



CITY OF WESTFIELD, IN
BoardofPublicWorks_Meeting_Agenda_10_09_2017

Monday, October 09, 2017 at 01:30 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Monday, October 09, 2017 at 01:30 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 27, 2017

Documents: [September 27, 2017 Minutes](#)

Resolution

Action Item #2:

2017 Stormwater Bond

Documents: [Bond Resolution - 2017 Westfield Stormwater Bonds-C2](#) | [Confirmatory Resolution - 2017 Westfield Stormwater Bonds-C2](#)

Bid Approval

Construction Standards & Specifications Changes

Change Orders

Contracts/Leases

Action Item #3:

INDOT Local Public Agency Contract Extension - Intersection Sight Distance

Documents: [INDOT LPA Contract Extension](#)

Agreements and/or Memorandum of Understanding (MOU)

Action Item #4:

USI-City of Westfield Agreement - Grand Junction Plaza

Documents: [USI/City of Westfield Agreement - Grand Junction Plaza](#)

Consent Agenda

Department Reports

Fire

Police

Public Works

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 201____, by and between, the **CITY OF WESTFIELD** hereinafter referred to as the "LOCAL PUBLIC AGENCY", and

USI Consultants, Inc.

8415 E. 56th Street

Indianapolis, IN 46216

(317) 544-4996

hereinafter referred to as the "CONSULTANT."

WITNESSETH

WHEREAS, the LOCAL PUBLIC AGENCY desires to contract for engineering services required to prepare contract documents, and an opinion of probable cost, for the project hereinafter described, and,

WHEREAS, THE CONSULTANT has expressed a willingness to prepare said contract documents and opinion of probable cost and provide construction inspection services as desired by the LOCAL PUBLIC AGENCY and to furnish the engineering services in connection therewith;

NOW, THEREFORE, the parties hereto agree that said CONSULTANT shall provide the services and documents, hereinbefore and hereinafter described, in relation to the following described project:

GRAND JUNCTION PLAZA/JERSEY STREET
Retaining Wall Design and Utility Coordination

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

SECTION 1: SERVICES BY CONSULTANT

The services to be provided by the CONSULTANT under this Agreement are as set out in Appendix "A" attached to this Agreement, and made an integral part hereof.

SECTION II: INFORMATION AND SERVICES TO BE FURNISHED BY LOCAL PUBLIC AGENCY

The information and services to be furnished by the LOCAL PUBLIC AGENCY are as set out in Appendix "B", attached to this Agreement, and made an integral part hereof.

SECTION III: NOTICE TO PROCEED AND SCHEDULE

The CONSULTANT shall begin the work to be performed under this Agreement immediately upon receipt of the written notice to proceed from the LOCAL PUBLIC AGENCY, and shall deliver the work to the LOCAL PUBLIC AGENCY in accordance with the Schedule contained in Appendix "C", attached to this Agreement, and made an integral part hereof. The CONSULTANT shall not begin work prior to the date of the notice to proceed, unless otherwise directed by the LOCAL PUBLIC AGENCY.

SECTION IV: COMPENSATION

The CONSULTANT shall receive payment for the work performed under this Agreement as set forth in Appendix "D", attached to this Agreement, and made an integral part hereof.

SECTION V: GENERAL PROVISIONS

1. Work Office

The CONSULTANT shall perform the work under this Agreement at the following offices:

USI CONSULTANTS, INC.
8415 E. 56th Street
Indianapolis, IN 46216
(317) 544-4996

The CONSULTANT shall notify the LOCAL PUBLIC AGENCY of any change in its mailing address and/or the location(s) of the office(s) where the work is performed.

2. Employment

During the period of this Agreement, the CONSULTANT shall not engage, on a full or part time or other basis, any LOCAL PUBLIC AGENCY personnel who remain in the employ of the LOCAL PUBLIC AGENCY.

The State of Indiana has enacted a law (I.C. 22-5-1.7) that requires an entity entering into a contract with a state agency or political subdivision to verify that their employees are legally eligible to work in the United States. As a term of this agreement, CONSULTANT shall:

- A. Enroll in and verify the work eligibility status of newly hired employees through the E-Verify programs (but is not required to do this if the E-Verify program no longer exists);and
- B. Certifies that the CONSULTANT does not knowingly employ unauthorized aliens.

3. Covenant against Contingent Fees

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the LOCAL PUBLIC AGENCY shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

4. Subletting and Assignment of Contract

No portion of the work under the Agreement shall be sublet, assigned or otherwise disposed of, except with the written consent of the LOCAL PUBLIC AGENCY. Consent to sublet, assign or otherwise dispose of any portion of the work under this Agreement shall not be construed to relieve the CONSULTANT of any responsibility for the fulfillment of this Agreement. A subcontractor shall not subcontract any portion of its work under this Agreement.

5. Ownership of Documents/Instruments of Service

The LOCAL PUBLIC AGENCY acknowledges the CONSULTANT'S documents as instruments of professional service. Nevertheless, the plans and specifications prepared under this agreement shall become the property of the LOCAL PUBLIC AGENCY upon completion of the work and payment in full of all monies due to the CONSULTANT. The LOCAL PUBLIC AGENCY shall not reuse or make any modification to the plans and specifications without the prior written authorization of the CONSULTANT. The LOCAL PUBLIC AGENCY agrees, to the fullest permitted by law, to indemnify and hold the CONSULTANT harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the plans and/or specifications by the LOCAL PUBLIC AGENCY or any person or entity that acquires or obtains the plans and specifications from or through the LOCAL PUBLIC AGENCY without written authorization of the CONSULTANT.

6. Access to Records

The CONSULTANT and his subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred and shall make such materials available at its respective offices at all reasonable times during the period of this Agreement and for three years from the date of final payment under the terms of this Agreement, for inspection by the LOCAL PUBLIC AGENCY, and copies thereof shall be furnished if requested.

7. Compliance with State and Other Laws

The CONSULTANT specifically agrees that in performance of the services herein enumerated by him or by a subcontractor or anyone acting in behalf of either, that he or they will comply with state, federal and local statutes, ordinances, and regulations applicable to the performance of this Agreement.

8. Standard of Performance

Services provided by CONSULTANT under this Agreement shall be performed in accordance with generally accepted engineering practices. All estimates, recommendations, opinions, and decisions shall be based on available information at the time, and the experience, technical qualifications, and professional judgment of CONSULTANT. CONSULTANT shall hold harmless the LOCAL PUBLIC AGENCY from claims, suits, actions, and damages resulting from the negligent acts, errors or omissions of the CONSULTANT under this Agreement.

9. Status of Claim

The CONSULTANT shall be responsible for keeping the LOCAL PUBLIC AGENCY currently advised as to the status of any claims made for damages against the CONSULTANT resulting from services performed under this Agreement. The CONSULTANT shall send notice of claims related to work under this Agreement to the LOCAL PUBLIC AGENCY.

10. Responsibility of the CONSULTANT

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services if the errors or deficiencies resulted, independently of all other causes, from negligence of the CONSULTANT. The CONSULTANT shall not be responsible for errors, omissions or deficiencies in the designs, drawings, specifications, reports or other services of the LOCAL PUBLIC AGENCY or other consultants, including, without limitation, surveyors and geotechnical engineers, who have been retained by LOCAL PUBLIC AGENCY. The CONSULTANT shall have no liability for errors or deficiencies in its designs, drawings, specifications and other services that were caused, or contributed to, by errors or deficiencies (unless such errors, omissions or deficiencies were known or should have been known by the CONSULTANT) in the designs, drawings, specifications and other services furnished by the LOCAL PUBLIC AGENCY, or other consultants retained by the LOCAL PUBLIC AGENCY.
- B. Neither the LOCAL PUBLIC AGENCY'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 LOCAL PUBLIC AGENCY in accordance with applicable law for all damages to the LOCAL PUBLIC AGENCY caused by the CONSULTANT'S negligent performance of any of the services furnished under this contract.

- C. The CONSULTANT shall be responsible for all damage to life and property caused by errors or omissions of the CONSULTANT, its subcontractors, agents, or employees in connection with the services rendered by the CONSULTANT pursuant to this contract. The CONSULTANT shall indemnify, defend, and hold harmless the LOCAL PUBLIC AGENCY and their officials and employees, from any liability due to loss, damage, injuries, or other casualties of whatever kind, which, directly and independently of all other causes, arise out of, or result from, the negligence of the CONSULTANT, its agents or employees, in performing the services that are required of the CONSULTANT by this contract.
- D. The CONSULTANT shall have no responsibility for supervising, directing or controlling the work of contractors or other consultants retained by the LOCAL PUBLIC AGENCY, nor shall the CONSULTANT have authority over, or responsibility for, the means, methods, techniques, sequences or procedures of construction (except those required by the contract plans, specifications, special provisions, etc. prepared by the CONSULTANT) selected by contractors. The CONSULTANT shall have no responsibility for the safety of persons on or off the job site, and whether or not engaged in the work, for safety precautions and programs incident to the work of contractors, or for any failure of contractors or others to exercise care for the safety of any person, including employees of contractors, or to comply with laws, rules, regulations, ordinances, codes or orders applicable to contractors' performance of the work.
- E. The rights and remedies of the LOCAL PUBLIC AGENCY provided for under this contract are in addition to any other rights and remedies provided by law.
- F. The CONSULTANT shall have an affirmative duty to advise the LOCAL PUBLIC AGENCY of any known or obvious errors, omissions, or deficiencies in the designs, drawings, specifications, reports, or other services of the LOCAL PUBLIC AGENCY or consultants retained by the LOCAL PUBLIC AGENCY.

11. Insurance

The CONSULTANT shall procure and maintain, until final payment by the LOCAL PUBLIC AGENCY for the services covered by this Agreement, insurance of the kinds and in the amounts hereinafter provided in insurance companies authorized to do such business in the State of Indiana covering all operations under this Agreement whether performed by him or by his subcontractor. During the life of this Agreement, the CONSULTANT shall furnish the LOCAL PUBLIC AGENCY with certificates showing that the required insurance coverage is maintained.

The CONSULTANT will provide the following minimum insurance requirements:

- | | | |
|----|----------------------------------|--|
| A. | Workers' Compensation Insurance: | Employer's Liability:
\$1,000,000 each accident
\$1,000,000 Disease - Each employee
\$1,000,000 Disease - Policy Limit |
| B. | General Liability Insurance: | \$1,000,000 per occurrence bodily injury
or property damage
\$1,000,000 Damage to Rented Property
(each occurrence)
\$10,000 Medical Expense per person
\$2,000,000 Annual aggregate
\$1,000,000 Personal & Adv. Injury
\$1,000,000 Products- Comp/OP/Agg |
| C. | Automobile Liability | \$1,000,000 Combined Single Limit |
| D. | Professional Liability | \$5,000,000 each claim
\$5,000,000 annual aggregate |

12. Progress Reports

The CONSULTANT shall submit a monthly Progress Report to the LOCAL PUBLIC AGENCY by the tenth of each month, showing progress to the first of the month, or may otherwise communicate project status in the form of meetings, phone calls, faxes, emails, etc. The most current progress report should be submitted with each invoice.

13. Changes in Work

In the event the LOCAL PUBLIC AGENCY requires a major change in scope, character or complexity of the work after work has progressed as directed by the LOCAL PUBLIC AGENCY, adjustments in compensation to the CONSULTANT and in time for performance of the work as modified, shall be determined by the LOCAL PUBLIC AGENCY in the exercise of its honest and reasonable judgment and the CONSULTANT shall not commence the additional work or the

change of the scope of the work until a supplemental agreement is executed and the CONSULTANT is authorized in writing by the LOCAL PUBLIC AGENCY to proceed with the work.

14. Delays and Extensions

Delays or hindrances, that are not a result of CONSULTANT error, shall be compensated for by an extension of time for such periods as may be determined by mutual agreement of CONSULTANT and LOCAL PUBLIC AGENCY. Additional costs incurred due to the delay shall also be determined by mutual agreement of CONSULTANT and LOCAL PUBLIC AGENCY.

15. Abandonment and Termination

The LOCAL PUBLIC AGENCY reserves the right to terminate or suspend this Agreement upon written notice.

- A. If the LOCAL PUBLIC AGENCY shall abandon the services herein mentioned, the CONSULTANT shall deliver to the LOCAL PUBLIC AGENCY all data, reports, drawings, specifications and estimates completed or partially completed and these shall become the property of the LOCAL PUBLIC AGENCY. The earned value of the work performed shall be based upon an estimate of the portions of the total services as have been rendered by the CONSULTANT to the date of the abandonment.
- B. If the CONSULTANT shall abandon or fail to timely perform its duties hereunder, including the preparation and completion of plans and specifications within the several times hereinbefore specified, or within such further extension or extensions of time as agreed upon, the LOCAL PUBLIC AGENCY may give written notice, that if the CONSULTANT shall not within twenty (20) calendar days from the date of such notice, have complied with the requirements of this Agreement, then the Agreement is deemed terminated. Upon the mailing or delivery of such notice or personal delivery thereof to the CONSULTANT, and the failure of the CONSULTANT within said described twenty (20) day period to fully comply with each and all requirements of this Agreement, this Agreement shall terminate.

When written notice is referred to herein, it shall be deemed given when deposited in the mail addressed to the CONSULTANT at its last known address.

- C. In case the LOCAL PUBLIC AGENCY shall act under either of the preceding paragraphs, then 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 Agreement, shall be delivered within twenty (20) days to the LOCAL PUBLIC AGENCY.

16. Non-Discrimination

Pursuant to I.C. 22-9-1-10 and I.C. 5-16-6-1, the CONSULTANT and his subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, handicap, national origin or age. Breach of this covenant may be regarded as a material breach of the Agreement.

17. Successors and Assignees

The LOCAL PUBLIC AGENCY, insofar as authorized by law, binds itself and its successors, and the CONSULTANT binds its successors, executors, administrators and assignees of such other party, as the cause may be insofar as authorized by law, in respect to all covenants of this Agreement.

Except as above set forth, neither the LOCAL PUBLIC AGENCY nor the CONSULTANT shall assign, sublet or transfer its or his interest in this Agreement without the consent of the other.

18. Iran Certification

CONSULTANT 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.

19. 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 Consultant shall comply with IRCA and all other applicable federal, state and local immigration laws, regulations, Executive Orders ('other immigration laws') and by executing this Contract, 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. Consultant 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 Contract. The Consultant 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 Consultant's failure to comply with IRCA or other immigration law. Consultant shall include this provision in any subcontracts or subordinate agreements it enters into with respect to this Agreement.

