#)

Bid Approval

Construction Standards & Specifications Changes

Contracts/Agreements

Agreements and/or Memorandum of Understanding (MOU)

Action Item #2:

Westfield Boulevard Connector from Park Street to David Brown Drive

Documents: [INDOT LPA Exchange Contract](#)

Action Item #3:

North Street Reconstruction Preliminary Engineering Services

Documents: [Consulting Contract - North Street Roadway & Drainage Improvements](#)

Action Item #4:

State Road 32 Reconstruction Preliminary Engineering Services

Documents: [SR 32 Reconstruction Contract](#)

Action Item #5:

Contract for Goods & Services Between City of Westfield & Merrell Brothers, Inc.

Documents: [Contract - City of Westfield & Merrell Bros.](#) | [Zaiger Letter](#) | [Contract Amendment #1](#)

Action Item #6:

Contract for Goods & Services Between City of Westfield & Midwest Paving - Midland Trace Trail Project

Documents: [Midland Trace Trail Project - Contract Goods & Services](#)

Change Orders

Action Item #7:

161st & Union Roundabout Phase 2 Environmental Assessment

Documents: [Change Order - 161st & Union](#)

Consent Agenda

Crew Carwash - Road Impact Fee Payment Agreement

Documents: [Crew Carwash RIF Agreement](#)

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

October Bond Information

Documents: [October Bond Info](#)

Department Reports

Fire

WFD Report

Documents: [WFD September 2018 Report](#)

Police

WPD Report

Documents: [WPD September 2018 Report](#)

Public Works

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY September 26, 2018

The Westfield Board of Public Works and Safety met on September 26, 2018 at the Westfield Public Works Conference Room. Present were, Mayor Cook, Randy Graham, Kate Snedeker, Kim Strang, Records Manager and Brian Zaiger, legal counsel.

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

AGENDA ITEMS:

Action Item #1: Meeting Minutes Consideration for Approval:

Kate Snedeker made the motion to approve the August 22, 2018 meeting minutes as presented. Mayor Cook seconded. Vote: Yes-3; No-0. Motion carried.

CONTRACTS AND AGREEMENTS:

Action Item #2: Crossroads Church at Westfield-Installment Payment Agreement

Brian Zaiger presented explaining the details of the agreement and payment schedule for the infrastructure (off-site extension of water mains) on property located on Grassy Branch Road.

Randy Graham made the motion to approve the agreement. Mayor Cook seconded. Vote: Yes-3; No-0. Motion carried.

Action Item #3: Oak Ridge Point Road Impact Fee Credit Agreement

Jeremy Lollar presented, giving details on the agreement. The area involved is located between Oak Ridge Road (to the east), and State Highway 32 (to the north) and Midland Trace Trail (to the south)

Mayor Cook made the motion to approve the agreement. Kate Snedeker seconded. Vote: Yes-3; No-0. Motion carried.

Action Item #4: The Trails Road Impact Fee Agreement

Jeremy Lollar presented giving the details of the agreement. The area is located between Oak Ridge Road (to the west) and the Monon trail (to the east) and State Highway 32 (to the north) and Midland Trace (to the south).

Mayor Cook made the motion to approve the agreement. Kate Snedeker seconded. Vote: Yes-3; No-0. Motion carried.

Action Item #5: WSP USA for 161st Street and Springmill Roundabout Contract

John Nail presented stating this is the contract for Right of Way Acquisition Services for the 161st Street/Springmill Road Roundabout Project with a total of 3 parcels.

Mayor Cook made the motion to approve the contract as presented. Kate Snedeker seconded. Vote: Yes-3; No-0. Motion carried.

CHANGE ORDERS

Action Item #6: 151st Street Culvert Replacement Intersection Sight Distance Improvements

John Nail presented stating the change order is for the utility coordination on the 151st Street Culvert Replacement project. \$22,500.00 will be added making the project cost \$150,043.00.

Kate Snedeker made the motion to approve the change order/improvements. Mayor Cook seconded. Vote: Yes-3; No-0. Motion carried.

Action Item #7: Kinsey Avenue Culvert Replacement

John Nail presented stating the change order is for the utility coordination of the Kinsey Ave Culvert Replacement project. \$15,000 will be added making the project \$71,213.00

Mayor Cook made the motion to approve the change order. Kate Snedeker seconded. Vote: Yes-3; No-0. Motion carried.

Action Item #8: Westfield Park Road Culvert Replacement

John Nail presented stating the change order is for additional hydraulic analysis of the Westfield Park Road Culvert Replacement project

Kate Snedeker made the motion to approve change order. Mayor Cook seconded. Vote: Yes-3; No-0. Motion carried.

AGREEMENTS/MEMORANDUM OF UNDERSTANDING (MOU):

Action Item #9: Agreement between Carmel, Fishers, Noblesville, & Westfield-Joint Hiring Process

Chief Reed presented stating this agreement would utilize NeoGov to automate the hiring and performance evaluation processes. The site will serve as the central repository of all candidates who apply to any of the Parties.

Mayor Cook made the motion to approve the agreement. Kate Snedeker seconded.
Vote: Yes-3; No-0. Motion carried.

CONSENT AGENDA:

151st Street Culvert Replacement-Title Sheet Signature

September Bond Information

Kate Snedeker made the motion to approve the consent agenda. Mayor Cook seconded.
Vote: Yes-3; No-0. Motion carried.

DEPARTMENT REPORTS:

Fire- Chief Reed

Police- Chief Rush

Public Works- Jeremy Lollar

With no further business Kate Snedeker made the motion to adjourn. Mayor Cook seconded.
The meeting was adjourned at 1:38 PM

Deputy Clerk-Treasurer

Board of Public Works and Safety

CONTRACT FOR GOODS AND SERVICES

This Contract for Goods and Services (“Vendor Contract”) is made and entered into as of the 24th day of May 2017, by and between City of Westfield (“Contracting Party”) and Merrell Bros., Inc. (“Vendor”).

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

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

- (a) Goods and/or services provided by Vendor: (See Exhibit B attached hereto and made a part hereof).
- (b) Location: 2706 E. 171st Street, Westfield, Indiana 46074 (the “City Property”)
- (c) Date by which the Services shall be completed: To start May 25th, 2017 and complete by May 11th, 2018 (the “Completion Date”).
- (d) Purchase Price: One Million, Four-Hundred Twenty-Eight Thousand, Four-Hundred Eight-Nine Dollars and 47/100 (\$1,428,489.47) (see Proposal dated May 8th, 2017 - Exhibit B).

The purchase price includes the following alternates:

N/A

- (e) The Contracting Party provides two payment options to vendors for payment of approved invoiced amounts. They are as follows:
 - a. Option #1: Traditional – Invoices shall be payable within forty-five (45) days following Contracting Party’s receipt and approval of an invoice at the address specified below.
 - b. Option #2: Preferred – Invoices are payable within 7 days following Contracting Party’s receipt and approval of an invoice at the address specified below if vendor accepts MasterCard.
- (f) The Contract Documents include:
 - a. This Goods and Services agreement
 - b. “Contract and Specifications for WWTP Lagoon Closure” dated February 28, 2017 inclusive of all sections and appendixes.
 - c. Addendum #1 Dated April 7, 2017
 - d. Addendum #2 Dated May 1, 2017
 - e. Addendum #3 Dated May 3, 2017

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

(g) Addresses:

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

City of Westfield
Department of Public Works
Attn: Jeremy Lollar, Director
2706 East 171st Street
Westfield, Indiana 46074

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

If to Vendor:

Merrell Bros., Inc.
8811 W 500 N
Kokomo, IN 46901

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

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

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

CONTRACT TERMS AND CONDITIONS

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

2. **PERFORMANCE:** Vendor hereby agrees to provide all goods and services necessary to perform the requirements of this Vendor Contract and to execute its responsibilities hereunder by following and applying at all times the highest professional and technical guidelines and standards. Contracting Party reserves the right at any time to direct changes, or cause Vendor

to make changes in the goods and services or to otherwise change the scope of the work covered by this Contract with a signed Change Order executed by both parties, and Vendor agrees to make such changes promptly. Any difference in price or time for performance resulting from such changes shall be equitably adjusted by Contracting Party after receipt of documentation in such form and detail as Contracting Party may reasonably require.

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

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

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

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

7. **LIENS:** Vendor shall not cause or permit the filing of any lien related to its services. In the event any such lien is filed and Vendor fails to remove such lien of record within thirty (30) days after the filing thereof, by payment or bonding, Contracting Party shall have the right to pay such lien or obtain such bond, all at Vendor's sole cost and expense. Vendor shall indemnify and hold harmless Contracting Party from and against any and all liability, loss, judgments, costs and expenses, including reasonable attorneys' fees, incurred by Contracting Party in connection with any such lien.

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

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

10. **REQUIRED INSURANCE AND INDEMNIFICATION:**

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

Worker's Compensation	Required.
Employer's Liability	\$1,000,000 each accident, \$1,000,000 disease each employee, and \$1,000,000 disease policy limits.
Commercial General Liability (CG0001), including Personal Injury, Premises Operations, including explosion,	\$1,000,000 Per Occurrence and \$2,000,000 General Aggregate.

collapse or underground property damage hazards, including costs to repair or replace damaged work. (The Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy).	
Commercial Automobile Liability , including Owned, Non-Owned and Hired Car coverages.	\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage.

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

- (e) Without limiting anything set forth in this paragraph 10, the following additional insurance coverage limits are required for the professional engineering services specifically required by the scope of the contracted goods and services: \$1,000,000 per claim and \$1,000,000 general aggregate professional liability, with retroactive coverage to the earlier of date of execution of Contract and commencement of any work and coverage for a minimum period of two (2) years after professional services completion.
- (f) If Vendor fails to maintain the insurance as set forth herein, Contracting Party may terminate this Contract immediately or, at the option of Contracting Party, Contracting Party may obtain insurance on the Vendor's behalf and offset the cost of insurance related to the contracted services against any payments due Vendor.

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

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

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

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

15. **GOVERNMENT COMPLIANCE:** Vendor agrees to comply with all present federal, state and local laws, orders, rules, regulations, codes and ordinances which may be applicable to Vendor's performance of its obligations under this Contract, and all provisions required thereby to be included herein, are hereby incorporated by reference. Vendor agrees to indemnify and hold harmless Contracting Party from and against any loss, damage, liability, cost or expense (including, without limitation, attorneys' fees) resulting from any violation of such laws, orders, rules, regulations, codes or ordinances by Vendor.

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

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

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

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

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

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

22. **TERMINATION:** Contracting Party may terminate this Contract (a) immediately, in the event of a Default by Vendor, or (b) at any time without cause upon seven (7) days' prior written notice to Vendor. In the event of such termination, Vendor shall be entitled to receive only

payment for conforming goods delivered as of the date of termination and compensation for goods and services which have been accrued pro rata as of the date of termination, after deduction of all of Contracting Party's costs and expenses, including, without limitation, attorneys' fees, incurred in connection with any Default by Vendor.

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

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

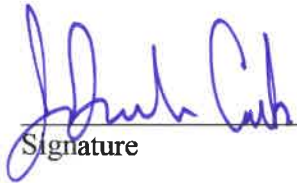
25. **IRCA COMPLIANCE:** The Immigration Reform and Compliance Act of 1986 (IRCA) prohibits the employment of unauthorized aliens and requires all employers to: (1) not knowingly hire or continue to employ any person not authorized to work in the United States, (2) verify the employment eligibility of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

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

EXECUTED this 24th day of May 2017.

Contracting Party:

City of Westfield
2706 East 171st Street
Westfield, Indiana 46074

 5-24-17
Signature Date

J. Andrew Cook, Member

Signature Date

Kate Snedeker, Member

 5-24-17
Signature Date

Randell Graham, Member

Vendor:

Merrell Bros., Inc.
8811 W 500 N
Kokomo, IN 46901

 _____
Signature

DUSTIN SMITH
Printed Name

C.B.O.O.
Title

6/1/17
Date

EXHIBIT A

Project Rules

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

SITE ACCESS

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

LIMITED CITY OCUPANCY (If Applicable)

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

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

MATERIAL MANAGEMENT PLAN

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

CLEAN UP

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

WORK HOURS

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

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

PUBLIC ACCESS AND SAFETY

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

SITE DECORUM

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

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

PARKING

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

UTILITY COORDINATION

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

USE OF ROADWAYS AND PATHS

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

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

TRAFFIC CONTROL

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

CRANES & HOISTING

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

TEMPORARY SHORING AND BRACING

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

TEMPORARY BARRICADES

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

CONSTRUCTION SIGNAGE

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

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

TEMPORARY FACILITIES

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

RUBBER TIRED EQUIPMENT

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

REMOVAL OF TEMPORARY FACILITIES

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

VIOLATIONS

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

GENERAL SAFETY PRECAUTIONS

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

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

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

EXHIBIT B

See attached Proposal dated May 8, 2017

SECTION 3: SUPPLEMENTAL PROPOSAL FORM

SUPPLEMENTAL PROPOSAL FORM

CITY OF WESTFIELD, INDIANA

Wastewater Treatment Plant Lagoon Closure

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

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

The Project generally includes the closure of two (2) abandoned lagoons (East and West), located at 2728 East 171st Street, Westfield, Indiana. The East Lagoon is approximately 9.61 acres, the West Lagoon is approximately 8 acres, and both lagoons have a 0.15 MGD capacity. The Lagoons were retired from service in April 2016 and have not previously been cleaned out. The lagoons will be closed in accordance with the City of Westfield Lagoon Closure Plan, dated August 2016. The general phases for closure will be:

- Dewatering
- Biosolids Removal and Disposal
- Liquid Sludge Removal and Disposal
- Clay Liner Removal and Disposal
- Site Restoration

The project will be awarded to the lowest and most responsible bidder based on the combined total base bid.

The undersigned proposes to furnish all work for the construction of the City of Westfield Wastewater Treatment Plant Lagoon Closures Project, including all labor, materials, supplies, equipment and all appurtenances necessary to complete the work as per the Lagoon Closure Plan for line item prices outlined in the Base Bid Itemized Proposal table below.

Schedule

The undersigned agrees to be complete with the base bid work 350 calendar days after the Notice to Proceed has been issued, currently anticipated to be by May 25, 2018. If work is not completed by the specified dates above, liquidated damages will be assessed at \$1,000.00 per day.

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

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

ID	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	AMOUNT
1	MOBILIZATION AND DEMOBILIZATION	LS	NA	\$ 10,210.00	\$ 10,210.00
2	DEWATERING (EAST LAGOON)	GAL	18,787,306	\$ 0.0005	\$ 9,393.65
3	DEWATERING (WEST LAGOON)	GAL	15,639,782	\$ 0.0005	\$ 7,819.89
4	BIOSOLIDS REMOVAL/DISPOSAL (EAST LAGOON)	DRY TON	1,368	\$ 378.00	\$ 517,104.00
5	BIOSOLIDS REMOVAL/DISPOSAL (WEST LAGOON)	DRY TON	1,138	\$ 378.00	\$ 430,164.00
6	LIQUID SLUDGE REMOVAL/DISPOSAL (EAST LAGOON)	GAL	469,682	\$ 0.2970	\$ 139,495.55
7	LIQUID SLUDGE REMOVAL/DISPOSAL (WEST LAGOON)	GAL	390,994.56	\$ 0.2970	\$ 116,125.38
8	CLAY LINER REMOVAL/DISPOSAL (EAST LAGOON)	TON	2,170	\$ 49.50	\$ 107,415.00
9	CLAY LINER REMOVAL/DISPOSAL (WEST LAGOON)	TON	1,806	\$ 49.50	\$ 89,397.00
10	SITE RESTORATION	LS	NA	\$ 1,365.00	\$ 1,365.00
Total					\$ 1,428,489.47

Base Bid Amount in words for City of Westfield WWTP Lagoon Closure Project:

ONE MILLION, FOUR HUNDRED TWENTY EIGHT THOUSAND, FOUR HUNDRED EIGHTY NINE Dollars and FORTY SEVEN /100

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

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

FIVE PERCENT OF PROPOSED BID AMOUNT Dollars (\$ 5% OF PROPOSAL),

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

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

Addendums

The undersigned has received and thoroughly reviewed the bidding documents for the above-mentioned project. The undersigned has also received and reviewed the following addendums and included their provisions within this proposal.

Addenda No.: 1
Date Issued: April 7, 2017

Addenda No.: 2
Date Issued: May 1, 2017

Addenda No.: 3
Date Issued: May 3, 2017

Addenda No.: _____
Date Issued: _____

Receipt of Addenda No. 3, 2, 1 is hereby acknowledged.

Respectfully submitted,

MERRELL BROS., INC.

Contractor

(Individual ☐) (Partnership ☐)
or (Corporation ☒)

By

Terry Merrell

TERRY MERRELL

Title

CHIEF FINANCIAL OFFICER

Dated:

Address 8811 WEST 500 NORTH

MAY 8, 20 17

KOKOMO, IN 46901

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

[illegible]

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

Section 3 – Page 3

MERRELL BROS.

A Biosolids Management Corporation

- Liquid / Dry Land Application
- Consulting
- Off-Site Biosolids Storage
- Lagoon/Pond Hydraulic Dredging
- State / Federal Reporting
- Lagoon Surveying
- Grease & Septage Disposal
- Lagoon/Pond Mechanical Dredging
- Permitting
- Digester and Lagoon Cleaning
- Brown/Yellow Grease Recycling
- Belt Press/Centrifuge Dewatering

Phase I: Dredging & Dewatering Work Plan

Hydraulic Dredging Plan

A hydraulic crane will be used to place the dredge into the lagoons. Aluminum floating dredge pipe will be installed behind the dredge. This pipe will float across the surface of the pond and will be attached to a check valve on the bank. From this check valve, HDPE pipe will extend to our 18,000-gallon mix tank that is set up in the dewatering area. Liquid biosolids will be pumped into this tank and a submersible mixer will provide equalization of the incoming material.

We own and operate a fleet of 5012 IMS & Dino-6 hydraulic dredges that are specifically designed for safe and efficient biosolids removal from lagoons. Our IMS dredge has both a star wheel and cable drive system that will allow the dredge to move across the lagoon efficiently



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Belt Press Dewatering Plan

Inside our containment system, we will utilize (4) mobile belt filter presses that will nurse off the 18,000-gallon equalization tank. The presses will utilize cationic emulsion polymer to dewater the biosolids. The cake will be conveyed directly into our conveyor bottom trailers. As each truck is filled to capacity, the driver will transport the biosolids to our regional biosolids centers for IDEM approved disposal. A custom enclosed polymer system will make down and age the emulsion cationic polymer required for dewatering.



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Transportation Plan

Merrell Bros., Inc. will be responsible for safely and efficiently transporting the dewatered biosolids to our IDEM approved Regional Biosolids Centers. Our quad dump trucks or Conveyor Bottom Trailers will legally transport 18-24 tons of dewatered biosolids per load. Our equipment is maintained to exceed DOT specifications and licensed to legally transport dewatered biosolids. Using our own equipment and personnel for every aspect of our projects allows us to maintain complete control of our operations. Therefore, we have never failed to complete a project ahead of schedule in our 34-year history.



Biosolids Testing, Approval & Weighing Plan

Prior to starting the project, samples will be collected and sent to a third party certified lab for IDEM approved land application required testing as required by our Biocenter permit. Once we receive the test results, we will issue the City of Westfield an approval letter for your records. Each load will be weighed on certified truck scales and printed weight tickets will be provided with each pay request.

Samples of the dewatered biosolids will be collected from each load and mixed together to form a daily composite sample. This sample will be sent to third party certified laboratory for percent solids testing. This data will be used to calculate the total dry tons of biosolids removed each day.

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GENERAL SITE PLAN



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BEFORE



**FINAL
SCRAPING**



AFTER



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Phase II: Dredging & Dewatering Work Plan

Phase II will involve liquid hauling of the remaining biosolids in the lagoon. This process will employ liquid sludge being pumped from the bottom of the lagoon using either our hydraulic dredge or lagoon pump. The liquid sludge will be loaded directly into our transport tankers and the liquid sludge will be transported to our regional biosolids centers for disposal. This process will continue until the lagoon is completely clean and the original clay liner is exposed. We want to keep a water cap on the lagoons as long as possible to **minimize odor concerns**. The less time the biosolids are exposed to the atmosphere the better.



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Phase III: Solids Hauling

After the liquid biosolids have been removed, the bottom of the lagoon will be scraped to return the floor to its original soil content. Background samples will be taken around the lagoons, in uncontaminated areas, to be the benchmark data for the soil at the bottom of each of the lagoons. After Phase III, the lagoon will have been scraped bare leaving an uncontaminated lagoon. After Phase III has been completed, IDEM will be notified that the lagoons are ready for inspection. Upon approval from IDEM the lagoon will be considered clean closed. **Figure 05** shows a lagoon in the process of being scraped. **Figure 06** shows the results after a lagoon has been scraped and a bare floor of the lagoon.

Figure 05



Figure 06



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Company ID Number: 337550

**THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION
MEMORANDUM OF UNDERSTANDING**

ARTICLE I

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Department of Homeland Security (DHS) and **MERRELL BROS., INC.** (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). This MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), and the Employer. E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of the Employment Eligibility Verification Form (Form I-9). For covered government contractors, E-Verify is used to verify the employment eligibility of all newly hired employees and all existing employees assigned to Federal contracts or to verify the entire workforce if the contractor so chooses.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). Authority for use of the E-Verify program by Federal contractors and subcontractors covered by the terms of Subpart 22.18, "Employment Eligibility Verification", of the Federal Acquisition Regulation (FAR) (hereinafter referred to in this MOU as a "Federal contractor with the FAR E-Verify clause") to verify the employment eligibility of certain employees working on Federal contracts is also found in Subpart 22.18 and in Executive Order 12989, as amended.

ARTICLE II

FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF SSA

1. SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all employees verified under this MOU and the employment authorization of U.S. citizens.
2. SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.
3. SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by SSA as governed

CODE OF BY –LAWS

OF

Merrell Bros., Inc.

ARTICLE 1

Seal – Fiscal Year

Section 1.01. Seal. The Board of Directors may authorize the Corporation to have a corporate seal and to cause the seal to be affixed to documents executed by, and certificates of, the Corporation. However, the use of a corporate seal or an impression thereof shall not be required upon, and shall not affect the validity of, any instrument whatsoever.

Section 1.02. Fiscal Year. The fiscal year of the Corporation shall begin at the beginning of the first day of January in each year and end at the close of the last day of December next succeeding.

ARTICLE 2

Shares of Stock

Section 2.01. Consideration for Shares. The Corporation may issue shares of stock of the Corporation for such an amount of consideration as may be fixed from time to time by the Board of Directors.

Section 2.02. Stock Split. The Board of Directors shall have the authority to declare a split-up or division of issued shares of common capital stock having no nominal or par value into a greater number of shares to the extent of the authorized but unissued shares available therefore.

Section 2.03. Stock Conversion or Exchange. In the event of a conversion of shares or an exchange of shares for the same or a different number of shares, the consideration for the shares so issued in exchange or conversion shall be deemed to be (1) the stated capital then represented by the shares so exchanged or converted, and (2) that part of surplus, if any, transferred to stated capital, and (3) any additional consideration paid to the Corporation upon the issuance of shares for the shares so exchanged or converted.

Section 2.04. Treasury Shares. The Board of Directors may cancel or dispose of treasury shares for such consideration as the Board may determine.

and examination during the usual business hours for all proper purposes by every shareholder of the Corporation, or his duly authorized agent or attorney.

Section 8.04. Annual Financial Statement. Upon the written request of any shareholder of the Corporation, the Corporation shall mail to such shareholder its most recent annual financial statements showing in reasonable detail its assets and liabilities, and the results of its operations.

ARTICLE 9

Special Corporate Acts

Section 9.01. Execution of Negotiable Instruments. All checks, drafts, notes, bonds, purchase of real estate, contracts, bills of exchange and orders for the payment of money of the Corporation shall, unless otherwise directed by the Board of Directors, or unless otherwise required by law, may be signed by any one of the following officers: President, Vice President, Treasurer, Secretary. The Board of Directors may, however, authorize any one of such officers to sign checks, drafts and orders for the payment of money and may designate officers and employees of the Corporation, other than those named above, or different combinations of such officers and employees of the Corporation, who may, in the name of the Corporation, execute in its behalf checks, drafts and orders for the payment of money, from such accounts, or within such limits, as the Board of Directors may designate.

ARTICLE 10

Requirement for Repayment Of Excessive Compensation

Any officer or employee of the Corporation receiving payments from the Corporation as a salary, commission, bonus, interest, rent, or for an entertainment expense incurred by him, which payment is disallowed by the Internal Revenue Service in whole or in part as a deductible expense of the Corporation in computing its United States income tax, shall be required to reimburse the Corporation to the full and complete payment to the Corporation by the officer or employee of each amount disallowed so as to assist the Corporation in paying the deficiency and to prevent a decrease in the assets of the Corporation resulting from the payment

Attachment 1

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

Addendums 1, 2 and 3 included in Exhibit B.

Attachment 2

The Affidavit of Employee Status shall be signed and notarized.

