



CITY OF WESTFIELD, IN
Board of Public Works Meeting Agenda_06_24_2015

Wednesday, June 24, 2015 at 01:00 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Wednesday, June 24, 2015 at 01:00 PM

MEETING PLACE: Westfield Public Works- Large Conference Room

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

AGENDA ITEMS

Meeting Minutes Consideration for Approval

Action Item #1: Minutes- May 27, 2015

Documents: [Minutes- 05/27/15](#)

Bid Approval

None

Construction Standards & Specifications Changes

None

Change Orders

None

Contracts/Leases

Action Item #2: WPD Mobile Radio/L3 Upgrade- Body Cameras

Agreements and/or Memorandum of Understanding (MOU)

Action Item #3: INDOT/MPO HSIP Funding Projects Agreements

Documents: [INDOT/MPO HSIP Funding Projects](#) | [Handicap Ramp and Improvements](#) | [Roundabout and Intersection Lighting](#) | [Intersection Sight Distance Improvement](#) | [Guard Rail Improvement 151st Culvert](#)

Action Item #4: Urban Farmer RIF Credit Agreement

Documents: [Urban Farmer RIF Credit Agreement](#)

Consent Agenda

Performance Bonds Acceptance & Release

Documents: [Performance Bonds Acceptance & Release](#)

Acceptance of Keeneland Park Section 6 Secondary Plat

Documents: [Acceptance of Keeneland Park Section 6 Secondary Plat](#)

Department Reports

Fire

Documents: [WFD Report](#)

Police

Documents: [WPD Report](#)

Public Works

Documents: [WPWD Report](#)

THE WESTFIELD BOARD OF PUBLIC WORKS AND SAFETY May 27, 2015

The Westfield Board of Public Works and Safety met on May 27, 2015, at the Westfield Public Works Conference Room. Present were, Kate Snedeker, Randy Graham, Records Manager Kim Strang and Brian Zaiger, legal counsel. Randy Graham called the meeting to order at 1:03 P.M.

AGENDA ITEMS

Meeting Minutes Consideration for Approval:

Kate Snedeker made the motion to approve the April 29, 2015 meeting minutes as presented and this was seconded by Randy Graham. Vote: Yes-2; No-0. Motion carried.

Bid Approval:

None

Construction Standards & Specifications Changes:

None

Change Orders:

None

Contracts/Leases

None

Agreements and/or Memorandum of Understanding (MOU)

None

Consent Agenda

WPD Conditional Offer of Employment (1 applicant)

Performance/Maintenance Bond Acceptance & Release (See attached documents) 

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

Department Reports

- **Fire** –Joe Lyons
- **Police**- Scott Jordan
- **Public Works**- Jeremy Lollar

Randy Graham made the motion to adjourn, Kate Snedeker seconded. Vote: Yes-2; No-0. Motion carried.

With no further business the meeting was adjourned at 1:11 P.M.

Deputy Clerk-Treasurer

Board of Public Works and Safety



Mayor
Andy Cook

City Council
Jim Ake
Steven Hoover
Robert L. Horkay
Chuck Lehman
Robert J. Smith
Cindy L. Spoljaric
Robert W. Stokes

Clerk Treasurer
Cindy J. Gossard

INDOT/MPO HSIP Funding Projects

The Westfield Public Works Department is recommending that the Board of Public Works and Safety consider the following agreements:

- Handicap Ramp and Curb Improvements
- Roundabout and Intersection Lighting
- Intersection Sight Distance Improvement (buy corner cuts and clearing)
- Guard Rail Improvement 151st Culvert

Public Works Department

(317) 804-3100 office
(317) 804-3190 fax

2706 East 171st Street
Westfield, IN 46074
westfield.in.gov

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

EDS #: A249-15-L150097

Des. No.: 1500428

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**

Recommended for approval by:

Print or type name and title

Robert D. Cales, Director
Contract Administration Division

Date: _____

Signature and date

Executed by:

Print or type name and title

(FOR)

Brandye Hendrickson, Commissioner

Signature and date

Date: _____

Print or type name and title

Department of Administration

Signature and date

Jessica Robertson, Commissioner

Date: _____

LPA DUNS #: _____

Attest

State Budget Agency

Auditor or Clerk Treasurer

Brian E. Bailey, Director

Date: _____

Approved as to Form and Legality:

This instrument prepared by:

Ellen Hite

June 1, 2015

(FOR)

Gregory F. Zoeller, Attorney General of Indiana

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: **1500428**
Program: **Group I Safety**
Type of Project: **Bike/Pedestrian Facilities**
Location: **Various Locations**

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

A project to install/upgrade handicap pedestrian curb ramps 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 **\$ 144,000.00**.

 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.

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

EDS #: A249-15-L150098

Des. No.: 1500429

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, 2018 and June 30, 2019**, 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**

Recommended for approval by:

Print or type name and title

Robert D. Cales, Director
Contract Administration Division

Signature and date

Date: _____

Print or type name and title

Executed by:

Signature and date

(FOR)

Brandye Hendrickson, Commissioner

Print or type name and title

Date: _____

Department of Administration

Signature and date

Jessica Robertson, Commissioner

LPA DUNS #: _____

Date: _____

Attest

State Budget Agency

Auditor or Clerk Treasurer

Brian E. Bailey, Director

Date: _____

Approved as to Form and Legality:

This instrument prepared by:

Ellen Hite

June 1, 2015

(FOR)

Gregory F. Zoeller, Attorney General of Indiana

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: **1500429**
Program: **Group I Safety**
Type of Project: **Install Lighting**
Location: **Various Locations**

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

A project to install street lighting at existing roundabouts and intersections 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 **\$ 891,000.00**.

 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.

**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**

Recommended for approval by:

Print or type name and title

Robert D. Cales, Director
Contract Administration Division

Signature and date

Date: _____

Print or type name and title

Executed by:

Signature and date

(FOR)

Brandye Hendrickson, Commissioner

Print or type name and title

Date: _____

Department of Administration

Signature and date

Jessica Robertson, Commissioner

LPA DUNS #: _____

Date: _____

Attest

State Budget Agency

Auditor or Clerk Treasurer

Brian E. Bailey, Director

Date: _____

Approved as to Form and Legality:

This instrument prepared by:

Ellen Hite

June 1, 2015

(FOR)

Gregory F. Zoeller, Attorney General of Indiana

Date: _____

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.

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

EDS #: A249-15-L150100

Des. No.: 1500431

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, 2019 and June 30, 2020**, INDOT will make the federal funds shown in section I.A. and/or I.B. of Attachment D available for the Project, provided the Project is eligible.
- 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**

Recommended for approval by:

Print or type name and title

Robert D. Cales, Director
Contract Administration Division

Signature and date

Date: _____

Print or type name and title

Executed by:

Signature and date

(FOR)

Brandye Hendrickson, Commissioner

Print or type name and title

Date: _____

Department of Administration

Signature and date

Jessica Robertson, Commissioner

LPA DUNS #: _____

Date: _____

Attest

State Budget Agency

Auditor or Clerk Treasurer

Brian E. Bailey, Director

Date: _____

Approved as to Form and Legality:

This instrument prepared by:

Ellen Hite

June 1, 2015

(FOR)

Gregory F. Zoeller, Attorney General of Indiana

Date: _____

ATTACHMENT A
PROJECT DESCRIPTION

Des. No.: **1500431**
Program: **Group I Safety**
Type of Project: **Guardrail Attenuators, New or Modernized**
Location: **151 St**

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

A project for guardrail attenuators, new or modernized, for 151st Street, between Shelborne and Town Road, 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 **\$ 72,000.00.**

 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.