20. 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 the Consultant or any individual in a management position with Consultant is discovered on the SND list, published by OFAC, such discovery shall constitute a material breach of this Contract. Contracting Party shall promptly notify Consultant, which shall have three (3) days in which to provide to Contracting Party clear and convincing evidence that (a) neither Consultant nor any individual in a management position with Consultant is an SND, (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. Consultant shall include this provision in any subcontracts or subordinate agreements it enters into with respect to this Agreement.

21. Supplements

This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

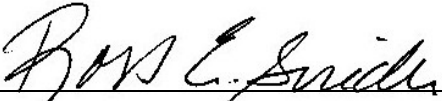
22. Indemnification

CONSULTANT shall defend, indemnify, and hold harmless the LOCAL PUBLIC AGENCY (including its officers, employees, and agents) from all demands, damages, liabilities, costs, and expenses (including reasonable attorney's fees), judgments, settlements, and penalties of every kind arising out of its performance of Services including, without limitation, damages for personal injury or death or loss or damage to property due, or claimed to be due, to the negligence or willful misconduct of CONSULTANT including such portion thereof due, or claimed to be due, to the negligence of the LOCAL PUBLIC AGENCY except that CONSULTANT shall have no duty to hold harmless the LOCAL PUBLIC AGENCY, for such portion of the foregoing proximately caused by negligence or misconduct of the LOCAL PUBLIC AGENCY, and if any suit, claim, or demand was defended by CONSULTANT, then the LOCAL PUBLIC AGENCY will reimburse CONSULTANT for its pro-rata share of its costs, expenses (including reasonable attorney's fees), and damages. The LOCAL PUBLIC AGENCY may elect to participate in the defense of any suit, claim, or demand by employing attorneys at its own expense, without waiving CONSULTANT's obligations to indemnify, defend, or hold harmless. CONSULTANT shall not settle or compromise any claim, suit, or action, or consent to entry of judgment without the prior written consent of the LOCAL PUBLIC AGENCY and without an unconditional release of all liability by each claimant or plaintiff to the LOCAL PUBLIC AGENCY.

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

CONSULTANT

USI CONSULTANTS, INC.



Ross E. Snider, PE, President

LOCAL PUBLIC AGENCY

CITY OF WESTIFIELD

Jeremy Lollar
Public Works Director



Philip D. Beer II, PE, PLS, FACEC, Vice President

Phil Sundling, PE
City Engineer

DATE: September 28, 2017

Date: _____

SERVICES BY CONSULTANT:

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

The CONSULTANT shall be responsible for performing the following activities:

1. Utility coordination throughout the duration of the project.
2. Retaining wall design (approximately 250 feet along the north side of Jersey street)

Remainder of this page left blank intentionally.

INFORMATION AND SERVICES TO BE FURNISHED BY LOCAL PUBLIC AGENCY:

The LOCAL PUBLIC AGENCY shall furnish the CONSULTANT with the following (if requested):

1. Available data from the transportation planning process.
2. Plans of existing roadways & structures, and traffic assignments, if available.
3. Assist with access to enter upon public and private lands as required for the CONSULTANT to perform the duties required under this Agreement.
4. All legal services as may be required for development of the project.

Remainder of this page left blank intentionally.

SCHEDULE:

The CONSULTANT shall begin the work to be performed under this agreement within thirty (30) days upon receipt of the written Notice-to-Proceed (NTP) from the LOCAL PUBLIC AGENCY and shall deliver the work to the LOCAL PUBLIC AGENCY in accordance with the Schedule shown below. The CONSULTANT shall not begin work prior to the date of the Notice to Proceed.

The anticipated schedule of work will approximately be as shown below:

Preliminary Retaining Wall Design.....	60 days after NTP
Final Retaining Wall Design.....	60 days after approval of Preliminary Plans
Utility Coordination.....	throughout project duration

Remainder of this page left blank intentionally.

COMPENSATION:

The CONSULTANT shall receive as payment for the work performed under this Agreement the Not to exceed fee of \$20,000.00, unless a modification of this agreement is approved in writing by the LOCAL PUBLIC AGENCY.

The CONSULTANT shall be paid based on the attached billable hourly rate schedule.

The CONSULTANT shall not be paid for any service performed by the LOCAL PUBLIC AGENCY or services not required to develop this project. If notice to proceed with any portion of the work is not given prior to one year from the date of this Agreement, the fees for that portion of the work may be renegotiated as mutually agreed upon by the LOCAL PUBLIC AGENCY and the CONSULTANT. Costs for routine photocopy and paper reproduction, cellular phone costs, pager costs and computer time costs will not be paid as a reimbursable but is to be included in the above fees and overhead costs.

Method of Payment

The CONSULTANT shall submit invoices to the LOCAL PUBLIC AGENCY, not more often than once per month during the progress of the work, for partially completed work as of the date of the invoice. Such invoices shall represent the value, to the LOCAL PUBLIC AGENCY, of the partially completed work based on the proportion which its percentage of completion bears to the total cost of the fully completed work.

The LOCAL PUBLIC AGENCY for and in consideration of the rendering of the engineering services provided for in Appendix "A", agrees to pay the CONSULTANT for rendering such services the fee established above upon completion of the work there under, acceptance thereof by the LOCAL PUBLIC AGENCY and upon the CONSULTANT submitting an invoice as described above.

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.

Remainder of this page left blank intentionally.

USI Billable Hourly Rates Per Classification

2017 - 2018

Effective: September 26, 2017

CLASSIFICATION	BILLABLE HOURLY RATE
1. Engineer IV (Department Manager)	\$226.00
2. Engineer III (Senior Engineer)	\$186.00
3. Engineer II (Project Manager)	\$163.00
4. Engineer I (Engineer)	\$143.00
5. Engineer Intern	\$105.00
6. Designer / Detailer II	\$174.00
7. Designer / Detailer I	\$156.00
8. Construction Project Manager V (Department Manager)	\$186.00
9. Construction Project Manager IV	\$158.00
10. Construction Project Manager III	\$140.00
11. Construction Project Manager II	\$112.00
12. Construction Project Manager I	\$90.00
13. Survey Manager (Design Surveys)	\$210.00
14. Survey Manager (Construction Surveys)	\$177.00
15. Asst. Survey Manager II	\$118.00
16. Asst. Survey Manager I	\$103.00
17. Survey Crew Chief II	\$133.00
18. Survey Crew Chief I	\$104.00
19. Survey Instrumentman I	\$89.00
20. Right-of-Way Project Manager II	\$135.00
21. Right-of-Way Project Manager I	\$114.00
22. CADD Technician	\$75.00
23. Systems Administrator	\$146.00
24. Clerical	\$83.00
25. Intern	\$59.00

NOTES:

1. The base rate shown will be multiplied by a factor of 1.5 for overtime rates (over 8 hrs. per day).
2. Same rates will apply for travel time.
3. Motel expenses will be reimbursed at the rate charged to USI Consultants, Inc.
4. Per Diem expense will be \$30.00 per night per individual.
5. Mileage Rates will be \$0.38 a mile

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

EDS #: A249-18-L170106

Des. No.: 1500430

CFDA No.: 20.205

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

NOTICE TO PARTIES

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

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

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

With a copy to:

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

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

Greenfield District Office
32 South Broadway
Greenfield, Indiana 46140

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

City of Westfield
130 Penn Street
Westfield, Indiana 46074

RECITALS

WHEREAS, the PARTIES had previously entered into a Contract, which is attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, the Contract has expired, but the project referenced in **Exhibit A** has not yet been completed, and the PARTIES believe it is in the best interests of the citizens of the State of Indiana to complete the project; and

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

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

SECTION I. PREAMBLE. The Preamble, Notice and Recitals recorded above are incorporated by reference into this Contract. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Contract.

SECTION II. PURPOSE. The purpose of this Contract is to complete the project, for which it was contracted in **Exhibit A**. Except for those terms provided for in this Contract, the terms and provisions in **Exhibit A** are incorporated herein by reference.

SECTION III. PROJECT FUNDS. INDOT will not share in the cost of the Project. INDOT will disburse funds from time to time; however, INDOT will be reimbursed by the Federal Highway Administration (FHWA) or the LPA. PARTIES acknowledge that obligations in the amount of **\$ 54,450.00** have been made toward completion of the project. Additional federal funds in the amount of **\$ 54,450.00** have been allocated to the Project since the execution of the original LPA contract (which is attached as **Exhibit A**). The maximum amount of federal funds allocated to the Project is **\$ 324,450.00**. The remaining balance of the federal fund allocation for the Project is **\$ 270,000.00**, which shall be made in accordance with Section V.P. for the completion of the project.

SECTION IV. TERM. The term of this Contract shall commence on **June 30, 2017** and terminate on **June 30, 2020**, unless otherwise terminated under the provisions of this Contract.

SECTION V. GENERAL PROVISIONS

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

- C. **Audits.** The LPA acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

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

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

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

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

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.
3. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this

required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

E. Compliance with Laws.

1. The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."
4. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ig/>. If the LPA or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44.1-1-4 and under any other applicable State or Federal laws.
5. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this agreement. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.
6. As required by I.C. 5-22-3-7:
 - (1) The LPA and any officials of the LPA certify that:
 - (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines]; in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the LPA will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

- (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

F. Debarment and Suspension.

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

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

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

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

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

H. Disputes.

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute.

Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.

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

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

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

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

3. Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
 4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;
 5. Within thirty (30) days after receiving notice under subdivision (3)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
 6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.
- J. Force Majeure.** In the event either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- K. Funding Cancellation Clause.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- L. Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.
- M. Indemnification.** The LPA agrees to and shall indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT and/or its/their officials, agents, representatives, attorneys and employees, individually and/or jointly, from any and all claims, demands, actions, liability and/or liens that may be asserted by the LPA and/or by any other person, firm, corporation, insurer, government or other legal entity, for any claim for damages arising out of any and all loss, damage, injuries, and/or other casualties of whatsoever kind, or by whomsoever caused, to the person or property of anyone on or off the right-of-way, arising out of or resulting from the performance of the contract or from the installation, existence, use, maintenance, condition, repairs, alteration and/or removal of any equipment or material, whether due in whole or in part to the acts and/or omissions and/or negligent acts and/or omissions:
- (a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
 - (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;

- (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
- (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

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

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

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

O. Non-Discrimination.

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

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

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

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the

following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, income status, limited English proficiency, or status as a veteran).

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
 - a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - b. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
 - c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.
 - d. Information and Reports: The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
 - e. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
 - f. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means of

enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

- P. **Payment.** All payments made by INDOT, if any, shall be made in arrears in conformance with State fiscal policies and procedures and, as required by I.C. 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by I.C. 4-13-2-20.
- Q. **Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.
- R. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:
1. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
 2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
 3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.
- S. **Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
- T. **Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

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

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

Non-Collusion

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

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

LPA: City of Westfield

**STATE OF INDIANA
Department of Transportation**

Print or type name and title

Recommended for approval by:

Signature and date

Steven Duncan, Director
Contract Administration Division

Print or type name and title

Date: _____

Signature and date

Executed by:

Print or type name and title

(FOR)
Joseph McGuinness, Commissioner

Date: _____

Signature and date

Department of Administration

LPA DUNS # _____

Jessica Robertson, Commissioner

Attest

Date: _____

State Budget Agency

Auditor or Clerk Treasurer

Jason D. Dudich, Director

Date: _____

This instrument prepared by:

Approved as to Form and Legality:

Ellen Hite
August 21, 2017

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

Date: _____

EXHIBIT A

Version 2-18-2014

INDIANA DEPARTMENT OF TRANSPORTATION - LOCAL PUBLIC AGENCY PROJECT COORDINATION CONTRACT

EDS #: A249-15-L150099

Des. No.: 1500430

CFDA No.: 20.205

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

NOTICE TO PARTIES

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

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

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

With a copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, IGCN 758
Indianapolis, IN 46204

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

Greenfield District Office
32 South Broadway
Greenfield, Indiana 46140

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

City of Westfield
130 Penn Street
Westfield, Indiana 46074

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

SECTION V TERM AND SCHEDULE.

- A. If the LPA has the plans, special provisions, and cost estimate (list of pay items, quantities, and unit prices) for the Project ready such that federal funds can be obligated (INDOT obligates the funds about 7 weeks before the date bids are opened for the construction contract) between July 1, 2016 and June 30, 2017, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible.
- B. In the event that federal funds for the Project are not obligated during the period listed in section V.A., the federal funds allocated to the Project will lapse.

SECTION VI GENERAL PROVISIONS

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

The State considers the LPA to be a "sub-recipient" for purposes of this Contract. However, if required by applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract the LPA shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The LPA is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the LPA's fiscal year. The LPA agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the LPA, and not of a parent, member, or subsidiary corporation of the LPA, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the LPA is not out of compliance with the financial aspects of this Contract.

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any

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

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, (Disclosure Form to Report Lobbying), in accordance with its instructions.
3. The LPA also agrees by signing this Contract that it shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

E. Compliance with Laws.

1. The LPA shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under, after execution of this Contract shall be reviewed by INDOT and the LPA to determine whether the provisions of this Contract require formal modification.
2. The LPA acknowledges that federal requirements provide for the possible loss of federal funding to one degree or another when the requirements of Public Law 91-646 and other applicable federal and state laws, rules and regulations are not complied with.
3. The LPA acknowledges paragraph 7 of the Federal Highway Program Manual, Volume 7, Chapter 1, Section 3, entitled "Withholding Federal Participation" which is herewith quoted in part as follows: "Where correctable noncompliance with provisions of law or FHWA requirements exist, federal funds may be withheld until compliance is obtained. Where compliance is not correctable, the FHWA may deny participation in parcel or project costs in part or in total."
4. The LPA and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, *et seq.*, Indiana Code § 4-2-7, *et seq.*, the regulations promulgated there under, and Executive Order 05-12, dated January 12, 2005. If the LPA is not familiar with these ethical requirements, the LPA should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<http://www.in.gov/ethics/>>>>. If the LPA or its agents violate any applicable ethical standards, INDOT may, in its sole discretion, terminate this Contract immediately upon notice to the LPA. In addition, the LPA may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 35-44.1-1-4 and under any other applicable State or Federal laws.
5. The LPA represents and warrants that the LPA and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities under this agreement. Failure to do so may be deemed a material breach of this Contract and grounds for termination and denial of further work with the State.

6. As required by I.C. 5-22-3-7:

- (1) The LPA and any officials of the LPA certify that:
 - (A) the LPA, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines]; in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the LPA will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
- (2) The LPA and any officials of the LPA certify that an affiliate or official of the LPA and any agent acting on behalf of the LPA or on behalf of an affiliate or official of the LPA except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

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

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

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

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

G. Disputes.

1. Should any disputes arise with respect to this Contract, the LPA and INDOT agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
2. The LPA agrees that, the existence of a dispute notwithstanding, it shall continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the LPA fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by INDOT or the LPA as a result of such failure to proceed shall be borne by the LPA.