AFFIDAVIT OF EMPLOYEE STATUS

Re: Project – WWTP Lagoon Closure

WHEREAS, the City of Westfield, Hamilton County, Indiana, hereinafter referred to as the “City” is in the process of construction work on the WWTP Lagoon Closure project, hereinafter referred to as the “Project”;

WHEREAS, Merrell Bros., Inc., hereinafter referred to as the “Vendor”, is the general contractor of the above reference project; and

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

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



Signature:

DUSTIN SMITH

Printed Name:

Signature:

Printed Name:

STATE OF INDIANA:

SS:

COUNTY OF _____ :

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

Witness my hand and Notarial Seal this 1st day of June, 2017

Kristen Sparks
Signature

Kristen Sparks
Printed Name

My Commission expires 11/1/2024

I am a resident of Tipton County.



CITY OF WESTFIELD BY:

Jeremy Lottar
, Director of Public Works

STATE OF INDIANA:

SS:

COUNTY OF HAMILTON:

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

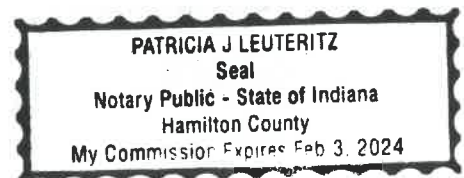
Witness my hand and Notarial Seal this 2nd day of June, 2017

Patricia J. Leuteritz
Signature

Patricia J. Leuteritz
Printed Name

My Commission expires 2/3/24

I am a resident of Hamilton County.



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

Attachment 3

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



Invoice Date:	
Invoice or App Number:	

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

Westfield Project Name:	WWTP Lagoon Closure
Westfield Project Number:	1718011
Westfield Project Manager:	Jeremy Lollar
Westfield PO Number:	PO003502

1. Original Contract Amount	\$ 1,428,489.47
2. Change Orders/Amendments	\$ 0.00
3. Total Contract Amount (Line 1 + 2)	\$ 1,428,489.47
4. Total Earned To Date	\$ 0.00
5. Retainage (If Applicable)	\$ 0.00
6. Total Earned Less Retainage (Line 4 less 5)	\$ 0.00
7. Less Previous Payments (Line 6 from prior Invoice)	\$ 0.00
8. Total Amount Payable This Invoice (Line 6 less 7)	\$ 0.00
9. Balance to Finish, Including Retainage (Line 3 less 6)	\$ 1,428,489.47

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

ROAD IMPACT FEE INSTALLMENT AGREEMENT

Cross Referenced to Instrument No. _____

Dahm No 49, LLC (dba Crew Carwash, Inc.) (the “Property Owner”) makes the following commitments (the “Commitments”) to the City of Westfield, Hamilton County, Indiana (“City”) regarding the installment payments for the Road Impact Fees properly assessed on the following described real estate (the “Real Estate”) located in Hamilton County, Indiana:

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

Address: 777 East State Road 32, Westfield, Indiana 46074
Parcel No: 08-09-01-00-04-003.000

Section 2. **Improvement Location Permit No.:** 18-C-012-823 (the “ILP”).

Section 3. **Statement of Terms:**

A. As part of the development of the Real Estate, road impact fees are required to be paid to the City by the Property Owner. In accordance with City Ordinance 12-13, the City assessed a road impact fee of **\$371,508.00** on September 17, 2018, attached hereto as **Exhibit B** (18-RIFA-09) (the “Assessed Road Impact Fee”), as part of the Property Owner’s filed ILP for the Real Estate.

On September 26, 2018, the Westfield Board of Public Works approved an agreement which assigns \$150,000 of the Assessed Road Impact Fee to third party, Edgerock Development, LLC (see **Exhibit C**). Therefore, the remaining balance of **\$221,508.00** shall be paid by the Property Owner.

B. Pursuant to I.C. 36-7-4-1324 the City agrees to installment payments of the Assessed Road Impact Fees as set forth herein.

C. Prior to the issuance of the ILP, the Property Owner agrees to tender five-thousand dollars (\$5,000.00) or five percent (5%), whichever is greater.

- D. The Property Owner agrees to make installment payments to the City for the remaining Assessed Road Impact Fee on or before the dates set forth below. The remaining amounts shall be due in equal payments beginning November 1, 2019, and every year thereafter, in accordance with the following:

Issuance of ILP:	\$11,075.40
November 1, 2019:	\$42,086.52
November 1, 2020:	\$42,086.52
November 1, 2021:	\$42,086.52
November 1, 2022:	\$42,086.52
November 1, 2023:	\$42,086.52
Total Road Impact Fee:	\$221,508.00

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

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

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

Section 5. **Effective Date:**

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

Section 6. **Recording:**

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

Section 7. **Enforcement:**

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

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

Dahm No 49, LLC (the “Property Owner”)

By: _____

Printed Name: _____

Title: _____

Date: _____

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

SIGNATURE OF NOTARY PUBLIC

State of _____, County of _____, SS:

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

Printed Name of Notary Public _____

My Commission Expires _____

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

Prepared by: Brian J. Zaiger, Krieg DeVault, LLP
12800 North Meridian
Street Suite 300
Carmel, IN 46032

EXHIBIT A

REAL ESTATE

THAT PART OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 18 NORTH, RANGE 3 EAST, HAMILTON COUNTY INDIANA (ALL REFERENCES TO DEEDS, MICROFICHE, PLATS, SURVEYS, ETC., REFER TO THE RECORDS OF THE HAMILTON COUNTY RECORDER'S OFFICE, UNLESS NOTED OTHERWISE) AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING FOR REFERENCE AT A HARRISON MONUMENT FOUND AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 1;

THENCE ALONG THE NORTH LINE OF SAID SECTION 1, NORTH 89 DEGREES 50 MINUTES 10 SECONDS EAST, A DISTANCE OF 488.85 FEET TO THE NORTHWEST CORNER OF A 0.28 ACRE PARCEL DESCRIBED IN THE WARRANTY DEED RECORDED JULY 16, 1965 IN BOOK 197, PAGE 324;

THENCE ALONG THE WEST LINE OF SAID 0.28 ACRE PARCEL, SAID LINE BEING PARALLEL TO THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1, SOUTH 00 DEGREES 23 MINUTES 43 SECONDS WEST, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE CONTINUING ALONG THE WEST LINE OF SAID 0.28 ACRE PARCEL, SAID LINE BEING PARALLEL TO THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1, SOUTH 00 DEGREES 23 MINUTES 43 SECONDS WEST, A DISTANCE OF 355.11 FEET;

THENCE NORTHWESTERLY, 44.27 FEET ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 137.50 FEET, SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 74 DEGREES 40 MINUTES 53 SECONDS EAST AND A LENGTH OF 44.08 FEET;

THENCE NORTH 65 DEGREES 27 MINUTES 30 SECONDS WEST, A DISTANCE OF 147.39 FEET;

THENCE NORTHWESTERLY, 2.22 FEET ALONG AN ARC TO THE LEFT AND HAVING A RADIUS OF 529.50 FEET, SUBTENDED BY A LONG CHORD HAVING A BEARING OF NORTH 65 DEGREES 34 MINUTES 42 SECONDS WEST AND A LENGTH OF 2.22 FEET TO A POINT ON THE WEST LINE OF THE PARCEL DESCRIBED IN THE SPECIAL WARRANTY DEED RECORDED JANUARY 11, 2017 PER INSTRUMENT NUMBER 2017001604;

THENCE ALONG THE WEST LINE OF AFORESAID PARCEL, SOUTH 00 DEGREES 23 MINUTES 47 SECONDS WEST, A DISTANCE OF 280.82 FEET TO A POINT BEING 55.00 FEET SOUTH OF THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1;

THENCE ALONG A LINE BEING 55.00 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 1, NORTH 89 DEGREES 50 MINUTES 10 SECONDS EAST, A DISTANCE OF 179.11 FEET TO THE POINT OF BEGINNING, CONTAINING 1.321 ACRES, MORE OR LESS.

THE BEARINGS FOR THIS DESCRIPTION ARE BASED UPON THE INDIANA STATE PLANE COORDINATE SYSTEM EAST ZONE (NAD83).

ASSESSED ROAD IMPACT FEE

ROAD IMPACT FEE ASSESSMENT

Estimate Request #: 18-RIFA-09

Assessment Date: 9/17/2018

Calculations Performed by: John Nail

(I.C. 36-7-4-1321 and City Ordinance No. 12-13)



Property Information:

Property Description:

Parcel: 08-09-01-01-01-003.000

Address: 733 SR 32, Westfield, IN 46074

The Trails PUD

Applicant: Crew Carwash, Inc.

Name: Justin Furr

Address: 10251 Hague Road, Indianapolis, IN 46256

Development Information:

Existing: vacant lot

Proposed:

6,250 square feet - automated car wash

Zoning:

Road Impact Fee Calculation:

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

Land Use Code:	Automated Car Wash (948) *		
Independent Variable:	6,250	sq. ft. gross floor area	
Weighted Trip Average:	198.80	per	1,000 Sq. Ft. GFA (average weekday 24-hour trip rate)

*The ITE Manual includes only one (1) study for this land use code. The study is for weedyard, PM peak hour, yielding 14.20 trips. The Weighted Trip Average (198.80 per 1,000 SF) is calculated by multiplying 14.20 by the hours of weekday operation (14 hours).

Trips:

A "trip" is a single or one-direction vehicle movement exiting or entering the site. For trip generation purposes, the total trips for a 24-hour period are the total of all trips entering plus all trips exiting a site during this period (e.g., one vehicle in and out of site = 2 trips).

Pass-by Trips:

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

Redevelopment:

If this development includes the demolition of an existing structure (e.g., redevelopment, relocation), then the calculation below takes into consideration the appropriate credits that may be eligible for this development, based on the demolition of the existing structure.

Calculation:

	Sq. Ft. GFA	Variable	Trip Average		
Trips:	6,250	/ 1,000	x 198.8	=	1,242.50 24-hour trips
Pass-by Trips:		Average pass-by trip percentage:	0%		pass-by trip reduction % (destination land use)
					0.00 pass-by trips
Credits:		No structure demolition is proposed			0.00 structure demolition credits
			Total net trips:		1,242.50 24-hour trips

Road Impact Fee: \$ 299 per trip (effective 01/01/2018 through 12/31/2018)

Road Impact Fee Assessment:						Road Impact
24-hour trips	fee per trip		road impact fee	pass-by trip discount	redevelopment credits	Fee Due:
1,242.50	x \$ 299	=	\$ 371,508	- 0.00	- 0.00	\$ 371,508

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

EXHIBIT C
ROAD IMPACT FEE AGREEMENT LETTER



555 East Main Street • Westfield, IN 46074
+1 317 979 0538 • bdalton@mag-us.com

September 26, 2018

City of Westfield
Economic and Community Development Department
2728 East 171st Street
Westfield, Indiana 46074

Crew Carwash, Inc.
10251 Hague Road
Indianapolis, Indiana 46256

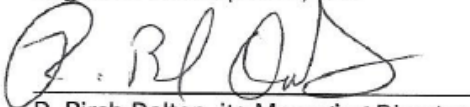
RE: Lot 3 of The Trails of Westfield
 Assignment of Road Impact Fee Credit

To Whom It May Concern:

In accordance with the Road Impact Fee Credit Agreement approved by the Board of Public Works and Safety on September 26, 2018, for the Trails of Westfield and 175th Street, Edgerock Development, LLC hereby assigns One Hundred and Fifty Thousand Dollars and 00/100 (\$150,000.00) of its road impact fee credits to apply to those road impact fees owed for the Improvement Location Permit to be issued for the construction of a Crew Carwash on Lot 3 of The Trails of Westfield.

Sincerely,

Edgerock Development, LLC


R. Birch Dalton, its Managing Director

Westfield Police Department

Monthly Performance Measures Report



Board of Public Works & Safety

September 2018

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Westfield Police Department

September 2018

Events by Nature

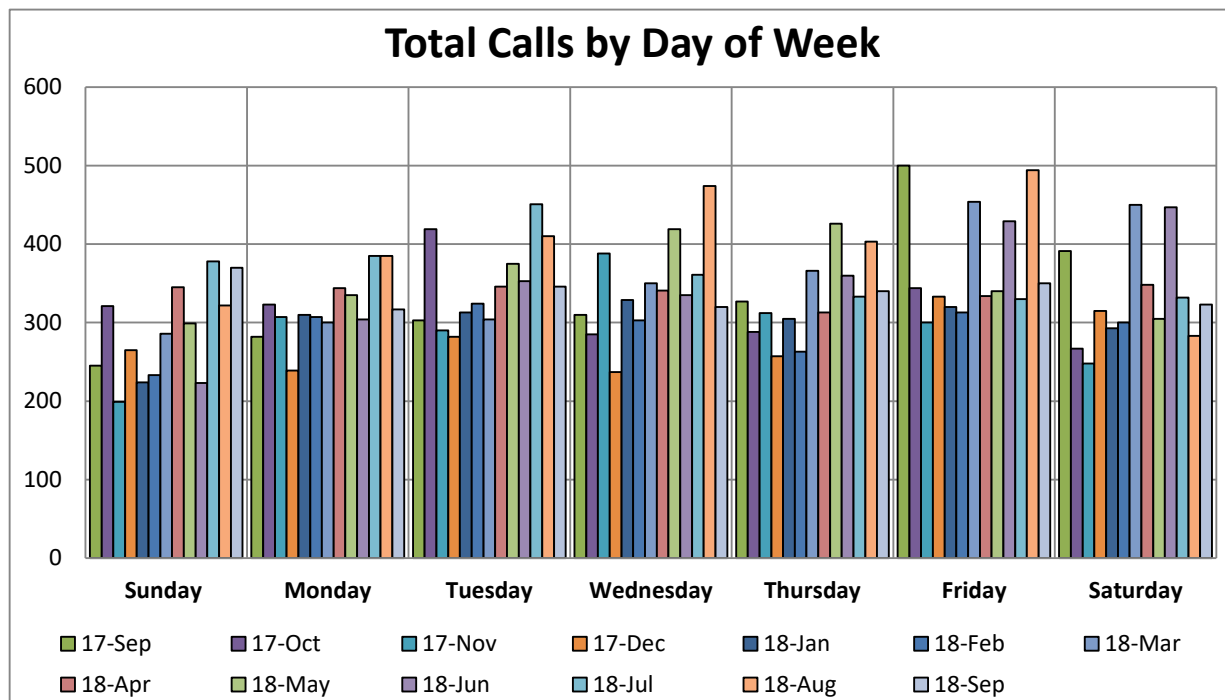
911 Hang Up	26
Abandoned Vehicle	11
Abandonment	0
Abuse / Neglect	1
Accident - Hit & Run	9
Accident - Other	0
Accident - Property Damage	68
Accident - Personal Injury	10
Accident - Sinking Vehicle	0
Accident - Unknown	2
Accelerator Stuck	0
Active Assailant	0
Alarm - Other	1
Alarm - Vehicle	1
Alarm - Burglar	139
Alarm - Hold Up	18
Animal Bite / Attack	6
Animal Complaint	31
Assist Fire	36
Assist Other Department	12
Assist Public	27
Battery	1
Bomb Device Found	0
Bomb Threat	0
Burglary	4
Carjacking	0
Case Follow Up	91
Child Seat Inspection	0
Civil Dispute	27
Criminal Mischief	13
Damage to Property	0
Death Investigation	0
Directed Patrol	13
Disturbance	23
Driving Complaint	58
Drug Complaint	4
Escort	1
Fight	0
Firearms Shots Fired	1
Found / Lost Property	14
Found Person	1
Fraud Prescription	0
Fraud / Deception	17
Harassment	22
Intoxicated Person	0
Investigation	6

Juvenile Complaint	10
K9 Detail	1
Kidnapping	0
Lock Out	50
Loud Party	3
Mental Emotional - Violent	2
Mental Person	10
Miscellaneous	18
Missing Person	5
Missing Person - PLS	0
New Call	1
Nuisance	4
Ordinance Misc.	19
Parking Complaint	17
Physical Disturbance	14
Reckless Activity	0
Road Rage	3
Robbery	0
Runaway	3
School Patrol	128
Security Check	2
Sex Offense	2
Shooting	0
Special Detail	2
Stabbing	0
Suicide	0
Suspicious Activity	106
Suspicious Package	0
Test	0
Theft	37
Theft - From a Vehicle	8
Theft - of a Vehicle	2
Threat to Life	6
Threatening Suicide	5
Tow Release	3
Traffic Hazard	77
Transport	0
Trespassing	9
Traffic Stop	1041
Unknown Call for Police	1
VIN Check	31
Wanted	1
Warrant Service	10
Weapons Complaint	0
Welfare Check	41
	2366

Westfield Police Department
September 2018

Total # of Calls by Day of Week

DAY	17-Sep	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep
Sunday	245	321	199	265	224	233	286	345	299	223	378	322	370
Monday	282	323	307	239	310	307	300	344	335	304	385	385	317
Tuesday	303	419	290	282	313	324	304	346	375	353	451	410	346
Wednesday	310	285	388	237	329	303	350	341	419	335	361	474	320
Thursday	327	288	312	257	305	263	366	313	426	360	333	403	340
Friday	500	344	300	333	320	313	454	334	340	429	330	494	350
Saturday	391	267	248	315	293	300	450	348	305	447	332	283	323
TOTAL	2358	2247	2044	1928	2094	2043	2510	2371	2499	2451	2570	2771	2366

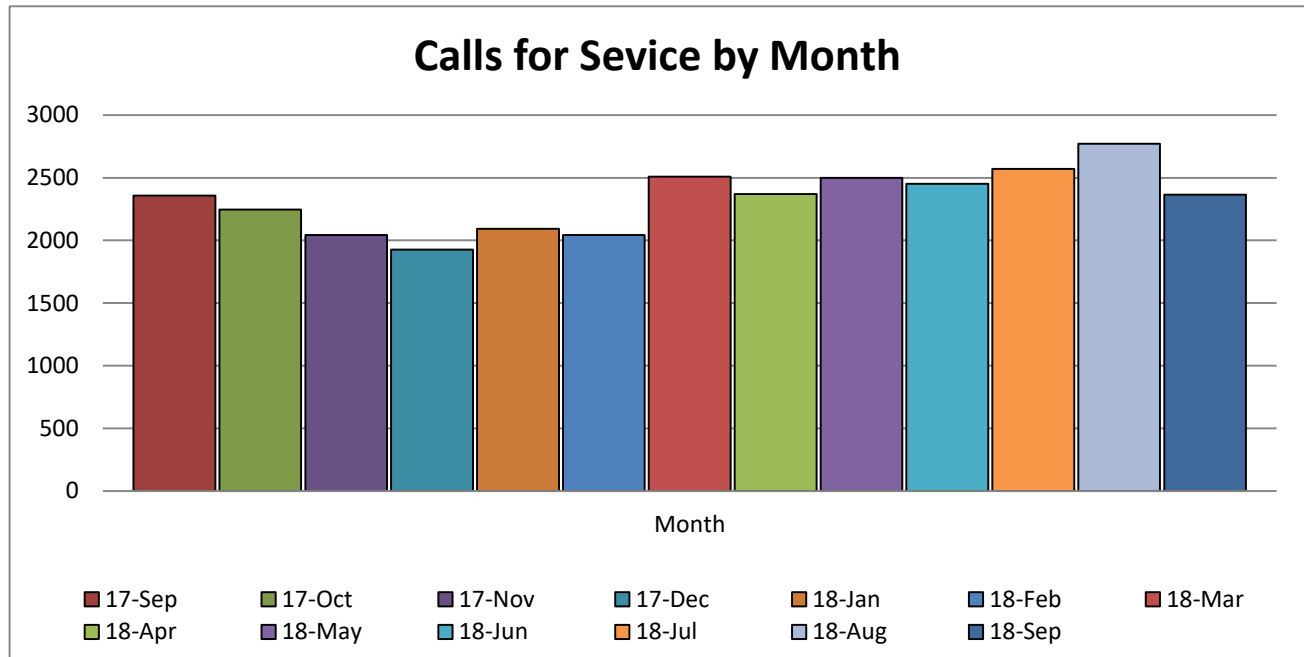


Westfield Police Department
September 2018

Total # of Calls by Hour of Day

HOURL	17-Sep	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep
0	100	93	74	77	66	73	82	99	90	96	105	78	80
1	69	53	46	44	51	46	62	53	62	78	64	47	68
2	49	40	33	35	37	34	38	56	55	43	50	31	44
3	34	35	17	27	34	23	27	34	30	30	27	21	47
4	25	31	13	18	27	12	11	20	13	29	31	17	17
5	18	16	20	20	24	30	13	20	18	20	32	17	21
6	35	35	38	41	52	50	66	65	64	67	65	46	28
7	110	102	79	77	76	58	99	119	111	128	118	95	79
8	133	149	140	95	72	72	113	106	125	101	123	216	150
9	111	132	116	98	105	106	132	105	142	133	152	180	170
10	169	172	181	123	121	155	157	118	158	158	172	206	162
11	104	123	126	102	93	94	114	118	135	101	129	157	116
12	106	105	134	104	81	74	124	131	99	117	108	127	97
13	145	130	92	102	125	125	159	115	126	140	134	196	106
14	131	140	114	119	135	144	159	133	135	155	142	219	122
15	142	125	125	117	96	122	136	150	139	131	134	189	134
16	127	95	83	84	105	74	130	111	118	122	113	129	130
17	96	81	70	103	106	84	112	124	101	116	111	108	105
18	114	112	126	107	179	143	182	155	168	142	142	164	156
19	121	108	90	122	160	156	186	146	175	120	132	157	149
20	85	79	62	83	71	79	93	89	92	80	79	88	72
21	82	75	62	54	82	69	82	66	93	106	110	89	77
22	123	109	102	87	111	105	122	118	127	132	141	102	111
23	129	107	101	89	85	115	111	120	123	106	156	92	125
TOTAL	2358	2247	2044	1928	2094	2043	2510	2371	2499	2451	2570	2771	2366

Westfield Police Department
September 2018



Westfield Police Department
September 2018

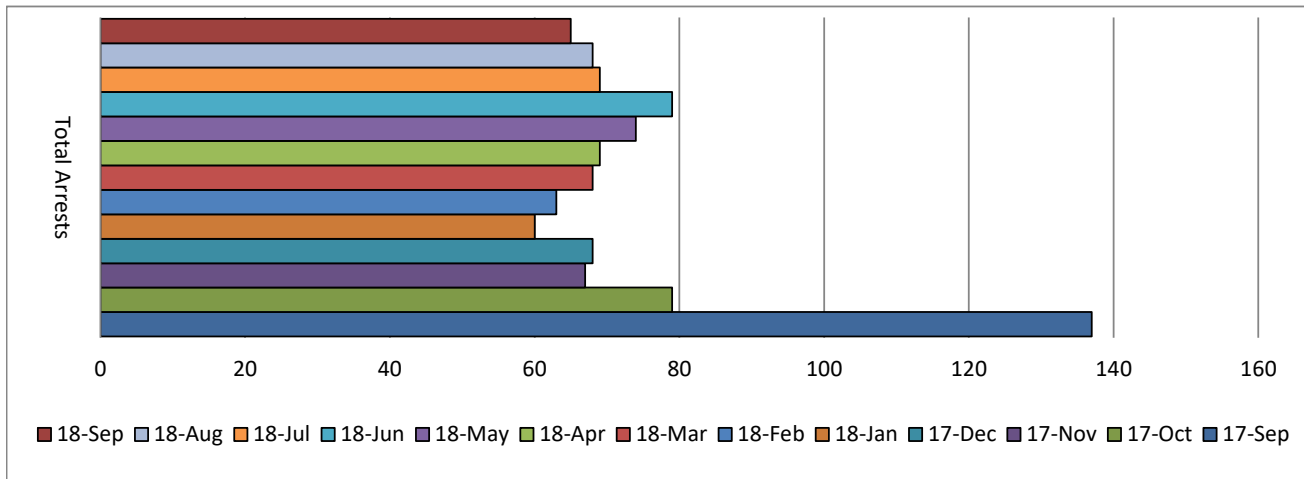
UCR OFFENSES

OFFENSE	17-Sep	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep
Arson	0	0	0	0	0	1	0	0	0	0	0	0	0
Homicide	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	1	-1	0	0	0	0	1	0	0	1	0	0	0
Robbery	2	1	-1	1	0	1	0	0	0	0	1	0	0
Battery - Aggravated	0	0	1	1	0	1	2	0	0	0	0	0	0
Battery - Simple	15	12	19	14	11	21	11	16	24	11	10	16	11
Burglary	3	0	2	5	1	4	4	4	0	1	1	3	3
Theft	24	17	29	30	26	31	28	24	32	29	51	32	30
Motor Vehicle Theft	0	1	2	0	1	1	0	0	0	2	2	1	1
TOTAL	45	30	52	51	39	60	46	44	56	44	65	52	45