Mayor
Andy Cook

City Council
Jim Ake
Steven Hoover
Robert L. Horkay
Chuck Lehman
Robert J. Smith
Cindy L. Spoljaric
Robert W. Stokes

Clerk Treasurer
Cindy J. Gossard

Consent Agenda Items:

Performance Bond Acceptance

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

- Springmill Park (1401142) (Cash-In-Lieu CK# 15001 (\$6,398.15) – Erosion Control \$116,330.00)
- Spring Orchard at Springmill Trails, Section 3 (1401100) (Cash-In Lieu CK# 11407 (\$2,080.32) – Erosion Control \$37,824.00)
- Kroger – Store #J-970 – Fuel Center (1404085) (Bond #9182904 – Storm Sewer \$67,608.64)
- Kroger – Store #J-970 – Fuel Center (1404085) (Bond #9182902 – Sidewalk \$7,776.45)
- Kroger – Store #J-970 – Fuel Center (1404085) (Bond #9182903 – Erosion Control \$20,564.50)

Performance Bond Release

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

- 2014 Fall Resurface (Bond #929611289 – Streets/Curbs \$94,139.98)

Maintenance Bond Acceptance

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

- None

Maintenance Bond Release

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

- None

Public Works Department

(317) 804-3100 office
(317) 804-3190 fax

2706 East 171st Street
Westfield, IN 46074
westfield.in.gov



**City of Westfield Fire Department
Board of Public Works & Safety Report
May 1st – May 31st, 2015**

**Contact: Fire Chief
Joe Lyons
or Nikki Hartman
804-3304**

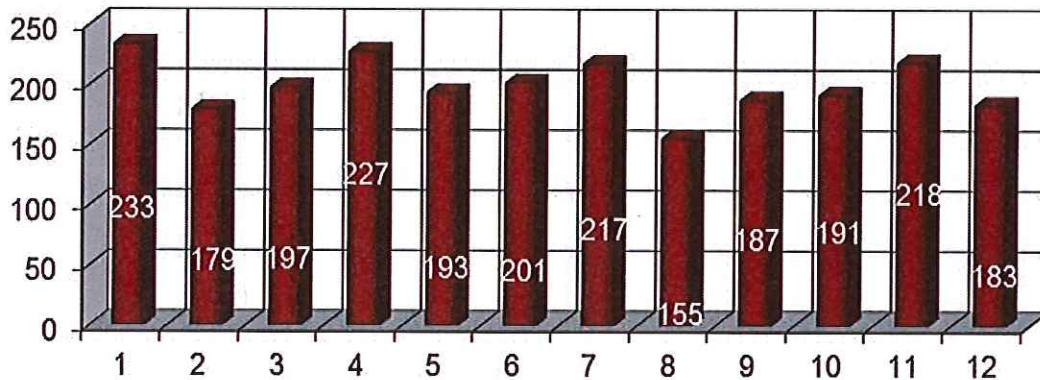


Westfield Fire Department 2015 Incident Statistics By Fire / Medical Groups

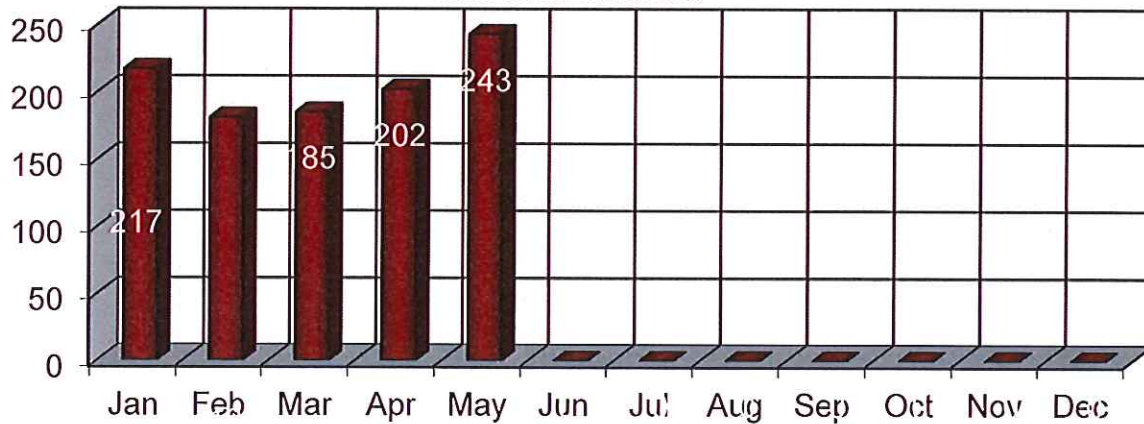


	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
Total WFD Fire Incidents	97	81	91	93	91								453	44.1%
Total WFD Medical Incidents	120	100	94	109	152								575	55.9%
Total WWFD Incidents	217	181	185	202	243	0	0	0	0	0	0	0	1028	100%

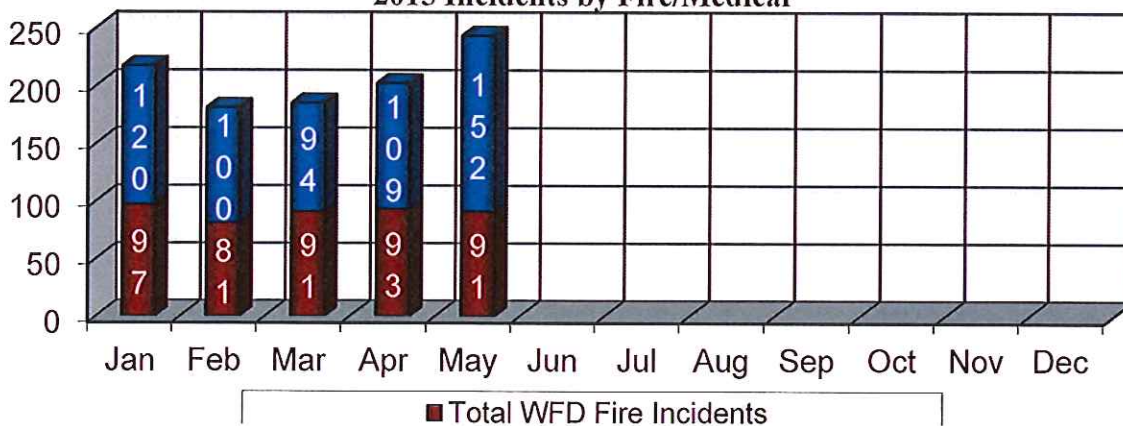
Westfield Fire Department
2014 Total Incidents



Westfield Fire Department
2015 Total Incidents



Westfield Fire Department
2015 Incidents by Fire/Medical



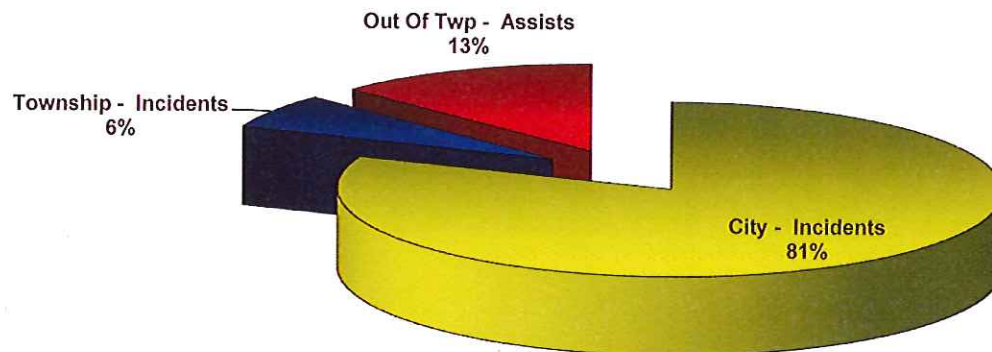


Westfield Fire Department 2015 Fire/Medical Incidents By Governmental Area



2015 Incidents	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Totals	%
City - Incidents	171	142	139	181	197								830	80.7%
Township - Incidents	13	11	18	8	16								66	6.4%
Out Of Twp - Assists	33	28	27	13	30								131	12.7%

Westfield Fire Department 2015 Incidents by Governmental Areas



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



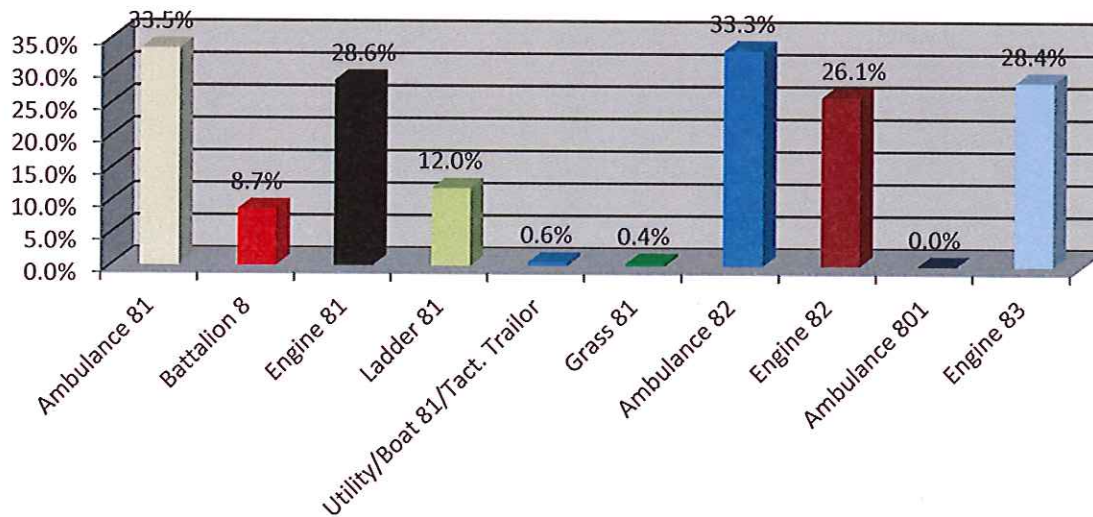
Westfield Fire Department 2015 Total Apparatus Responses By Unit & Station