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

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

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

1. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
2. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
3. Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2)

notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

4. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (3)(2) above, or otherwise receiving actual notice of such conviction;
5. Within thirty (30) days after receiving notice under subdivision (3)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
6. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.

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

J. **Funding Cancellation Clause.** When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Contract, this Contract shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

K. **Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

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

- (a) of the State of Indiana, INDOT, and/or its/their officials, agents, representatives, attorneys and/or employees, individually and/or jointly;
- (b) of the LPA, and/or its officials, agents, representatives, attorneys and/or employees, individually and/or jointly;

- (c) of any and all persons, firms, corporations, insurers, government or other legal entity engaged in the performance of the contract; and/or
- (d) the joint negligence of any of them, including any claim arising out of the Worker's Compensation law or any other law, ordinance, order, or decree.

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

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

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

N. No Investment in Iran. As required by IC 5-22-16.5, the LPA certifies that the LPA 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.

O. Non-Discrimination.

1. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the LPA, 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.
2. The LPA understands that INDOT is a recipient of Federal Funds. Pursuant to that understanding, the LPA, agrees that if the LPA employs fifty (50) or more employees and does at least \$50,000 worth of business with the State and is not exempt, the LPA will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LPA shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Contract.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion and disability.)

3. During the performance of this Contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:
 - a. Compliance with Regulations: The LPA shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
 - b. Nondiscrimination: The LPA, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
 - c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LPA of the LPA's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran.
 - d. Information and Reports: The LPA shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of an LPA is in the exclusive possession of another who fails or refuses furnish this information, the LPA shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
 - e. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the LPA under the Contract until the LPA complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.
 - f. Incorporation of Provisions: The LPA shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LPA shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation or the Federal Highway Administration may direct as a means

of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LPA becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LPA may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LPA may request the United States of America to enter into such litigation to protect the interests of the United States of America.

- P. **Payment.** All payments made by INDOT, if any, shall be made in arrears in conformance with State fiscal policies and procedures and, as required by I.C. 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the LPA in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by I.C. 4-13-2-20.
- Q. **Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.
- R. **Pollution Control Requirements.** If this Contract is for \$100,000 or more, the LPA:
1. Stipulates any facility to be utilized in performance under or to benefit from this Contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;
 2. Agrees to comply with all of the requirements of the Clean Air Act (including section 114) and the Federal Water Pollution Control Act (including section 308) and all regulations and guidelines issued there under; and
 3. Stipulates, as a condition of federal aid pursuant to this Contract, it shall notify INDOT and the FHWA of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this Contract is under consideration to be listed on the EPA List of Violating Facilities.
- S. **Severability.** The invalidity of any section, subsection, clause or provision of the Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.
- T. **Status of Claims.** The LPA shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the LPA resulting from services performed under this Contract. The LPA shall send notice of claims related to work under this Contract to:

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

The remainder of this page is intentionally left blank.

Non-Collusion

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

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

Randell Graham
Print or type name and title

[Signature] 6-24-15
Signature and date

Jeremy Lollar - Director
Print or type name and title

[Signature] 6/24/15
Signature and date

GARY PENCE Proj. Manager
Print or type name and title

[Signature] 6-2-15
Signature and date

LPA DUNS #: 962590683

Attest:
[Signature]
Auditor or Clerk Treasurer

Recommended for approval by:

[Signature]
Robert D. Cales, Director
Contract Administration Division

Date: 7/17/2015

Executed by:

[Signature] DEPUTY COMMISSIONER (FOR)
Brandye Hendrickson, Commissioner

Date: 7/21/2015

Department of Administration

[Signature] (FOR)
Jessica Robertson, Commissioner

Date: 7/27/15

State Budget Agency

[Signature]
Brian B. Bailey, Director

Date: 8-4-15

Approved as to Form and Legality:

[Signature] (FOR)
Gregory P. Zoeller, Attorney General of Indiana

Date: 8.13.15

This instrument prepared by:

Ellen Hite
June 1, 2015

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: 1500430
Program: Group I Safety
Type of Project: Sight Distance Improvement
Location: Various Locations

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

A project to improve intersection sight distance, in various locations, in the City of Westfield, Hamilton County, Indiana.

ATTACHMENT B

LPA'S RIGHTS AND DUTIES

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

1. The LPA has requested and intends to use federal funds to partially pay for the Project. The LPA asserts that the LPA has completed or will complete the Project in accordance with INDOT's Design Manual (See <http://www.in.gov/div/contracts/standards/dm.html>) and all pertinent state and federal laws, regulations, policies and guidance. The LPA or its consultant shall prepare the environmental document(s) for the Project in accordance with INDOT's Environmental Manual (See <http://www.in.gov/indot/7287.htm>). Land acquisition for the Project by the LPA or its consultant shall be in accordance with INDOT's Real Estate Manuals (See <http://www.in.gov/indot/3018.htm>).
2. The LPA acknowledges that in order for the cost of consultant services to be eligible for federal funds or federal credits, the consultant selection must be in accordance with INDOT's consultant selection procedure.
3. REQUIREMENTS FOR ADDITIONAL CONTRACTS
 - A. If the LPA wishes to contract with a consultant, contractor or other agent to complete work on the Project, LPA may:
 1. use the "LPA-CONSULTANT Agreement", which is found at <http://www.in.gov/indot/div/projects/LPASection/> and is incorporated by reference; or
 2. use a form of agreement that has been reviewed and approved by INDOT.
4. The LPA agrees to provide all relevant documents including, but not limited to, all plans, specifications and special provisions, to INDOT for review and approval, and such approval will not be unreasonably withheld. If INDOT does not approve an LPA submittal, the LPA shall cause the submittal to be modified in order to secure INDOT's approval. The LPA understands that if it fails to provide a submittal, submits it late, or the submittal is not approvable, the schedule, cost, and federal funds for the Project may be jeopardized.
5. The LPA agrees to complete all right-of-way acquisition, utility coordination and acquire the necessary permit(s) and submit documentation of such to INDOT. The utility coordination shall be in accordance with 105 IAC 13.
6. At least ninety to one hundred twenty (90 to 120) calendar days prior to INDOT's scheduled construction letting for the project, the LPA will submit to INDOT documentation of the LPA's fiscal body's resolution or other official action irrevocably committing the LPA to fund the LPA's cost of the Project as described in Attachment D.

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

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

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

12. The LPA shall submit reports, including but not limited to quarterly reports, to INDOT regarding the project's progress and the performance of work per INDOT standard reporting methods. If the required reports are not submitted, federal funds may be withheld.
13. The LPA hereby agrees that all utilities which cross or otherwise occupy the right-of-way of said Project shall be regulated on a continuing basis by the LPA in accordance with INDOT's Utility Procedure and Accommodation Policy (See <http://www.in.gov/indot/2376.htm>). The LPA shall execute written use and occupancy contracts as defined in this Policy.
14. If FHWA or INDOT invokes sanctions per Section VI.D.2. of the General Provisions of this contract, or otherwise denies or withholds federal funds (hereinafter called a citation or cited funds) for any reason and for all or any part of the Project, the LPA agrees as follows:
 - a. In the case of correctable noncompliance, the LPA shall make the corrections, to the satisfaction of FHWA and INDOT, in a reasonable amount of time. If the LPA fails to do so, paragraph 14.b. and/or 14.c. below, as applicable, shall apply.
 - b. In case a citation for noncompliance is not correctable or if correctable and the LPA does not make any corrections, or if correctable and the LPA makes corrections that are not acceptable to FHWA and INDOT, or for whatever reason the FHWA citation continues in force beyond a reasonable amount of time, this paragraph shall apply and adjustments shall be made as follows:
 1. The LPA shall reimburse INDOT the total amount of all right-of-way costs that are subject to FHWA citation that have been paid by INDOT to the LPA.
 2. If no right-of-way costs have as yet been paid by INDOT to the LPA or to others, INDOT will not pay any right-of-way claim or billing that is subject to FHWA citation.
 3. The LPA agrees that it is not entitled to bill INDOT or to be reimbursed for any of its right-of-way liabilities or costs that are subject to any FHWA citation in force.
 - c. If FHWA issues a citation denying or withholding all or any part of construction costs due to LPA noncompliance with right-of-way requirements, and construction work was or is in progress, the following shall apply:
 1. INDOT may elect to terminate, suspend, or continue construction work in accord with the provisions of the construction contract.
 2. INDOT may elect to pay its obligations under the provisions of the construction contract.
 3. In the case of correctable noncompliance, the LPA shall make the corrections in a reasonable amount of time to the satisfaction of FHWA and INDOT.

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

ATTACHMENT C

INDOT'S RIGHTS AND DUTIES

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

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

ATTACHMENT D

PROJECT FUNDS

I. Project Costs.

- A. If the Program shown on Attachment A is receiving Group I Safety federal-aid funds for the project, the LPA is allocated the funds through the MPO as written in their fiscally constrained TIP. Any adjustments (positive or negative) to the dollar amount listed in the TIP are hereby considered adjustments to the contract between the LPA and INDOT, as the MPO must maintain fiscal constraint for all projects listed. Federal funds made available to the LPA by INDOT will be used to pay 90% of the eligible Project costs. The maximum amount of federal-aid funds allocated to the Project is \$ 270,000.00.

X

OR

- B. Federal-aid Funds made available to the LPA by INDOT will be used to pay _____ % of the eligible Project costs. The maximum amount of federal funds allocated to the project is \$ _____.

- C. The LPA understands and agrees that in accordance with I.C. 8-23-2-14, federal reimbursement for construction inspection and testing construction materials, after INDOT retains 2.5% of the final construction costs for oversight, is limited to:

- (1) 14.5% of the final construction cost if the final construction cost is less than or equal to \$500,000; or
- (2) 12.5% of the final construction cost if the final construction cost is greater than \$500,000.

- D. The remainder of the Project cost shall be borne by the LPA. For the avoidance of doubt, INDOT shall not pay for any costs relating to the Project unless the PARTIES have agreed in a document (which specifically references section I.D. of Attachment D of this contract) signed by an authorized representative of INDOT, the Indiana Department of Administration, State Budget Agency, and the Attorney General of Indiana.

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

- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
- (2) Are verifiable from INDOT's or the LPA's records;
- (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR section 18.22;
- (4) Are included in the approved budget, or amendment thereto; and

- (5) Were not incurred prior to FHWA authorization.

II. Billings.

A. Billing:

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

B. Other Costs:

1. The LPA shall pay INDOT for expenses incurred in performing the final audit less the amount eligible for Federal-aid reimbursement.
2. The LPA shall pay INDOT for expenses incurred in supervising the Project out of the maximum limitation shown in section I.C. of Attachment D.

III. Repayment Provisions.

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

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY September 27, 2017

The Westfield Board of Public Works and Safety met on September 27, 2017 at the Westfield Public Works Conference Room. Present were, Randy Graham, Kate Snedeker, Mayor Cook, Deputy Clerk Treasurer Kim Strang, and Nikki Finelli, representing legal counsel.

Randy Graham called the meeting to order at 1:02 P.M.

AGENDA ITEMS:

Action Item #1: Meeting Minutes Consideration for Approval:

Mayor Cook made the motion to approve the August 23, 2017 meeting minutes as presented. Kate Snedeker seconded. Vote: Yes-3; No-0. Motion carried.

AGREEMENTS/MEMORANDUM OF UNDERSTANDING (MOU):

Action Item #2: Chatham Hills Road Impact Fee Payment Agreement

Phil Sundling presented detailing the terms of the agreement.

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

Action Item #3: Robinson Tract-Utility & Access Easement Agreement

Phil Sundling presented stating Robinson being a landowner, desires to retain an easement which is owned by the City. Terms of the agreement were discussed.

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

Action Item #4: Northpoint, Bo Properties Westfield, Westfield Definitive Agreement-Signing Authority

Phil Sundling presented asking for the signing authority for the Northpoint, Bo Properties agreement.

Randy Graham made the motion to approve the agreement and request for signing authority. Mayor Cook seconded. Vote: Yes-2; No-0 (Kate Snedeker abstained) Motion carried.

Action Item #5: 146th Street Bridge-Maintenance Agreement for Lighting

Phil Sundling presented stating the County would like install lighting to the 146th street Bridge. The county has agreed to pay for all costs associated with installation. Carmel and Westfield have agreed to maintain the Enhancements after installation. (North side of the bridge maintained by Carmel, South side by Westfield)

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

Action Item #6: 2017 Stormwater Bond

Jeremy Lollar presented stating the projects and costs that would be covered with the bond monies.

Nikki Finelli give a brief overview of the Resolution that will have a public hearing on October 9, @ 1:30pm in the Public Works conference room.

Mayor Cook made a motion approve the Declaratory Resolution and to hold a public hearing on the Resolution. Kate Snedeker seconded. Vote: Yes-3; No-0. Motion carried.

CONTRACTS/LEASES

Action Item #7: 161st & Spring Mill Survey & Preliminary Design Contract

Phil Sundling presented giving details of the contract, which shall not exceed \$169,630.00.

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

Action Item #8: United Consulting- Partial Inspection Services for Monon Trail Phase 7 Signing Authority.

Phil Sundling presented stating this is an INDOT project, with inspection services that will be done jointly by City employees, and United Consulting.

Mayor Cook made the motion to approve the signing authority to Jeremy Lollar concerning inspection services. Kate Snedeker seconded. Vote: Yes-3; No-0. Motion carried.

CONSENT AGENDA:

September Bond Information

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

DEPARTMENT REPORTS:

- **Fire** –Joe Lyons
- **Police**- Chief Rush
- **Public Works**- Jeremy Lollar

With no further business, Mayor Cook made the motion to adjourn. Kate Snedeker seconded. The meeting was adjourned at 1:39 P.M.