Westfield Police Department

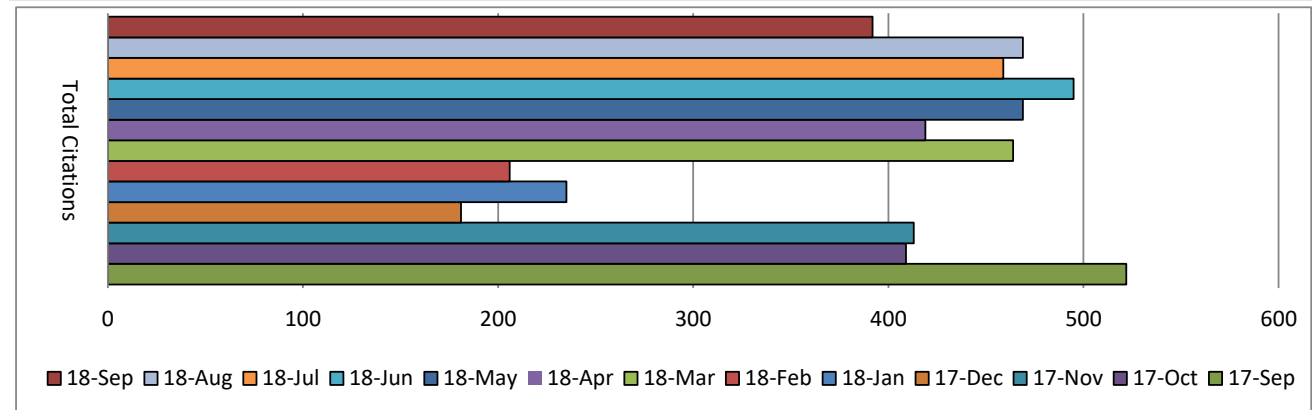
September 2018

Arrest Reports Taken	17-Sep	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep
Alcohol/ Drug Related	26	16	13	13	15	17	8	19	16	26	24	14	22
Felony Charges	16	7	20	18	5	14	3	10	5	21	8	7	18
Misdemeanor Charges	131	82	58	77	69	69	80	92	78	114	113	109	90
Total Arrests	137	79	67	68	60	63	68	69	74	79	69	68	65



Traffic	17-Sep	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep
Total Citations	522	409	413	181	235	206	464	419	469	495	459	469	392
Total Written Warning	1113	1084	989	782	1036	1107	1307	1141	1105	1100	1158	1127	1043
Total Traffic Accidents	58	49	49	77	54	44	55	60	80	47	71	66	53
Property Damage	51	44	45	68	48	40	46	53	73	40	67	57	43
Personal Injury	7	5	4	9	6	4	9	6	7	7	4	9	10
Fatality	0	0	0	0	0	0	0	1	0	0	0	0	0
Hit and Run*	5	6	2	3	7	3	1	6	2	6	6	6	3

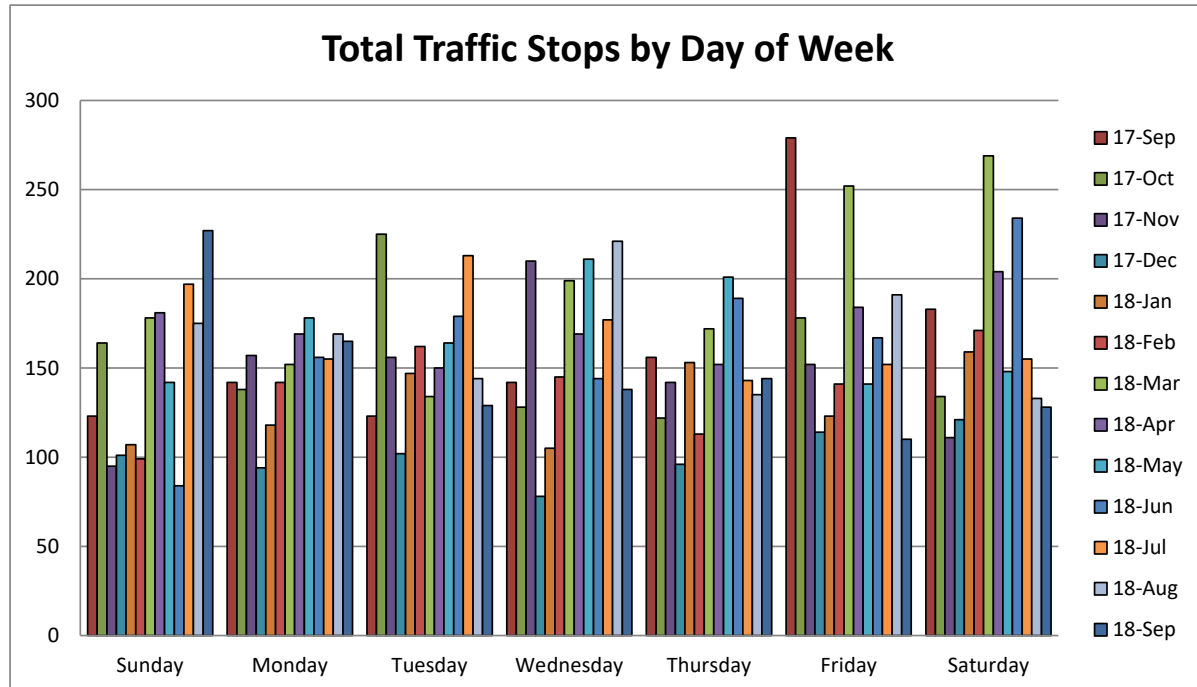
*numbers included in property damage, personal injury, and fatality accidents



Westfield Police Department
September 2018

Traffic Stops by Day of Week

Day:	17-Sep	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep
Sunday	123	164	95	101	107	99	178	181	142	84	197	175	227
Monday	142	138	157	94	118	142	152	169	178	156	155	169	165
Tuesday	123	225	156	102	147	162	134	150	164	179	213	144	129
Wednesday	142	128	210	78	105	145	199	169	211	144	177	221	138
Thursday	156	122	142	96	153	113	172	152	201	189	143	135	144
Friday	279	178	152	114	123	141	252	184	141	167	152	191	110
Saturday	183	134	111	121	159	171	269	204	148	234	155	133	128
TOTAL	1148	1089	1023	706	912	973	1356	1209	1185	1153	1192	1168	1041

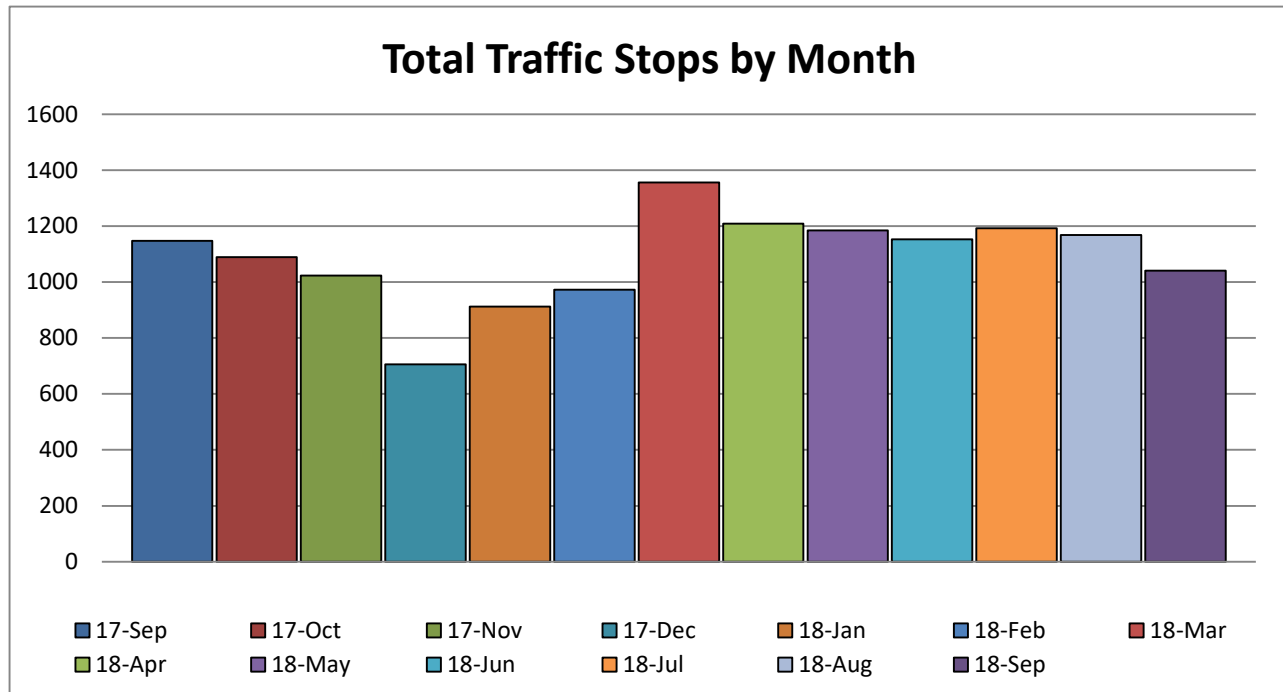


Westfield Police Department
September 2018

Traffic Stops by Hour of the Day

Hour:	17-Sep	17-Oct	17-Nov	17-Dec	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep
0	71	60	50	47	40	44	59	69	59	63	62	41	49
1	47	30	28	20	24	31	44	36	36	41	35	22	39
2	30	21	21	19	18	23	31	44	35	28	27	10	28
3	16	21	7	11	11	13	12	25	14	15	10	6	27
4	8	13	7	6	9	7	4	7	4	8	12	4	8
5	3	2	5	3	9	13	7	7	7	10	18	4	5
6	17	19	23	19	32	31	42	53	42	44	46	21	10
7	67	72	64	47	34	22	58	86	77	98	67	53	39
8	79	93	84	55	34	25	62	49	57	51	64	97	77
9	53	66	69	21	46	52	67	47	76	74	87	86	87
10	92	85	100	54	58	62	94	71	80	82	104	78	83
11	45	57	67	28	35	34	57	41	51	28	52	68	47
12	45	37	55	25	19	23	43	43	29	32	31	42	25
13	66	59	34	37	44	53	78	62	49	61	41	64	34
14	68	59	59	52	40	69	94	55	60	78	64	106	36
15	59	56	57	30	33	41	73	60	51	62	47	84	65
16	48	26	24	13	18	24	48	37	35	64	50	46	38
17	17	19	18	8	20	13	20	31	18	38	29	23	19
18	49	38	45	41	115	77	109	88	94	58	54	72	59
19	56	58	32	40	99	97	124	74	94	51	51	86	67
20	26	34	17	22	20	32	39	34	28	14	24	18	19
21	26	28	24	13	41	31	35	22	29	30	40	24	26
22	78	63	59	42	51	73	85	80	79	61	73	57	79
23	82	73	74	53	62	83	71	88	81	62	104	56	75
TOTAL	1148	1089	1023	706	912	973	1356	1209	1185	1153	1192	1168	1041

Westfield Police Department
September 2018



Westfield Police Department
September 2018
Community Events

9/4/2018	Jake Laird Community Day
9/6/2018	Oak Trace First Grade Police Department Visit - Lt. Gorrell & Officer Martin
9/12/2012	Moms Club Police Department Tour for Kids - Lt. Gorrell
9/14/2018	Washington Woods Elementary Police Officer Visit - Officer Ford
9/20/2018	Shamrock Career Fair - Officer Burtron
9/28/2018	Washington Woods Elementary Police Department Visit - Days A

Westfield Police Department

September 2018

Training

9/6/2018	Monthly K9
9/10-14/18	RAIDER Level 1,2 and 4 - Lt. Vickroy
9/13/2018	Monthly ESU
9/17-20/18	Departmental Taser / STOPS Recertifications
9/24-27/18	Firearms Qualifications



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

Contact: Fire Chief

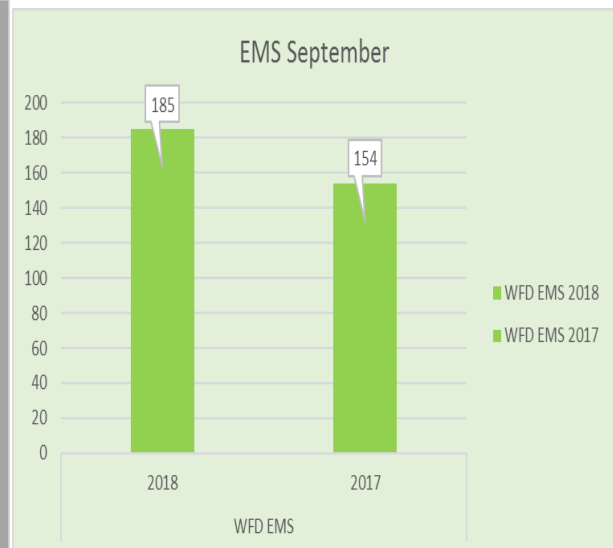
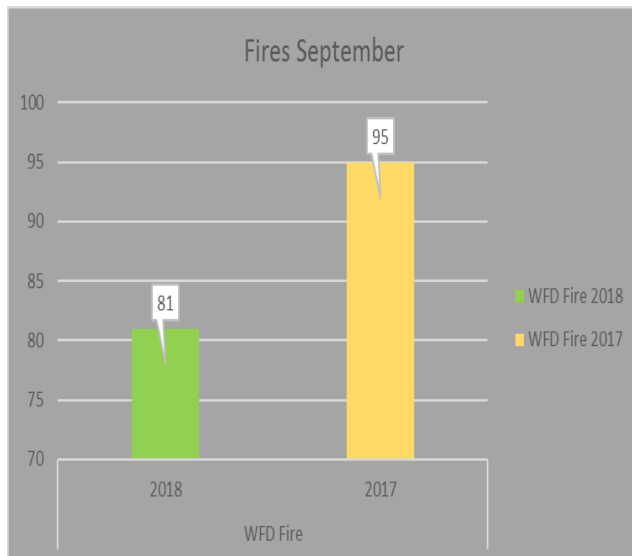
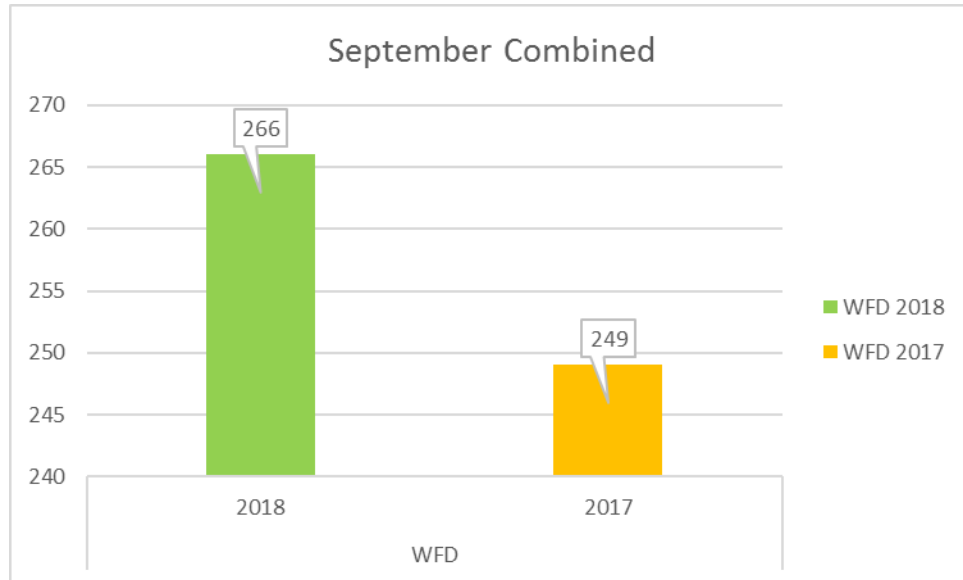
Marcus Reed

Or Nikki Hartman

804-3304

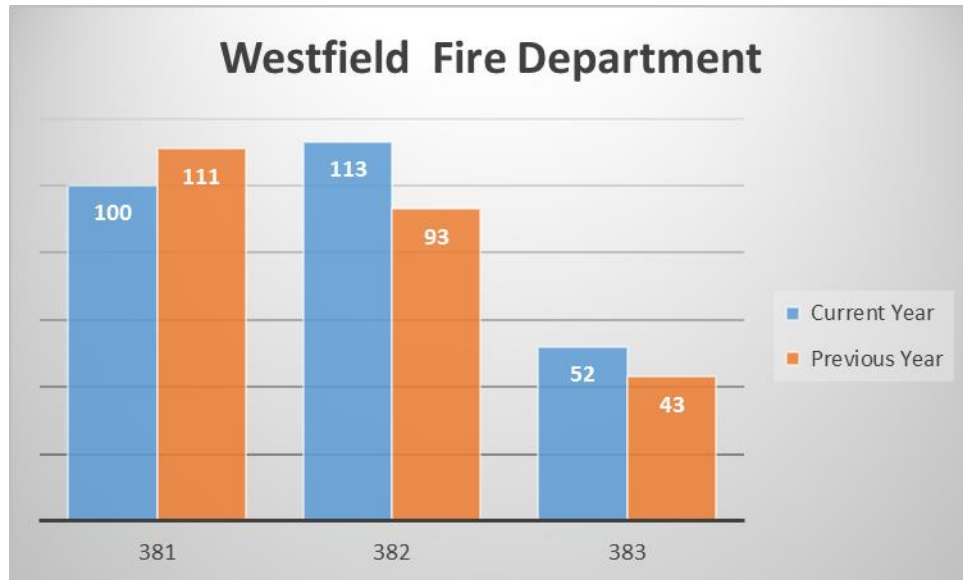


Westfield Fire Department 2018 Incident Statistics

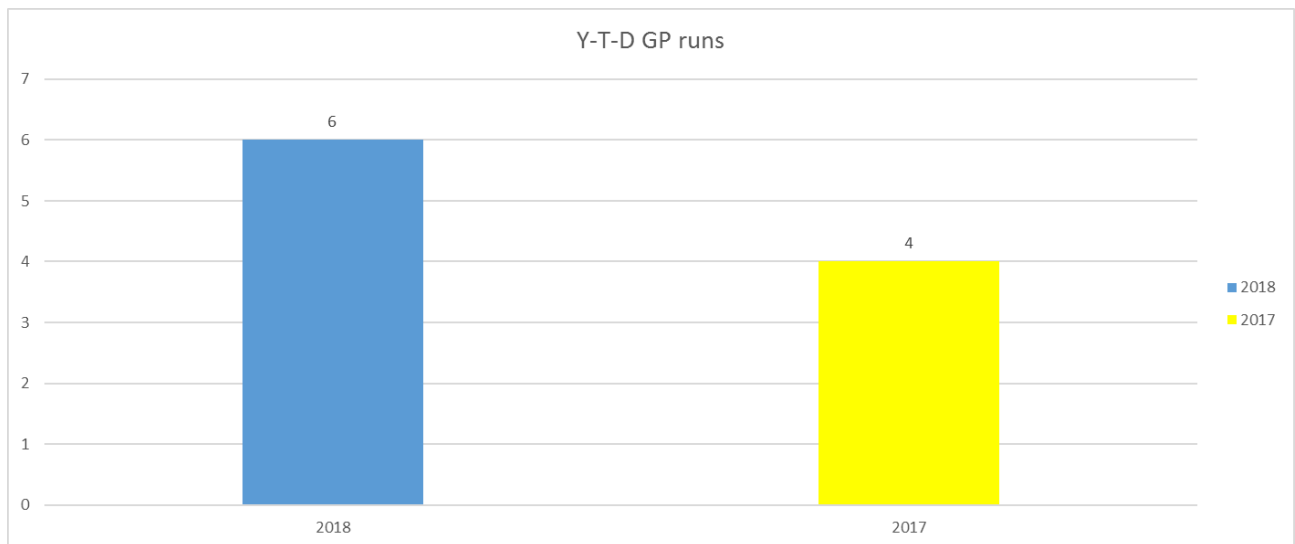




Westfield Fire Department 2018 Incident Statistics



Runs per station this year and last year comparison

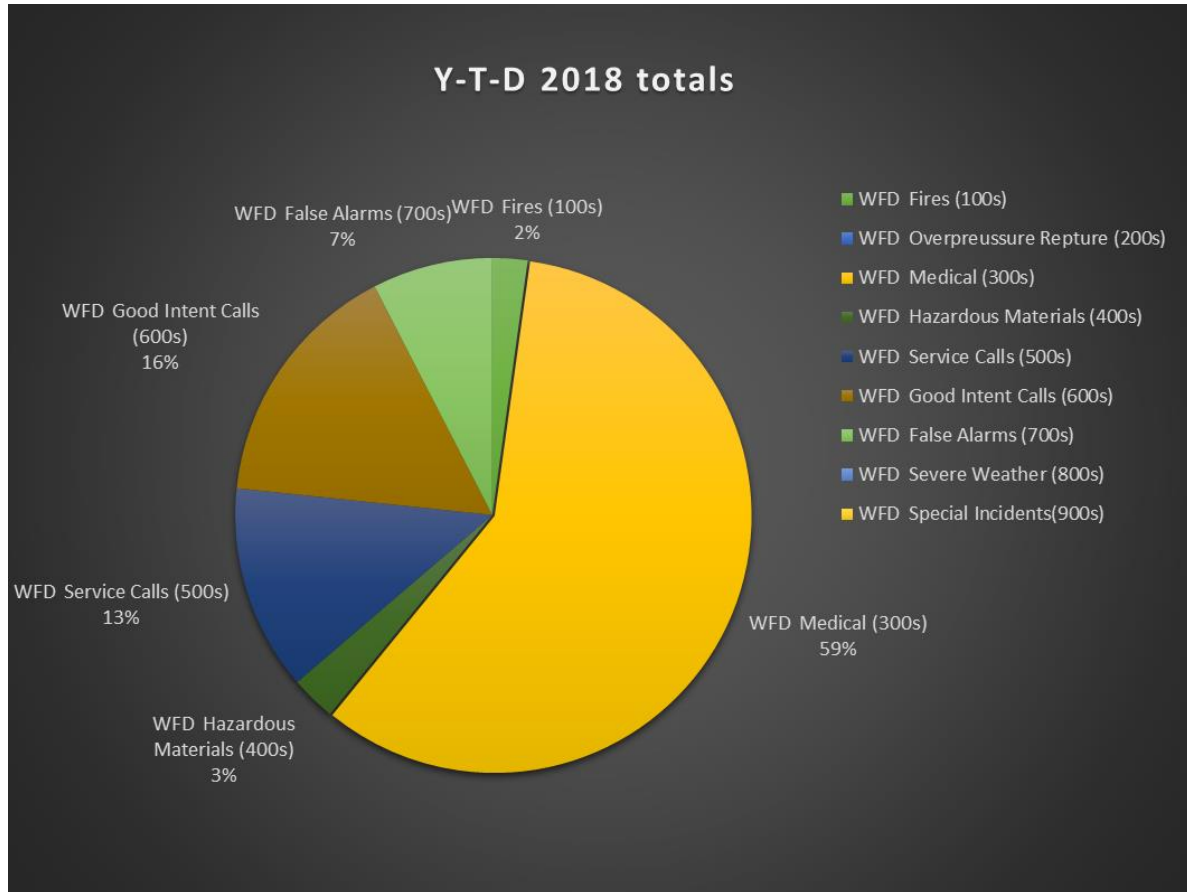


Grand Park

57 calls to GP this year through September



Westfield Fire Department 2018 Incident Statistics



YTD	2,496
Fires	67
Overpressure	3
Medical	1,619
Hazmat	82
Service Calls	247
Good Intent	332
False Alarms	137
Severe Weather	7

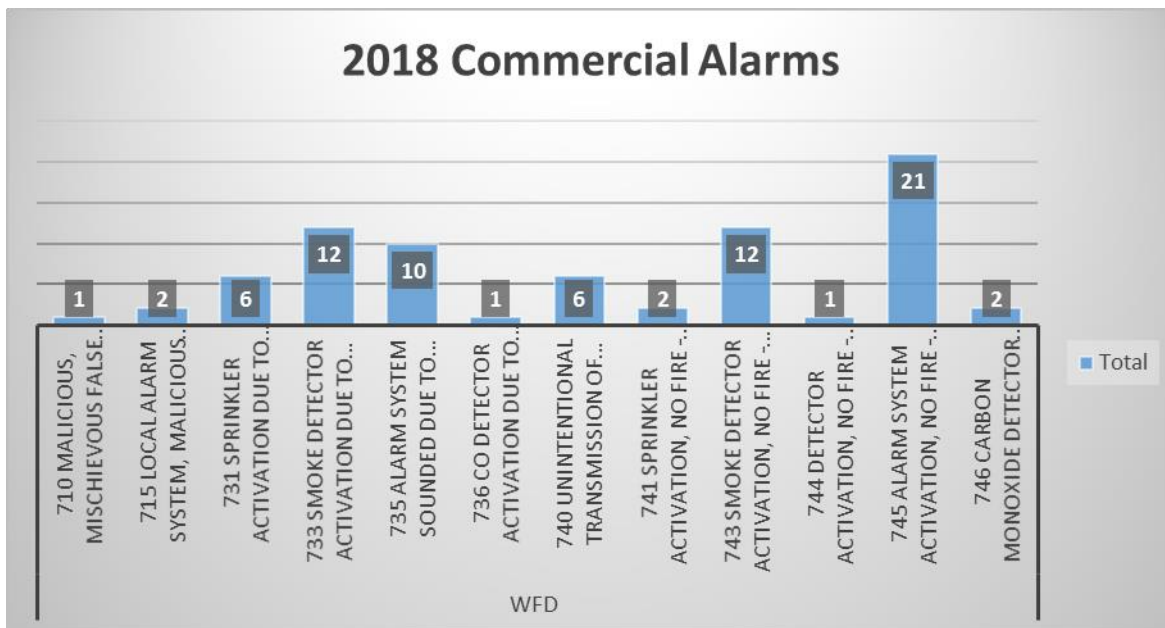
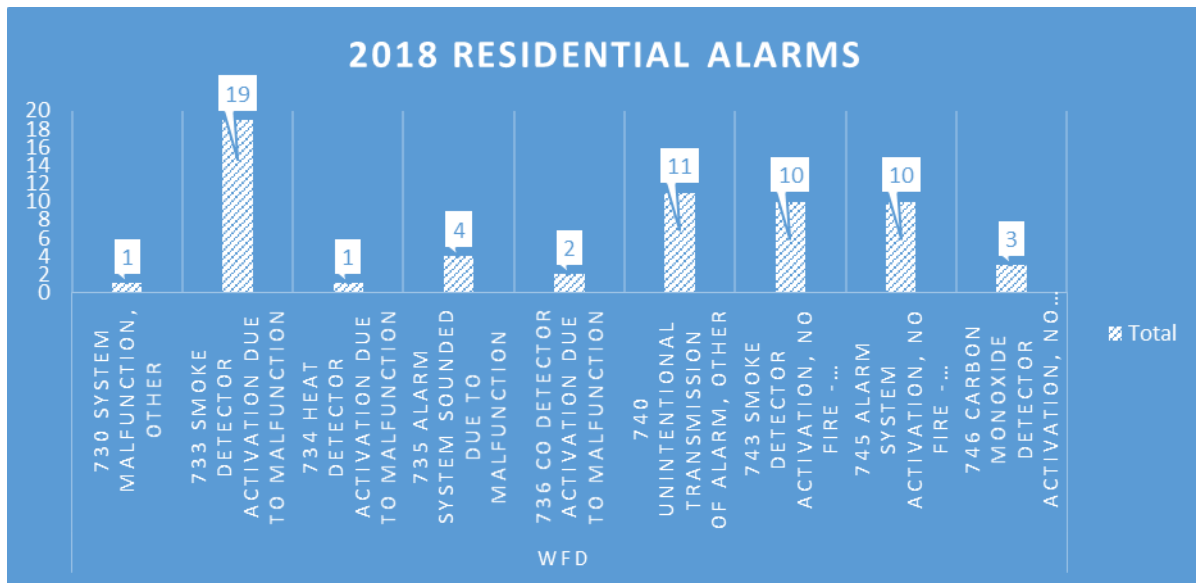