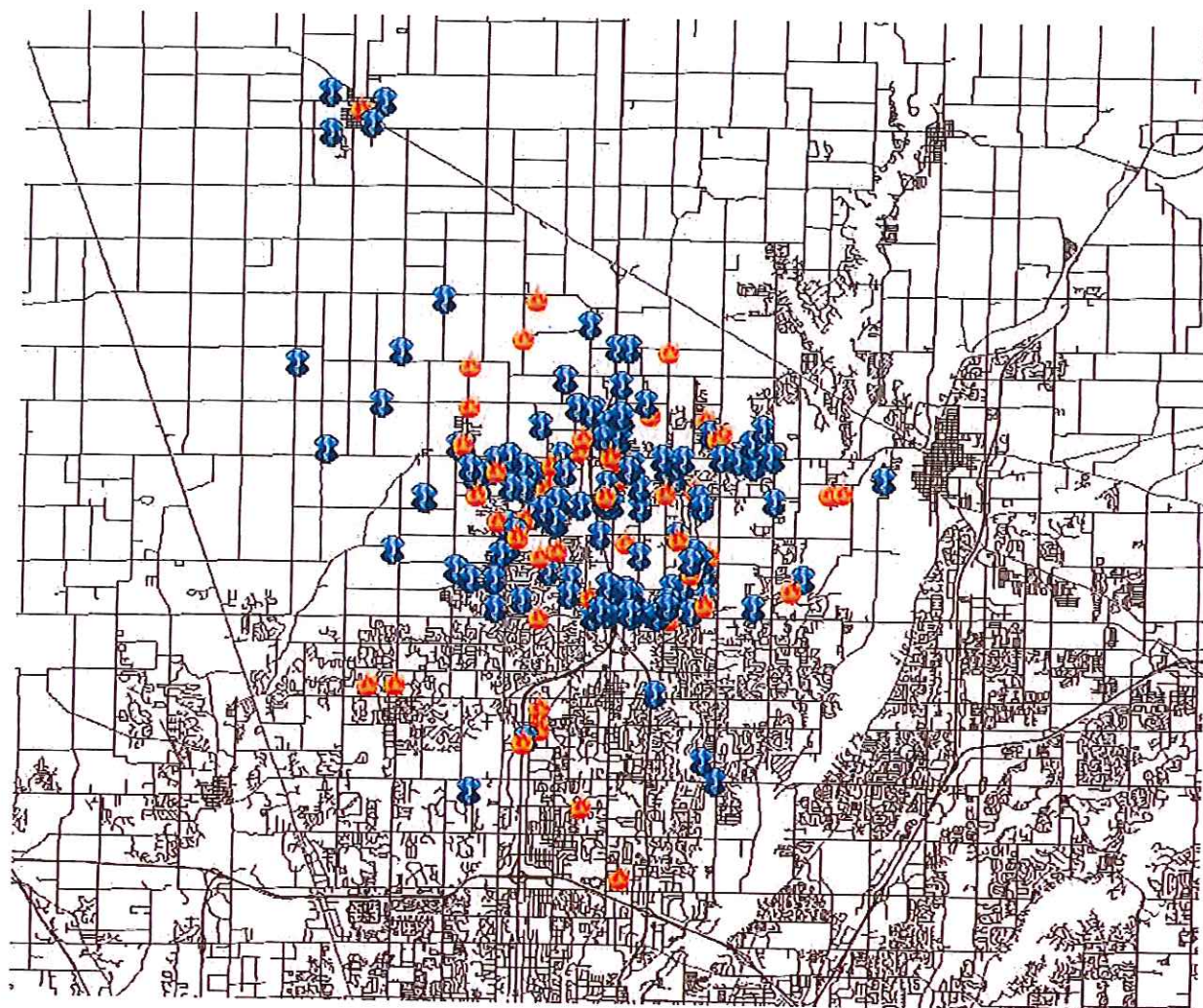


<u>Station 81 Responses</u>														Totals	%
Ambulance 81	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		344	33.5%
Battalion 8	27	14	15	18	15									89	8.7%
Engine 81	58	50	63	53	70									294	28.6%
Ladder 81	31	14	22	24	32									123	12.0%
Utility/Boat 81/Tact. Trailer	1	-	1	2	2									6	0.6%
Grass 81		1	2	-	1									4	0.4%

<u>Station 82 Responses</u>														Totals	%
Ambulance 82	Jan	Feb	March	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		342	33.3%
Engine 82	69	51	37	57	54									268	26.1%
Ambulance 801	0	-	-	-	-									0	0.0%
<u>Station 83 Responses</u>														Totals	%
Engine 83	61	50	46	59	76									292	28.4%

Westfield Fire Department 2015 Total Apparatus Responses





Westfield Fire Department

Kristen Custom Report

Alarm Date Between {05/01/2015} And {05/31/2015}

Incident Type	Count	Pct of Incidents	Total Est Loss	Pct of Losses
I Fire				
100 Fire, Other	2	0.82%	\$0	0.00%
111 Building fire	3	1.23%	\$75,000	100.00%
113 Cooking fire, confined to container	1	0.41%	\$0	0.00%
140 Natural vegetation fire, Other	1	0.41%	\$0	0.00%
173 Cultivated trees or nursery stock fire	1	0.41%	\$0	0.00%
	8	3.29%	\$75,000	100.00%
J Rescue & Emergency Medical Service Incident				
320 Emergency medical service, other	6	2.46%	\$0	0.00%
321 EMS call, excluding vehicle accident with	142	58.43%	\$0	0.00%
322 Motor vehicle accident with injuries	4	1.64%	\$0	0.00%
324 Motor Vehicle Accident with no injuries	4	1.64%	\$0	0.00%
353 Removal of victim(s) from stalled elevator	1	0.41%	\$0	0.00%
360 Water & ice-related rescue, other	1	0.41%	\$0	0.00%
	158	65.02%	\$0	0.00%
K Hazardous Condition (No Fire)				
111 Gasoline or other flammable liquid spill	1	0.41%	\$0	0.00%
112 Gas leak (natural gas or LPG)	3	1.23%	\$0	0.00%
144 Power line down	3	1.23%	\$0	0.00%
145 Arcing, shorted electrical equipment	1	0.41%	\$0	0.00%
	8	3.29%	\$0	0.00%
L Service Call				
500 Service Call, other	1	0.41%	\$0	0.00%
511 Lock-out	1	0.41%	\$0	0.00%
531 Smoke or odor removal	3	1.23%	\$0	0.00%
551 Assist police or other governmental agency	16	6.58%	\$0	0.00%
554 Assist invalid	2	0.82%	\$0	0.00%
	23	9.46%	\$0	0.00%
M Good Intent Call				
500 Good intent call, Other	2	0.82%	\$0	0.00%
511 Dispatched & cancelled en route	20	8.23%	\$0	0.00%
521 Wrong location	2	0.82%	\$0	0.00%
531 Authorized controlled burning	2	0.82%	\$0	0.00%
571 HazMat release investigation w/no HazMat	1	0.41%	\$0	0.00%

Westfield Fire Department

Kristen Custom Report

Alarm Date Between {05/01/2015} And {05/31/2015}

Incident Type	Count	Pct of Incidents	Total Est Loss	Pct of Losses
6 Good Intent Call	27	11.11%	\$0	0.00%
7 False Alarm & False Call				
700 False alarm or false call, Other	11	4.52%	\$0	0.00%
733 Smoke detector activation due to	2	0.82%	\$0	0.00%
740 Unintentional transmission of alarm, Other	2	0.82%	\$0	0.00%
743 Smoke detector activation, no fire -	3	1.23%	\$0	0.00%
744 Detector activation, no fire -	1	0.41%	\$0	0.00%
	19	7.81%	\$0	0.00%