Deputy Clerk-Treasurer

Board of Public Works and Safety

Resolution #17-130

BOND RESOLUTION OF THE BOARD OF PUBLIC WORKS AND SAFETY OF
THE CITY OF WESTFIELD, INDIANA, ACTING AS THE BOARD OF DIRECTORS OF
THE STORM WATER MANAGEMENT DIVISION OF THE CITY OF WESTFIELD,
INDIANA

WHEREAS, on September 27, 2017, the Board of Public Works and Safety ("Board") of the City of Westfield, Indiana ("City"), acting as the board of directors of the Stormwater Management Division ("Division") of the City, being the governing body of the Storm Water District ("District") of the City, adopted a Declaratory Resolution declaring that it is necessary for the protection of the public health and welfare of the inhabitants of the District and the safeguarding of the property within the District and will be of public utility and benefit, to complete the storm water projects as described in Attachment 1 attached hereto and incorporated herein by reference, together with necessary appurtenances, related improvements and equipment (collectively, "Projects"), and that maps, plans, specifications, drawings and estimates have been prepared and filed by engineers employed by the Board for the completion of the Projects, which maps, plans, specifications, drawings and estimates have been approved by the Board; and

WHEREAS, the District has acquired all lands, easements, and/or rights-of-way necessary to complete the Projects; if any additional property is required, the Board shall acquire said property in accordance with IC 8-1.5-5; and

WHEREAS, on October 9, 2017, after notice and public hearing in accordance with IC 8-1.5-5 and IC 5-3-1, the Board confirmed the Declaratory Resolution by the adoption of a Confirmatory Resolution; and

WHEREAS, the Board has obtained engineer's estimates of the costs for the construction of the Projects and will advertise for and receive bids therefor, which bids are subject to the Board's determination to construct the Projects and subject to the Board obtaining funds to pay for the Projects; that on the basis of said estimates, the estimated cost of the Projects, including estimated incidental expenses, is in the approximate amount of Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000); and

WHEREAS, the Board finds that it does not have sufficient funds on hand to apply to the cost of the Projects, and that the entire cost of the Projects is to be financed by the issuance of storm water revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$3,250,000 and, if necessary, bond anticipation notes ("BANs"); and

WHEREAS, the bonds to be issued pursuant to this resolution are to be issued subject to the provisions of Indiana Code 8-1.5-5, as in effect on the date of delivery of the bonds authorized herein (collectively, "Act"), and the terms and restrictions of this resolution; and

WHEREAS, the Board has been advised that it may be cost efficient to purchase municipal bond insurance and/or a debt service reserve surety for the bonds authorized herein; and

WHEREAS, the storm water revenue bonds to be issued pursuant to this resolution will constitute a first charge against the Net Revenues of the storm water system, and are to be issued subject to the provisions of the laws of the State of Indiana, including, without limitation, the Act, and the terms and restrictions of this resolution; and

WHEREAS, the Board desires to authorize the issuance of BANs, in one or more series, hereunder, if necessary, payable solely from the proceeds of storm water revenue bonds issued to finance the aforementioned cost of the Projects, and to authorize the refunding of the BANs, if issued; and

WHEREAS, the Board shall obtain all necessary approvals required by law for the issuance of the bonds authorized hereby, including the approval of the Common Council; and

WHEREAS, the Board now finds that all conditions precedent to the adoption of a resolution authorizing the issuance of said revenue bonds and BANs have been complied with in accordance with the provisions of the Act;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS AND SAFETY, ACTING AS THE BOARD OF DIRECTORS OF THE DEPARTMENT OF STORM WATER MANAGEMENT OF THE STORM WATER DISTRICT OF THE CITY OF WESTFIELD, INDIANA, THAT:

Section 1. Authorization of Project. The Board shall proceed with the construction of the Projects in accordance with the cost estimates and the maps, plans, specifications and drawings heretofore prepared and filed for the Projects. The cost of financing the completion of the Projects shall not exceed the sum of \$3,250,000 plus investment earnings on the BAN and bond proceeds, without further authorization from the Board. The Projects shall be constructed in accordance with the maps, plans, specifications and drawings heretofore mentioned and the bonds and BANs herein authorized shall be issued pursuant to and in accordance with the provisions of the Act. The term "storm water system," "system" and other like terms where used in this resolution shall be construed to mean and include the existing storm water system and all real estate and equipment used in connection therewith and appurtenances thereto, and all extensions, additions and improvements thereto and replacements thereof now or at any time hereafter constructed or acquired.

Section 2. Issuance of BANs and Bonds. (a) The City shall, acting for and on behalf of the Board, issue, if necessary, BANs of the District, in one or more series, for the purpose of procuring interim financing to apply on the cost of the Projects. The City shall issue its BANs in an amount not to exceed Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000) to be designated "Storm Water District Bond Anticipation Notes." The BANs shall be sold at a price not less than 99% of the par value thereof, shall be numbered consecutively from 1 upward, shall be any multiple of \$1,000 as designated in the purchase agreement for the BANs, shall be dated as of the date of delivery thereof, and shall bear interest at a rate not to exceed 6.0% per annum (the exact rate or rates to be determined through negotiations with the purchaser of the BANs). The BANs will mature no later than five (5) years after their date of delivery. The BANs are subject to renewal or extension at an interest rate or rates not to exceed 6.0% per annum (the exact rate or

rates to be negotiated with the purchaser of the BANs). The term of the BANs and all renewal BANs may not exceed five years from the date of delivery of the initial BANs. The BANs shall be registered in the name of the purchasers thereof.

(b) The City, acting for and on behalf of the Board, shall issue bonds of the District authorized herein in an aggregate principal amount not to exceed Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000), for the purpose of procuring funds to apply on the costs of the Projects, refunding the BANs, if issued, and the payment of issuance costs, including premiums for municipal bond insurance and a debt service reserve surety, if acquired, and all other costs related to the refunding and the Projects. The bonds authorized herein may be issued in one or more series and shall be designated "Storm Water District Revenue Bonds, Series 2017 (provided, that in the event a series of bonds is issued in a calendar year after 2017, the designation of such series of bonds shall be appropriately modified to reflect such calendar year of issuance) ("Bonds"). The Bonds shall be sold at a price not less than 99% of the par value thereof and shall be issued in fully registered form, in the denomination of Five Thousand Dollars (\$5,000) each, or integral multiples thereof, numbered consecutively from 1 up, and dated as of the first day of the month in which they are sold or the date of delivery of the Bonds, as determined by the Clerk-Treasurer with the advice of the District's financial advisor. Interest shall be payable semiannually on January 1 and July 1 in each year, beginning on the first January 1 or the first July 1 following the date of delivery of the Bonds, as designated by the Clerk-Treasurer of the City, with the advice of the District's financial advisor. The Bonds shall be payable in lawful money of the United States of America, at the principal office of the Paying Agent (as hereinafter defined) and such Bonds shall bear interest at a rate or rates not exceeding 6% per annum. The Bonds shall mature semiannually, or be subject to mandatory sinking fund redemption if term bonds are issued, on January 1 and July 1 of each year, over a period ending no later than January 1, 2033 for all other Bonds, and in such amounts which will produce as level annual debt service as practicable taking into account the annual debt service on all series of Bonds issued hereunder.

All or a portion of the Bonds may be issued as one or more term bonds, upon election of the purchaser thereof. Such term bonds shall have a stated maturity or maturities consistent with the maturity schedule determined in accordance with the preceding paragraph, on January 1 or July 1, on the dates as determined by the purchaser thereof, but in no event later than the last serial maturity date of the Bonds as determined in the preceding paragraph. The term bonds shall be subject to mandatory sinking fund redemption and final payment(s) at maturity at 100% of the principal amount thereof, plus accrued interest to the redemption date, on principal payment dates which are hereinafter determined in accordance with the preceding paragraph. Each series of Bonds shall rank on a parity with the other for all purposes, including the pledge of Net Revenues under this resolution. Interest on the Bonds and BANs shall be calculated according to a 360-day calendar year containing twelve 30-day months.

Section 3. Registrar and Paying Agent; Book Entry Provisions. (a) The Clerk-Treasurer is hereby authorized to contract with a qualified financial institution to serve as Registrar and Paying Agent for the Bonds ("Registrar" or "Paying Agent"). The Registrar is hereby charged with the responsibility of authenticating the Bonds. The Clerk-Treasurer is hereby authorized to enter into such agreements or understandings with the Registrar as will enable the institution to perform the services required of a registrar and paying agent. The Clerk-Treasurer is further authorized to

pay such fees as the Registrar may charge for the services it provides as Registrar and Paying Agent and such fees may be paid from the Sinking Fund established to pay the principal of and interest on the Bonds as fiscal agency charges.

The principal of the Bonds and BANs shall be payable at the principal corporate trust office of the Paying Agent. All payments of interest on the Bonds and BANs shall be paid by check, mailed one business day prior to the interest payment date to the registered owners thereof as the names appear as of the fifteenth day of the month preceding the interest payment date ("Record Date") and at the addresses as they appear on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by such registered owner on or before such Record Date. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall be instructed to wire transfer payments by 1:00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time).

All payments on the Bonds and BANs shall be made in any coin or currency of the United States of America, which on the date of such payment, shall be legal tender for the payment of public and private debts. Each Bond shall be transferable or exchangeable only upon the books of the City kept for that purpose at the principal corporate trust office of the Registrar by the registered owner in person, or by its attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or its attorney duly authorized in writing, and thereupon a new fully registered Bond or Bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the City except for any tax or governmental charge required to be paid with respect to the transfer or exchange, which taxes or governmental charges are payable by the person requesting such transfer or exchange. The City, Registrar and Paying Agent for the Bonds may treat and consider the person in whose name such bonds are registered as the absolute owner thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest due thereon.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent upon giving 30 days' notice in writing to the City and by first class mail to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such 30 day period or upon the earlier appointment of a successor registrar and paying agent by the City. Any such notice to the City may be served personally or sent by registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the City, in which event the City may appoint a successor registrar and paying agent. The City shall notify each registered owner of the Bonds then outstanding by first class mail of the removal of the Registrar and Paying Agent. Notices to the registered owners of the Bonds shall be deemed to be given when mailed by first class mail to the addresses of such registered owners as they appear on the registration books kept by the Registrar.

Upon the appointment of any successor registrar and paying agent by the City, the Clerk-Treasurer is authorized and directed to enter into such agreements and understandings with such successor registrar and paying agent as will enable the institution to perform the services required of a registrar and paying agent for the Bonds. The Clerk-Treasurer is further authorized to pay such fees as the successor registrar and paying agent may charge for the services it provides as registrar and paying agent and such fees may be paid from the Storm Water District Sinking Fund described in Section 14 hereof. Any predecessor registrar and paying agent shall deliver all of the Bonds and any cash or investments in its possession with respect thereto, together with the registration books, to the successor registrar and paying agent. As to the BANs and as to the Bonds, if agreed to by the successful bidder, the Clerk-Treasurer may serve as Registrar and Paying Agent and is hereby charged with the duties of Registrar and Paying Agent.

(b) The District has determined that it may be beneficial to the City to have the Bonds held by a central depository system pursuant to an agreement between the City and The Depository Trust Company, New York, New York ("Depository Trust Company") and have transfers of the Bonds effected by book-entry on the books of the central depository system ("Book Entry System"). The Bonds may be initially issued in the form of a separate single authenticated fully registered Bond for the aggregate principal amount of each separate maturity of the Bonds. In such case, upon initial issuance, the ownership of such Bonds shall be registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company. With respect to the Bonds registered in the register kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, the City and the Paying Agent shall have no responsibility or obligation to any other holders or owners (including any beneficial owner ("Beneficial Owner")) of the Bonds with respect to (i) the accuracy of the records of the Depository Trust Company, CEDE & CO., or any Beneficial Owner with respect to ownership questions, (ii) the delivery to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any notice with respect to the Bonds including any notice of redemption, or (iii) the payment to any bondholder (including any Beneficial Owner) or any other person, other than the Depository Trust Company, of any amount with respect to the principal of, or premium, if any, or interest on the Bonds except as otherwise provided herein.

No person other than the Depository Trust Company shall receive an authenticated Bond evidencing an obligation of the City to make payments of the principal of and premium, if any, and interest on the Bonds pursuant to this resolution. The City and the Registrar and Paying Agent may treat as and deem the Depository Trust Company or CEDE & CO. to be the absolute bondholder of each of the Bonds for the purpose of (i) payment of the principal of and premium, if any, and interest on such Bonds; (ii) giving notices of redemption and other notices permitted to be given to bondholders with respect to such Bonds; (iii) registering transfers with respect to such Bonds; (iv) obtaining any consent or other action required or permitted to be taken of or by bondholders; (v) voting; and (vi) for all other purposes whatsoever. The Paying Agent shall pay all principal of and premium, if any, and interest on the Bonds only to or upon the order of the Depository Trust Company, and all such payments shall be valid and effective fully to satisfy and discharge the City's and the Paying Agent's obligations with respect to principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. Upon delivery by the Depository Trust Company to the City of written notice to the effect that the Depository Trust Company has determined to substitute a new nominee in place of CEDE & CO., and subject to the

provisions herein with respect to consents, the words "CEDE & CO." in this resolution shall refer to such new nominee of the Depository Trust Company. Notwithstanding any other provision hereof to the contrary, so long as any Bond is registered in the name of CEDE & CO., as nominee of the Depository Trust Company, all payments with respect to the principal of and premium, if any, and interest on such Bonds and all notices with respect to such Bonds shall be made and given, respectively, to the Depository Trust Company as provided in a representation letter from the City to the Depository Trust Company.

Upon receipt by the City of written notice from the Depository Trust Company to the effect that the Depository Trust Company is unable or unwilling to discharge its responsibilities and no substitute depository willing to undertake the functions of the Depository Trust Company hereunder can be found which is willing and able to undertake such functions upon reasonable and customary terms, then the Bonds shall no longer be restricted to being registered in the register of the City kept by the Registrar in the name of CEDE & CO., as nominee of the Depository Trust Company, but may be registered in whatever name or names the bondholders transferring or exchanging the Bonds shall designate, in accordance with the provisions of this resolution.

If the City determines that it is in the best interest of the bondholders that they be able to obtain certificates for the fully registered Bonds, the City may notify the Depository Trust Company and the Registrar, whereupon the Depository Trust Company will notify the Beneficial Owners of the availability through the Depository Trust Company of certificates for the Bonds. In such event, the Registrar shall prepare, authenticate, transfer and exchange certificates for the Bonds as requested by the Depository Trust Company and any Beneficial Owners in appropriate amounts, and whenever the Depository Trust Company requests the City and the Registrar to do so, the Registrar and the City will cooperate with the Depository Trust Company by taking appropriate action after reasonable notice (i) to make available one or more separate certificates evidencing the fully registered Bonds of any Beneficial Owner's Depository Trust Company account or (ii) to arrange for another securities depository to maintain custody of certificates for and evidencing the Bonds.

If the Bonds shall no longer be restricted to being registered in the name of the Depository Trust Company, the Registrar shall cause the Bonds to be printed in blank in such number as the Registrar shall determine to be necessary or customary; provided, however, that the Registrar shall not be required to have such Bonds printed until it shall have received from the City indemnification for all costs and expenses associated with such printing.