Westfield Fire Department 2018 Incident Statistics

**Special
Incidents**

2

Alarm Data





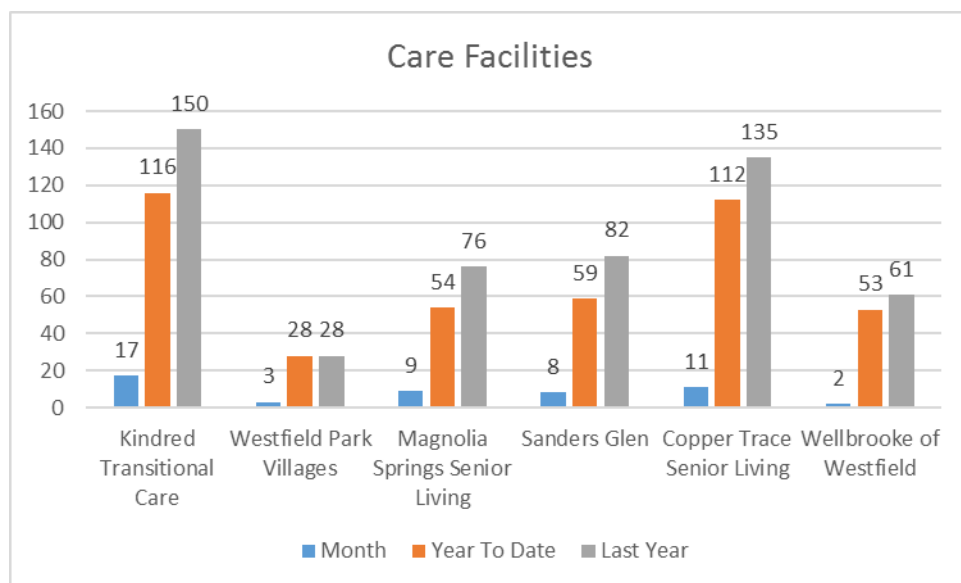
Westfield Fire Department 2018 Incident Statistics

76 Commercial Alarms

Property Saved

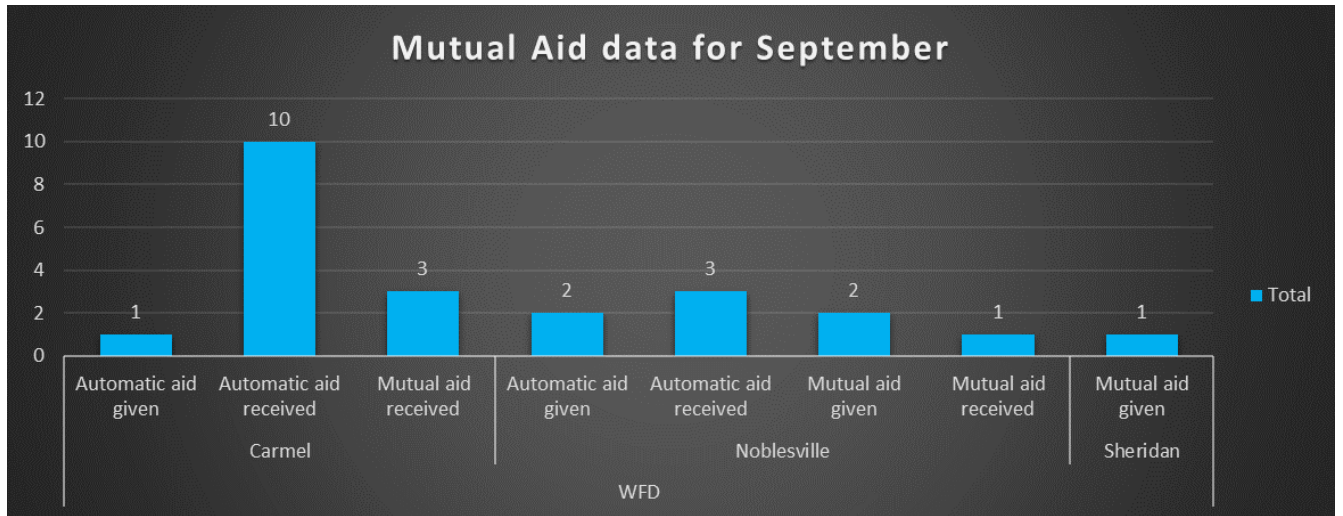


Care Facility

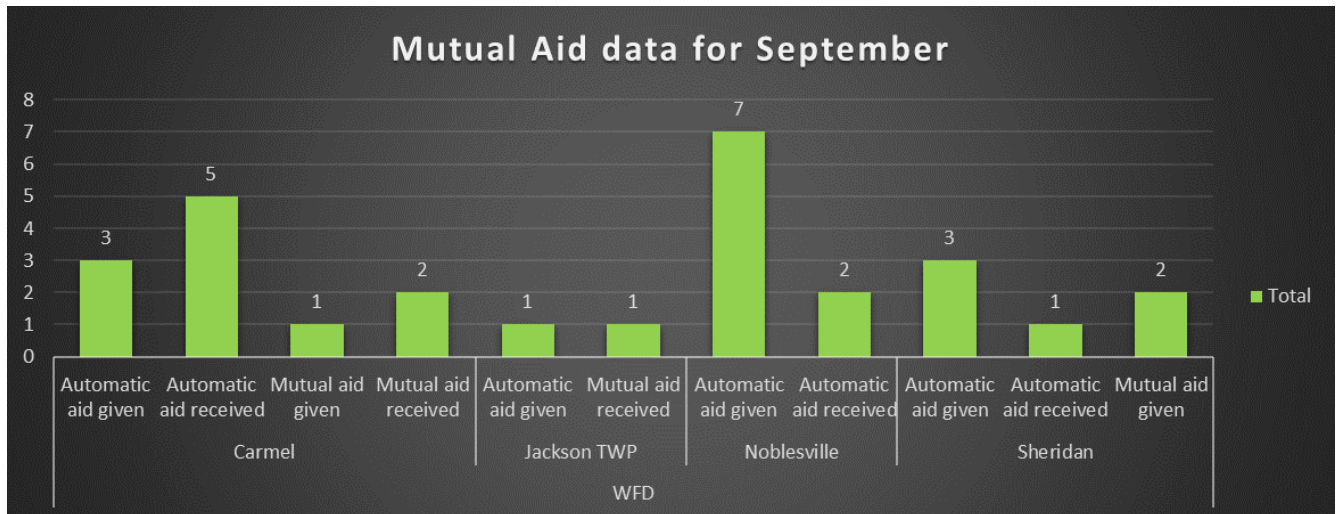




Westfield Fire Department 2018 Incident Statistics



Total MA for EMS calls 20



Total MA for Fire Incidents 26

**INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY
EXCHANGE CONTRACT**

SUPPLEMENT NUMBER 1

EDS No.: A249-17-L160145

CFDA #: 20.205

This Supplemental Contract, is made and entered into effective as of the date of the Indiana Attorney General signature affixed to this Supplemental Contract, by and between the Indiana Department of Transportation, (hereinafter referred to as "INDOT"), and the **City of Westfield**, (hereinafter referred to as "LPA").

WITNESSETH

WHEREAS, INDOT and the LPA did, on **December 28, 2016**, enter into a Contract, providing for Services required in connection with INDOT **Designation Number 1401650** for **new road construction on Westfield Blvd., from the Poplar and Jersey Street intersection running south to 169th Street** and

WHEREAS, it has been determined by INDOT that a supplement of the previously executed INDOT/LPA Contract for Services is necessary due to a change in the Exchange Project, and

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

The "Recitals" above are hereby made an integral part of and specifically incorporated into this Contract **Supplement Number 1**.

1. Section V – TERM AND SCHEDULE of the original Contract is amended to read as follows:

SECTION V **TERM AND SCHEDULE.**

The Term of this Contract shall be from **July 1 2018 to June 30, 2021.**

2. All other matters previously agreed to and set forth in the original Contract dated **December 28, 2016** and not affected by this Supplement shall remain in full force and effect.

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****Recommended for approval by:**_____
Print or type name and title_____
Steven Duncan, Director
Contract Administration Division

Date: _____

Signature and date**Executed by:**_____
Print or type name and title

(FOR)

Joseph McGuinness, Commissioner

Date: _____

Signature and date**Department of Administration**_____
Print or type name and title_____
Leslie A. Crane, Commissioner

Date: _____

Signature and date**LPA DUNS #** _____**State Budget Agency**

Attest

Jason D. Dudich, Director

Date: _____

Auditor or Clerk Treasurer**Approved as to Form and Legality:**

This instrument prepared by:

Ellen HiteOctober 1, 2018_____
(FOR)
Curtis T. Hill, Jr., Attorney General of Indiana

Date: _____



September 17, 2018

Via Email: bzaiger@kdlegal.com

Brian Zaiger
Krieg DeVault LLP
12800 N. Meridian Street Suite 300
Carmel, IN 46032

Re: Merrell Bros. – City of Westfield Lagoon Closure Project

Dear Brian:

I am writing on behalf of my client, Merrell Bros, Inc. as part of our continuing discussions regarding possible additional work on the City of Westfield Lagoon Project. As you know, we previously provided you Proposed Terms Regarding Change Order, which outlines the process by which we propose Merrell could recommence work on the project. My understanding is that the City is generally agreeable to the approach procedurally, subject to agreement on the amount of work authorized.

When we spoke yesterday, you indicated that the City would now like to focus on estimating the cost of remaining work to complete the project. I asked my client to provide an estimate, which is set forth below. However, I need to make clear that this is only a rough estimate, as it is impossible to determine with much accuracy the precise volume and density of sludge that still must be removed in order to comply with IDEM's requirements.

Here is the estimate that was presented to me by Merrell Bros., Inc.:

The pond is 9 acres. 9 acres x 43,560 sq. ft. per acre = 392,040 sq. ft. 392,040 sq. ft. divided by 27 yards per cubic foot, equals 14,520 yards per foot of sludge. 14,520 divided by 12 inches equals 1,210 yards per foot. There are approximately 201.96 gallons in a cubic yard, so 201.96 x 1,210 = 244,371 gallons. If you take this and load it up into 5 gallon buckets that equals 244,371 divided by 5 = 48,874 five gallon buckets per inch. There very easily could be 6 inches of slop left in this pond that is now about the consistency of biscuits and gravy. This is the

nasty stuff. This is the most expensive part to dispose of because it cannot be land applied so that means it must go to a landfill, which is expensive. The landfill will not accept this material unless every load can pass a paint filter test. This test consists of taking the sludge and putting it into a paint filter that has a screen in the bottom of it. If one drop of liquid comes out of the filter the entire load is rejected. So, this means we have to take this material that is anywhere from skim milk to biscuits and gravy and turn it over, flip it, dry it, etc. to get it dry. It has to go from a 30% consistency (30% sludge – 70% water) to at least 50%. Unfortunately about half of the material was already getting dry before the City stopped us. Now we have to start all over but yet do it maybe in October - November instead of August.

We are estimating that there is around 6 inches on average left, which translates into 7,260 yards or tons. If you take $7,260 \times .30\%$ solids as it sits, that equals 2,178 dry tons. If you take that number times the contract price of \$378.00 per dry ton you come up with \$823,284.

The last thing to point out is this is just to remove the sludge and scrape the lagoon bottom. I don't want any surprises for them later so it is important to point out that if for some reason IDEM would require them to remove additional subsoil from either lagoon, that would be an additional cost. The price for that is identified in the original bid page as \$49.50 per ton.

The \$823,284 estimate likely represents a worst-case scenario, though we cannot be certain. However, in order to provide the City some assurance that it will not need to spend more than this amount, Merrell is prepared to commit to completing the sludge removal for this amount, less a 5% discount, for a not-to-exceed cost of \$782,119. Of course, if the total cost ends up being less than this amount, Merrell Bros., Inc. would only charge for work actually completed.

With this additional information, we ask that you the City promptly provide a proposed Change Order Agreement that includes the amount it is prepared to authorize Merrell Bros., Inc. to undertake.

Time is of the essence. Merrell has been diligently trying since at least August 1 to obtain a commitment from the City to be paid for additional work on this project. It is now mid-September, and Merrell so far has lost approximately six weeks of long, hot, mostly dry days of work. During this time, the lagoon, which was drying when work stopped, has accumulated a lot of water. Additional delays will only increase the total cost of completing this project. Merrell Bros., Inc. is and has been poised to restart work as soon as it has appropriate assurances that it will be paid for that work.

We look forward to hearing from you very soon.

Best regards,

A handwritten signature in black ink, appearing to read 'Eric Pavlack', with a stylized, flowing script.

Eric Pavlack

Project Name: 161st and Union Roundabout

Project Number / Phase: J175336600

Date: 9/21/2018

Change Order Number: 2

Prepared For: Nicky Kalck

Cardno Contact: Marc Woernle

Change Requested:

The services requested pertain to Phase II archaeological testing of site 12-H-1825 as part of the 161st and Union Street Roundabout project in Westfield, Indiana. This change order request is being submitted as a result of the meeting held between representatives from Etica Group, the City of Westfield, and Cardno on 4 September 2018. The objective of this Phase II is to systematically test and evaluate site 12-H-1825 following Indiana Department of Transportation-Cultural Resource Office (INDOT-CRO) and Indiana State Historic Preservation Officer/Division of Historic Preservation and Archaeology (IN SHPO) Phase II testing methodology and guidelines. The following is a breakdown of our methodological approach used to ensure this Phase II is conducted as efficiently as possible.

Task 1 – Cultural Resources: Site Investigation/ Analysis Report/ Artifact Curation

Research Design

Upon receiving Notice to Proceed (NTP), Cardno will draft a Phase II Research Design, which will outline the methodology for the Phase II fieldwork. Typical Phase II methodology, as outlined in the IN SHPO guidelines, requires sampling at least 10 percent of the site. However, given the setting of the current project area (wooded with thick shrub/scrub vegetation), a 10 percent sample through traditional investigation techniques will prove difficult. As a result, prior to submitting the Research Design, Cardno anticipates completing one conference call with INDOT-CRO and IN SHPO to negotiate a testing plan with both parties. The goal of the conference call will be to present the Phase II approach, as outlined below, and receive initial acceptance and approval before proceeding with the formal Research Design submittal.

Phase II Archaeological Testing of Site 12-H-1825

Cardno will conduct the Phase II evaluation of site 12-H-1825 according to the methodologies negotiated with INDOT-CRO and the IN SHPO. For the purposes of this proposal, we have assumed the following levels of effort:

The ground conditions of site 12-H-1825 negate the use of mechanical excavation to achieve a 10 percent sample, as is typical in Phase II investigations. In an effort to obtain data pertinent to the occupational pattern across the site, Cardno will complete a magnetometer survey and resistivity survey over the entire site boundary, as currently defined, an area measuring 848 square meters (53 x 16 meters). Cardno proposes to survey up to 3, 20-x-20-m grids. This level of survey would encompass the entire surface area of the site.

The survey will attempt to ascertain depositional patterns across the site, as well as provide a secondary means of identifying intact subsurface deposits to test through hand excavation. Cardno will attempt to clear the surface vegetation to sufficiently complete a magnetometer survey, and a collection grid will be established. This grid will also be used for the resistivity survey, and to document the later phase of the investigation (excavation). Survey points across the grid will be documented using a GPS unit with sub-meter accuracy. These points will then be used to establish a planar coordinate system for the site that will dictate provenience locations.

Based upon the results of the magnetometer and resistivity surveys as well as the close-interval shovel testing completed during the Phase Ia portion of the project, Cardno will hand excavate up to ten, 1-x-1-x-0.7 meter test units. These test units will be placed in an effort to “ground-truth” anomalies identified during the geophysical survey and/or in areas of apparent artifact concentrations, in an effort to identify intact subsurface deposits.

Based on our current knowledge of the site, Cardno assumes that up to four total features will be identified and investigated. The size and volume of the feature fill may be variable. Feature volume is not expected to exceed 0.1-0.2 cubic meters. If features exceed this volume, Cardno will negotiate with INDOT-CRO and IN SHPO to sample these larger features.

Excavated areas and features will be recorded with a survey grade GPS unit. Mapping will be converted to Geographic Information Systems (GIS) layers to be presented in a project-wide geodatabase and will be projected in UTM, Zone 16, NAD 83.

Documentation of test units and features will adhere to INDOT-CRO and IN SHPO guidelines. Profile and plan drawn maps will be generated for each test unit and feature. Photographic documentation will be systematically recorded for excavated portions of the site.

Laboratory analysis and curation techniques will be completed according to IN SHPO standards and Indiana State Museum guidelines. Based on the results of the Phase Ia investigation, Cardno assumes that up to 500 artifacts will be recovered. Additional assumptions related to laboratory analysis and curation efforts associated with this Phase II investigation include:

- Artifacts will be analyzed according to function, type, distribution, spatial patterning, alteration, material type, or other potential variables
- In curating the recovered materials for 12-H-1825, Cardno assumes that recovered archaeological materials will require no more than 1 (1) standard Hollinger curation box measuring 15” x 12.5” x 10”. Diagnostic artifacts will be curated with the Indiana State Museum.

Report of Investigations

Cardno will produce a report of investigations that meets INDOT-CRO and IN SHPO guidelines for Phase II archaeological testing. The Phase II reporting effort will assess the NRHP eligibility of site 12-H-1825 as it contributes to the understanding of the regional archaeological record. Cardno will produce reporting, figures, CAD drawings, and GIS mapping. CAD drawings will include profiles of all features and units, and one plan view that best represents each unit or feature. Cardno will produce a preliminary draft report and submit it electronically to the INDOT-CRO for review and comment. Once all INDOT-CRO comments have been addressed, Cardno will produce a final report that will be submitted to the IN SHPO for review and comment. Cardno will also complete an updated archaeological site form for upload to the IN SHPO State Historic Architectural and Archaeological Research Database (SHAARD).

Assumptions:

- Magnetometer survey limited to 1,200 square meters of area;
- Resistivity survey limited to 1,200 square meters of area;
- Hand excavation limited to 10, 1-x-1-x-0.7 meter test units;
- Investigation limited to four total features with a total volume of 0.1 - 0.2 cubic meters;
and
- Analysis limited to 500 artifacts.

Fee for Task 3: \$43,700.00**Total Fixed Fee for this Change Order: \$43,700.00****Change Approved By:****Client:**_____
Signature_____
Printed Name/Title_____
Company_____
Authorization Date**Cardno:**_____
Cardno, Inc.

Cardno Project #: J175336600

CONTRACT FOR GOODS AND SERVICES

This Contract for Goods and Services (“Vendor Contract”) is made and entered into as of the 29th day of October 2018, by and between City of Westfield (“Contracting Party”) and Midwest Paving, LLC (“Vendor”).

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

- A. **Basic Terms.** This Vendor Contract is on the following basic terms and conditions:
- (a) Goods and/or services provided by Vendor: (See Exhibit B attached hereto and made a part hereof).
 - (b) Location: Midland Trail at 2706 E 171st Street and Midland Trail south of Park Street between Mill Street and future Poplar Street, Westfield, Indiana 46074 (the “City Property”)
 - (c) Date by which the Services shall be completed: To start October 15th, 2018 and complete by December 31th, 2018 (the “Completion Date”).
 - (d) Purchase Price: One Hundred Ninety Thousand Eight Hundred Three Dollars and 40/100, \$190,803.40 (see Proposal dated September 27, 2018 - Exhibit B).
 - (e) Liquidated Damages shall be assessed at \$500.00 per day for each day work is not complete after the specified completion dates.
 - (f) The Contracting Party provides two payment options to vendors for payment of approved invoiced amounts. They are as follows:
 - a. Option #1: Traditional – Invoices shall be payable within forty-five (45) days following Contracting Party’s receipt and approval of an invoice at the address specified below.
 - b. Option #2: Preferred – Invoices are payable within 7 days following Contracting Party’s receipt and approval of an invoice at the address specified below if vendor accepts MasterCard.
 - (g) The Contract Documents include:
 - a. This Goods and Services agreement
 - b. “Request for Quote for Midland Trace Trail Project” dated September 27, 2018 inclusive of all sections and appendixes.

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

(h) Addresses:

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

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

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

If to Vendor:

Midwest Paving, LLC
16105 River Road
Noblesville, IN, 46062

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

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

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

CONTRACT TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

10. **REQUIRED INSURANCE AND INDEMNIFICATION:**

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

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

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

- (b) The insurance shall be procured from companies authorized to do business in the state of Indiana. Except as otherwise expressly set forth herein, coverage shall be on an occurrence basis. All insurance procured or maintained by Vendor on which the Contracting Party is an additional insured, shall be primary. Any insurance maintained by Contracting Party shall be considered excess and non-contributory. Vendor shall permit Contracting Party to examine the actual policies upon request at the Vendor's offices where the policy is stored.
- (c) A Certificate of Insurance acceptable to Contracting Party shall be submitted to Contracting Party prior to commencement of any work hereunder, including, without limitation, a certificate issued by the Industrial Board or other appropriate agency in the State of Indiana showing that the Worker's Compensation and other employee benefit insurance is in full force and effect. Each insurer shall possess an A.M. Best's rating of no less than A-VIII as of inception of this Contract. The Certificate of Insurance shall contain a provision that coverage shall not be canceled unless at least thirty (30) days' prior written notice has been given to Contracting Party. The Certificate of Insurance shall name the Contracting Party as an additional insured with respect to all but the Worker's Compensation, Employee Liability, and Professional Liability coverage. The additional insured endorsement shall state that coverage is afforded the additional insured as primary and non-contributory. In addition, each Certificate of Insurance shall provide that the Certificate Holder is the Contracting Party, c/o City of Westfield. Vendor shall not have earned any fees nor be due any payments hereunder unless and until such Certificate of Insurance is received by Contracting Party.
- (d) Vendor shall indemnify and hold harmless Contracting Party, and its employees from and against any and all liability, claim, damage, loss or expense (including, without limitation, court costs and reasonable attorneys' fees) to the extent caused by any negligence of the Vendor, its employees or sub Vendors, in the performance of the services under this contract, but not to the extent arising directly out of the negligence of Contracting Party. This subparagraph (d) shall survive the expiration or termination of this Contract.
- (e) Without limiting anything set forth in this paragraph 10, the following additional insurance coverage limits are required for the professional engineering services specifically required by the scope of the contracted goods and services: \$1,000,000 per claim and \$1,000,000 general aggregate professional liability, with retroactive coverage to the earlier of date of execution of Contract and commencement of any work and coverage for a minimum period of two (2) years after professional services completion.

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

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

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

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

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

15. **GOVERNMENT COMPLIANCE**: Vendor agrees to comply with all present federal, state and local laws, orders, rules, regulations, codes and ordinances which may be applicable to Vendor's performance of its obligations under this Contract, and all provisions required thereby to be included herein, are hereby incorporated by reference. Vendor agrees to indemnify and hold harmless Contracting Party from and against any loss, damage, liability, cost or expense (including, without limitation, attorneys' fees) resulting from any violation of such laws, orders, rules, regulations, codes or ordinances by Vendor.

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

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

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

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

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

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

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

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

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

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

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

EXECUTED this _____ day of _____, 2018.