Total Incident Count: 243

Total Est Loss: \$75,000

Westfield Police Department

Monthly Performance Measures Report



Board of Public Works & Safety

May 2015

Table of Contents

	Page
1. Field Activity Performance Measures	
a) Events by Nature/Calls for Service	1
b) Calls by Day of Week	2
c) Calls by Hour of Day	3
d) Total Calls by Month Chart	4
e) UCR Offenses	5
f) Non-UCR Offenses	6
g) Arrests	7
h) Traffic Accidents	7
i) Traffic Stops Citations & Warnings	7
j) Traffic Stops by Day of Week	8
k) Traffic Stops by Hour of Day	9
l) Traffic Stops by Month Chart	10
2. Community Events	11
3. Training	12

WESTFIELD POLICE DEPARTMENT

May 2015

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

Abduction/ Kidnapping	0
Abuse/ Abandonment/Neglect	10
Admin- K-9 Detail	0
Admin- Log Information	0
Admin-Public Relations	3
Admin- Special Detail	1
Admin- Test Calls	0
Admin- Tow Release	3
Admin- Warning Correction	0
Alarm- Bank	0
Alarm- Business	78
Alarm- Residence	84
Animal- Complaints	45
Assault- Battery	4
Assault- Sexual	1
Assist- Fire Incident	2
Assist- Medical Incident	13
Assist- Other Agencies	29
Bomb Found/ Suspicious Pkg	0
Burglary/ Home Invasion	8
Damage/ Vandalism/ Mischief	8
Deceased- All Others	1
Disturbance- Fireworks Cmplt	2
Disturbance- Loud Party	3
Disturbance- Noise Complaint	7
Disturbance- Nuisance	3
Disturbance- Physical (fight)	4
Disturbance- Verbal	11
Domestic Disturbance	9
Drugs- Complaint	10
Fraud- Criminal Deception	0
Fraud- Forgery	14
Fraud- Prescription	1
Harassment/ Stalking/ Threat	21
Indecency / Lewdness	0
Intoxicated- Possible DUI	15
Mental/ Emotional	25
Miscellaneous	20

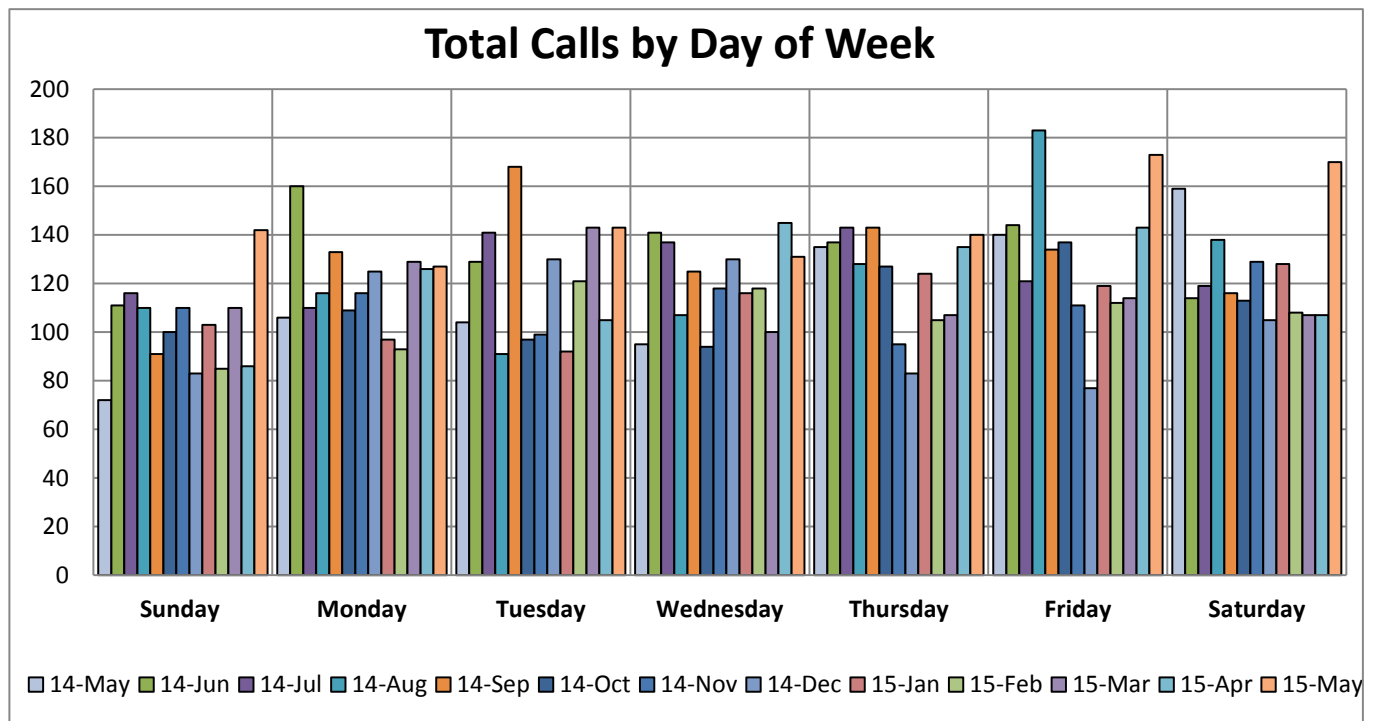
Person-Missing	6
Persons- Runaway	3
Robbery-Carjacking	0
Service Call- 9-1-1 Hang Up	11
Service Call- Damage to Property	6
Service Call- Found Property	12
Service Call- Keep the Peace	29
Service Call- Lost Property	9
Service Call- Notification	1
Service Call- Security Check	4
Service Call- Vehicle Lockout	64
Service Call- Vin Check	32
Service Call- Welfare Check	51
Suicidal- Attempted	0
Suicidal- Persons Threatening	0
Supplemental- Case Follow Up	42
Suspicious- Noises	5
Suspicious- Open Door/ Window	2
Suspicious- Person/Prowler	25
Suspicious- Solicitor	15
Suspicious- Vehicle	23
Theft- From a Vehicle	11
Theft- Of a Vehicle	0
Theft- Others	32
Theft- Shoplifting	2
Trespassing/ Unwanted Person	5
Trfc Complaint - Abandoned Veh	4
Trfc Complaint- Driving Issues	42
Trfc Complaint- Parking Issues	11
Trfc Hazard- Debris in Road	9
Trfc Hazard- Disabled Vehicle	15
Trfc Hazard- Trfc Signal Out	8
Trnsprtn Acdnt- MV Hit & Run	8
Trnsprtn Acdnt- MV Prop Damg	60
Trnsprtn Acdnt- MV Prsnl Inj	7
Wanted- Warrant Service	4
Weapons- Person Carrying	1
Weapons- Shot Fired	1

WESTFIELD POLICE DEPARTMENT

May 2015

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

DAY	14-May	14-Jun	14-Jul	14-Aug	14-Sep	14-Oct	14-Nov	14-Dec	15-Jan	15-Feb	15-Mar	15-Apr	15-May
Sunday	72	111	116	110	91	100	110	83	103	85	110	86	142
Monday	106	160	110	116	133	109	116	125	97	93	129	126	127
Tuesday	104	129	141	91	168	97	99	130	92	121	143	105	143
Wednesday	95	141	137	107	125	94	118	130	116	118	100	145	131
Thursday	135	137	143	128	143	127	95	83	124	105	107	135	140
Friday	140	144	121	183	134	137	111	77	119	112	114	143	173
Saturday	159	114	119	138	116	113	129	105	128	108	107	107	170
TOTAL	811	936	887	873	910	777	778	733	779	742	810	847	1026