In connection with any notice or other communication to be provided to bondholders by the City or the Registrar with respect to any consent or other action to be taken by bondholders, the City or the Registrar, as the case may be, shall establish a record date for such consent or other action and give the Depository Trust Company notice of such record date not less than fifteen (15) calendar days in advance of such record date to the extent possible.

So long as the Bonds are registered in the name of the Depository Trust Company or CEDE & CO. or any substitute nominee, the City and the Registrar and Paying Agent shall be entitled to request and to rely upon a certificate or other written representation from the Beneficial Owners of the Bonds or from the Depository Trust Company on behalf of such Beneficial Owners stating

the amount of their respective beneficial ownership interests in the Bonds and setting forth the consent, advice, direction, demand or vote of the Beneficial Owners as of a record date selected by the Registrar and the Depository Trust Company, to the same extent as if such consent, advice, direction, demand or vote were made by the bondholders for purposes of this resolution and the City and the Registrar and Paying Agent shall for such purposes treat the Beneficial Owners as the bondholders. Along with any such certificate or representation, the Registrar may request the Depository Trust Company to deliver, or cause to be delivered, to the Registrar a list of all Beneficial Owners of the Bonds, together with the dollar amount of each Beneficial Owner's interest in the Bonds and the current addresses of such Beneficial Owners.

(c) Interest on the Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date of the Bonds unless the Bonds are authenticated after the Record Date and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless the Bonds are authenticated on or before the Record Date immediately preceding the first interest payment date, in which case they shall bear interest from the original date until the principal shall be fully paid.

Section 4. Redemption of BANs and Bonds. (a) The BANs are prepayable by the City, in whole or in part, at any time upon twenty (20) days' notice to the owner of the BANs without any premium.

(b) The Bonds of this issue are redeemable at the option of the City, commencing no sooner than January 1, 2023, and thereafter on any date, on thirty days' notice, in whole or in part, in the order of maturity determined by the City, and by lot within a maturity, at face value, together with no premium, plus in each case accrued interest to the date fixed for redemption.

If any Bond is issued as a term bond, the Paying Agent shall credit against the mandatory sinking fund requirement for the Bonds maturing as term bonds, and corresponding mandatory redemption obligation, in the order determined by the City, any Bonds maturing as term bonds which have previously been redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Registrar for cancellation or purchased for cancellation by the Paying Agent and not theretofore applied as a credit against any redemption obligation. Each Bond maturing as a term bond so delivered or cancelled shall be credited by the Paying Agent at 100% of the principal amount thereof against the mandatory sinking fund obligation on such mandatory sinking fund date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the Bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced; provided, however, the Paying Agent shall credit only such Bonds maturing as term bonds to the extent received on or before forty-five (45) days preceding the applicable mandatory redemption date.

Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate Bond for purposes of optional and mandatory redemption. If less than an entire maturity is called for redemption, the Bonds to be called shall be selected by lot by the Registrar. If some Bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the Bonds for optional redemption before selecting the Bonds by lot for the mandatory sinking fund redemption.

In either case, notice of such redemption shall be given at least thirty (30) days prior to the date fixed for redemption by mail unless the notice is waived by the registered owner of a Bond. Such notice shall be mailed to the address of the registered owners as shown on the registration records of the City as of the date which is forty-five (45) days prior to such redemption date. The notice shall specify the date and place of redemption and sufficient identification of the Bonds called for redemption. The place of redemption shall be determined by the City. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the principal office of the Paying Agent to pay the redemption price on the date so named. Coincidentally with the payment of the redemption price, the bonds so called for redemption shall be surrendered for cancellation.

Section 5. Execution and Negotiability. Each of the Bonds and BANs shall be executed in the name of the City, acting for and on behalf of the Board, by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of its Clerk, and the seal of the City shall be affixed, imprinted or impressed to or on each of the BANs and Bonds manually, by facsimile or any other means; and these officials, by the execution of a Signature and No Litigation Certificate, shall adopt as and for their own proper signatures the facsimile signatures appearing on the Bonds. In case any officer whose signature or facsimile signature appears on the Bonds shall cease to be such officer before the delivery of the Bonds, the signature of such officer shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

The BANs and Bonds shall have all of the qualities and incidents of negotiable instruments under the laws of the State of Indiana, subject to the provisions for registration herein.

The Bonds shall also be authenticated by the manual signature of the Registrar, and no Bond shall be valid or become obligatory for any purpose until the certificate of authentication thereon has been so executed.

Section 6. Form of Bonds. The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly prior to delivery thereof:

[Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City of Westfield, Indiana, or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.]

NO. _____

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF HAMILTON

CITY OF WESTFIELD
STORM WATER DISTRICT REVENUE BOND, SERIES 2017

Interest <u>Rate</u>	[Maturity <u>Date</u>]	Original <u>Date</u>	Authentication <u>Date</u>	[CUSIP]
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REGISTERED OWNER:

PRINCIPAL SUM:

The City of Westfield ("City"), in Hamilton County, State of Indiana, for and on behalf of the Storm Water District of the City ("District"), for value received, hereby promises to pay to the Registered Owner named above or registered assigns, solely out of the special revenue fund hereinafter referred to, the Principal Sum set forth above on [the Maturity Date set forth above] OR [on the dates and in the amounts as set forth on Exhibit A attached hereto] (unless this bond be subject to and be called for redemption prior to maturity as hereinafter provided), and to pay interest hereon until the Principal Sum shall be fully paid at the interest rate[s] per annum specified [above] OR [on Exhibit A attached hereto] from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month preceding an interest payment date and on or before such interest payment date in which case it shall bear interest from such interest payment date or unless this bond is authenticated on or before 1, , in which case it shall bear interest from the Original Date, until the principal is paid, which interest is payable semiannually on the first day of January 1 and July 1 in each year, beginning on _____ 1, 20____. Interest shall be calculated according to a 360-day calendar year containing twelve 30- day months.

The principal of this bond is payable at the principal office of _____ ("Registrar" or "Paying Agent"), in the _____ of _____, Indiana. All payments of interest on this bond shall be paid by check, mailed one business day prior to the interest payment date to the registered owner hereof as of the fifteenth day of the month preceding such interest payment date at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the registered owner. If payment of principal or interest is made to a depository, payment shall be made by wire transfer on the payment date in same-day funds. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Paying Agent shall wire transfer payments by 1 :00 p.m. (New York City time) so such payments are received at the depository by 2:30 p.m. (New York City time). All payments on the bond shall be made in any coin or currency of the United States of America, which on the dates of such payment, shall be legal tender for the payment of public and private debts.

[The bonds shall be initially issued in Book Entry System (as defined in the Resolution). The provisions of this bond and of the Resolution are subject in all respects to the provisions of

the Letter of Representations between the City and The Depository Trust Company, or any substitute agreement, effecting such Book Entry System.]

THIS BOND IS NOT A CORPORATE OBLIGATION OR INDEBTEDNESS OF THE CITY, BUT IS THE OBLIGATION AND INDEBTEDNESS OF THE DISTRICT, AND THE CITY SHALL NOT BE OBLIGATED TO PAY THIS BOND OR THE INTEREST HEREON EXCEPT FROM THE HEREINAFTER DESCRIBED SPECIAL FUND, AND NEITHER THIS BOND NOR THE ISSUE OF WHICH IT IS A PART SHALL IN ANY RESPECT CONSTITUTE A CORPORATE OBLIGATION OR INDEBTEDNESS OF THE CITY WITHIN THE PROVISIONS AND LIMITATIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

This bond is [the only] one of an authorized issue of bonds of the District, issued in the name of the City, of like date, tenor and effect, except as to numbering, rates of interest and dates of maturity, aggregating Dollars (\$ _____); numbered consecutively from 1 up; issued for the purpose of providing funds to be applied on the cost of completion of the storm water projects (as set forth in the Resolution) ("Projects"), [to refund interim notes issued in anticipation of the bonds] and to pay issuance expenses[, including premiums for municipal bond insurance and a debt service reserve surety]. This bond is issued pursuant to a resolution adopted by the Board of Public Works and Safety, acting as the board of directors of the Stormwater Management Division of the City, being the governing body of the District of the City, on October 9, 2017 ("Resolution"), and in accordance with the provisions of Indiana law, including without limitation Indiana Code 8-1.5-5, as in effect on the date of delivery of the bonds of this issue (collectively, "Act"), the proceeds of which bonds are to be applied to the costs of the Projects, [the payment of notes issued in anticipation of the bonds,] and expenses incurred in connection therewith[, including premiums for municipal bond insurance and a debt service reserve surety].

Pursuant to the provisions of the Act and the Resolution, the principal of and interest on this bond and all other bonds of said issue and any bonds hereafter issued ranking on a parity herewith, are payable solely from the Storm Water District Sinking Fund created by the Resolution ("Sinking Fund") to be provided from the Net Revenues (defined as gross revenues after deduction only for the payment of the reasonable and proper expenses of operation and maintenance, excluding any transfers for payment in lieu of property taxes ("PILOTs")) of the storm water system of the District. This bond and the issue of which it is a part constitute a first charge upon the Net Revenues.

The City irrevocably pledges the entire Net Revenues of the storm water system to the prompt payment of the principal of and interest on the bonds authorized by the Resolution, of which this is one, and any bonds ranking on a parity therewith, to the extent necessary for that purpose, and covenants that it will cause to be fixed, maintained and collected such rates and charges for services rendered by the utility as are sufficient in each year for the payment of the proper and reasonable expenses of operation and maintenance of the storm water system and for the payment of the sums required to be paid into the Sinking Fund under the provisions of the Act and the Resolution. If the City or the proper officers thereof shall fail or refuse to so fix, maintain and collect such rates or charges, or if there be a default in the payment of the interest on or principal of this bond, the owner of this bond shall have all of the rights and remedies provided for under Indiana Law.

The City further covenants that it will set aside and pay into its Sinking Fund monthly, as available, or more often if necessary, a sufficient amount of the Net Revenues of the works for payment of (a) the interest on all bonds which by their terms are payable from the revenues of the storm water system, as such interest shall fall due, (b) the necessary fiscal agency charges for paying bonds and interest, (c) the principal of all bonds which by their terms are payable from the revenues of the storm water system, as such principal shall fall due, and (d) an additional amount as a margin of safety to [create and] maintain the debt service reserve required by the Resolution. Such required payments shall constitute a first charge upon all the Net Revenues of the storm water system.

The Bonds maturing on or after _____, 20____, are redeemable at the option of the City, on _____, 20____, or any date thereafter, on thirty (30) days' notice, in whole or in part, in the order of maturity as determined by the City and by lot within a maturity, at face value, together with no premium, plus accrued interest to the date fixed for redemption.

[The bonds maturing on 1, 20__ are subject to mandatory sinking fund redemption prior to maturity, at a redemption price equal to the principal amount thereof plus accrued interest, on _____ on the dates and in the amounts set forth below:

Term Bond

Date	Amount
------	--------

*Final Maturity]

Each Five Thousand Dollars (\$5,000) principal amount shall be considered a separate bond for purposes of optional [and mandatory] redemption. If less than an entire maturity is called for redemption, the bonds to be redeemed shall be selected by lot by the Registrar. [If some bonds are to be redeemed by optional redemption and mandatory sinking fund redemption on the same date, the Registrar shall select by lot the bonds for optional redemption before selecting the bonds by lot for the mandatory sinking fund redemption]

Notice of such redemption shall be mailed to the address of the registered owner as shown on the registration records of the City as of the date which is forty-five (45) days prior to such redemption date not less than thirty (30) days prior to the date fixed for redemption unless the notice is waived by the registered owner of this bond. The notice shall specify the date and place of redemption and sufficient identification of the bonds called for redemption. The place of redemption may be determined by the City. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the City may deposit in trust with its depository bank, an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the registered owner shall look only to the

funds so deposited in trust with said bank for payment and the City shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the books of the City kept for that purpose at the principal corporate trust office of the Registrar by the registered owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner, or his attorney duly authorized in writing, and thereupon a new fully registered bond or bonds in an authorized aggregate principal amount and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or to the registered owner, as the case may be, in exchange therefor. This bond may be transferred without cost to the registered owner except for any tax or governmental charge required to be paid with respect to the transfer. The City, the Registrar, the Paying Agent and any other registrar or paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon.

This bond is subject to defeasance prior to redemption or payment as provided in the Resolution referred to herein. THE OWNER OF THIS BOND, BY THE ACCEPTANCE HEREOF, HEREBY AGREES TO ALL THE TERMS AND PROVISIONS CONTAINED IN THE RESOLUTION. The Resolution may be amended without the consent of the owners of the bonds as provided in the Resolution if the Board of Directors determines, in its sole discretion, that the amendment shall not adversely affect the rights of any of the owners of the bonds.

The bonds maturing in any one year are issuable only in fully registered form in the denomination of \$5,000 or any integral multiple thereof not exceeding the aggregate principal amount of the bonds maturing in such year.

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law. This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the Board of Public Works and Safety, acting as the board of directors of the Department of Storm Water Management, has caused this bond to be executed in the name of the City of Westfield, for and on behalf of the Westfield Storm Water District, by the manual or facsimile signature of the Mayor, its corporate seal to be hereunto affixed, imprinted or impressed by any means and attested manually or by facsimile by its Clerk-Treasurer.

CITY OF WESTFIELD, INDIANA

By: _____
Mayor

[SEAL]

Attest:

Clerk-Treasurer

REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned Resolution.

as Registrar

By _____,
Authorized Representative

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ this bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____, attorney, to transfer the within bond in the books kept for the registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

[EXHIBIT A]

[End of bond form]

Section 7. Authorization for Preparation and Sale of the BANs and the Bonds; Bond Insurance; Official Statement; Continuing Disclosure. (a) The Clerk-Treasurer is hereby authorized and directed to have the BANs and the Bonds prepared, and the Mayor and the Clerk-Treasurer are hereby authorized and directed to execute and attest, as appropriate, the BANs and the Bonds in the form and manner provided herein. The Clerk-Treasurer is hereby authorized and directed to deliver the BANs and the Bonds to the respective purchasers thereof. At the time of delivery of the BANs and the Bonds, the Clerk-Treasurer shall collect the full amount which the

respective purchasers have agreed to pay therefor, which amount shall not be less than 99% of the face value of the BANs and not less than 99% of the face value of the Bonds, as the case may be, plus accrued interest to the date of delivery, if any. The City may receive payment for the BANs in installments. The Bonds, when fully paid for and delivered to the purchaser, shall be the binding special revenue obligations of the City payable out of the Net Revenues of the storm water system to be set aside into the Sinking Fund as herein provided. The proceeds derived from the sale of the Bonds shall be and are hereby set aside for application on the cost of the Project hereinbefore referred to, the refunding of the BANs, if issued, and the expenses necessarily incurred in connection with the BANs and Bonds. The proper officers of the City are hereby directed to sell the Bonds, to draw all proper and necessary warrants, and to do whatever acts and things which may be necessary to carry out the provisions of this resolution.