Contracting Party:

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

Vendor:

Midwest Paving, LLC
16105 River Road
Noblesville, IN 46062

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

EXHIBIT A

Project Rules

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

SITE ACCESS

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

LIMITED CITY OCUPANCY (If Applicable)

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

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

MATERIAL MANAGEMENT PLAN

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

CLEAN UP

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

WORK HOURS

- ❑ It is the expectation of City that ALL Contractors and subcontractors limit work to normal business working hours, Monday through Friday, unless otherwise required or approved in advance by City.
- ❑ The Work of this Project shall be accomplished during normal working hours and days. Contractors planning to work on weekends or observed holidays must schedule with the authorized Owner agent, no later than 48 hours prior to the anticipated work day.
- ❑ Normal working hours and days are defined as:
 - Mondays through Fridays, 7:00 a.m. to 6:00 p.m. (typical)
 - Weekends (Saturday and Sunday), as scheduled and approved in advance by the City.
 - No work shall be performed on days of normal observance of the following holidays:
 - New Year's Day
 - Memorial Day
 - Independence Day
 - Labor Day
 - Thanksgiving Day and the Friday following
 - Christmas Day
- ❑ Requests for work on non-normal work days or outside the defined normal working hours of this project, does not constitute an approval of said request and may need to be rescheduled to provide adequate security and supervision as required by Contract.

- ❑ No use of power actuated tools or hammer drills is permitted at an occupied City building or adjacent to private residence and/or business between the hours of 7:00 AM and 5:00 PM, or as directed by City officials

PUBLIC ACCESS AND SAFETY

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

SITE DECORUM

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

- ❑ Fighting and horseplay on the project site are absolutely forbidden. Participants in fights will be escorted from the premises and not permitted to return.

PARKING

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

UTILITY COORDINATION

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

USE OF ROADWAYS AND PATHS

- ❑ Comply with limitations on use of public streets and with other requirements of authorities having jurisdiction.
- ❑ Use of the City Park paths or perimeter trails, including those at Grand Park, is discouraged but we understand that in many cases cannot be avoided. Please coordinate in advance any vehicle or equipment size and weight with the City prior to mobilizing on site.
- ❑ Where materials are transported in the performance of this Work, do not load vehicles beyond the capacity recommended by the manufacturer of the vehicles or prescribed by any applicable state or local law or regulation.
- ❑ Provide protection against damage whenever it is necessary to cross existing paths, sidewalks, curbs, and gutters on the City project. Repair and make good at the expense of Contractor all damages thereto, including damage to existing utilities and paving, arising from the operations under the Contract.

- ❑ Access onto any athletic field at Sports Campus at Grand Park or onto any City owned property with irrigation installed is strongly discouraged. Contractor shall protect all playing surfaces and site utilities that could be compromised by the construction activities of the Contractor.
- ❑ Truck staging is not allowed on any City street surrounding the Project.
- ❑ Promptly clean all public right-of-ways should dirt or other debris from site be deposited on roads and streets by the Contractor or vehicles used to deliver or conduct the scope of this agreement.
- ❑ It is the responsibility of ALL Contractors to provide flag person(s) at pedestrian crossings of construction equipment at right of ways or pedestrian paths one hundred percent of the time such equipment is operating.

TRAFFIC CONTROL

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

CRANES & HOISTING

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

TEMPORARY SHORING AND BRACING

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

TEMPORARY BARRICADES

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

CONSTRUCTION SIGNAGE

- ❑ Advertising Signage: The use of Contractor/subcontractor advertising signage is strictly prohibited.
- ❑ No ground-mounted signage is allowed on the project site without the expressed written consent of the City.
- ❑ Signage is authorized on construction trailers and corporate-owned equipment and vehicles. Such signage cannot exceed 6' by 4' (24 square feet) in size. Trailers in violation shall be removed from the site by the Contractor and the Contractor shall have the site storage privileges revoked
- ❑ Signage to be fabricated from new materials and constructed from materials able to withstand construction use/abuse and exposure based upon its proposed installation location for its intended use.

❑ Project Specific Signage:

- ALL signage shall be as approved by the City and the authority having jurisdiction.
- All employee personnel informational signage shall be bilingual (English and Spanish) as requested by the City.
- All project specific signage shall include the City logo and project name incorporated into the design of each sign for the project.

TEMPORARY FACILITIES

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

RUBBER TIRED EQUIPMENT

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

REMOVAL OF TEMPORARY FACILITIES

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

VIOLATIONS

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

GENERAL SAFETY PRECAUTIONS

- ❑ Safe working practices shall be observed at **all times**. The safety of your employees, the buildings and the work site is considered to be paramount. All work shall be conducted and completed by the guidelines set forth by the Federal, Local and State Authorities.
- ❑ The City of Westfield is a "Safe City". Any worker or person on a jobsite shall have 100% protection as defined by OSHA for the hazards that they may be exposed. This includes but is not limited to 100% eye protection, hard hat and hi-visibility vest at all times when on-site.
- ❑ Proper gloves are to be used to limit abrasions and cuts. Hearing protection shall be accessible to employees and used whenever exposed to noises that require such protective devices.
- ❑ Fall protection shall be worn, observed or employed when working at a height greater than 6' unless approved in writing by the City and OSHA/IOSHA. This fall protection directive is to be used at all times and includes activities utilizing articulating boom lifts, scissors lifts, ladders, scaffolding and any other activity where workers are exposed to a fall and shall compile with the provisions of OSHA and IOSHA.
- ❑ Any and all "Hot Work" shall have an appropriate fire extinguisher immediately accessible and be pre-approved by the City officials.

- ❑ All electrical service shall be properly protected with a GFCI, including the use of extension cords on permanent power.
- ❑ Eye protection shall be worn at all times when cutting, grinding, chipping, drilling or using power actuated tools.
- ❑ Safety manuals and MSDS sheets must be turned in to the assigned City representative prior to commencing work on site. These manuals are still to be maintained by the Contractor on site for use and reference by any authority having jurisdiction.
- ❑ The City of Westfield is a “Safe City”. In the event of an accident or near-miss, the employees involved may be required to perform a drug and alcohol screening prior to being able to continue working on site.

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

EXHIBIT B

See attached Proposal dated 9-27-18

Attachment 1

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

Attachment 2

The Affidavit of Employee Status shall be signed and notarized.

AFFIDAVIT OF EMPLOYEE STATUS

Re: Project – Midland Trace Trail Project

WHEREAS, the City of Westfield, Hamilton County, Indiana, hereinafter referred to as the “City” is in the process of construction work on the Midland Trace Trail Project, hereinafter referred to as the “Project”;

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

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

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

Signature:

Signature:

Printed Name:

Printed Name:

STATE OF INDIANA:

SS:

COUNTY OF

:

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

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

Signature

Printed Name

My Commission expires _____

I am a resident of _____ County.

CITY OF WESTFIELD BY:

, Director of Public Works

STATE OF INDIANA:

SS:

COUNTY OF HAMILTON:

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

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

Signature

Printed Name

My Commission expires _____

I am a resident of _____ County.

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

Attachment 3

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



Invoice Date:	
Invoice or App Number:	

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

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

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

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

WESTFIELD - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of October 29, 2018 ("Effective Date") by and between City of Westfield, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and Spiars Engineering, LLC ("the CONSULTANT"), a limited liability company organized under the laws of the State of INDIANA.

Project No.: _____

Project Description: North Street Roadway and Drainage Improvements

RECITALS

WHEREAS, the LPA has entered into an agreement with the CONSULTANT for a Roadway Improvement project ("the Project"), which Project Coordination Contract is herein attached as Attachment 1 and incorporated as reference; and

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

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

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

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

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

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

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

SECTION III TERM. The term of this Contract shall be from the date of the last signature affixed to this Contract to the completion of the construction contract which is estimated to be November 1, 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 **\$33,800**.

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, State of Indiana, or its authorized representative, and copies thereof shall be furnished free of charge, if requested by the LPA or State of Indiana. 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 or State of Indiana 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.

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 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. 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 the City of Westfield 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. (Westfield'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. (Westfield'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. (Westfield'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 LPA within a reasonable time period, not to exceed ninety (90) days, in order to implement Title VI compliance in accordance with Westfield'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 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, 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 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 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.

12. 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.

13. 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.

14. **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.

15. **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.

16. **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.
17. **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 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.
18. **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.
19. **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.
20. **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 not to exceed \$100,000. 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 the LPA as insured 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 18 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: the CONSULTANTS shall carry professional liability insurance in an amount not less than \$250,000.00 per claim and \$250,000.00 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: 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.

21. **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.
22. **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:

City of Westfield
Attn: John Nail
2706 E. 171st Street
Westfield, IN 46074

Notices to the CONSULTANT shall be sent to:

Spiars Engineering, LLC
Attn: Russell Spiars
650 Eagle Creek Circle
Zionsville, IN 46077

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.

23. **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.
24. **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 the LPA 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".
25. **Payments.** All payments shall be made in arrears and in conformance with the LPA's fiscal policies and procedures.
26. **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.

27. **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
28. **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.
29. **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:
30. **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.
31. **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.
32. **Taxes.** The LPA will not be responsible for any taxes levied on the CONSULTANT as a result of this Contract.
33. **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.

34. 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 12). 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.

35. **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.
36. **Work Standards/Conflicts of Interest.** The CONSULTANT shall understand and utilize all relevant LPA standards including, but not limited to, the most current version of the City of Westfield Standards and Specifications, 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.
37. **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.
38. **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.
39. **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.

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

 Russell E. Spiars

 (Print or type name and title)

Attest:

 Signature

 (Print or type name and title)
BOARD OF PUBLIC WORKS

 Signature

 Andy Cook, Mayor

 Signature

 Kate Snedeker, Member

 Signature

 Randy Graham, Member

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 City of Westfield and the State of Indiana.

The project area includes North Street from East Street westward to the ending at the alley. The essence of the project is to prepare updated survey data, construction documents and public information for the improvements in the project area. Toward this end, the CONSULTANT shall be responsible for performing the following activities:

Topographic Survey of Project Areas, as follows:

- Along North Street from East Street westward to termination at alley.
- From 5' beyond north R/W to 5' beyond south R/W
- Determine casting elevations, invert elevations, pipe materials and pipe sizes
- Assess existing conditions w/ photos

Construction Documents for Full Reconstruction of North Street per Westfield Construction Standards (INDOT IDM as needed)

- One travel lane in each direction
- New curb and gutter and drainage
- Provide new ADA-compliant curb ramps
- Provide new driveways where directed by the City
- ADA-compliant pavement markings and signage
 - Salvage existing signs where prudent
 - Adjust existing castings to grade

Additional Assumptions Affecting Scope of Services:

- Provide Utility Coordination in accordance with 105 IAC 13
- Prepare SWPPP and obtain Rule 5 permits
- Provide Engineer's Final Cost Estimate and Quantity Calculations
- Attend and provide Support for Public Information Meetings
- Prepare Bid documents including final plans and unique special provisions as needed.
- Provide final CAD to City of Westfield GIS for recording
- Post-Bidding Services, as necessary
- No R/W acquisition is anticipated

Items to be provided by the City of Westfield:

- Coordination, Presentation, and meeting space for the Public Information Meetings
- Coordination with future projects such as SR 32 Reconstruction in downtown Westfield Project letting and advertising
- Contract Book preparation Construction Inspection
- New construction As-built data
- Support on Utility Coordination by facilitating meetings as needed

APPENDIX "B"

INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA:

The LPA shall furnish the CONSULTANT with the following:

- Provide existing available plans and information for the project area
- Utility relocation plans and coordination, if necessary
- Prepare markups and consultation on easements descriptions and acquisition, as necessary
- Coordination and presentation for the public information meetings
- Project letting and advertising
- Provide observation and consultation services as requested by City during construction and acceptance
- New construction As-built data.

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:

Owner	Task Name	Duration	Start	Finish
Survey	Survey		10/30/18	11/30/18
Preliminary Engineering	Stage 1 (30%)		12/1/18	2/1/19
Preliminary Engineering	Preliminary Field Check			2/15/19
Public Outreach	Public Information Meeting No. 1			
Utilities	Work Plans (If Necessary)			
Preliminary Engineering	Stage 3 (90%)			4/15/19
Preliminary Engineering	Final Field Check			
Utilities	Utility Relocations (If Necessary)			
Permitting	Rule 5 Permitting			
Preliminary Engineering	Final Tracings			
Preliminary Engineering	Contract Information Book			
Preliminary Engineering	Letting			6/21/19
Preliminary Engineering	Public Information Meeting No. 2			
Construction	Begin Construction			
Construction	End Construction			

APPENDIX "D"Rates for hourly services:

Professional Engineer	\$100.00/hr.
Design Technician	\$ 60.00/hr.
Clerical	\$ 30.00/hr.
Professional Land Surveyor	\$110.00/hr.
Two-man survey crew	\$190.00/hr.
Survey technician/research/cad	\$ 75.00/hr.
Robotic instrument	\$ 30.00/hr.

Fees for Lump Sum Services:

Topographic/boundary/utility survey	\$1,500.00
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Reimbursable Expenses Repaid at cost:

Reproduction, delivery, etc. (estimated budget)	\$ 1200.00
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LPA - CONSULTING CONTRACT

This Contract ("this Contract") is made and entered into effective as of _____, 20____ ("Effective Date") by and between City of Westfield, acting by and through its proper officials ("LOCAL PUBLIC AGENCY" or "LPA"), and American Structurepoint, Inc. ("the CONSULTANT"), a corporation organized under the laws of the State of Indiana.

Des. No.: 1801731

Project Description: SR 32 Reconstruction from east of Poplar Street to East Street

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 11/1/2024. 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 \$1,197,205.

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:

John Nail, City Engineer
2706 East 171st Street
Westfield, Indiana 46074

Notices to the CONSULTANT shall be sent to:

Willis R. Conner, President
American Structurepoint, Inc.
7260 Shadeland Station
Indianapolis, Indiana 46256

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

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

28. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the CONSULTANT:
- i. Stipulates that any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
 - ii. Agrees to comply with all of the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder; and
 - iii. Stipulates that, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the Federal Highway Administration of the receipt of any knowledge indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA Listing of Violating Facilities.
29. **Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
30. **Status of Claims.** The CONSULTANT shall give prompt written notice to the LPA any claims made for damages against the CONSULTANT resulting from Services performed under this Contract and shall be responsible for keeping the LPA currently advised as to the status of such claims. The CONSULTANT shall send notice of claims related to work under this Contract to:
- John Nail, City Engineer
2706 East 171st Street
Westfield, Indiana 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

American Structurepoint, Inc.

Signature

Willis R. Conner, President
(Print or type name and title)

LOCAL PUBLIC AGENCY

City of Westfield, Indiana

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 performing the following activities:

A. General

1. The CONSULTANT shall provide engineering and prepare road design plans, opinions of probable construction cost, and other submittal documents following the *INDOT LPA Process Guidance Document for Local Federal Aid Projects* dated August 2013 and revisions thereto, for road reconstruction of SR 32, from east of Poplar Street to East Street, City of Westfield, Hamilton County, Indiana. SR 32 road reconstruction includes 0.48 miles of adding 2 travel lanes and 1 center turn lane, to existing 2 travel lanes, including installation of curb and gutter, storm sewer, sidewalk on both sides, and lighting, all in accordance with the Westfield Complete Street Standards. Intersection treatment is anticipated to be traffic signal at Union Street and roundabout at East Street, both to be confirmed through traffic analysis.
2. The CONSULTANT shall provide engineering and prepare road design plans to Stage One, opinions of probable construction cost, and other submittal documents following American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Geometric Design of Highways and Streets*, as well as City of Westfield local standards for proposed Jersey Street from Union Street to the southern approach of proposed roundabout at the intersection with SR 32 and East Street. Jersey Street new road construction includes approximately 0.22 miles of new construction, 1 travel lane in each direction, including installation of curb and gutter, storm sewer, sidewalk on both sides, all in accordance with the Westfield Complete Street Standards.

B. Project Management

1. The CONSULTANT shall manage all activities critical to accomplishing the project development tasks contained in the Project's scope of work. The CONSULTANT project manager shall be responsible for overall design and coordination, in addition technical execution and development of the final design.
 - a. Conduct monthly status progress meetings with the LPA, INDOT, and design team.
 - b. Conduct design review meetings following Stage One, Stage Two, and Stage Three submittals with the LPA, INDOT, and design team.
 - c. Provide weekly progress reports on project status to LPA, INDOT, and design team.
 - d. Develop, monitor, and update project schedule and deliver documentation to LPA and INDOT monthly.

C. Topographic Survey

1. The CONSULTANT shall provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners. The CONSULTANT shall survey the project location and provide the LPA with one set of original field notes for the data accumulation surveys. The CONSULTANT shall obtain deeds

of record, subdivision plats, and section or auditor plats for all properties within the project limits. The CONSULTANT's services shall be in accordance with IC 25-21.5; 865 IAC 1-12; and Chapter 106 of the INDOT Design Manual (Survey Manual). The CONSULTANT acknowledges that it has a copy of the Survey Manual. If there is any conflict between IC 25-21.5, 865 IAC 1-12, or the Survey Manual, the order of precedence will be:

- a. IC 25-21.5
 - b. 865 IAC 1-12
 - c. Survey Manual
2. The survey limits are generally described below:
- a. SR 32
 - 1) SR 32 Mainline: Approximately $\pm 3,100'$, $\pm 180'$ width, beginning 200' east of the Poplar Street and SR 32 Roundabout, head in easterly direction for approximately 0.59 miles and terminate approximately 800' east of the SR 32 and East Street intersection (see Exhibit A).
 - 2) East Street S-Line: Approximately $\pm 830'$, $\pm 120'$ width, beginning at SR 32 and East Street intersection, head in northerly direction for approximately 0.16 miles and terminate at intersection with East Street and North Street (see Exhibit A).
 - b. Jersey Street
 - 1) Jersey Street (future) S-Line: Approximately $\pm 1,450'$, $\pm 150'$ width, beginning at Jersey Street and Union Street intersection, head in easterly direction for approximately 0.27 miles and terminate at intersection with SR 32 and East Street (see Exhibit A).
3. CONSULTANT shall make a request through the Indiana Underground Plant Protection Service as provided by Indiana Code 8-1-26 to have public utilities marked within the public rights-of-way and recorded easements. CONSULTANT will not be responsible for damages resulting from a utility company who will not respond or for utilities that are not marked or that are mismarked.

D. Environmental Services

SR 32:

1. The CONSULTANT shall conduct a Red Flag Investigation (RFI) of the project corridor. The RFI will include a preliminary analysis of publicly available infrastructure, environmental, hydrological and cultural resources data within the project corridor. In addition, the IDEM Virtual File Cabinet will be reviewed to assess the potential for sites requiring additional investigation due to potential soil and/or groundwater contamination. A narrative summary and maps depicting findings of the RFI will be produced. The RFI will be prepared in general accordance with the INDOT Hazardous Materials Unit Operating Manual, Section 3.1.
2. The CONSULTANT shall carry out environmental analyses and develop the appropriate level of National Environmental Policy Act (NEPA) documentation for the project in accordance with INDOT environmental procedures as determined by the anticipated project impacts. An Environmental Assessment is anticipated for this project. The environmental services required to

develop this project shall be in accordance with the Procedural Manual for Preparing Environmental Documents (2008) and the most recent INDOT Categorical Exclusion Manual and revisions thereto. Copies of these documents are on file with INDOT and are incorporated by reference and made a part hereof.

3. The CONSULTANT shall provide specialized studies required to complete the environmental document including evaluation of potential historic or cultural resources. This shall include a Historic Properties Report, Archaeological Records Check, and an Archaeological Field Reconnaissance as required. The CONSULTANT shall prepare appropriate Section 106 documentation in accordance with the INDOT Cultural Resources Manual as required for a finding of "Adverse Effect". The CONSULTANT shall prepare the required consulting parties coordination and preparation of a Memorandum of Agreement (MOA). It is anticipated that four (4) Consulting Party meetings, four (4) additional Agency coordination meetings will be required to evaluate the "Adverse Effect" finding and develop appropriate mitigation measures. Additionally, the Advisory Council of Historic Preservation (ACHP) will be invited to participate (in accordance with required notification for an adverse effect finding); however, it is anticipated the ACHP will not elect to participate and no formal consultation with the ACHP will occur. Implementation of any mitigation measures required as part of the final MOA will be considered out of scope and additional or supplemental services will be required. If the CONSULTANT is required to provide an environmental service not listed above, including coordination associated with a traditional cultural place or work associated with human remains and/or the Native American Graves and Repatriation Act (NAGPRA), the effort to provide such additional service will be considered a change in the scope and additional or supplemental services will be required.
4. The CONSULTANT shall prepare necessary documentation to meet the requirements for evaluating impacts to Section 4(f) resources (public parks, recreational areas, nature preserves, or historic resources) within the project area. It is anticipated the proposed project will require an Individual Section 4(f) evaluation. This effort will include development and evaluation of potential avoidance alternatives, determination of whether any alternatives are feasible and prudent, analysis of impacts from identified avoidance alternatives, and a description of the measures to minimize harm to the Section 4(f) resource. The CONSULTANT shall coordinate the draft Individual Section 4(f) evaluation with INDOT and FHWA and prepare the final Individual Section 4(f) evaluation following FHWA legal sufficiency review.
5. The CONSULTANT shall conduct an analysis of Noise Impacts consistent with the most recent versions of the INDOT Traffic Noise Analysis Procedures and revisions thereto. A copy of this document is on file with INDOT and are incorporated by reference and is made a part hereof. This evaluation shall include determination of existing noise levels, identification of noise receptors, predictions of future noise levels, evaluation of impacts, and an analysis of noise abatement.
6. The CONSULTANT shall conduct an analysis of Environmental Justice and Community Impacts as required under Executive Order 12898 consistent with the procedures outlined in the most recent versions of the INDOT Categorical Exclusion Manual and Public Involvement Procedures Manual and revisions thereto. A copy of these documents are on file with INDOT and are incorporated by reference and are made a part hereof. This evaluation shall include analysis of available US Census data to identify populations of concern, identification of impacts from the proposed project, coordination with local community representatives to quantify the project's effects, and determination of appropriate mitigation if unavoidable and disproportionate impacts are identified. It is anticipated a minimum of one (1) consultation meeting with local representatives will be conducted to determine impacts and develop mitigation concepts.

7. The CONSULTANT shall prepare necessary documentation to advertise and conduct one (1) Public Hearing and two (2) Public Information Meetings for the project. Public notices and presentation graphics will be prepared for the Public Hearing and Public Information Meeting in accordance with the most recent version of the INDOT Public Involvement Procedures Manual and revisions thereto. A hearing transcript and responses to public comment will be prepared to facilitate the Public Hearing Certification.
8. The CONSULTANT shall organize and facilitate two (2) Community Advisory Committee (CAC) meetings, including coordination with the CLIENT to identify CAC members, scheduling and advertising for CAC meetings, preparation of maps and information for distribution, facilitation of the meetings, preparation of meeting summaries, and summarizing the CAC process as part of the public involvement portion of the Environmental Assessment. It is anticipated the initial CAC meeting will be held prior to the completion of the Environmental Process while the second CAC Meeting will be held as design develops after issuance of the FONSI.
9. The CONSULTANT shall prepare a Wetland Delineation Report, including Qualitative Habitat Evaluation Index for streams to determine the presence of wetlands and other aquatic resources that are regulated by the US Army Corps of Engineers (USACE) and/or Indiana Department of Environmental Management (IDEM). The Wetland Delineation Report will include the location of wetlands or waterways and coordination with the design engineers regarding avoidance alternatives for the proposed project. The Wetland Delineation will be prepared in accordance with the USACE Wetland Delineation Manual (1987) and guidance provided by the USACE since 1991, including the appropriate Regional Supplement to the Corps of Engineers Wetland Delineation Manual.
10. The CONSULTANT shall prepare and submit the appropriate permit applications for the project including Section 401 Regional General Permit (RGP) to the Indiana Department of Environmental Management (IDEM) and Section 404 RGP to the United States Army Corps of Engineers (USACE). If during coordination with the USACE or IDEM it is determined that an individual permit and/or mitigation is required for impacts to water resources, the work to identify potential sites and to prepare mitigation plans or other related services shall be considered a change in the scope or work, and additional or supplemental services will be required.
11. If the CONSULTANT is required to provide an environmental service not listed above or additional number of meetings that what is listed above, the work to provide such additional service shall be considered a change in the scope of work. The environmental services required to develop this project shall be in accordance with the Procedure Manual for Preparing Environmental Documents dated 2008 and the most recent version of the Categorical Exclusion Manual and any revisions thereto. Copies of these documents are on file with the INDOT and are incorporated by reference and made a part hereof.

Jersey Street:

12. The CONSULTANT shall conduct a Red Flag Investigation (RFI) of the project corridor. The RFI will include a preliminary analysis of publicly available infrastructure, environmental, hydrological and cultural resources data within the project corridor. In addition, the IDEM Virtual File Cabinet will be reviewed to assess the potential for sites requiring additional investigation due to potential soil and/or groundwater contamination. A narrative summary and maps depicting findings of the RFI will be produced. The RFI will be prepared in general accordance with the INDOT Hazardous Materials Unit Operating Manual, Section 3.1.