WESTFIELD POLICE DEPARTMENT

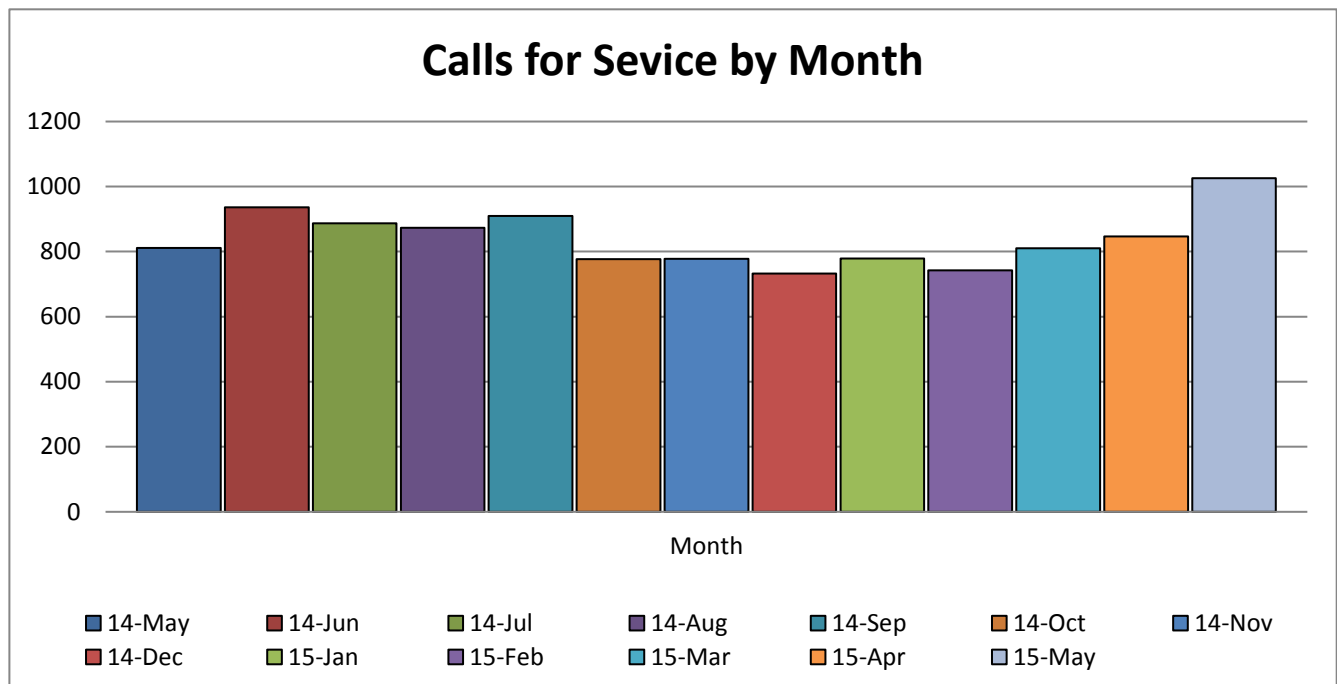
May 2015

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

HOURL	14-May	14-Jun	14-Jul	14-Aug	14-Sep	14-Oct	14-Nov	14-Dec	15-Jan	15-Feb	15-Mar	15-Apr	15-May
0	23	32	20	26	15	25	17	19	24	25	16	20	28
1	13	23	18	16	15	13	26	19	15	9	7	21	18
2	7	11	18	5	11	11	5	14	19	14	11	13	17
3	17	7	8	10	6	10	9	9	6	12	10	7	12
4	7	8	4	9	17	7	12	6	12	8	5	8	13
5	7	17	5	10	5	6	11	6	9	9	12	15	14
6	12	19	5	9	23	14	14	12	10	15	14	7	14
7	23	28	20	23	35	33	20	20	22	24	33	23	42
8	36	45	38	44	38	32	38	30	26	32	32	41	38
9	30	43	53	33	49	34	45	38	36	37	41	39	51
10	58	45	53	47	54	44	28	42	43	37	31	38	58
11	47	47	39	41	53	41	48	38	38	38	46	46	55
12	44	56	59	48	47	47	42	50	43	45	39	43	48
13	61	52	43	55	56	37	63	35	41	41	43	48	68
14	43	48	51	61	53	37	49	41	43	45	55	52	62
15	55	61	66	59	61	53	55	58	53	61	55	46	61
16	53	61	47	48	50	57	40	47	49	43	59	65	60
17	53	73	55	57	63	57	49	48	61	50	53	62	70
18	35	42	47	58	53	47	54	50	41	52	45	51	56
19	33	51	46	49	62	44	45	49	49	42	43	52	54
20	37	45	41	43	41	45	34	24	39	30	43	43	60
21	47	42	58	46	42	27	30	44	38	25	55	53	47
22	46	49	61	43	37	31	23	19	35	29	31	28	45
23	24	31	32	33	24	25	21	15	27	19	31	26	35
TOTAL	811	936	887	873	910	777	778	733	779	742	810	847	1026

WESTFIELD POLICE DEPARTMENT

May 2015



WESTFIELD POLICE DEPARTMENT

May 2015

UCR OFFENSES

OFFENSE	14-Mar	14-Jun	14-Jul	14-Aug	14-Sep	14-Oct	14-Nov	14-Dec	15-Jan	15-Feb	15-Mar	15-Apr	15-May
Arson	0	1	0	0	0	0	0	0	0	0	0	0	0
Homicide	0	0	0	0	0	0	0	0	0	0	0	0	0
Rape	0	0	0	0	0	2	0	0	1	0	0	0	1
Robbery	0	0	1	1	0	0	0	0	0	2	0	0	0
Battery - Aggravated	1	0	0	3	3	3	13	2	2	1	0	2	3
Battery - Simple	15	25	14	11	16	15	7	7	14	6	9	3	18
Burglary	2	3	1	4	5	3	2	1	2	0	2	1	6
Theft	29	33	34	47	30	34	29	33	34	27	25	38	29
Motor Vehicle Theft	0	0	1	3	1	0	2	0	1	1	0	0	1
TOTAL	47	62	51	69	55	57	53	43	54	37	36	44	58

WESTFIELD POLICE DEPARTMENT

May 2015

NON UCR OFFENSES (PART II)

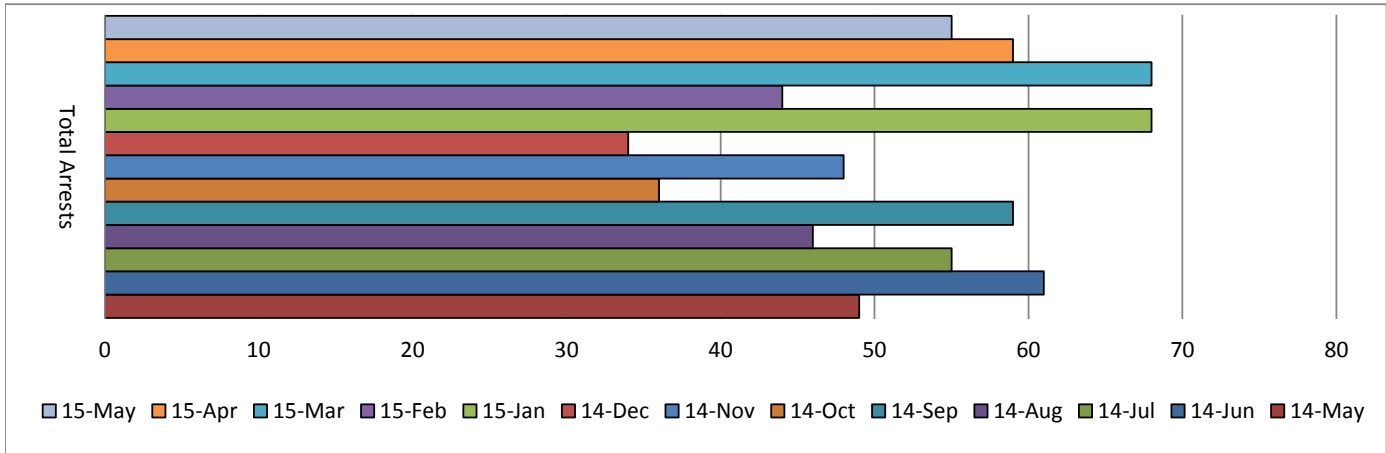
ANIMALS/ INCLUDING DOG BITES	8
ASSIST OTHER AGENCY	7
CHILD ABUSE REPORTED	9
CHILD CUSTODY DISPUTE	3
CIVIL DISPUTE	5
CRIMINAL MISCHIEF/VANDALISM	5
DAMAGED PROPERTY	8
DEATHS OTHER THAN HOMICIDE/SUICIDE	1
DISTURBANCE/ARGUMENTS/FIGHTS	18
DOORS / WINDOWS UNLOCKED OR OPEN	0
DRIVING WHILE SUSPENDED	12
DRUG ABUSE VIOLATIONS	10
FIRES / UNDETERMINED	0
FRAUD	10
HARASSMENT	8
IDENTITY THEFT	0
JUVENILE COMPLAINT	0

LEAVING THE SCENE	5
LIQUOR LAW VIOLATIONS	1
MISSING PERSON / LOST	3
NON-MOVING TRAFFIC VIOLATIONS	7
OPERATING WHILE INTOXICATED	8
PROPERTY FOUND	13
PROPERTY LOST	19
RECKLESS DRIVING	1
RUNAWAY	4
SUICIDE/ATTEMPTS/THREATS OF	5
SUSPICIOUS INCIDENT/PERSON	7
THREATS/INTIMIDATION	1
TRAFFIC VIOLATIONS	3
TRESPASSING	0
WARRANT ARREST	1
WEAPON VIOLATION	1
WELFARE CHECK	0