(b) In the event the financial advisor to the District certifies to the City that it would be economically advantageous for the City to obtain a municipal bond insurance policy for any of the Bonds issued hereunder, the City hereby authorizes the purchase of such an insurance policy. [The acquisition of a municipal bond insurance policy is hereby deemed economically advantageous in the event the difference between the present value cost of (a) the total debt service on the Bonds if issued without municipal bond insurance and (b) the total debt service on the Bonds if issued with municipal bond insurance, is greater than the cost of the premium on the municipal bond insurance policy.] If such an insurance policy is purchased, the Mayor and the Clerk-Treasurer are hereby authorized to execute and deliver all agreements with the provider of the policy to the extent necessary to comply with the terms of such insurance policy and the commitment to issue such policy. Such agreement shall be deemed a part of the resolution for all purposes and is hereby incorporated herein by reference.

(c) Distribution of an Official Statement (preliminary and final) for the Bonds, prepared on behalf of the City, is hereby authorized and approved and the Mayor and Clerk-Treasurer are authorized and directed to execute the Official Statement on behalf of the City in a form consistent with this resolution. The Mayor or Clerk-Treasurer is hereby authorized to designate the preliminary Official Statement as "nearly final" for purposes of Rule 15c2-12 ("Rule") as promulgated by the Securities and Exchange Commission.

(d) If an Official Statement is not required upon delivery of the Bonds, the City shall obtain an investment letter from the purchaser of the Bonds which satisfies federal and state securities laws applicable to the Bonds.

(e) If the Bonds are subject to the Rule, a continuing disclosure undertaking ("Undertaking") for the Bonds is hereby authorized and approved by the Board, and the Mayor and Clerk-Treasurer are hereby authorized and directed to complete, execute and attest the same on behalf of the City. Notwithstanding any other provisions of this resolution, failure of the City to comply with the Undertaking shall not be considered an event of default under the Bonds or this resolution.

Section 8. Bond Sale. The Bonds shall be sold at a public sale. Prior to the sale of the Bonds, the Clerk-Treasurer shall cause to be published a notice of bond sale in *The Times* in accordance with IC 5-3-1, two times, at least one week apart, the first publication made at least

fifteen (15) days before the date of the sale and the second publication being made at least three (3) days before the date of the sale, or (ii) a notice of intent to sell bonds in *The Times* and the *Court & Commercial Record* once each week for two weeks all in accordance with IC 5-1-11 and IC 5-3-1. The notice or summary notice shall state the character and amount of the Bonds, the maximum rate or rates of interest thereon, the terms and conditions upon which bids will be received and the sale made, and such other information as the Clerk-Treasurer and the attorneys employed by the City shall deem advisable and any summary notice may contain any information deemed so advisable. The notice may provide, among other things, that electronic bidding will be permitted and that the successful bidder shall be required to submit a certified or cashier's check or a wire transfer of funds in an amount equal to ___% of the principal amount of the Bonds described in the notice within twenty-four hours of the sale and that in the event the successful bidder shall fail or refuse to accept delivery of the Bonds and pay for the same as soon as the Bonds are ready for delivery, or at the time fixed in the notice of sale, then said check or wire transfer and the proceeds thereof shall be the property of the City and shall be considered as its liquidated damages on account of such default. Bidders for the Bonds will be required to name the rate or rates of interest which the Bonds are to bear, not exceeding the maximum rate hereinbefore fixed, and that such interest rate or rates shall be in multiples of one-eighth (1/8) or one-hundredth (1/100) of one percent (1%). The rate bid on a maturity shall be equal to or greater than the rate bid on the immediately preceding maturity. No conditional bid or bid for less than 98.5% of the face amount of the Bonds will be considered. The opinion of Krieg DeVault LLP, bond counsel of Indianapolis, Indiana, approving the legality of the Bonds, will be furnished to the purchaser at the expense of the City.

The Bonds shall be awarded by the Clerk-Treasurer to the best bidder who has submitted his bid in accordance with the terms of this resolution, IC 5-1-11 and the notice. The best bidder will be the one who offers the lowest net interest cost to the City, to be determined by computing the total interest on all of the Bonds to their maturities, deducting the premium bid, if any and adding thereto the discount bid, if any. The right to reject any and all bids shall be reserved. If an acceptable bid is not received on the date of sale, the sale may be continued from day to day thereafter without further advertisement for a period of thirty (30) days, during which time no bid which provides a higher net interest cost to the City than the best bid received at the time of the advertised sale will be considered.

Section 10. Financial Records and Accounts. The Board shall keep proper records and books of account, separate from all of its other records and accounts, in which complete and correct entries shall be made showing all revenues received on account of the operation of the storm water system and all disbursements made therefrom and all transactions relating to said system. The Board shall maintain on file the audited financial statements of said system prepared by the State Board of Accounts.

Section 11. Use of Proceeds for Projects, Refunding, Costs of Issuance and Accrued Interest. The accrued interest received at the time of the delivery of the Bonds, if any, shall be deposited in the Storm Water District Sinking Fund hereinafter defined and further credited to the Bond and Interest Redemption Account. The remaining proceeds from the sale of the Bonds, to the extent not used to refund BANs, and BAN proceeds, shall be deposited in a bank or banks which are legally designated depositories for the funds of the City, in a special account or accounts

to be designated as "City of Westfield Storm Water District Construction Account" ("Construction Account"). All funds deposited to the credit of the Storm Water District Sinking Fund or Construction Account shall be deposited, held, secured or invested in accordance with the laws of the State of Indiana relating to the depositing, holding, securing or investing of public funds, including particularly IC 5-13, and the acts amendatory thereof and supplemental thereto. The funds in the Construction Account shall be expended only for the purpose of paying the cost of the Projects, or as otherwise required by the Act, refunding the BANs, if issued, and for the expenses of issuance of the Bonds and BANs. The cost of obtaining the legal services of Krieg DeVault LLP, shall be considered as a part of the cost of the Projects on account of which the Bonds are issued.

Any balance or balances remaining unexpended in such special account or accounts after completion of the Projects, which are not required to meet unpaid obligations incurred in connection with such Projects, shall either (1) be paid into the Sinking Fund and used solely for the purposes of the Sinking Fund or (2) be used for the same purpose or type of project for which the Bonds were originally issued, all in accordance with IC 5-1-13, as amended and supplemented.

Section 11. Pledge of Net Revenues. The interest on and the principal of the Bonds issued pursuant to the provisions of this resolution, and any bonds hereafter issued on a parity therewith, shall constitute a first charge on all the Net Revenues, and such Net Revenues are hereby irrevocably pledged to the payment of the interest on and principal of such Bonds, to the extent necessary for that purpose.

Section 12. Revenue Fund. All revenues derived from the operation of the storm water system and from the collection of storm water rates and charges shall be deposited in the fund known as the Storm Water District Revenue Fund ("Revenue Fund") hereby created. Out of the Revenue Fund, the proper and reasonable expenses of operation and maintenance of the system shall be paid, the principal and interest of all bonds and fiscal agency charges of registrars or paying agents shall be paid, the reserve shall be funded and the costs of additions and extensions to the system shall be paid. This fund shall be maintained separate and apart from all other accounts of the City. All moneys deposited in the Revenue Fund may be invested in accordance with IC 5-13.

Section 13. Operation and Maintenance Account. There is hereby created an account known as the "Operation and Maintenance Account" ("O&M Account"). On the last day of each calendar month, a sufficient amount of moneys shall be transferred from the Revenue Fund to the O&M Account so that the balance maintained in the O&M Account is sufficient to pay the reasonable expenses of operation and maintenance of the works for the next succeeding two (2) calendar months. The moneys credited to this Account shall be used for the payment of the reasonable and proper operation and maintenance expenses of the storm water system on a day-to-day basis, but none of the moneys in the O&M Account shall be used for PILOTs, improvements, extensions or additions. Any moneys in said Account in excess of the expected expenses of operation and maintenance for the next succeeding month may be transferred to the Storm Water District Sinking Fund if necessary to prevent a default in the payment of principal of or interest on the outstanding bonds of the storm water system or to the Storm Water Depreciation Account to be used for any improvements, extensions or additions to the storm water system.

Section 14. Storm Water District Sinking Fund. There is hereby created a special fund designated "Storm Water District Sinking Fund" ("Sinking Fund") for the payment of the principal of and interest on all outstanding storm water revenue bonds, and the payment of any fiscal agency charges in connection with the payment of bonds. There shall be set aside and deposited in the Sinking Fund, as available, and as hereinafter provided, a sufficient amount of the Net Revenues of said storm water system to meet the requirements of the Bond and Interest Redemption Account and the Debt Service Reserve Account hereby created in the Sinking Fund. Such payments shall continue until the balances in the Bond and Interest Redemption Account and Debt Service Reserve Account hereinafter described equal the principal of and interest on all of the then outstanding bonds of the storm water system to the final maturity and provide for payment of all fiscal agency charges.

(a) Bond and Interest Redemption Account. There is hereby created, within the Sinking Fund, the Bond and Interest Redemption Account ("Bond and Interest Account"). There shall be credited on the last day of each calendar month to the Bond and Interest Account an amount of the Net Revenues equal to (i) at least one-sixth (1/6) of the interest on all then outstanding bonds payable on the then next succeeding interest payment date and (ii) at least one-sixth (1/6) of the principal payable on the then outstanding bonds which will be payable on the then next succeeding principal payment date, until the amount of interest and principal payable on the then next succeeding interest and principal payment date shall have been so credited. There shall similarly be credited to the Account any amount necessary to pay the bank fiscal agency charges for paying interest and principal on the bonds as the same become payable. The City shall, from the sums deposited in the Sinking Fund and credited to the Bond and Interest Account, remit promptly to the registered owner or to the bank fiscal agency sufficient moneys to pay the interest and principal on the due dates thereof together with the amount of bank fiscal agency charges.

(b) Debt Service Reserve Account. The Debt Service Reserve Account ("Reserve Account") is hereby created. On the date of delivery of the Bonds, Bond proceeds, funds on hand of the storm water system or a combination thereof may be deposited into the Reserve Account. The initial deposit or the balance accumulated in the Reserve Account shall equal but not exceed the least of: (i) the maximum annual debt service on the Bonds; (ii) 125% of the average annual debt service on the Bonds; or (iii) 10% of the proceeds of the Bonds ("Reserve Requirement"). If the initial deposit into the Reserve Account does not equal the Reserve Requirement or if no deposit is made, an amount of Net Revenues shall be credited to the Reserve Account on the last day of each calendar month until the balance therein equals the Reserve Requirement. The monthly deposits shall be equal in amount and sufficient to accumulate the Reserve Requirement within five (5) years of the date of delivery of the Bonds.

The Reserve Account may be satisfied with cash, a debt service reserve surety bond or a combination thereof. If such a surety is purchased, the Mayor and the Clerk-Treasurer are hereby authorized to execute and deliver all agreements with the provider of the surety to the extent necessary to comply with the terms of such surety and the commitment to issue such surety and such agreements shall be deemed a part of this resolution and incorporated herein by reference.

The Reserve Account shall constitute the margin for safety and a protection against default in the payment of principal of and interest on the Bonds and the moneys in the Reserve Account

shall be used only to pay current principal and interest on the Bonds to the extent that moneys in the Bond and Interest Account are insufficient for that purpose. Any deficiencies in credits to the Reserve Account shall be promptly made up from the next available Net Revenues remaining after credits into the Bond and Interest Account. In the event moneys in the Reserve Account are transferred to the Bond and Interest Account to pay interest and principal on the Bonds, then such depletion of the balance in the Reserve Account shall be made up from the next available Net Revenues after the credits into the Bond and Interest Account hereinbefore provided for. Any moneys in the Reserve Account in excess of the Reserve Requirement shall be transferred to the Storm Water Depreciation Account.

Section 15. Storm Water Depreciation Account. There is hereby created a special fund designated the "Storm Water Depreciation Account" ("Depreciation Account"). In the event all required payments into the O&M Account and the Sinking Fund have been met to date, any excess Net Revenues may be transferred to the Depreciation Account and used for the repair of the system, new acquisition, construction, additions and extensions to the system, and to make payments representing PILOTs. The City reserves the right to transfer PILOTs from the Depreciation Account no more frequently than semiannually, in accordance with the Act, and only if all required transfers have been made to the O&M Account and the Sinking Fund and the Accounts of the Sinking Fund contain the required balances as of the date the PILOTs are paid. In no event shall any PILOTs be treated as an expense of operation and maintenance, nor in any case shall it be payable from the O&M Account or the Sinking Fund. All or any portion of the funds accumulated in the Depreciation Account shall be transferred to the Sinking Fund, if necessary, to prevent a default in the payment of principal of or interest on the bonds payable from the Sinking Fund or to eliminate any deficiencies in credits to or minimum balance in the Reserve Account. Moneys in the Depreciation Account also may be transferred to the O&M Account to meet unforeseen contingencies in the operation and maintenance of the storm water system.

Section 16. Maintenance of Accounts; Investment of Funds. The Sinking Fund shall be deposited in and maintained as a separate account or accounts apart from all other accounts of the City. The O&M Account and the Depreciation Account may be maintained in a single account, or accounts, but such account or accounts shall likewise be maintained separate and apart from all other accounts of the City and apart from the Sinking Fund account or accounts. All moneys deposited in said accounts shall be deposited, held and secured as public funds in accordance with the public depository laws of the State of Indiana; provided that moneys therein may be invested at the direction of the Clerk-Treasurer in obligations in accordance with the applicable laws, including particularly IC 5-13, as amended and supplemented, and in the event of such investment the income therefrom shall become a part of the funds invested and shall be used only as provided in this resolution.

Section 17. Defeasance of Bonds. If, when the Bonds or a portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or a portion thereof for redemption shall have been given, and the whole amount of the principal and the interest and the premium, if any, so due and payable upon all of the Bonds or a portion thereof then outstanding shall be paid; or (i) sufficient moneys, or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, the principal of and the

interest on which when due will provide sufficient moneys for such purpose, shall be held in trust for such purpose, and provision shall also be made for paying all fees and expenses for the redemption, then and in that case the Bonds or any designated portion thereof issued hereunder shall no longer be deemed outstanding or entitled to the pledge of the Net Revenues of the City's storm water system.