13. The CONSULTANT shall prepare a Wetland Delineation Report, including Qualitative Habitat Evaluation Index for streams to determine the presence of wetlands and other aquatic resources that are regulated by the US Army Corps of Engineers (USACE) and/or Indiana Department of Environmental Management (IDEM). The Wetland Delineation Report will include the location of wetlands or waterways and coordination with the design engineers regarding avoidance alternatives for the proposed project. The Wetland Delineation will be prepared in accordance with the USACE Wetland Delineation Manual (1987) and guidance provided by the USACE since 1991, including the appropriate Regional Supplement to the Corps of Engineers Wetland Delineation Manual. If it is determined that water quality permits will be required for unavoidable impacts to identified water resources, additional or supplemental services will be required to prepare the appropriate permit applications.
14. If the CONSULTANT is required to provide an environmental service not listed above or additional number of meetings that what is listed above, the work to provide such additional service shall be considered a change in the scope of work. The environmental services required to develop this project shall be in accordance with the Procedure Manual for Preparing Environmental Documents dated 2008 and the most recent version of the Categorical Exclusion Manual and any revisions thereto. Copies of these documents are on file with the INDOT and are incorporated by reference and made a part hereof.

E. Engineering Assessment Report

1. The CONSULTANT will evaluate existing conditions along alternate routes of SR 32 for the purposes of determining a preferred alignment that will meet the purpose and need of the project. This will include:
 - a. Coordinate with LPA on future plans for development along SR 32.
 - b. Develop conceptual typical sections for SR 32, including number of lanes, accommodations for pedestrians and bicyclists, and preliminary right-of-way limits.
 - c. Assess utility, environmental, and existing property impacts in relation to proposed alignment alternatives. Assumed to evaluate 3 total alternate routes for SR 32, including the proposed route.
 - d. One meeting with LPA and selected stakeholders to solicit input and develop consensus on proposed typical section and preferred alignment. Assumed traffic study is completed to preliminary stage prior to this meeting.
 - e. Provide a brief summary of findings and recommendations in accordance with environmental document requirements for alternate alignment evaluation and engineer assessment requirements in Indiana Design Manual Chapter 14.

F. Traffic Design Services

1. Traffic Study Limits
 - a. SR 32 & US 31 Southbound Ramp
 - b. SR 32 & US 31 Northbound Ramp
 - c. SR 32 & Poplar/Shamrock
 - d. SR 32 & Mill Street
 - e. SR 32 & Union Street
 - f. SR 32 & Walnut Street

- g. SR 32 & Cherry Street
- h. SR 32 & East Street
- i. Penn Street & East Street
- j. Jersey Street & Union Street
- k. Penn Street & Union Street
- l. Jersey Street (future) & Cherry Street

2. Traffic Counts

- a. The CONSULTANT shall provide collection of 4-hour (AM and PM) peak-hour traffic volumes at the twelve (12) study intersections.
 - 1) Listed in Traffic Study Limits
- b. The CONSULTANT shall perform 24-hour machine tube counts at the following three (3) locations:
 - 1) SR 32 east of Poplar St/Shamrock Blvd intersection
 - 2) SR 32 between Union Street and Cherry Street
 - 3) SR 32 east of East Street

3. Traffic Analysis

- a. The CONSULTANT shall perform trip end estimation for the proposed/approved developments, provided by the LPA.
- b. The CONSULTANT shall project background traffic volumes for the horizon year.
- c. The CONSULTANT shall perform capacity analysis of the study intersections for each of the scenarios listed above using deterministic methods (traffic simulations are a supplemental service).
- d. The CONSULTANT shall evaluate the need for auxiliary lanes at the study intersections along SR 32.
- e. The CONSULTANT shall prepare a summary report documenting all study efforts, findings, and recommendations.
- f. The CONSULTANT shall evaluate inclusion and exclusion of future Jersey Street traffic impact.

4. VISSIM Model Development

- a. Extents of model include all major intersections along SR 32 between US 31 interchange and East Street. No minor street driveways will be included in the model.
- b. A capacity analysis shall be conducted by CONSULTANT for the existing conditions and proposed conditions.
- c. A simulation video shall be provided by CONSULTANT for the existing conditions and proposed conditions. The video will focus on the peak hour with the highest overall traffic volumes.

5. Traffic Signal Design

- a. CONSULTANT will provide a design for a modification and modernization of a traffic signal control system for the intersection of SR 32 and Union Street, should it be verified and determined that a traffic signal is warranted.

6. Traffic Coordination Meetings

- a. Attend up to four (4) coordination meetings involving INDOT, and the LPA including:
 - 1) Project kick-off meeting
 - 2) Project coordination meeting
 - 3) Preliminary findings discussion
 - 4) Comment review meeting

G. Road Design and Plan Development

1. The CONSULTANT shall prepare plans, special provisions for the specifications, and opinion of probable construction cost, which will be in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the plans or reports are submitted: American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Geometric Design of Highways and Streets* and INDOT's standard specifications, road memoranda, and design manuals, except as modified by supplemental specifications and special provisions, if any.
 - a. The road design limits and project design scope are generally described in Item A.
 - b. Submittal Deliverables for SR 32 Reconstruction: Stage One, Preliminary Field Check, Preliminary Right of Way, Stage Two, Final Right of Way, Stage Three, and Final Tracings
 - c. Submittal Deliverables for Jersey Street Construction: Stage One
 - d. The anticipated project design scope is described below:
 - 1) General road design (Pavement treatment, typical section, intersection treatments)
 - 2) Storm sewer and drainage details
 - 3) Maintenance of traffic
 - 4) Pavement markings and sign details
 - 5) Pedestrian accommodations and ADA curb ramp details
 - e. Public involvement during environmental process: assume two Public Information Meetings and one Public Hearing
 - f. Constructability review meetings with LPA: one at Preliminary Field Check and one at Stage Three plan submittal

- g. The CONSULTANT shall prepare up to two conceptual computer graphic renderings at the request of the LPA. Exhibits shall utilize aerial photography to illustrate the conceptual layout of the SR 32 Reconstruction project.
- 2. The opinion of probable cost will be prepared according to the current practices for INDOT and will include all items 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 LPA, through its own forces or through other party or parties, will prepare detail plans. The unit prices to be used shall be in accordance with the methods used by INDOT.
- 3. The CONSULTANT shall review the contract bid package and coordinate any necessary corrections with the Technical Services Division of INDOT.

H. Utility Coordination

- 1. The CONSULTANT shall provide coordination necessary to prepare application documents and process utility relocation coordination to secure appropriate certifications and approvals necessary for construction of this project, including:
 - a. Coordinating with utilities and supplying necessary plans and design information for coordination of utility relocations in accordance with 105 IAC 13.
 - b. The CONSULTANT shall prepare and submit initial notices to all involved utilities, including project schedule and due dates.
 - c. The CONSULTANT shall prepare and submit utility existing facility verification plans and coordinate with utilities to correctly identify all existing facilities on the plans.
 - d. The CONSULTANT shall prepare and submit preliminary field check plans to all involved utilities and coordinate with utilities to identify any potential conflicts. The CONSULTANT will schedule and host an on-site preliminary field check meeting and prepare and distribute field check meeting minutes at the appropriate time (40 percent complete plans) during the design phase.
 - e. The CONSULTANT shall submit Stage Two plans and request work plans for all involved utilities and work with each utility until work plans are approved by all parties.
 - f. The CONSULTANT shall conduct at least two utility coordination meetings, in addition to the preliminary field check meeting with all involved utilities, and shall schedule additional meetings as necessary. The two meetings are anticipated to be kickoff coordination meeting with utilities to verify utility locations and meeting to coordinate work plans.
 - g. The CONSULTANT shall issue Notice of Work Plan Approvals and Notice to Proceed to Utility Owners once the right-of-way is cleared and staked so the Utilities can begin their work.

I. Stakeholder Coordination

- 1. The CONSULTANT shall, as needed, make arrangements for and attend meetings in cooperation with the LPA, local officials, INDOT officials, planning agencies or commissions, and civic organizations for appropriate project coordination with the local stakeholders and the community. The CONSULTANT will prepare agenda and meeting minutes and letter responses to questions as needed. The following meetings are included in this scope.

- a. One scoping and design criteria confirmation kickoff meeting with LPA and INDOT
- b. Quarterly coordination meetings throughout design process up to bid letting; assume 12 meetings
- c. One preconstruction meeting

J. Culvert Hydraulic Analysis

- 1. The CONSULTANT shall perform hydraulic analysis to properly size culvert at Thompson Creek, approximately 280' west of Union Street and SR 32 intersection. This includes watershed delineation, time of concentration calculations, and HY-8 sizing procedures. A hydraulic analysis report will be completed, submitted, and coordinated through final approval by INDOT.
- 2. The CONSULTANT shall complete and coordinate required outlet permit, crossing permit, and legal drain work with the Hamilton County Surveyors Office.

K. Pavement Design

- 1. The CONSULTANT shall perform pavement design in accordance with the *INDOT Design Manual*, Chapter 304.
- 2. CONSULTANT shall compile all required data to complete the pavement design for the Project. If additional testing and/or analysis is required, including but not limited to pavement core sampling on SR 32, the CONSULTANT shall request that INDOT supply the appropriate available data for use in the design.
- 3. The CONSULTANT shall recommend construction and maintenance operations for the proposed pavement sections according to current INDOT practices.
- 4. The CONSULTANT shall prepare a final pavement design report, detailing recommendations, analysis, and assumptions involved in the pavement design.

L. Lighting Design

- 1. The CONSULTANT shall prepare construction documents for providing roadway lighting along SR 32 from east of Poplar Street to east of East Street, an approximate distance of 2,150' including lighting for up to eight (8) intersections. Lighting plan submittals shall consist of a PFC submittal, a Stage Three submittal and a final tracings submittal. Lighting will utilize decorative poles and fixtures similar to those currently in use at the SR 32 & Poplar Street roundabout.
 - a. Lighting Design – East Street: lighting required to be in accordance with INDOT standards for anticipated roundabout intersection at the SR 32 and East Street intersection.
 - b. Lighting Design – SR 32: lighting for remainder of corridor, excluding the East Street intersection.

M. IDNR Permit and Hydraulic Analysis

- 1. Flood control design and permitting for the proposed project will include research and development of hydraulic modeling to evaluate the proposed roundabout at East Street within the floodplain limits of Grassy Branch. Hydraulic models of current conditions will be developed and compared with the proposed conditions, taking into account all of the changes made to the ditches as a result of the project. A hydraulic report will be developed discussing the project

impacts and addressing all of the necessary items required by Indiana Department of Natural Resources, Division of Water. A Construction in a Floodway permit will then be filed with the Indiana Department of Natural Resources, if necessary.

N. Rule 5 Permit and Erosion Control Details

1. The CONSULTANT shall prepare and submit a Rule 5 Erosion Control Plan to procure appropriate Notice of Intent for construction. The CONSULTANT shall prepare temporary erosion control plans and details in accordance with the accepted standards for such work and in accordance with the following documents in effect at the time the plans or reports are submitted: American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets and INDOT's standard specifications, road memoranda, and design manuals, except as modified by supplemental specifications and special provisions, if any.

O. Geotechnical Services

1. The CONSULTANT shall make or cause to be made a complete geotechnical investigation in general accordance with the INDOT Geotechnical Manual. The general scope of geotechnical services is attached as Exhibit B. In the event more extensive boring, sampling, testing analyses and engineering services are needed, such services will be added via a supplemental contract.

P. Asbestos Survey Services

1. The CONSULTANT shall make or cause to be made a complete asbestos investigation in general accordance with customary principles and practices in the fields of environmental science and engineering. The general scope of Asbestos Survey Services is attached as Exhibit C.

Q. Subsurface Utility Engineering (SUE)

1. A private utility locate service will be used to identify utilities using geophysical methods, as further described in Exhibit D. Although geophysical methods provide reasonably accurate results, the possibility for error does exist. CONSULTANT will not be responsible for damages resulting from a private utility locate service.

R. Right-of-Way Plan Development

1. Title Research Services

a. Preparation of Title and Encumbrance Reports – Permanent Right-of-Way

- 1) A Title and Encumbrance Report will be provided for each permanent right-of-way parcel. The Title and Encumbrance Report will be created by adequately researching all available records and documenting the research to identify all parties or entities having any ownership interest in the property to be acquired, including an abstract of all pertinent data, legal descriptions, all liens (taxes, mortgages, and recorded judgments), assessments, taxes, and any encumbrances against the property.

2) General

- a) Each Title and Encumbrance Report and the attachments thereto will be submitted in duplicate or via ERMS if requested.

- b) The CONSULTANT agrees to testify in court in behalf of the LPA on any title work prepared under this contract should he/she be required to do so by the LPA. In consideration for actions taken by the CONSULTANT, the LPA will agree in writing to fees for testimony prior to the date the CONSULTANT must testify.
 - c) The CONSULTANT agrees to follow accepted principles and techniques as shown and any necessary interpretation of these furnished by the LPA. Any parcel that does not meet such requirements will be further documented without additional compensation to the CONSULTANT.
- b. Preparation of Title and Encumbrance Reports – Temporary Right-of-Way
 - 1) A Title and Encumbrance Report will be provided for each temporary right-of-way parcel that contains the deed of record for the current fee owner, documentation for any sell-offs and contiguous property, and current tax information.
 - 2) General
 - a) The CONSULTANT shall furnish a copy of the deed(s) that conveyed the caption to the current fee owner and any sell-offs.
 - b) Each Title and Encumbrance Report and the attachments thereto will be submitted in duplicated or via ERMS if requested.
- c. Supplemental Title and Encumbrance Reports (Updates)

When requested, the CONSULTANT shall provide title work from the date of the original Title and Encumbrance Report to the present date. The CONSULTANT shall provide the following, in duplicate:

- 1) A cover sheet that identifies any changes and the associated recording documents. In addition, the CONSULTANT shall note the current status of the taxes.
 - 2) Copies of any documents recorded since the date of the original Title and Encumbrance Report that affect the caption property.
- 2. Right-of-Way Staking

The CONSULTANT shall provide a one-time staking of the proposed right-of-way for each parcel during the land acquisition process.
- 3. Right-of-Way Engineering
 - a. The CONSULTANT shall prepare title research, legal descriptions, route survey plats and/or right-of-way parcel plats, acquisition instruments, and other materials to be used in the acquisition of right-of-way in accordance with INDOT's Right-of-Way Engineering Procedure Manual, hereinafter called the MANUAL, and 865 IAC 1-12.
 - b. The CONSULTANT shall compare and study, in detail, all of the title information and survey data furnished with it and the CONSULTANT shall calculate or otherwise determine all other data, as may be necessary, for writing the legal description of every right-of-way parcel, all in conformity with the MANUAL. All documents, plats, and plans prepared by the CONSULTANT are to be checked by the CONSULTANT prior to submittal to LPA. All documents and plats requiring a seal under this Contract may or may not be reviewed by LPA

for content. If the plans, aerial mosaics, title information and surveys are furnished to the CONSULTANT, there is no expressed or implied guarantee that conditions so indicated are entirely representative of those actually existing, or that unforeseen developments will not occur. The CONSULTANT is required to examine carefully all such data and satisfy itself as to the actual conditions. In case of any obvious discrepancy between the information furnished by LPA and the actual conditions of the locality, or in case of errors or omissions in said information supplied by LPA, the CONSULTANT shall make such corrections or additions on the plans, plats, strips, maps, or mosaics as necessary for the proper carrying out of its services. The CONSULTANT is assumed to have made itself familiar with the plans, aerial mosaics, and surveys, and it shall not plead that LPA or the consultant, if any, who prepared those materials should assume responsibility for adding the information thereto as required by this Contract and by the MANUAL. It will be the CONSULTANT'S duty to immediately inform LPA, in writing, of any such defect, error or omission which cannot be resolved without additional title search or field survey, or which cannot be made without altering the design extent or character of the right-of-way limits as shown by LPA before proceeding on this portion of the work.

- c. The CONSULTANT may, with prior written approval of LPA, undertake additional title research in order to resolve errors or omissions in provided abstracting, as may be deemed necessary by LPA for the purpose of completing the work included in this Contract.
- d. The CONSULTANT may, with the prior written approval of LPA, undertake field surveys for the purpose of checking title or plan data and/or for the acquisition of vital locative and boundary information that is not contained in existing records, as may be considered necessary to complete fully and satisfactorily the work included in this Contract.
- e. Each right-of-way (parcel) plat and each sheet of legal description and access control clause issued by the CONSULTANT will be dated and will bear the signature and seal of the Registered Land Surveyor (Indiana) by whom the same is prepared, or under whose personal supervision the same is prepared by his/her regularly employed subordinates, and for which he/she takes full responsibility.
- f. Taking possession and use by LPA of completed portions of the work, at any time, will not be deemed as acceptance of the work so taken or used.

S. Construction Phase Design Services

- 1. The CONSULTANT services defined within this section begin following the Bid Letting of construction for the Project.
- 2. The CONSULTANT shall review all shop drawings for this contract during construction. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto, or accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, coordination of the work with other trades, all of which are the sole responsibility of the Contractor. The CONSULTANT's review shall be conducted with reasonable promptness while allowing sufficient time in the CONSULTANT's judgment to permit adequate review. Review of a specific item shall not indicate that the CONSULTANT has reviewed the entire assembly of which the item is a component. The CONSULTANT shall not be responsible for any deviations from the Construction Documents not brought to the attention of the CONSULTANT in writing by the Contractor. The CONSULTANT shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

3. 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 will 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.
4. As needed and directed by the LPA, the CONSULTANT shall perform construction-phase utility coordination services as described in the 2013 Indiana Design Manual, Chapter 104, as revised.
5. Attend construction progress meetings as needed; assume eight meetings throughout the duration of construction.

T. Excluded Design Services

The services listed below are not included in the scope of services. If desired by the LPA or INDOT, they may be added as part of a supplemental contract.

1. Landscaping and streetscape design
2. Wayfinding sign design
3. Municipal utility infrastructure design, including sanitary sewer and water line facilities
4. Land acquisition services
5. Appraisal Problem Analysis (APA)
6. Retaining wall design
7. Stormwater detention design
8. Alternate bid pavement, design, and plan preparation, and Life Cycle Cost Analysis
9. Hazardous waste mitigation if encountered on site
10. Noise mitigation design
11. IDNR Construction in Floodway permit for Thompson Creek
12. Phase II Site Investigation or development of a remediation work plan
13. Implementation of any mitigation measures required as part of the final MOA
14. Coordination associated with a traditional cultural place or work associated with human remains and/or the Native American Graves and Repatriation Act (NAGPRA)

APPENDIX "B"**INFORMATION AND SERVICES TO BE FURNISHED BY THE LPA AND INDOT:**

The LPA or INDOT shall furnish the CONSULTANT with the following items. The CONSULTANT shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the LPA and INDOT and the LPA's consultants. The CONSULTANT shall provide prompt written notice to the LPA if the CONSULTANT becomes aware of any error, omission, or inconsistency in such services or information.

1. Criteria for design and details for signs, signals, lighting, highway and structures such as grades, curves, sight distances, clearances, design loading, etc.
2. Available data and previous studies from the transportation planning process
3. Utility plans available to INDOT or the LPA covering utility facilities and the location of signals and underground conduits throughout the affected areas
4. Provide access to enter upon public and private lands as required for the CONSULTANT to perform work under this Contract
5. All legal services as may be required for development of the project
6. An LPA representative with decision-making authority for inquiries
7. Payment of all permit and review fees required by agencies having jurisdiction over this project data
8. Approved Traffic Studies (by others) to be provided by INDOT/LPA
 - a. Southwest Corner of SR 32 and Union Street
 - b. Northeast Corner of SR 32 and East Street
 - c. Additional large scale developments and/or redevelopments anticipated within the study limits prior to the horizon year
9. Past roadway and right of way plans for SR 32 by INDOT
10. Property limits and existing right-of-way determination by INDOT

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 Field Survey complete within 90 calendar days after receipt of notice to proceed from the LPA.
- B. Environmental Services
 - 1. Draft Environmental Assessment for release for public involvement within 90 calendar days after the signed Section 106 Finding of Effect is received from INDOT.
 - 2. Final Environmental Assessment for signature within 90 calendar days of receipt of the FONSI documentation. Upon final signature, the CONSULTANT will circulate copies of the complete Environmental Assessment as appropriate.
- C. Traffic Analysis
 - 1. All study efforts, findings, and recommendations will be summarized in a draft report to be delivered to the LPA and INDOT for review within 90 calendar days of receiving Notice to Proceed from the LPA.
 - 2. A final report will be issued to the LPA within 30 calendar days of receiving comments from LPA and INDOT.
- D. Roadway Design
 - 1. Stage One plans within 120 calendar days after completed topographic survey.
 - 2. Preliminary Field Check plans and utility coordination within 60 calendar days after Stage One review by INDOT and LPA is complete.
 - 3. Stage Two plans within 90 calendar days after receipt from the LPA of approval of the Preliminary Field Check and Preliminary Right of Way Plans.
 - 4. Stage Three plans within 120 calendar days after receipt from the LPA of approval of the Final Right of Way Plans and Final Pavement Design.
 - 5. Final Tracings with opinions of probable cost and special provisions within 60 calendar days after receipt from the LPA of approval of the Stage Three and Constructability Review by INDOT.
- E. Geotechnical Investigation Report
 - 1. Preliminary Draft within 120 calendar days after Preliminary Field Check
 - 2. Final Draft within 30 calendar days after preliminary draft submission

- F. Right-of-way engineering services will be completed within 90 calendar days after notice to proceed with final plans.
- G. Right-of-way acquisition services, by INDOT, will begin following receipt of an approved Environmental Document.

- Remainder of this page intentionally left blank

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

1. The CONSULTANT shall be compensated for services to be performed under this Contract a total fee not to exceed \$1,197,205 (\$1,131,155 for SR 32 and \$66,050 for Jersey Street) unless approved in writing by the LPA.
2. The CONSULTANT shall be compensated for the following services on a lump-sum basis. The total obligation under this portion of the Contract for SR 32 shall not exceed \$925,850 unless approved in writing by the LPA.
 - a. Project Management \$60,900
 - b. Topographic Survey – SR 32 \$57,350
 - c. Environmental Services – SR 32 \$198,400
 - d. Section 106 \$61,900
 - e. Noise Analysis \$5,800
 - f. Engineering Assessment Report \$19,200
 - g. Traffic Design Services \$66,200
 - h. Road Design and Plan Development – SR 32 \$298,300
 - i. Utility Coordination – SR 32 \$20,500
 - j. Stakeholder Coordination \$29,400
 - k. Culvert Hydraulic Analysis \$13,500
 - l. Pavement Design \$10,400
 - m. Lighting Design – East Street \$7,470
 - n. Lighting Design – SR 32 (if authorized by LPA) \$17,430
 - o. IDNR Permit and Hydraulic Analysis \$19,500
 - p. Rule 5 Permit and Erosion Control Details \$39,600

3. The CONSULTANT shall be compensated for the following services on a lump-sum basis. The total obligation under this portion of the Contract for Jersey Street shall not exceed \$66,050 unless approved in writing by the LPA.

a. Topographic Survey – Jersey Street	\$19,450
b. Environmental Services – Jersey Street	\$5,400
c. Road Design and Plan Development – Jersey Street	\$37,400
d. Utility Coordination – Jersey Street	\$3,800
4. The CONSULTANT shall receive payment for the work performed under this Contract related to Geotechnical Services based on the specific cost per unit as shown in Exhibit B, attached hereto and incorporated herein, multiplied by the actual units of work performed. The final amount will be adjusted according to the actual units of work performed; however, the final amount shall not exceed \$19,555 unless and until a supplemental agreement is executed.
5. The CONSULTANT shall receive payment for the work performed under this Contract related to Asbestos Survey Services based on the specific cost per unit as shown in Exhibit C, attached hereto and incorporated herein, multiplied by the actual units of work performed. The final amount will be adjusted according to the actual units of work performed; however, the final amount shall not exceed \$52,150 unless and until a supplemental agreement is executed.
6. The CONSULTANT shall receive payment for the work performed under this Contract related to Subsurface Utility Engineering (SUE) based on the specific cost per unit as shown in Exhibit D, attached hereto and incorporated herein, multiplied by the actual units of work performed. The final amount will be adjusted according to the actual units of work performed; however, the final amount shall not exceed \$35,700 unless and until a supplemental agreement is executed.
7. The CONSULTANT shall be compensated for Right-of-Way Engineering Services based on the specific cost per unit multiplied by the actual units of work. Estimated unit costs are shown in Exhibit E, which is attached hereto and incorporated herein. The right-of-way engineering services unit costs shall be adjusted in accordance with INDOT's fee schedule once notice-to-proceed is given for right-of-way engineering services. The final amount will be adjusted according to the actual Subconsultant invoices; however, the final amount shall not exceed \$87,900 unless and until a supplemental agreement is executed. Thirty parcels are assumed.
8. For Construction Phase Design Services, the CONSULTANT will be paid for the actual hours of work performed by essential personnel exclusively working on these tasks multiplied by the hourly rates shown in Exhibit F, plus reimbursable expenses at their direct cost. The fees for construction phase services will not exceed \$10,000 unless and until a supplemental agreement is executed.
9. The CONSULTANT shall not be paid for any service performed by the LPA or not required to develop this project.

B. Method of Payment

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

The invoice voucher shall represent the value, to the LPA, of the partially completed work as of the date of the invoice voucher. The CONSULTANT shall attach thereto a summary of each pay item in Section A.1 of this Appendix, percentage completed, and prior payments.

2. The LPA, for and in consideration of the rendering of the engineering 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 completed work, 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.
 - b. From the partial payment thus computed, there shall be deducted all previous partial fee payments made to the CONSULTANT.
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 in accordance with item 6, Changes In Work, of the General Provisions set out in this Contract.