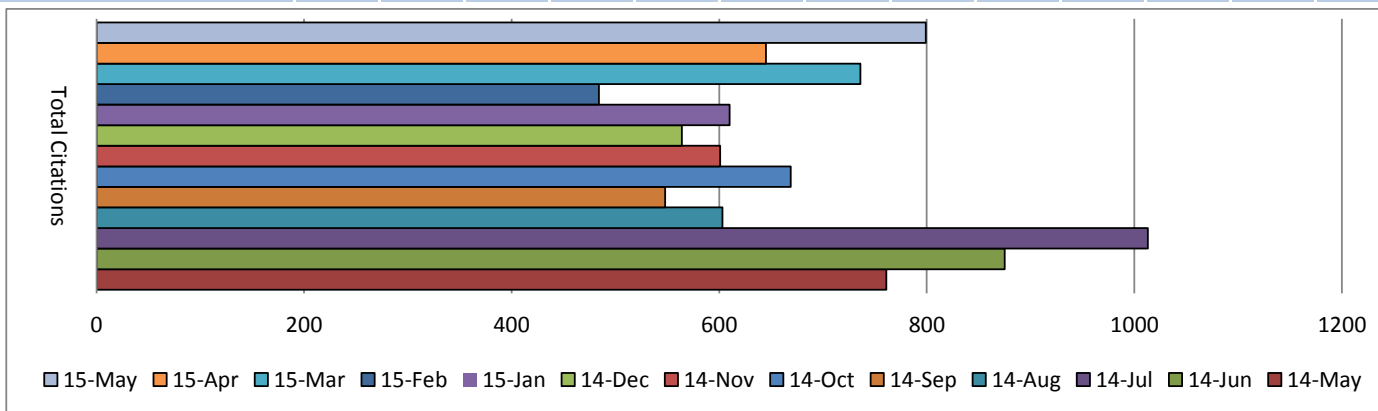
WESTFIELD POLICE DEPARTMENT

May 2015

Arrest Reports Taken	14-May	14-Jun	14-Jul	14-Aug	14-Sep	14-Oct	14-Nov	14-Dec	15-Jan	15-Feb	15-Mar	15-Apr	15-May
Alcohol/ Drug Related	14	15	17	18	24	7	17	11	23	14	31	14	23
Felony Charges	12	6	14	7	7	9	18	4	18	6	6	15	45
Misdemeanor Charges	57	70	72	63	85	35	52	42	79	46	80	65	67
Traffic Arrest Charges	29	52	41	47	52	18	33	33	57	25	35	42	10
Total Arrests	49	61	55	46	59	36	48	34	68	44	68	59	55



Traffic	14-May	14-Jun	14-Jul	14-Aug	14-Sep	14-Oct	14-Nov	14-Dec	15-Jan	15-Feb	15-Mar	15-Apr	15-May
Total Citations	761	875	1013	603	548	669	601	564	610	484	736	645	799
Total Written Warnings	793	801	855	768	862	826	835	981	968	911	1061	883	958
Total Traffic Accidents	35	46	46	38	57	58	58	54	53	51	40	41	52
<i>Hit and Run</i>	4	5	1	3	6	4	9	5	6	1	5	2	4
<i>Personal Injury</i>	3	9	9	7	11	10	10	5	5	5	4	7	6
<i>*Fatality</i>	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Property Damage</i>	28	32	36	28	40	44	39	44	42	45	31	32	42

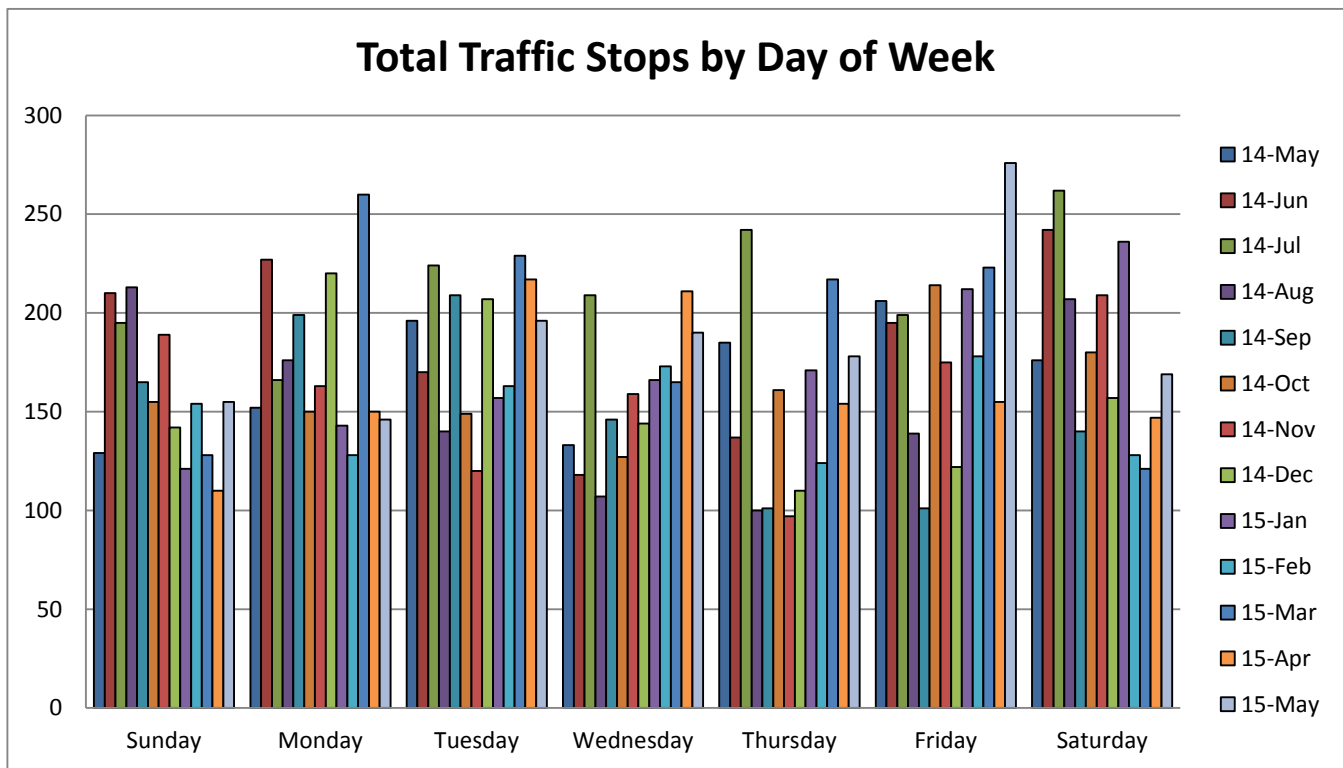


WESTFIELD POLICE DEPARTMENT

May 2015

Traffic Stops: SELF INITIATED by Day of Week

Day:	14-May	14-Jun	14-Jul	14-Aug	14-Sep	14-Oct	14-Nov	14-Dec	15-Jan	15-Feb	15-Mar	15-Apr	15-May
Sunday	129	210	195	213	165	155	189	142	121	154	128	110	155
Monday	152	227	166	176	199	150	163	220	143	128	260	150	146
Tuesday	196	170	224	140	209	149	120	207	157	163	229	217	196
Wednesday	133	118	209	107	146	127	159	144	166	173	165	211	190
Thursday	185	137	242	100	101	161	97	110	171	124	217	154	178
Friday	206	195	199	139	101	214	175	122	212	178	223	155	276
Saturday	176	242	262	207	140	180	209	157	236	128	121	147	169
TOTAL	1177	1299	1497	1082	1061	1136	1112	1102	1206	1048	1343	1144	1310