Section 18. Rate Covenant. The Board covenants and agrees that it will assess and collect user fees from all of the property of the District for the operation and maintenance of the storm water system. Pursuant to the Act, so long as there are bonds outstanding for which user fees were pledged, the Board may not rescind the user fees or reduce them below a rate that would produce one hundred twenty-five percent (125%) of the highest annual debt service on the outstanding bonds to their final maturity, based on an average of the immediately preceding three (3) years of user fee collections, if the user fees have been levied for the preceding three (3) years. If the user fees have not been levied for the preceding three (3) years, the Board may not reduce user fees below a rate that would produce one hundred twenty-five (125%) of the highest debt service, based upon a study by a qualified public accountant or financial advisor. The user fees so established shall apply to any and all use of such system by and service rendered to the City and all departments thereof, and shall be paid by the City or the various departments thereof as the charges accrue.

Section 19. Additional Bond Provisions. The Board reserves the right to authorize and issue additional BANs at any time ranking on a parity with the BANs. The Board also reserves the right to authorize and issue additional bonds payable out of the Net Revenues of its storm water system ranking on a parity with the Bonds for the purpose of financing the cost of future extensions and additions to its storm water system, or to refund obligations, subject to the following conditions:

(a) All required payments into the Sinking Fund shall have been made in accordance with the provisions of this resolution, and the interest on and principal of all bonds payable from the Net Revenues of the storm water system shall have been paid in accordance with their terms.

(b) The Net Revenues of the storm water system in the fiscal year immediately preceding the issuance of any such bonds ranking on a parity with the Bonds authorized by this resolution shall be not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued; or, prior to the issuance of said parity bonds, the user fees shall be increased sufficiently so that said increased user fees applied to the previous fiscal year's operations would have produced Net Revenues for said year equal to not less than one hundred twenty-five percent (125%) of the maximum annual interest and principal requirements of the then outstanding bonds and the additional parity bonds proposed to be issued. For purposes of this subsection, the records of the storm water system shall be analyzed and all showings shall be prepared by a certified public accountant employed by the City for that purpose.

(c) The interest on the additional parity bonds shall be payable semiannually on January 1 of July 1 and the principal on, or mandatory sinking fund redemption dates for, the additional parity bonds shall be payable semiannually on the first days of January and July.

Section 20. Further Covenants of the Board; Maintenance, Insurance, Pledge Not to Encumber, Subordinate Indebtedness, and Contract with Bondholders. For the purpose of further safeguarding the interests of the owners of the Bonds and BANs herein authorized, it is specifically provided as follows:

(a) All contracts let by the Board in connection with the construction of the Projects shall be let after due advertisement as required by the laws of the State of Indiana, and all contractors shall be required to furnish surety bonds in an amount equal to one hundred percent (100%) of the amount of such contracts, to insure the completion of said contracts, in accordance with their terms, and such contractors shall also be required to carry such employers' liability and public liability insurance as are required under the laws of the State of Indiana relating to public contracts.

(b) The Projects shall be constructed under the supervision and subject to the approval of such competent engineer as shall be designated by the Board. All estimates for work done or material furnished shall first be checked by the engineer and approved by the Board prior to payment therefor.

(c) The District shall at all times maintain its storm water system in good condition and operate the same in an efficient manner and at a reasonable cost.

(d) So long as any of the Bonds or BANs herein authorized are outstanding, the Board shall maintain insurance on the insurable parts of said system of a kind and in an amount such as would normally be carried by private companies engaged in a similar type of business. All insurance shall be placed with responsible insurance companies qualified to do business under the laws of the State of Indiana.

As an alternative to maintaining such insurance, the City may maintain a self-insurance program with catastrophic or similar coverage so long as such program meets the requirements of any applicable laws or regulations and is maintained in a manner consistent with programs maintained by similarly situated municipalities.

All self-insurance or insurance proceeds shall be used in replacing the property destroyed or damaged or if not used for that purpose shall be treated and applied as Net Revenues of the system.

(e) So long as any of the Bonds or BANs are outstanding, the Board shall not mortgage, pledge or otherwise encumber the property and plant of the storm water system or any part thereof, nor shall it sell, lease or otherwise dispose of any portion thereof except only machinery, equipment or property which may be replaced, or shall no longer be necessary for use in such system.

(f) Except as hereinbefore provided in Section 19, so long as any of the Bonds are outstanding, no additional bonds or other obligations pledging any portion of the revenues of said system shall be authorized, executed or issued by the City except such as shall be made subordinate

and junior in all respects to the bonds herein authorized, unless all of the Bonds have been duly called for redemption and sufficient funds to effect the redemption and retirement have been deposited at the place of redemption on the date fixed for redemption in accordance with the terms and conditions of the Bonds and this resolution.

(g) The provisions of this resolution shall constitute a contract by and between the City and the owners of the Bonds and BANs herein authorized, and alter the issuance of the Bonds or BANs this resolution shall not be repealed or amended in any respect which will adversely affect the rights of the owners of the Bonds or BANs, nor shall the Board adopt any law, ordinance or resolution which in any way adversely affects the rights of such owners so long as any of the Bonds or BANs or the interest thereon remain unpaid. The Board reserves the right, however, excluding the changes set forth in Section 22 (a) through (g), to amend this resolution without the consent of Bond or BAN owners so long as the Board determines, in its sole discretion, that such amendment would not adversely affect the owners of the Bonds or BANs.

(h) The provisions of this resolution shall be construed to create a trust in the proceeds of the sale of the Bonds and BANs herein authorized for the uses and purposes therein set forth, and the owners of the Bonds and BANs shall retain a lien on such proceeds until the same are applied in accordance with the provisions of this resolution and of the governing Act. The provisions of this resolution shall also be construed to create a trust in the Net Revenues herein directed to be set apart and paid into the Sinking Fund for the uses and purposes of said Sinking Fund as in this resolution set forth. The owners of the Bonds shall have all of the rights, remedies and privileges under Indiana law in the event of default in the payment of the principal of or interest on any of the Bonds herein authorized, or in the event of default in respect to any of the provisions of this resolution or the Act.

Section 21. Tax Covenants. In order to preserve the exclusion of interest on the Bonds and BANs from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986 as existing on the date of issuance of the Bonds or BANs, as the case may be ("Code") and as an inducement to purchasers of the Bonds and BANs, the Board represents, covenants and agrees that:

(a) The storm water system will be available for use by members of the general public. Use by a member of the general public means use by natural persons not engaged in a trade or business. No person or entity other than the City or another state or local governmental unit will use more than 10% of the proceeds of the Bonds or BANs or property financed by the Bond or BAN proceeds other than as a member of the general public. No person or entity other than the City or another state or local governmental unit will own property financed by Bond or BAN proceeds or will have any actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, arrangements such as take-or-pay or output contracts or any other type of arrangement that conveys other special legal entitlements and differentiates that person's or entity's use of such property from use by the general public, unless such uses in the aggregate relate to no more than 10% of the proceeds of the Bonds or BANs, as the case may be. If the City enters into a management contract for the storm water system, the terms of the contract will comply with IRS Revenue Procedure 2017-33, as it may be amended, supplemented or superseded for time to time, so that the contract will not give rise to private business use under

the Code and the Regulations, unless such use in aggregate relates to no more than 10% of the proceeds of the Bonds or BANs, as the case may be.

(b) No more than 10% of the principal of or interest on the Bonds or BANs will (under the terms of the Bonds or BANs, this resolution or any underlying arrangement), directly or indirectly, be secured by an interest in property used or to be used for any private business use or payments in respect of any private business use or payments in respect of such property or to be derived from payments (whether or not to the City) in respect of such property or borrowed money used or to be used for a private business use.

(c) No more than 5% of the Bond or BAN proceeds will be loaned to any person or entity other than another state or local governmental unit. No more than 5% of the Bond or BAN proceeds will be transferred, directly or indirectly, or deemed transferred to a nongovernmental person in any manner that would in substance constitute a loan of the Bond or BAN proceeds.

(d) The City reasonably expects, as of the date hereof, that the Bonds and BANs will not meet either the private business use test described in paragraph (a) and (b) above or the private loan test described in paragraph (c) above.

(e) No more than 5% of the proceeds of the Bonds or BANs will be attributable to private business use as described in (a) and private security or payments described in (b) attributable to unrelated or disproportionate private business use. For this purpose, the private business use test is applied by taking into account only use that is not related to any government use of proceeds of the issue (Unrelated Use) and use that is related but disproportionate to any governmental use of those proceeds (Disproportionate Use).

(f) The City will not take any action nor fail to take any action with respect to the Bonds or BANs that would result in the loss of the exclusion from gross income for federal tax purposes on the Bonds or BANs pursuant to Section 103 of the Code, nor will the City act in any other manner which would adversely affect such exclusion. The City covenants and agrees not to enter into any contracts or arrangements which would cause the Bonds or BANs to be treated as private activity bonds under Section 141 of the Code.

(g) It shall be not an event of default under this resolution if the interest on any Bond or BAN is not excludable from gross income for federal tax purposes or otherwise pursuant to any provision of the Code which is not currently in effect and in existence on the date of issuance of the Bonds or BANs, as the case may be.

(h) The Board represents that it will rebate any arbitrage profits to the United States to the extent required by the Code and the regulations promulgated thereunder.

(i) These covenants are based solely on current law in effect and in existence on the date of delivery of the BANs and the Bonds, as the case may be.

Section 22. Amendments with Consent of Bondholders. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and

two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds issued pursuant to this resolution and then outstanding shall have the right from time to time (anything contained in this resolution to the contrary notwithstanding) to consent to and approve the adoption by the Board of such resolution or resolutions supplemental hereto as shall be deemed necessary or desirable by the Board for the purpose of modifying, altering, amending, adding to or rescinding in any particular any of the terms or provisions contained in this resolution, or in any supplemental resolution; provided, however, that nothing herein contained shall permit or be construed as permitting:

- (a) An extension of the maturity of the principal of or interest on any Bond issued pursuant to this resolution; or
- (b) A reduction in the principal amount of any Bond, the redemption premium or the rate of interest thereon; or
- (c) The creation of a lien upon or a pledge of the revenues of the storm water system ranking prior to the pledge thereof created by this resolution; or
- (d) A preference or priority of any Bond or Bonds issued pursuant to this resolution over any other Bond or Bonds issued pursuant to the provisions of this resolution; or
- (e) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental resolution; or
- (f) A reduction in the Reserve Requirement; or
- (g) An extension of mandatory sinking fund redemption dates, if any.

If the owners of not less than sixty-six and two-thirds percent (66 2/3%) in aggregate principal amount of the Bonds outstanding at the time of adoption of such supplemental resolution shall have consented to and approved the adoption thereof by written instrument to be maintained on file in the office of the Secretary of the Board, no owner of any Bond shall have any right to object to the adoption of such supplemental resolution or to object to any of the terms and provisions thereof. Upon the adoption of any supplemental resolution pursuant to the provisions of this section, this resolution shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this resolution of the City and all owners of Bonds then outstanding shall thereafter be determined exercised and enforced in accordance with this resolution, subject in all respects to such modifications and amendments. Notwithstanding anything contained in the foregoing provisions of this resolution, the rights and obligations of the City and of the owners of the Bonds authorized by this resolution, and the terms and provisions of the Bonds and this resolution, or any supplemental resolution, may be modified or altered in any respect with the consent of the Board and the consent of the owners of all the Bonds then outstanding.

Section 23. Issuance of BANs. (a) The Board, having satisfied all the statutory requirements for the issuance of its bonds, may elect to issue its BAN or BANs, pursuant to a

Bond Anticipation Note Purchase Agreement ("Purchase Agreement") to be entered into between the City and the purchaser of the BAN or BANs. The Board hereby authorizes the issuance and execution of the BAN or BANs in lieu of initially issuing bonds to provide interim construction financing for the Projects until permanent financing becomes available. It shall not be necessary for the Board to repeat the procedures for the issuance of its Bonds, as the procedures followed before the issuance of the BAN or BANs are for all purposes sufficient to authorize the issuance of the Bonds and the use of the proceeds to repay the BAN or BANs.

(b) The Mayor and the Clerk-Treasurer are hereby authorized to execute a purchase agreement ("BAN Purchase Agreement") in such form or substance as they shall approve acting upon the advice of counsel. The Mayor, the Clerk and the Clerk-Treasurer may also take such other actions or deliver such other certificates as are necessary or desirable in connection with the issuance of the BANs or the bonds and the other documents needed for the financing as they deem necessary or desirable in connection therewith.

Section 24. Tax Exemption. Notwithstanding any other provision of this resolution, the covenants and authorizations contained in this resolution ("Tax Sections") which are designed to preserve the exclusion of interest on the Bonds and BANs from gross income under federal law ("Tax Exemption") need not be complied with if the City receives an opinion of nationally recognized bond counsel that any Tax Section is unnecessary to preserve the Tax Exemption.

Section 25. Conflicting Resolutions. All resolutions and parts of resolutions in conflict herewith are hereby repealed.

Section 26. Headings. The headings or titles of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this resolution.

Section 27. This resolution shall be in full force and effect from and after its passage.

CITY OF WESTFIELD
BOARD OF PUBLIC WORKS

Andy Cook

Randy Graham

Kate Snedecker

ATTEST:

Cindy Gossard, Clerk-Treasurer

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Attachment I

Description of Storm Water Improvements

2017 Stormwater Bond

Declaratory Resolution

Public Information

9/27/17

- North Street Drainage Improvements
 - Project Description: Preliminary design efforts to add storm infrastructure to North Street from west of Cherry Street to East Street.
 - Cost Estimate: \$30,000
 - See Exhibit A, attached
- Westfield Park Culverts
 - Project Description: Preliminary design efforts to remove and replace Hamilton Bridge 059 with a single span 3-sided culvert along Westfield Park north of the Monon Trail. Design will also include permitting efforts and R/W engineering. A portion of construction will be supported by Hamilton County Highway Department.
 - Cost Estimate: \$480,000
 - See Exhibit B, attached
- Grassy Branch Stream Restoration Phase II
 - Project Description: Reconstruction of the Grassy Branch Stream from Mill Street to Union Street. Efforts include design, permitting, and construction.
 - Cost Estimate: \$300,000
 - See Exhibit C, attached
- Westfield Lagoon Closure
 - Project Description: Removal and remediation of two existing wastewater lagoons north of the Westfield Public Works and City Services buildings along 171st Street.
 - Cost Estimate: \$880,000
 - See Exhibit D, attached
- Sleepy Hollow Drainage and Sidewalks
 - Project Description: Construction of new drainage infrastructure within the Sleepy Hollow subdivision. Also includes sidewalk infrastructure.
 - Cost Estimate: \$510,000
 - See Exhibit E, attached

Additional Information Available Upon Request.