Exhibit A – Topographic Survey limits – SR 32 Reconstruction, east of Poplar Street to East Street, Westfield, IN
Orange – SR 32
Blue – Jersey Street



201801349



September 28, 2018

Mr. Kenneth R. Olson, P.E.
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Indianapolis, IN 46256

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Re: Geotechnical Engineering Investigation
Proposed State Road 32 Widening and Reconstruction Project
Poplar Street to East Street
Westfield, Indiana
INDOT Des No. 1801731
ATC Proposal No. PE-18-1202

Dear Mr. Olson:

ATC is pleased to submit this proposal for performing a geotechnical engineering investigation for the referenced project. A proposal to perform asbestos inspection services for existing structures within the project area is submitted under separate cover.

Project Characteristics

It is our understanding that the project will consist of the reconstruction and widening of State Road 32 (Main Street) in downtown Westfield, Indiana. The project area will be from just west of Poplar Street to just east of East Street and will be approximately 2,600 ft in length.

The project will include adding one travel lane in each direction and reconstruction of the existing State Road 32 pavement. The project will require the installation of new storm sewers. It is assumed that the maximum depth of the storm sewer inverts will be 12 ft below the existing grade. New traffic signals will be installed at the intersection of Union Street and State Road 32. Enhanced pedestrian facilities will be included. It is assumed that the project will not include any box culverts, retaining walls, three-sided culverts or bridges.

Scope of Services

The objectives of this investigation are to evaluate the existing subsurface conditions at the site and to develop recommendations necessary for the design and construction of the soil related elements of the proposed project. The proposed subsurface exploration

consists of drilling up to a total of eight soil test borings. The test borings will be drilled to depths of 20 to 30 ft (up to six test borings to a depth of 20 ft along the roadway alignment and up to two test borings to a depth of 30 ft for traffic signal foundations). Split-barrel samples (ASTM D-1586) will be obtained at 2.5 ft intervals to a depth of 15 ft below the existing ground surface and at 5 ft intervals elsewhere. Ground water level observations will be made during drilling operations, immediately after withdrawal of the augers from the borings and approximately 24 hours after completion of drilling in selected borings. Slotted PVC pipes will be installed in up to four of the test borings. The test borings will be backfilled in accordance with Indiana Department of Transportation (INDOT) Aquifer Protection guidelines. We will plug the upper 1 ft of the boreholes in pavement areas with concrete.

A reconnaissance of the project site will be made by a geotechnical engineer from our staff and the boring locations will be established in the field at that time. The cost estimate does not include establishing ground surface elevations at boring locations. ATC will contact Indiana 811 to locate underground utilities that are owned by the member utility companies; however, it is assumed that the owner's representative will accurately mark in the field the locations of all underground utilities that are part of the owner's physical plant (i.e., all underground utilities that are not part of the Indiana 811 locate service members). This proposal does not include fees for the repair of, or other fees associated with, damaged underground utilities that are not accurately marked in the field and ATC will not be responsible for costs associated with damages to underground utilities that are not accurately marked in the field. This proposal does not include fees to retain private underground utility locate services on the owner's behalf. If requested, ATC can arrange the services of a private underground utility locate service on the owner's behalf for additional fees.

Laboratory tests will be performed as necessary to establish the significant engineering characteristics and parameters of the subsurface soils. In addition to engineering classification tests, the laboratory testing program will include a standard Proctor maximum dry density test and resilient modulus tests performed on a representative sample of the pavement subgrade soils.

After completion of the field investigation and laboratory tests, an engineering report will be prepared containing recommendations to guide design and construction of the pavement foundations, the traffic signal foundations and the earth related elements of the pavement (i.e., resilient modulus values and subgrade treatment types). The proposed subsurface exploration, laboratory testing program and engineering analyses are in general conformance with the requirements of the Indiana Department of Transportation – Geotechnical Services Section guidelines for geotechnical investigations. The final field exploration and laboratory testing program may require some modifications after review by INDOT engineers.

This proposal is based on the following assumptions and exclusions:

- The field work can be performed during normal weekday working hours.
- All auger cuttings that cannot be placed to backfill the boreholes can be distributed on-site or at a location designed by the owner. The scope of this investigation does not include characterization or containerization of the auger-cuttings and drilling fluids; or the disposal of the auger cuttings, drillings fluids and/or containers.

- This proposal does not include costs for restitution for landscape damage and ATC will not be responsible for damage to landscaping.
- A topographic map of the site will be made available before completion of our study.
- The subsurface investigation outlined in this proposal assumes that there are no hazardous materials in the soil or in the ground water underlying the site and this study is not designed to detect or identify such materials. If it becomes apparent during the field investigation that hazardous materials may be present, field operations will be terminated. The investigation would be resumed only after renegotiation of the scope of services and fees to cover appropriate health and safety precautions and proper consideration of the new information.

Fee Estimate

We propose to perform the scope of services described herein according to the unit charges for the applicable items as shown on the attached fee schedule that is based upon the INDOT Geotechnical Manual Appendix A. The cost of the study will not exceed \$19,555.00, unless unexpected subsurface conditions are encountered or the project characteristics are changed significantly. If any changes in the program are indicated by the initial findings, we will consult with you and, with your approval, make such changes as are considered necessary. In any case, the cost estimate will not be exceeded without additional approval from you.

Authorization

Our professional services will be performed, our findings obtained and our recommendations prepared in accordance with customary principles and practices in the field of geotechnical engineering at the time and location where the services are performed. This warranty is in lieu of all other warranties either express or implied and no other warranties will be given.

This proposal is based upon the assumption that it will be incorporated into a Task Order according to the Standard Form of Agreement between Engineer and Consultant for On-Call Professional Services between American Structurepoint, Inc and ATC Group Services LLC dated January 1, 2016 and that this proposal will serve to define the scope of services and fees for the Task Order.

If you have any questions concerning this proposal, please do not hesitate to call me.

Sincerely,

ATC Group Services LLC

Thomas J. Struewing
Principal Engineer

Attachments

Exhibit B

Geotechnical Engineering Services
Proposed State Road 32 Widening and Reconstruction Project
INDOT Des. No. 1801731, Westfield, Indiana

ATC Group Services
2018 Fee Schedule
INDOT Appendix A

	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Unit 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	\$500.00	\$500.00
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	40	mi	\$3.50	\$140.00
2. Truck mounted borings with split-spoon sampling				
a. Standard	180	ft	\$19.00	\$3,420.00
b. Night time		ft	\$22.42	
3. Truck mounted borings with drilling fluid				
a. Standard		ft	\$19.00	
b. Night time		ft	\$22.42	
4. Truck mounted core drilling				
a. Standard		ft	\$39.00	
b. Night time		ft	\$46.00	
5. Truck mounted borings				
a. Truck mounted borings through bedrock or boulders or concrete pavement				
i. Standard		ft	\$39.00	
ii. Night time		ft	\$46.02	
b. Bridge deck coring and restoration				
i. Standard		ea	\$350.00	
ii. Night time		ea	\$413.00	
6. Cone penetrometer testing				
a. Set up				
i. Standard		ea	\$80.00	
ii. Night time		ea	\$94.40	
b. Subsurface profiling				
i. Standard		ft	\$12.25	
ii. Night time		ft	\$14.46	
c. Profiling with pore pressure measurement				
i. Piezometric Saturation				
a. Standard		ea	\$93.00	
b. Night time		ea	\$109.74	
ii. Penetration				
a. Standard		ft	\$14.50	
b. Night time		ft	\$17.11	
iii. Pore water dissipation test				

Exhibit B

Geotechnical Engineering Services
Proposed State Road 32 Widening and Reconstruction Project
INDOT Des. No. 1801731, Westfield, Indiana

ATC Group Services
2018 Fee Schedule
INDOT Appendix A

	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Unit Total</u>
a. Standard		hr	\$190.00	
b. Night time		hr	\$224.20	
iv. Hydraulic conductivity and consolidation				
a. Standard		ea	\$75.00	
b. Night time		ea	\$88.50	
d. Profiling with Shearwave Velocity Measurement				
i. Standard		ft	\$15.75	
ii. Night time		ft	\$18.59	
e. Sample				
i. Standard		ea	\$24.00	
ii. Night time		ea	\$28.32	
7. Hand or truck soundings				
a. Standard		ft	\$12.50	
b. Night time		ft	\$14.75	
8. Hand auger drilling				
a. Standard		ft	\$13.00	
b. Night time		ft	\$15.34	
9. Skid mounted borings with split-spoon sampling				
a. Standard		ft	\$30.00	
b. Night time		ft	\$35.40	
10. Skid mounted borings using drilling fluid				
a. Standard		ft	\$30.00	
b. Night time		ft	\$35.40	
11. Skid mounted core drilling				
a. Standard		ft	\$43.00	
b. Night time		ft	\$50.74	
12. Skid mounted boring through bedrock or boulders				
a. Standard		ft	\$45.00	
b. Night time		ft	\$53.10	
13. Skid mounted soundings				
a. Standard		ft	\$17.50	
b. Night time		ft	\$20.65	
14. Skid Mounted Cone Penetrometer Testing (CPT)				
a. Set up				
i. Standard		ea	\$115.00	
ii. Night time		ea	\$135.70	
b. Subsurface profiling				
i. Standard		ft	\$17.75	
ii. Night time		ft	\$20.95	
c. Profiling with pore pressure measurement				
i. Piezometric Saturation				
a. Standard		ea	\$110.00	
b. Night time		ea	\$129.80	
ii. Penetration				

Exhibit B

Geotechnical Engineering Services
Proposed State Road 32 Widening and Reconstruction Project
INDOT Des. No. 1801731, Westfield, Indiana

ATC Group Services
2018 Fee Schedule
INDOT Appendix A

	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Unit Total</u>
a. Standard		ft	\$20.50	
b. Night time		ft	\$24.19	
iii. Pore Water Dissipation Test				
a. Standard		hr	\$220.00	
b. Night time		hr	\$259.60	
iv. Hydraulic Conductivity and Consolidation				
a. Standard		ea	\$85.00	
b. Night time		ea	\$100.30	
d. Profiling with Shearwave Velocity Measurement				
i. Standard		ft	\$25.00	
ii. Night time		ft	\$29.50	
e. Sample				
i. Standard		ea	\$32.00	
ii. Night time		ea	\$37.76	
15. Furnishing of a boat		Actual Cost	1.0	
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	1.0	
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		ea	\$70.00	
b. Rock core borings		ea	\$120.00	
25. Additional 2-in. split spoon sampling	24	ea	\$21.00	\$504.00
26. 3-in. split spoon samples		ea	\$23.00	
27. 3-in. Shelby tube samples		ea	\$63.00	
28. Bag samples				
a. 25-lb sample	2	ea	\$51.00	\$102.00
b. 5-lb sample	2	ea	\$33.00	\$66.00
29. Field vane shear test				
a. Standard		ea	\$115.00	
b. Night time		ea	\$135.70	
30. 4½-in. cased hole		ft	\$12.50	
31. Installation of Geotechnical Instruments				
a. Inclinator casing installation				

Exhibit B

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ATC Group Services
2018 Fee Schedule
INDOT Appendix A

	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Unit Total</u>
i. Standard		ft	\$15.00	
ii. Night time		ft	\$17.70	
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	1.0	
34. Twenty-four hour water levels				
a. Field measurements per borehole				
i. Standard	4	ea	\$38.00	\$152.00
ii. Night time		ea	\$44.84	
b. PVC slotted pipe	80	ft	\$6.00	\$480.00
35. Special borehole backfilling				
a. 0 to 30 ft				
i. SPT				
a. Standard	8	ea	\$110.00	\$880.00
b. Night time		ea	\$129.80	
ii. CPT				
a. Standard		ea	\$46.00	
b. Night time		ea	\$54.28	
b. More than 30 ft				
i. SPT				
a. Standard		ft	\$6.50	
b. Night time		ft	\$7.67	
ii. CPT				
a. Standard		ft	\$1.90	
b. Night time		ft	\$2.24	
c. Pavement restoration				
i. Standard	8	ea	\$60.00	\$480.00
ii. Night time		ea	\$70.80	
36. Dozer rental		Actual Cost	1.0	
37. Traffic control				
a. Flag crew		day	\$750.00	
b. Equipment Rental and professional traffic control services	\$3,500.00	Actual Cost	1.0	\$3,500.00
c. Flag crew with equipment		day	\$850.00	
d. Traffic Control Coordination with Subcontractor	1	LS	\$600.00	\$600.00
38. Centerline surveying		Actual Cost	1.0	
Subtotal (Geotechnical Field)				\$12,374.00

GEOTECHNICAL LABORATORY

39. Sieve analysis for soils	6	ea	\$49.00	\$294.00
40. Hydrometer analysis	6	ea	\$58.00	\$348.00
41. Sieve analysis for Aggregates				

Exhibit B

Geotechnical Engineering Services
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INDOT Des. No. 1801731, Westfield, Indiana

ATC Group Services
2018 Fee Schedule
INDOT Appendix A

	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Unit Total</u>
a. Analysis by Washing (AASHTO T-11)		ea	\$77.00	
b. Analysis by Using (AASHTO T-27)		ea	\$135.00	
42. Liquid limit	6	ea	\$39.00	\$234.00
43. Plastic limit & plasticity index	6	ea	\$28.00	\$168.00
44. Liquid Limit Ratio		ea	\$75.00	
45. pH test	6	ea	\$15.50	\$93.00
46. Loss on Ignition Test				
a. Loss on Ignition Test (Conventional)		ea	\$24.00	
b. Loss on Ignition Test (Sequential)		ea	\$52.00	
c. Organic content based on Colorimeter		ea	\$24.00	
47. Topsoil Tests				
a. Phosphorus tests	2	ea	\$21.00	\$42.00
b. Potassium tests	2	ea	\$21.00	\$42.00
48. Moisture Content Test				
a. Moisture Content Test (Conventional)	40	ea	\$6.75	\$270.00
b. Moisture Content Test (Microwave)		ea	\$8.20	
49. Expansion Index of Soils		ea	\$235.00	
50. Specific Gravity Test		ea	\$36.00	
51. Unit weight determination		ea	\$17.50	
52. Hydraulic Conductivity Test				
a. Constant Head		ea	\$235.00	
b. Falling Head		ea	\$285.00	
53. Unconfined Compression Test on soils & Rocks				
a. Unconfined Compression Test (Soils)		ea	\$45.00	
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	
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	2	ea	\$140.00	\$280.00
b. Modified Proctor		ea	\$155.00	
59. Soil Support Testing				
a. California Bearing Ratio Test		ea	\$525.00	

Exhibit B

Geotechnical Engineering Services
Proposed State Road 32 Widening and Reconstruction Project
INDOT Des. No. 1801731, Westfield, Indiana

ATC Group Services
2018 Fee Schedule
INDOT Appendix A

		<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Unit Total</u>
	b. Resilient Modulus on remolded soil sample	2	ea	\$620.00	\$1,240.00
	c. Resilient modulus on Shelby tube sample		ea	\$400.00	
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	6	ea	\$105.00	\$630.00
62	Water Soluble Chloride Test		ea	\$105.00	
63	Soil Resistivity Test		ea	\$135.00	
64	Shale Durability Tests				
	a. Slake Durability Index Test		ea	\$125.00	
	b. Jar Slake Test		ea	\$13.25	
	Subtotal (Geotechnical Laboratory)				\$3,641.00
<u>GEOTECHNICAL ENGINEERING</u>					
65	Geotechnical report				
	a. Without soil subgrade investigation				
	i. First mile	1	LS	\$2,500.00	\$2,500.00
	ii. Each additional mile		mi	\$750.00	
	b. With soil subgrade investigation				
	i. First mile		LS	\$2,000.00	
	ii. Each additional mile		mi	\$850.00	
	c. Soil subgrade investigation (only)				
	i. First mile		LS	\$650.00	
	ii. Each additional mile		mi	\$400.00	
	d. Soil profile Drawing				
	I. First mile		LS	\$1,265.00	
	II. Each additional mile		mi	\$600.00	
66	a. Geotechnical Data Report for Design Build Projects				
	i. First mile		LS	\$900.00	
	ii. Each additional mile		mi	\$400.00	
	b. Technical Memo				
	i. First mile		LS	\$600.00	
	ii. Each additional mile		mi	\$300.00	
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, ϕ or C & ϕ analysis		ea	\$800.00	
	b. Corrective measures		ea	\$800.00	
	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	

Exhibit B

Geotechnical Engineering Services
Proposed State Road 32 Widening and Reconstruction Project
INDOT Des. No. 1801731, Westfield, Indiana

ATC Group Services
2018 Fee Schedule
INDOT Appendix A

	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Unit Total</u>
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)				\$2,500.00
<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	1.0	
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	1.0	
82 CAPWAP-C analysis		ea	\$550.00	
83 Final construction inspection report		ea	\$1,000.00	
Subtotal (Construction Inspection and Monitoring)				
<u>FOUNDATION EVALUATION BY NON-DESTRUCTIVE METHODS</u>				
84 a. Surface test/Pier or foundation		Actual Cost	1.0	
b. Borehole test/Pier or foundation		Actual Cost	1.0	
<u>GEOPHYSICAL INVESTIGATION</u>				
85 Geophysical Investigations		Actual Cost	1.0	
<u>GEOTECHNICAL PROJECT MANAGEMENT</u>				
86 Project Management				

Exhibit B

Geotechnical Engineering Services
Proposed State Road 32 Widening and Reconstruction Project
INDOT Des. No. 1801731, Westfield, Indiana

ATC Group Services
2018 Fee Schedule
INDOT Appendix A

	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Unit Total</u>
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	
<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)	8	ea	\$130.00	\$1,040.00
4. Pavement core (full depth)				
a. Standard		ea	\$200.00	
b. Night time		ea	\$230.00	
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	\$86.00	
9. Sieve analysis of extracted aggregate test		ea	\$58.00	
10. Recovery of asphalt from solution by Abson method		ea	\$360.00	
11. Theoretical maximum specific gravity test		ea	\$72.00	
12. Bulk specific gravity test		ea	\$32.00	
13. Air voids calculation		ea	\$29.00	
14. Core report for partial depth core		ea	\$50.00	
15. Core report for full depth core		ea	\$50.00	
16. Pavement analysis and report		ea	\$800.00	
		Subtotal (Pavement Investigation)		\$1,040.00
<u>Summary of Fees</u>				
Geotechnical Field			\$12,374.00	
Geotechnical Laboratory			\$3,641.00	
Geotechnical Engineering			\$2,500.00	
Construction Inspection and Monitoring				
Pavement Investigation			\$1,040.00	
Estimated Total			\$19,555.00	



October 2, 2018

Mr. Kenneth R. Olson, PE
Project Manager, Road Group
American Structurepoint, Inc.
7260 Shadeland Station
Indianapolis, IN 46256
Email: kolson@structurepoint.com

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Re: Asbestos Demolition Surveys Proposal
Fourteen (14) Commercial Buildings
Des 1801731 SR 32 Reconstruction - City of Westfield
SR 32 - From Poplar Street to East Street
Westfield, Indiana
ATC Proposal No. EM-18-303R

Dear Mr. Olson:

ATC is pleased to provide this proposal for asbestos surveys for demolition or relocation at the above-referenced locations (Site) for American Structurepoint, Inc. The entire scope of work has not yet been defined. ATC is anticipating up to fourteen (14) commercial type structures along the south of SR 32 from Poplar Street to East Street.

Scope of Services

We propose to perform comprehensive asbestos investigations in which suspect materials observed throughout the building will be documented and either sampled or assumed to contain asbestos. Roofing material samples will not be collected as part of this survey. As is required, ATC State of Indiana accredited building inspectors will collect samples for analysis by a local, fully accredited laboratory.

During an asbestos investigation, the site is inspected for the presence of surfacing materials (i.e., plaster and textured paint), thermal system insulation (i.e., pipe coverings and pipe fitting insulation) and miscellaneous materials (i.e., floor tile, wallboard and roofing materials) that may contain more than 1 percent asbestos. All of the materials suspected of being asbestos-containing materials (ACMs) are categorized in homogeneous areas (HAs). Each HA consists of all observed materials found in various locations in a building that are similar in color, appearance, texture and date of installation.

Conducting sampling to identify asbestos-containing materials will cost-effectively enable the client to properly plan asbestos abatement activities, if warranted. The EPA's National Emission Standard for Hazardous Air Pollutants (NESHAP) standard for asbestos (40 CFR Part 61, Subpart M) requires thorough inspections for the presence of both friable and non-friable ACMs in all buildings to be demolished or renovated. Local, state and federal environmental agencies may also require notification prior to any renovation or demolition activities in public or commercial buildings, and this investigation will provide data required for in these notifications.

When asbestos is found in a bulk sample of friable material, but the asbestos content is determined by visual estimation to be less than 10%, the building owner/operator may either (1) elect to assume that the material contains more than 1% asbestos and is therefore a legally defined ACM, or (2) require verification of the asbestos content using the Point Counting method. Unless otherwise directed by the client, ATC will assume that visual estimation is acceptable for the purposes of this investigation.

Project Deliverables

Following the investigations, the results will be made available to the appropriate American Structurepoint, Inc. representative through a written report. This report will detail survey and sampling methods, sample results, an assessment of the condition of the hazardous materials and recommendations, if warranted.

Fee Estimate

ATC will perform these investigations for a not to exceed cost of \$52,150.00. This cost will include inspection labor for up to 14 – commercial buildings, mileage, PLM analysis of up to 1,400 bulk samples/layers for asbestos, project review and generation of a final report for each property. ATC's estimate of sampling cost is based on the assumption that a representative sample of all suspected ACM materials are accessible for sampling.

Any additional PLM analysis will be performed for \$15.00 per sample and any point-count analysis will be performed for \$46.00 per sample. However, no additional analysis will be performed without the appropriate client representative's consent.

Authorization

Our professional services will be performed, our findings obtained and our recommendations prepared in accordance with customary principles and practices in the fields of environmental science and engineering. This warranty is in lieu of all other warranties either express or implied and no other warranties will be given.

Please acknowledge the terms of our proposal by completing the requested information and signing and dating the Proposal Acceptance Form. Return an executed copy of the Proposal Acceptance Form attached to the proposal. The written proposal, including the client service agreement, will serve as a full record of the contract. This proposal and any associated client service agreement are considered to be valid for a period of 90 days from the date above.

We appreciate the opportunity to provide you with this proposal and look forward to working with you on this project. Please feel free to contact either of the undersigned at 317.579.4081 if you have any questions or comments.

Sincerely,

ATC Group Services LLC



Laura M. Totten
Industrial Hygiene Department Manager



John T. Schilling, LPG (IN#2163)
Environmental Group Manager

Attachments



Subsurface Utility Engineering **Scope of Services for** **SR 32 Roadway Reconstruction – Westfield, IN**

Industry Standard of Care- All aspects of the Subsurface Utility Engineering (SUE) performed under this contract will be in accordance with ASCE Standard 38-02 "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" and industry standards as of the date this scope is approved.

Project Purpose

CARDNO will horizontally designate existing utilities consisting of, but not limited to, gas, water, electric, communication (FOC and telephone), cable television, force main and lighting, within the specific limits identified along SR 32 for the purpose of design and future construction. CARDNO will mark specific areas of underground utilities, as directed by Structurepoint, (with paint marks and flags) within the limits identified below.

Project Limits

The general project limits are located along SR 32, from just west of Mill St., to east of Hillcrest Dr., for a distance of approximately 2,550 linear feet as depicted in the information provided by Structurepoint. The width of investigation is approximately 45' each side of the SR 32 centerline. The width of investigation along each S-Line, which intersect with SR 32, is approximately 100' each side of the SR 32 centerline.

Mobilization

This includes all appropriate equipment, transportation and qualified personnel necessary to perform the requested SUE services.

Geophysical Surface Utility Designating – Quality Level B (QLB)

CARDNO will utilize surface geophysical methods to interpret the presence of subsurface utilities and use electromagnetic equipment to detect and designate the selected subsurface utilities. Access may be required into the buildings in order to properly locate utilities and utility services. Sizes and materials will be obtained from existing as-built records, if available.

CARDNO will also perform Ground Penetrating Radar (GPR) in an attempt to locate any utilities or features that are conductive or non-conductive in nature. Ground Penetrating Radar is a wave-based form of geophysical investigation in which an electromagnetic wave, launched by a transmitting antenna element, is propagated downward into the ground. A portion of the wave energy is reflected off of subsurface features differing in electrical properties from the surrounding material. The reflected radar energy is detected back at the surface by a receiving antenna and converted to electrical signals, which correspond to minor changes in the voltage. The signals are sent to the control unit, amplified, and recorded by a field laptop computer and a real-time two-dimensional depth profile is constructed. From the depth profile, features such as subsurface utilities, pipes, voids, or other obstructions can be interpreted and located in the field.

It should be noted that overall quality and vertical penetration of GPR data is entirely dependent on the composition of subsurface materials and the frequency of the GPR antennas. Highly electrically conductive materials typically serve to attenuate the electromagnetic radar energy and not allow for significant depth penetration. CARDNO cannot perform GPR in areas of thick brush or uneven terrain. Therefore, while due care will be exercised in the acquisition and interpretation of GPR measurements, CARDNO can offer no warranties or guarantees with respect to existing subsurface conditions.