WESTFIELD POLICE DEPARTMENT

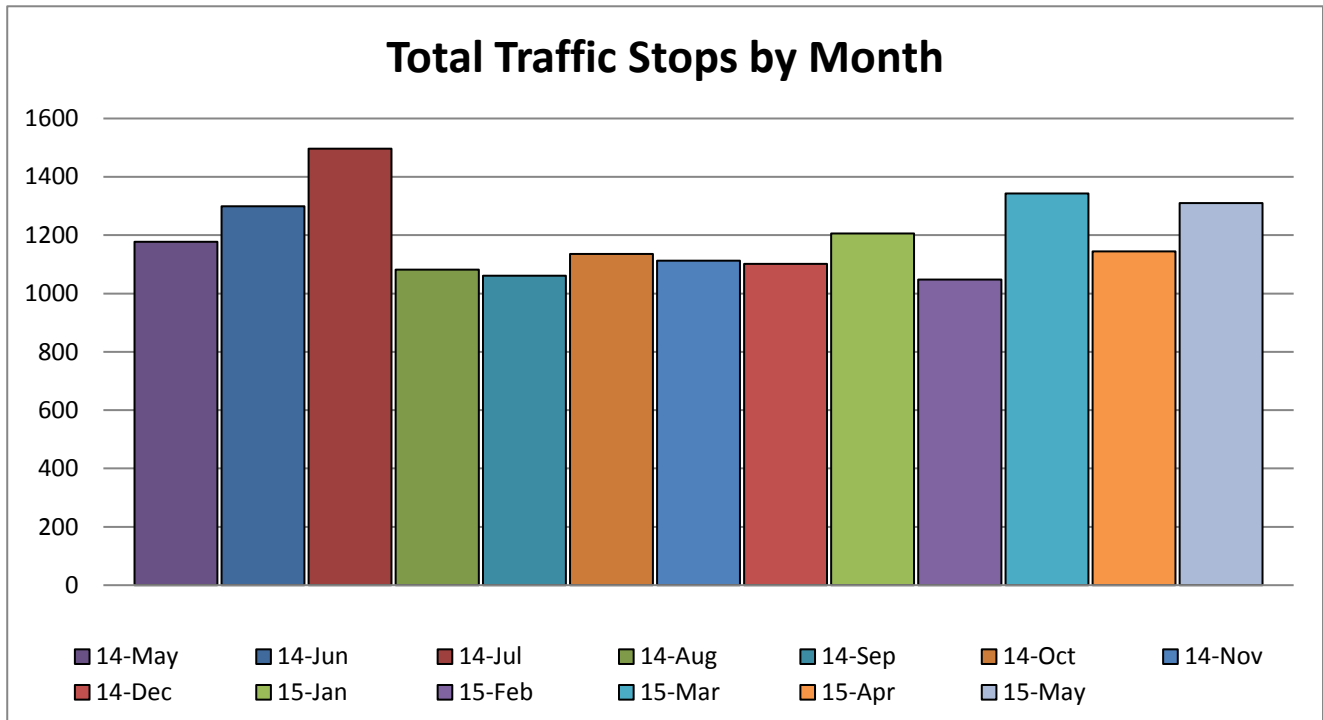
May 2015

Traffic Stops: SELF INITIATED by Hour of Day

Hour:	14-May	14-Jun	14-Jul	14-Aug	14-Sep	14-Oct	14-Nov	14-Dec	15-Jan	15-Feb	15-Mar	15-Apr	15-May
0	46	56	49	59	36	37	44	40	35	38	29	35	51
1	33	47	47	38	26	21	48	28	26	19	25	24	42
2	10	22	16	18	12	5	10	22	9	18	24	12	20
3	17	9	15	19	11	4	11	16	11	12	9	12	6
4	14	10	11	14	11	10	13	5	9	6	8	8	9
5	22	13	11	19	24	9	18	14	12	10	24	14	5
6	18	18	22	19	30	10	16	7	20	10	10	15	36
7	78	77	110	84	98	79	60	34	62	71	86	80	109
8	65	106	114	68	87	94	83	81	93	78	100	74	96
9	99	98	123	88	77	102	124	119	95	83	105	111	72
10	92	92	128	75	74	107	111	105	101	81	113	92	82
11	42	56	73	40	36	56	57	47	44	37	71	53	65
12	65	71	68	32	55	45	55	55	61	42	69	55	67
13	69	77	113	72	68	91	75	82	76	73	104	83	76
14	68	78	95	66	47	66	71	74	74	69	80	73	83
15	55	79	102	47	36	69	48	49	71	33	67	62	93
16	44	55	54	39	38	60	25	25	56	41	34	38	57
17	31	23	44	31	35	29	26	30	32	42	33	31	27
18	37	25	22	15	25	33	20	22	47	50	47	38	59
19	97	77	102	80	95	81	59	70	60	33	73	58	60
20	48	48	43	40	45	34	41	51	61	46	48	31	34
21	31	45	36	30	18	31	20	44	42	47	74	41	45
22	44	49	50	37	31	32	40	45	55	57	60	52	62
23	52	68	49	52	46	31	37	37	54	52	50	52	54
TOTAL	1177	1299	1497	1082	1061	1136	1112	1102	1206	1048	1343	1144	1310

WESTFIELD POLICE DEPARTMENT

May 2015



**Westfield Police Department
Community Events
May 2015**

5/6/15 Bike to School

5/25/15 K9 Demonstration for the Memorial Day Celebration – Officer Kang

5/26/15 Breakfast with kids – Officer Wheeler

5/25/15 Breakfast with kids – Officer Kang

5/25/15 Safety Talk Rainbow Child Center – Officer Martin and Lt. Gorrell

5/29/15 Breakfast with kids – Sgt. Adams

5/29/15 St. Maria Goretti Siler Angels talk about protecting themselves from fraud – Officer Martin

**Westfield Police Department
Monthly Training Summary
May 2015**

5/1/15 Getting Pat the iOS Passcodes – Investigations

5/4-7/15 Physical Tactics – Departmental Training

5/7/15 Monthly K9

5/11-14/15 national Citizens Academy Association Conference – Lt. Seagrave

5/14/15 Monthly ESU

5/26-28/15 Leads Online Leadership Conference – Detective Newlin-Haus

ROAD IMPACT FEE AGREEMENT

This ROAD IMPACT FEE AGREEMENT (“Agreement”) is made and entered into as of the 24th day of June, 2015, by and between the City of Westfield, Indiana, (the “City”) and Herron Holdings, LLC (the “Developer”) as follows:

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

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

WHEREAS, as part of the development of 120 East 161st Street, as more particularly described in the attached **Exhibit A** (the “Real Estate”), road impact fees are required to be paid to the City by the Developer in accordance with City Ordinance 12-13;

WHEREAS, the City desires to acquire right-of-way and install a multi-purpose path along the Real Estate’s frontage prior to the development of the Real Estate;

WHEREAS, the Developer is required to dedicate right-of-way and install a multi-purpose path at the time of the development of the Real Estate pursuant to the Westfield-Washington Township Unified Development Ordinance (the “Unified Development Ordinance”) and the Westfield Thoroughfare Plan, a part of the Westfield-Washington Township Comprehensive Plan (the “Thoroughfare Plan”);

WHEREAS, the City assessed a road impact fee of \$36,880 (the “Road Impact Fee”) on June 24, 2015 (Assessment Request # 15-RIFA-04), as part of the Developer’s filed Improvement Location Permit (15-CRM-005-355) for the Real Estate;

WHEREAS, the Developer desires to accommodate the City’s plans consistent with the City’s Thoroughfare Plan, as amended by the City’s Complete Streets Policy, in exchange for road impact fee credit (“RIF Credit”).

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

- 1) The Developer agrees to dedicate the real estate, as graphically depicted in the attached **Exhibit B** (the “Right-of-Way”), to the City at no cost to the City within thirty (30) days of this agreement.
- 2) The City agrees to construct certain improvements within the Right-of-Way as follows (collectively, the “Improvements”): (i) 8’-wide multi-purpose asphalt path; (ii) storm water infrastructure under Real Estate’s driveway; and (iii) widen and improve Real Estate’s existing driveway.