Please contact Phil Sundling at 317-517-1945 or psundling@westfield.in.gov

Exhibit A

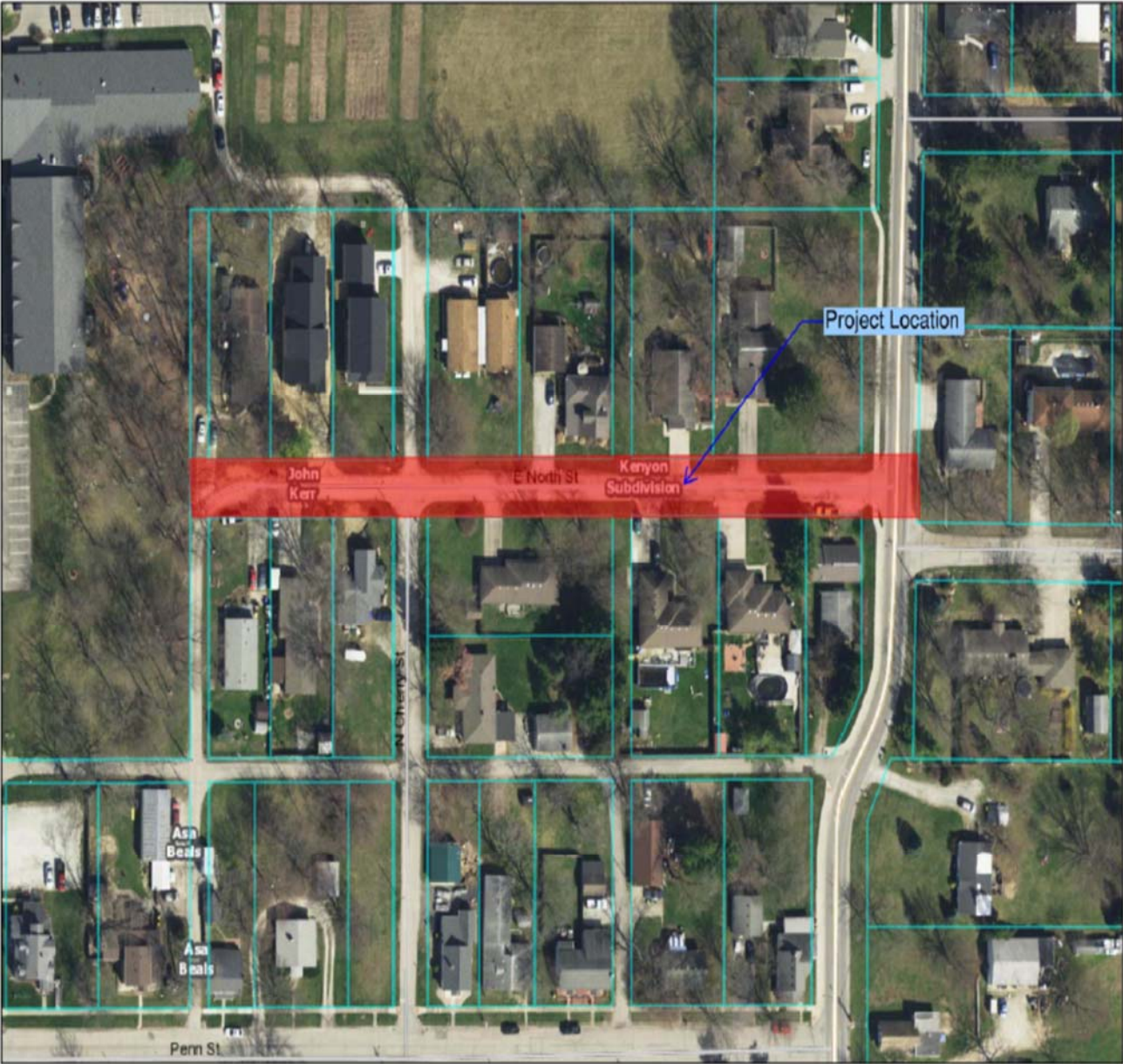


Exhibit B

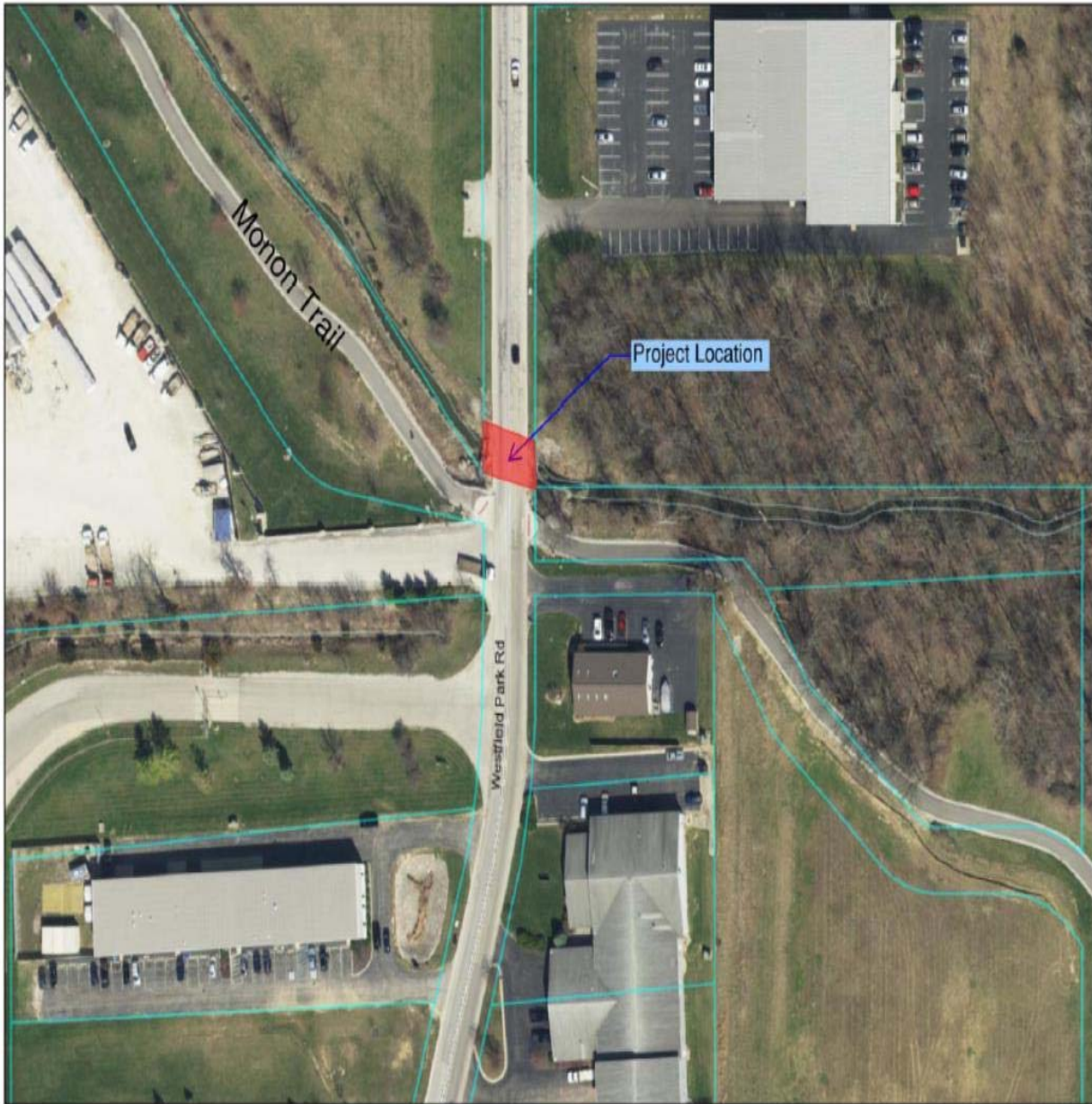
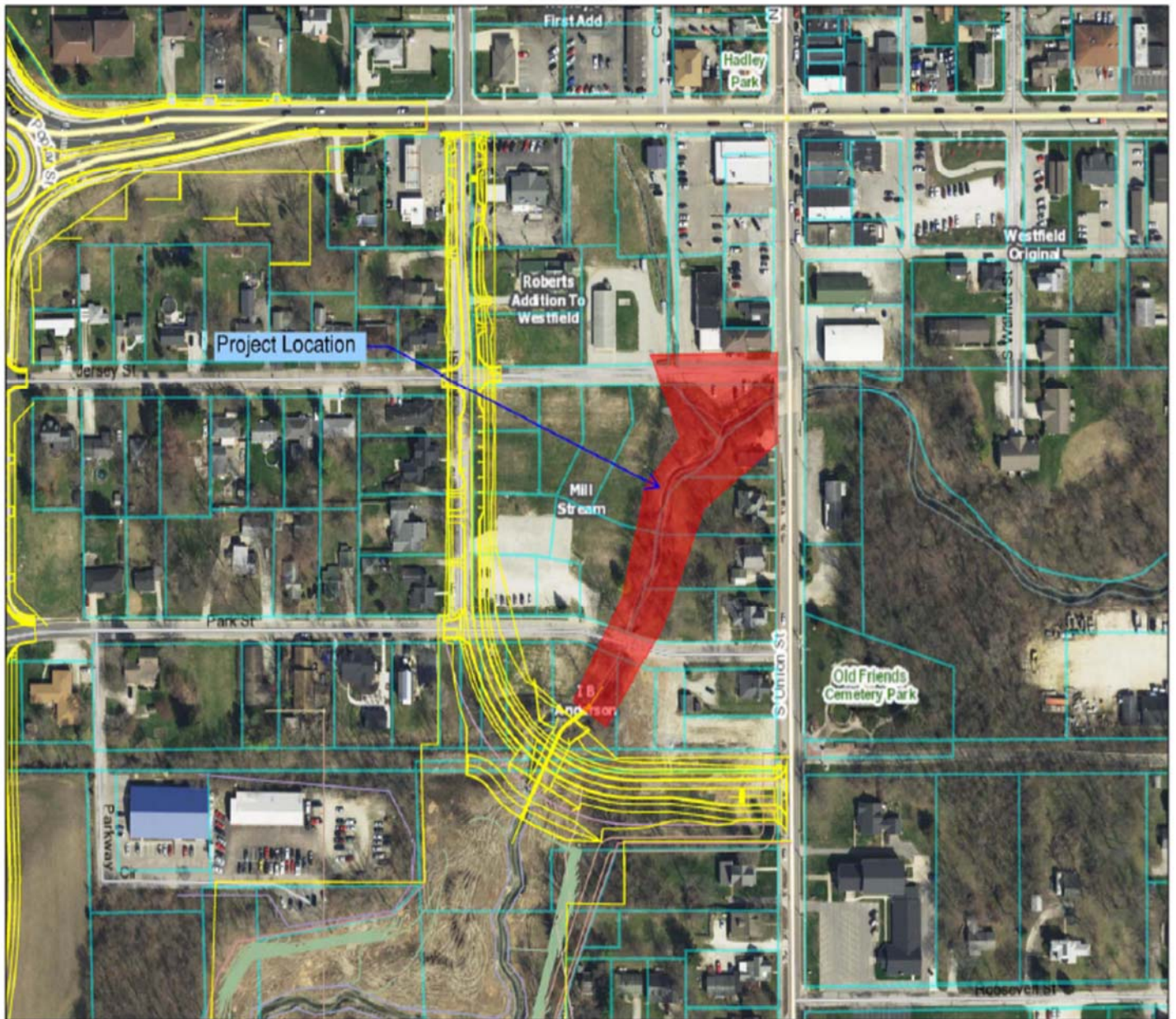


Exhibit C



RESOLUTION NO. 17-131

A RESOLUTION OF THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF WESTFIELD, INDIANA, ACTING AS THE BOARD OF DIRECTORS OF THE STORM WATER MANAGEMENT DIVISION OF THE CITY OF WESTFIELD, INDIANA, APPROVING THE CONSTRUCTION AND ACQUISITION OF CERTAIN STORM WATER IMPROVEMENTS AND CONFIRMING A DECLARATORY RESOLUTION AND ALL MATTERS RELATED THERETO

WHEREAS, pursuant to Indiana Code 8-1.5-5, the Common Council ("Council") of the City of Westfield, Indiana ("City") adopted Ordinance 16-08 on April 11, 2016 ("Storm Water Ordinance") creating the Stormwater Management Division ("Division") within the Department of Public Works ("Department") for the purpose of providing for and managing the collection, treatment, drainage, and disposal of City storm and surface water, establishing the Westfield Storm Water District ("District"), and adopting and approving user fees for the District; and

WHEREAS, pursuant to Indiana Code 8-1.5-5-4(g)(2) and the Storm Water Ordinance, the Board of Public Works and Safety of the City ("Board") serves as the board of directors of the Division, being the governing body of the District; and

WHEREAS, the City owns and operates a storm water utility to serve and benefit the residents of the City and District; and

WHEREAS, the Board adopted Declaratory Resolution No. 17-129 on September 27, 2017 ("Declaratory Resolution") declaring the Board's intent to proceed with certain improvements to the storm water utility; and

WHEREAS, the Board has published notice of a public hearing on the Declaratory Resolution, and matters addressed therein, in accordance with IC 8-1.5-5; and

WHEREAS, a public hearing was held on the Declaratory Resolution, and matters addressed therein, on October 9, 2017, at which time all parties requesting to be heard or to file written remonstrances were received and considered; and

WHEREAS, the Board desires to proceed with the acquisition, construction, rebuilding, repair, extension and improvement of the projects set forth in the Declaratory Resolution for the reasons and benefits set forth therein.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF WESTFIELD:

Section 1. The Declaratory Resolution adopted by the Board on September 27, 2017, is hereby confirmed and the projects described in the Declaratory Resolution are hereby declared to be necessary for the protection of the public health and welfare of the inhabitants of the District and the safeguarding of the property within the District, are of public utility and benefit and are hereby approved.

Section 2. The officers and representatives of the District and any member of the Board are hereby authorized, empowered and directed, on behalf of the District, to take any other action as such individual deems necessary or desirable to effectuate the foregoing resolutions, and any actions heretofore made or taken be, and hereby are, ratified and approved.

Section 3. This resolution shall be in full force and effect from and after its adoption.

Dated this 9th day of October, 2017.

CITY OF WESTFIELD
BOARD OF PUBLIC WORKS

Andy Cook

Randy Graham

Kate Snedecker

ATTEST:

Cindy Gossard, Clerk-Treasurer

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