As part of QLB services, CARDNO will provide investigation of the sanitary sewer laterals to connect them to the existing sanitary sewer mains. Work will include performing a visual investigation of the project area to locate any existing sewer cleanouts adjacent to existing buildings. If cleanouts are accessible and can be opened, CARDNO will attempt to flex rod the sewers to trace them as far as possible, with the purpose of connecting them to the sewer mains.

As part of QLB services, only if accessible, CARDNO will provide manhole detail information pertaining to existing telecommunication manholes. If accessible from ground level, CARDNO will record x, y, z dimensions of the inside of each manhole/vault. CARDNO will also provide the dimensions of the manhole lid in relation to the existing walls. No photographs of manhole walls or dimensions of conduits in relation to walls will be provided.

Using the aforementioned technology, CARDNO will provide paint markings or flags to show the approximate horizontal position of the desired utilities. Once the field information is completed and checked by the field crew supervisor, the SUE Field Supervisor will perform a quality control (QC) check of the project by cross checking the proposed scope of work to the actual work performed.

We are estimating approximately 25,560 linear feet of utilities would be investigated to mark the entire project limits based solely upon a field reconnaissance that was performed (refer to the Table of SUE Quantities for additional information). Per conversations with Structurepoint, SUE will be focused on specific areas of conflict, thus the maximum footage to be proved will be 15,000 lft. If substantial differences occur between the actual footage of utilities present in the field and those estimated at this time, either more or less, additional or reduced compensation may be necessary and requested.

Survey and CADD

If a survey is required, it will be the responsibility of STRUCTUREPOINT or others. In the event a survey is taken, we respectfully request that CARDNO be included in the final review of the survey data, CADD files and drawings to assure a complete QA/QC process.

Inclusions

1. CARDNO will coordinate all operations with STRUCTUREPOINT.
2. CARDNO will be responsible for providing basic Maintenance of Traffic using signs and cones.
3. CARDNO must be able to access the entire work area with our personnel, vehicles and equipment. CARDNO must be able to access inside buildings for the purpose of direct connecting to utilities.
4. Fee schedule is valid for sixty (60) days from the date of this proposal.
5. Perform Quality Assurance/Quality Control (QA/QC) of above services with various positive verifications as deemed necessary for the desired ASCE Quality Level.
6. CARDNO will perform this service with due diligence and use every reasonable effort to designate utilities in a manner consistent with ASCE Standard 38-02 and will be held

accountable for CARDNO's negligent acts, errors, or omissions for its services as outlined within this scope of services. However, CARDNO does not guarantee that all active or abandoned utility systems or structures can or will be detected, including but not limited to nonconductive materials, utilities located underneath other utilities. CARDNO will notify client where non-toneable or non-locatable utilities or structures are present.

Exclusions

1. CARDNO will not be responsible for the disposal of any hazardous material.
2. CARDNO will not be providing SUE Quality Levels "A, C or D" as defined in the ASCE Standard 38-02.
3. CARDNO will be provided with all existing utility records and plans, if available.
4. CARDNO shall not be required to work other than 6:00 AM to 6:00 PM, Monday through Friday.
5. Designating of gravity storm sewer or gravity sanitary sewer lines, traffic signal wiring, or irrigation lines is not included.
6. Designating non-toneable utilities without tracer wire is not included.
7. CARDNO shall not be required to enter into any confined spaces such as communication, sewer or drain manholes. (Additional costs will incur).
8. CARDNO will not be responsible for obtaining additional, outside Maintenance of Traffic (MOT) for lane closures or fees.
9. CARDNO will not be responsible for obtaining railroad flagman or flagging fees.
10. CARDNO shall not be required to obtain permission to enter said property.
11. CARDNO shall not be required to obtain any permits.
12. Use of CARDNO for Subsurface Utility Engineering (SUE) does not relieve the client, contractor(s), property owner(s) or utility owner(s) of the responsibility of notifying the Indiana One Call System prior to starting excavation. CARDNO will not be assumed or held responsible for damages to utilities caused by others.

Deliverables

Our submittal package for this project will be as follows:

- Paint Marks & Flags
- Field Sketches
- SUE Plan Sheets

Project Duration

For the purpose of this proposal, we anticipate being on site for a maximum of approximately five (5) work days with one two-man crew to complete the QLB scope of work (pending weather conditions). CARDNO will prepare final deliverables within seven (7) calendar days of receipt of complete survey data in a useable format to CARDNO.

CARDNO is prepared to schedule the work after receiving written Notice to Proceed (NTP), in addition to an executed agreement being in place. Please sign and date the last page of the Scope of Services and return a signed copy along with you standard task order including any relevant project, phase and task numbers. This will serve as our NTP.

Fee Schedule

Work will be performed in accordance with the attached fee schedule according to the unit and hourly rates indicated (see Attachment B for details).

QLB Total = **\$35,700.00**

This price is calculated by the project scope and limits described above. Should the scope or the limits change, we will request additional compensation for any additional work. **The above price will not be exceeded without prior authorization from STRUCTUREPOINT.** CARDNO will invoice monthly and at the completion of our work. All work shall be in accordance with CARDNO's standard terms and conditions. A standard CARDNO contract for professional services will be provided upon request.

Sincerely,

STRUCTUREPOINT Client:

Cardno


Kenneth F. Slaninka, Jr.
Director

Project: _____ Phase: __ Task:

Exhibit D

TABLE OF ESTIMATED SUE QUANTITIES



SR 32 Roadway Reconstruction in Westfield (1801731)

LOCATION	LENGTH	EST # OF UTIL.	TOTAL LENGTH	TEST HOLES	DESCRIPTION
	LFT	EA	LFT	EA	
<i>Mainline</i>					
SR 32	2,550	5.50	14,025	0	(0.5) S/L, (1) Tele, (1) Gas, (2) Fiber Optic, (1) Water
<i>Total Mainline Length =</i>	2,550				
<i>S-Lines</i>					
Mill St.	200	4	800	0	(1) Tele, (1) Gas, (1) Water, (1) Gas Station-Speedway
Camilla St.	100	3	300	0	(1) Tele, (1) Gas, (1) Water
Union St.	200	4	800	0	(1) Tele, (1) Gas, (1) Water, (1)Traffic
Elm (Alley)	100	2	200	0	(1) Gas, (1) Water
Walnut St.	200	2	400	0	(1) Gas, (1) Water
Mulberry (Alley)	100	2	200	0	(1) Gas, (1) Water
Cherry St.	200	2	400	0	(1) Gas, (1) Water
Alley	100	2	200	0	(1) Gas, (1) Water
East St.	100	3	300	0	(1) Tele, (1) Gas, (1) Water
Hillcrest Dr.	100	3	300	0	(1) Tele, (1) Gas, (1) Water
<i>Total S-Line Length =</i>	1,400				
<i>Laterals</i>	Dist.	# of Homes / Bus.	Footage		
Gas	45	25	1,125	0	
Water	45	25	1,125	0	
Sanitary Sewer	45	25	1,125	0	
SUBTOTAL			21,300		
20% Contingency for Potential Additional Crossings, Drops and Urban Nature of Project			4,260		
TOTAL			25,560		
TOTAL (Rounded)			25,560		
MAXIMUM Footage to be Investigated *			15,000		<i>* Only investigate specific areas per Structurepoint</i>

ATTACHMENT "B" ESTIMATE BREAKDOWN
SUBSURFACE UTILITY ENGINEERING



Project Description: **SR 32 Roadway Reconstruction in Westfield
(1801731)**

UTILITY DESIGNATING SERVICES				
Agreement Item	Unit	Billing Rate	Estimated Quantity	Total
Linear Foot	Per Foot	\$1.43	15,000	\$21,450.00
Ground Penetrating Radar (GPR)	Per Day	\$2,500.00	2	\$5,000.00
SUBTOTAL				\$26,450.00

UTILITY LOCATING SERVICES				
Agreement Item	Unit	Billing Rate	Estimated Quantity	Total
Test Hole Locates (1-25 holes)	Per Hole	\$795.00	0	\$0.00
SUBTOTAL				\$0.00

MOBILIZATION/DEMobilIZATION/MAINTENANCE OF TRAFFIC				
Agreement Item	Unit	Billing Rate	Estimated Quantity	Total
Vacuum Exc. Truck *	Per Trip	\$0.00	0	\$0.00
Designating / GPR Truck *	Per Trip	\$0.00	0	\$0.00
Maintenance of Traffic	Per Day	\$265.00	1	\$265.00
SUBTOTAL				\$265.00

** No mobilization when project is less than 60 miles from office.*

DIRECT COST (AT COST)				
Agreement Item	Unit	Authorized Rate	Estimated Quantity	Total
Project Manager Mileage	Per Mile	\$0.38	28	\$10.64
Per Diem	Per Day/Person	\$26.00	0	\$0.00
Hotel including Tax	Per Day	\$90.00	0	\$0.00
SUBTOTAL				\$10.64

ATTACHMENT "B" ESTIMATE BREAKDOWN
SUBSURFACE UTILITY ENGINEERING



Project Description: **SR 32 Roadway Reconstruction in Westfield
(1801731)**

BILLING RATES				
Agreement Item	Unit	Billing Rate	Estimated Quantity	Total
Principal/QA/QC	Per Hour	\$210.38	1	\$210.38
Director	Per Hour	\$210.38	12	\$2,524.56
Sen. Project Manager	Per Hour	\$137.31	6	\$823.86
Geophysicist /Project Manager	Per Hour	\$156.12	0	\$0.00
SUE Manager	Per Hour	\$110.13	21	\$2,312.73
SUE Supervisor	Per Hour	\$86.16	0	\$0.00
SUE Technician III	Per Hour	\$71.55	0	\$0.00
SUE Technician I / II (MOT Flagging)	Per Hour	\$52.63	32	\$1,684.16
Technical Support	Per Hour	\$79.90	2	\$159.80
CADD Manager	Per Hour	\$127.64	10	\$1,276.40
CADD/Engineering Technician	Per Hour	\$65.42	0	\$0.00
SUBTOTAL				\$8,991.89
TOTAL SUE SERVICES				\$35,717.53
TOTAL COST (ROUNDED)				\$35,700.00


 Kenneth F. Slaninka, Jr., PE
 Director

October 17, 2018
 Date

Exhibit E

SR 32 Reconstruction								
FEE PROPOSAL, Dated: 10/19/2018								
				R/W Engineering				
Parcel	Owner	Tax I.D.	Appraisal Report Type	Title Work Fee	Title Update Fee	Plats, Legals Fee	Staking Fee	Subtotal R/W Engineering
1	Speedway Superamerica LLC	29-09-01-203-009.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
2	LBM Properties LLC	29-09-01-204-002.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
3	Broken Bone Enterprises LLC	29-09-01-204-003.000-015		\$ 750.00	\$ 300.00	\$ 2,000.00	\$ 300.00	\$ 3,350.00
4	H & N Realty LLC	29-09-01-204-005.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
5	Weiss, David L. & Becky C	29-09-01-204-006.000-015		\$ 750.00	\$ 300.00	\$ 2,000.00	\$ 300.00	\$ 3,350.00
6	Town of Westfield	29-05-36-407-039.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
7	Tactical Holdings, LLC	29-08-31-304-034.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
8	Bradley, Cliff & Teresa	29-10-06-101-001.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
9	M&I Marshall & Isley Bank	29-10-06-101-002.000-015		\$ 1,125.00	\$ 450.00	\$ 2,000.00	\$ 300.00	\$ 3,875.00
10	Union Street Properties	29-10-06-101-003.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
11	Kemp, Katherine	29-06-31-304-027.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
12	D O Davis Real Estate LLC	29-08-31-304-026.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
13	Brookens, Russell Eugene & Carol Jean Revocable Living Tr	29-10-06-101-010.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
14	Lorren, Michael T	29-06-31-304-024.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
15	Stoesz, Jake & Nancy	29-10-06-101-011.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
16	21st Amendment Inc	29-06-31-304-023.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
17	WFD RE LLC	29-10-06-101-012.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
18	Wilson, Linda Trust	29-10-06-101-013.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
19	Krohn, Otto W	29-10-08-101-015.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
20	Absolute Stability commercial Real Estate LLC	29-10-06-102-002.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
21	Espinoza, Alfonso	29-10-06-102-004.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
22	Gollner, Michael & Teri	29-06-31-304-018.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
23	Hunt, Dennis Allen	29-10-06-102-005.000-015		\$ 1,125.00	\$ 450.00	\$ 2,000.00	\$ 300.00	\$ 3,875.00
24	Simpson, George A	29-10-06-102-006.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
25	Hahn, Frank M	29-08-31-308-011.000-015		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
26	TBD	TBD		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
27	TBD	TBD		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
28	TBD	TBD		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
29	TBD	TBD		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
30	TBD	TBD		\$ 375.00	\$ 150.00	\$ 2,000.00	\$ 300.00	\$ 2,825.00
Total				\$ 13,500.00	\$ 5,400.00	\$ 60,000.00	\$ 9,000.00	\$ 87,900.00

CONTRACT CONTROL:

NOTE: INDOT fee schedule will be used that is effective at the time of NTP.

NOTE: Any revisions required to 'Plats, Legals' due to design changes will be charged at half of the original fee.

AMERICAN STRUCTUREPOINT, INC.
TRANSPORTATION DEPARTMENT
2017-2018 STANDARD HOURLY RATES SCHEDULE

Standard Hourly Rates are subject to annual review and adjustment. Hourly rates for services in effect from July 1, 2017, to June 30, 2018 are:

<u>EMPLOYEE CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal	\$250
Project Manager	\$200
Senior Engineer	\$180
Project Engineer	\$145
Senior Planner	\$135
Project Planner	\$120
Senior Environmental Specialist	\$165
Environmental Specialist	\$95
*Staff Engineer, Staff Planner, or Staff Surveyor	\$100
*Staff Scientist	\$65
*Senior Technician	\$140
*Technician	\$100
*Researcher	\$100
Registered Land Surveyor	\$155
*Survey Crew Member	\$85
*Resident Project Representative	\$125
*Construction Inspector	\$95
*Interns and Co-ops	\$65
Landscape Architect	\$130

*Rates for these classifications are subject to overtime premium of an additional 0.16 x hourly rate.

REIMBURSABLE EXPENSES

Reimbursable expenses include direct expenses incurred by American Structurepoint, Inc., or our consultants in the performance of work which is directly related to the project. These expenses are in addition to compensation for Basic and Supplemental services. Reimbursable expenses will be invoiced at 1.1 times our direct costs. These expenses include, but are not limited to, the following:

- Renderings, models, or colored elevations
- Governmental agency review or permit fees
- Reproduction of documents for governmental agency review, bidding, or construction
- Reimbursable expenses charged to us by subconsultants
- Airline tickets, car rental, mileage, and per diem expenses for out-of-town travel
- Couriers and overnight deliveries, including FedEx, UPS, or similar carriers

The following expenses, if incurred in the process of providing professional services included in basic services, are included in the fee noted and are not considered reimbursable expenses:

- Printing for in-house purposes and progress meetings
- Plotting expenses
- Computer charges
- Long distance phone calls
- Faxes
- Postage and handling



October 29, 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:

- CCD Serenade, LLC, Serenade – Mass Grading, Bond #1160948, \$109,300.00, Erosion Control
- Gibraltar Construction, Westfield High School, Bond #30052361, \$124,885.20, Erosion Control
- Gibraltar Construction, Westfield High School, Bond #30052360, \$526,652.50, Storm Sewer
- M/I Homes, Scofield Farms, Section 2, Bond #SUR0048079, \$12,104.00, Common Area Sidewalks
- M/I Homes, Scofield Farms, Section 2, Bond #SUR0048078, \$241,580.00, Storm Sewer & Subsurface Drains

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:

- Grand Communities, Derby Ridge, Section 4, Bond #CMS0328942, \$21,803.00, Erosion Control
- Grand Communities, Derby Ridge, Section 5, Bond #CMS0328943, \$145,685.00, Pedestrian Bridge Improvements in the ROW
- Brandt Construction, Huntington Bank-Greyhound Pass, Bond #929618801, \$44,523.38, Storm Sewer & 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:

- Grand Communities, Derby Ridge, Section 4, Bond #CMS0332576, \$1,982.10, Erosion Control
- Grand Communities, Derby Ridge, Section 5, Bond #CMS0332577, \$13,244.07, Pedestrian Bridge
- Globe Asphalt Paving Co., Inc., Derby Ridge, Section 4, Bond #7658199, \$5,114.12, Streets
- Weihe Construction, Inc., Derby Ridge, Section 4, Bond #30049406, \$1,898.00, Storm Sewer
- Weihe Construction, Inc., Derby Ridge, Section 4, Bond #30049405, \$1,099.00, Lime Stabilization
- Weihe Construction, Inc., Derby Ridge, Section 4, Bond #30049404, \$1,521.00, Concrete Curb
- Brandt Construction, Inc., Huntington Bank Greyhound Pass, Bond #30050260, \$2,133.98, Storm Sewer
- The Snider Group, Wilshire, Section 2, Bond #B3241201, \$6,251.00, Storm Sewers
- The Snider Group, Wilshire, Section 2, Bond #1249725, \$18,834.00, Streets/Curbs
- The Snider Group, Wilshire, Section 2, Bond #B3241202, \$1,012.00, Sidewalks
- The Snider Group, Wilshire, Section 2, Bond #B3241204, \$5,209.00, Erosion Control
- The Snider Group, Wilshire, Section 2, Bond #B3241203, \$2,415.00, Trails
- E&B Paving, Scofield Farms, Section 2, Bond & Rider #30055398, \$16,378.00, Onsite Stone, Asphalt Binder, Asphalt Surface & Temporary Cul-de-sacs
- E&B Paving, Scofield Farms, Section 2, Bond & Rider #30055397, \$3,122.00, Walking Path, Stone Base & Asphalt Pavement
- Sitecrete, LLC, Scofield Farms, Section 2, Bond #30052375, \$3,091.00, Curbs
- Sigma Builders, Bridgewater J-Replat, Bond & Rider #69C007852, \$23,424.00, Erosion Control, Storm Sewers, & Underdrains, Curbs, Roadways, & Walking Trail (This maintenance bond releases Letter of Credit #51006401.)

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:

- Grassy Branch Development, Grassy Branch at Bridgewater, Performance Letter of Credit #18130868-00-000, \$2,568,011.00, Streets/Curbs, Storm Sewer, Sidewalk, Trail, Erosion Control & ROW Improvements
- Woodbury Ridge One, LOC #170050, \$292,785.00, Storm Sewer & Trail
- Woodbury Ridge One, LOC #170040, \$31,597.00, Trail
- Pedcor, Oak Park 2, Maintenance Letter of Credit, #2018-023, \$24,966.56, Streets/Curbs, & Sidewalks

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:

- Bridgewater Masters, Bridgewater J-Replat, LOC #51006401, \$154,870.00, Streets, Curbs, Storm Sewer, Trail, & Erosion Control
- Grassy Branch Development, Grassy Branch at Bridgewater, Performance LOC #18130342-00-000, \$465,300.00, Trail, Erosion Control, & ROW Improvements
- Pedcor, Oak Park 2, LOC, #2018-021, \$293,151.26, Streets & Curbs
- Pedcor, Oak Park 2, LOC, #2018-020, \$13,585.00, Sidewalks

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:

- Crew Carwash No. 49, \$2,957.52, Storm Sewer, Sidewalk, & Erosion Control

CONTRACT AMENDMENT #1 FOR GOODS AND SERVICES

This Contract Amendment #1 for Goods and Services (“Amendment 1”) is made and entered into as of the 29th day of October 2018, by and between City of Westfield (“Contracting Party”) and Merrell Bros., Inc. (“Vendor”) and modifies the original Contract for Goods and Services (“Vendor Contract”) entered into on the 24th day of May 2017.

WITNESSETH

WHEREAS, the CONTRACTING PARTY and the VENDOR entered into the VENDOR CONTRACT for the remediation of sanitary lagoons located at 2706 E. 171st Street, Westfield, Indiana 46074 on the 24th day of May 2017

WHEREAS, the CONTRACTING PARTY desires the VENDOR to amend the VENDOR CONTRACT for the following supplemental goods and services as per “Attachment A”

WHEREAS, in order to provide for the completion of these supplemental services, it is necessary to amend the original VENDOR CONTRACT by an additional not to exceed amount of \$782,119 (SEVEN HUNDRED EIGHTY-TWO THOUSAND ONE HUNDRED NINETEEN DOLLARS) as per “Attachment C”

The VENDOR shall provide the CONTRACTING PARTY the goods and services in accordance with VENDOR CONTRACT general terms and conditions unless otherwise stated in this amendment.

The VENDOR shall perform the goods and services as set forth in “Attachment A,” which is incorporated hereunto and made a part of this Agreement.

The VENDOR shall begin the goods and services under this agreement upon receipt of written notice-to-proceed from the CONTRACTING PARTY, and shall deliver the goods and services in accordance with the schedule contained in “Attachment B.” The VENDOR shall not begin work prior to the date of the notice to proceed.

The VENDOR shall receive payment for the goods and services performed under this agreement as set forth in “Attachment C,” which is incorporated hereunto and made a part of this agreement.

EXECUTED this _____ day of October 2018.

Contracting Party:

City of Westfield
2706 East 171st Street
Westfield, Indiana 46074

Vendor:

Merrell Bros., Inc.
8811 W 500 N
Kokomo, IN 46901

Signature

Date

J. Andrew Cook, Member

Signature

Printed Name

Title

Signature

Date

Kate Snedeker, Member

Date

Signature

Date

Randell Graham, Member

ATTACHMENT A



September 17, 2018

Via Email: bzaiger@kdlegal.com

Brian Zaiger
Krieg DeVault LLP
12800 N. Meridian Street Suite 300
Carmel, IN 46032

Re: Merrell Bros. – City of Westfield Lagoon Closure Project

Dear Brian:

I am writing on behalf of my client, Merrell Bros, Inc. as part of our continuing discussions regarding possible additional work on the City of Westfield Lagoon Project. As you know, we previously provided you Proposed Terms Regarding Change Order, which outlines the process by which we propose Merrell could recommence work on the project. My understanding is that the City is generally agreeable to the approach procedurally, subject to agreement on the amount of work authorized.

When we spoke yesterday, you indicated that the City would now like to focus on estimating the cost of remaining work to complete the project. I asked my client to provide an estimate, which is set forth below. However, I need to make clear that this is only a rough estimate, as it is impossible to determine with much accuracy the precise volume and density of sludge that still must be removed in order to comply with IDEM's requirements.

Here is the estimate that was presented to me by Merrell Bros., Inc.:

The pond is 9 acres. 9 acres x 43,560 sq. ft. per acre = 392,040 sq. ft. 392,040 sq. ft. divided by 27 yards per cubic foot, equals 14,520 yards per foot of sludge. 14,520 divided by 12 inches equals 1,210 yards per foot. There are approximately 201.96 gallons in a cubic yard, so 201.96 x 1,210 = 244,371 gallons. If you take this and load it up into 5 gallon buckets that equals 244,371 divided by 5 = 48,874 five gallon buckets per inch. There very easily could be 6 inches of slop left in this pond that is now about the consistency of biscuits and gravy. This is the

nasty stuff. This is the most expensive part to dispose of because it cannot be land applied so that means it must go to a landfill, which is expensive. The landfill will not accept this material unless every load can pass a paint filter test. This test consists of taking the sludge and putting it into a paint filter that has a screen in the bottom of it. If one drop of liquid comes out of the filter the entire load is rejected. So, this means we have to take this material that is anywhere from skim milk to biscuits and gravy and turn it over, flip it, dry it, etc. to get it dry. It has to go from a 30% consistency (30% sludge – 70% water) to at least 50%. Unfortunately about half of the material was already getting dry before the City stopped us. Now we have to start all over but yet do it maybe in October - November instead of August.

We are estimating that there is around 6 inches on average left, which translates into 7,260 yards or tons. If you take $7,260 \times .30\%$ solids as it sits, that equals 2,178 dry tons. If you take that number times the contract price of \$378.00 per dry ton you come up with \$823,284.

The last thing to point out is this is just to remove the sludge and scrape the lagoon bottom. I don't want any surprises for them later so it is important to point out that if for some reason IDEM would require them to remove additional subsoil from either lagoon, that would be an additional cost. The price for that is identified in the original bid page as \$49.50 per ton.

The \$823,284 estimate likely represents a worst-case scenario, though we cannot be certain. However, in order to provide the City some assurance that it will not need to spend more than this amount, Merrell is prepared to commit to completing the sludge removal for this amount, less a 5% discount, for a not-to-exceed cost of \$782,119. Of course, if the total cost ends up being less than this amount, Merrell Bros., Inc. would only charge for work actually completed.

With this additional information, we ask that you the City promptly provide a proposed Change Order Agreement that includes the amount it is prepared to authorize Merrell Bros., Inc. to undertake.

Time is of the essence. Merrell has been diligently trying since at least August 1 to obtain a commitment from the City to be paid for additional work on this project. It is now mid-September, and Merrell so far has lost approximately six weeks of long, hot, mostly dry days of work. During this time, the lagoon, which was drying when work stopped, has accumulated a lot of water. Additional delays will only increase the total cost of completing this project. Merrell Bros., Inc. is and has been poised to restart work as soon as it has appropriate assurances that it will be paid for that work.

We look forward to hearing from you very soon.

Best regards,

A handwritten signature in black ink, appearing to read 'Eric Pavlack', with a stylized, flowing script.

Eric Pavlack

ATTACHMENT B

Project schedule TBD.

ATTACHMENT C

See Attachment “A” for description of not to exceed compensation.