- 3) The City and Developer agree the collective cost of the Improvements to be \$25,000 (the “Cost of Improvements”).
- 4) The City agrees to issue a RIF Credit to the Developer for the Right-of-Way in the amount of \$12,500.
- 5) The Developer shall reimburse the City the Cost of Improvements as part of the Developer’s payment to the City of its Road Impact Fee.
- 6) In accordance with I.C. 36-7-4-1324, the City agrees to an installment payment plan of the Road Impact Fee over a period of five (5) years and a 0% interest rate.
- 7) The Developer agrees to pay \$5,000.00 to the City upon the issuance of the Improvement Location Permit and to make the following installment payments to the City for the remaining Road Impact Fee on or before the following dates:

Issuance of ILP:	\$5,000.00
August 1, 2016:	\$3,876.00
August 1, 2017:	\$3,876.00
August 1, 2018:	\$3,876.00
August 1, 2019:	\$3,876.00
August 1, 2020:	\$3,876.00
Total Road Impact Fee:	\$24,380.00

- 8) The parties acknowledge and agree that any improvement location permits (building permits) issued for the Real Estate after June 24, 2015, but prior to this Agreement, were issued in contemplation of this Agreement; and, as such, the City shall not charge a road impact fee for any anticipated permits. Accordingly, the otherwise applicable road impact fee that would have been collected from each of the issued building permits shall be credited against the future RIF Credit until such time that the Road Impact Fee is completely recognized or the RIF Credit is completely accounted.
- 9) Any notice, statement, demand, or other communication required or permitted to be given, rendered or made shall be addressed as indicated below:

If to Westfield:
City of Westfield
Attn: Jeremy Lollaer,
Director of Public Works
2706 East 171st Street
Westfield, IN 46074

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

If to Developer:
Herron Holdings, LLC
Attn: Noah Herron
120 E. 161st Street
Westfield, IN 46074

10) On June 24, 2015, the Westfield Board of Public Works and Safety authorized the Director of the Public Works Department to execute this Agreement.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

Herron Holdings, LLC

By: _____

Noah Herron

Manager

Date: _____

STATE OF INDIANA)

) SS:

COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Noah Herron, on behalf of Herron Holdings, LLC, who acknowledged its authority and the execution of the foregoing Road Impact Fee Agreement to be its voluntary act and deed.

WITNESS, my hand and Notarial Seal this 24th day of June, 2015.

My Commission Expires:

Printed: _____

Notary Public, A Resident of Hamilton
County, Indiana

**City of Westfield,
Hamilton County, Indiana**

By: _____

Jeremy Lollar, Director

Public Works Department

Date: _____

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared Jeremy Lollar, on behalf of the City of Westfield, who acknowledged its authority and the execution of the foregoing Road Impact Fee Agreement to be its voluntary act and deed.

WITNESS, my hand and Notarial Seal this 24th day of June, 2015.
My Commission Expires:

Printed: _____
Notary Public, A Resident of Hamilton
County, Indiana

THIS DOCUMENT PREPARED BY: Jeffrey M. Lauer, City of Westfield

Return Document to: Cindy Gossard, City of Westfield, 130 Penn Street, Westfield, IN 46074

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

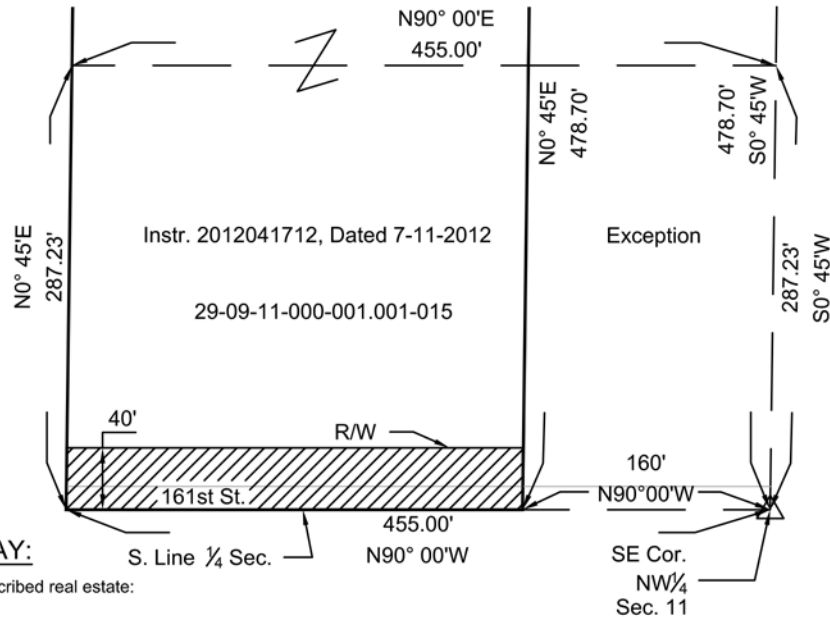
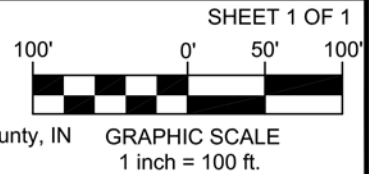
EXHIBIT A
REAL ESTATE

EXHIBIT B
RIGHT-OF-WAY



PARCEL : 10

Prepared for the City of Westfield, IN
for Multi-Use Path Connections
in the East Half of the Northwest Quarter of
Section 11, Township 18 North, Range 3 East, Hamilton County, IN



PARCEL 10 RIGHT-OF-WAY:

The South 40.00 feet of the following described real estate:

Tract I

Situated in the East Half of the Northwest Quarter of Section 11, Township 18 North, Range 3 East in Hamilton County, Indiana, and more particularly described as follows:
Beginning on the Southeast corner of said Northwest Quarter of Section 11, thence North 90 degrees 00 minutes West along the South Line of said Quarter a distance of 455.00 feet to a point; thence North 00 degrees 45 minutes East parallel to the East line of said Quarter a distance of 287.23 feet to a point; thence North 90 degrees 00 minutes East parallel to the South Line of said Quarter a distance of 455.00 feet to a point; thence on the East Line of said Quarter South 00 degrees 45 minutes West a distance of 287.23 feet to the point of beginning.

Tract II

Part of the Northwest Quarter, Section 11, Township 18 North, Range 3 East in Hamilton County, Indiana more particularly described as follows:
Commencing at the Southeast Corner of the above mentioned Quarter, North 00 degrees 45 minutes, assumed bearing, along said East Quarter line, 287.23 feet to the beginning point of this description, thence North 90 degrees 00 minutes West 455.00 feet, thence North 00 degrees 45 minutes East 191.47 feet, thence North 90 degrees 00 minutes East 455.00 feet, thence South 00 degrees 45 minutes West, along the East Quarter Line, 191.47 feet to the beginning point of this description.

EXCEPTING THEREFROM THE FOLLOWING:

Part of the Northwest Quarter of Section 11, Township 18 North, Range 3 East, Hamilton County, Indiana, and being more particularly described as follows:
Beginning at the Southeast corner of said Quarter Section; thence South 90 degrees 00 minutes West along the South line of said Quarter Section 160 feet; thence North 00 degrees 45 minutes East, parallel with the East line of said Quarter Section, 478.70 feet; thence North 90 degrees 00 minutes East, parallel with said South line, 160 feet to said East line; thence South 00 degrees 45 minutes West along said East line 478.70 feet to the point of beginning.

Said South 40.00 feet contains 0.271 acres, more or less, inclusive of the apparent existing right-of-way for 161st Street which contains 0.102 acres, more or less.



8415 East 56th St.
Indianapolis, IN 46216
PH: 317.544.4996
FAX: 317.544.4997

Note: Dimensions shown are
from the listed record documents.



Kelly D. Marley
Kelly D. Marley Date 10-23-2014
Reg. Land Surveyor No. LS20400016
State of Indiana

Drawn : KDM
Checked : JMG
USI Job # 2014-041
October 23, 2014



Board of Works

Andy Cook
Randy Graham
Kate Snedecker

Clerk Treasurer

Cindy J. Gossard

Public Works Department

(317) 804-3150 office
(317) 804-3181 fax

2728 East 171st Street
Westfield, IN 46074
westfield.in.gov

Memorandum

To: Westfield Board of Public Works & Safety

Date: June 24, 2015

Re: Public Works Project Report

Memo to Board Members

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

Westfield Public Works Executive Summary Progress Report

Street Maintenance

Our current focus is on the repair and installation of stone shoulders. We have assumed the responsibility of installing shoulders on our newly surfaced roads. With the addition of our Road Widener we can provide a better product at a reduced cost. As weather permits, we will also begin the construction of 8 new soccer fields at Grand Park.

Park Maintenance

Maintenance crews continue to address irrigation issues. We have also been focusing on in house landscape designs for roundabouts. This RFP will go out in the coming months in preparation for our fall landscaping package.

Notable changes since 3/25/15

1. 2015 Resurfacing and Maintenance Improvement Project (MIP)
Resurfacing has been completed with exception of North Union which will be completed this week and Springmill from 151st to the new RAB at 156th. Our annual road striping process will begin as soon as weather permits.

2. 156th and Spring Mill Roundabout
Construction was completed and the intersection was opened to traffic on 6/12/15. We are currently working on punch list items in order to close out the project. RAB lighting has been ordered and will be installed when the shipment comes in.
3. 161st and Oakridge RAB
Construction was finished on 6/12/15 and initial landscaping was finished on 6/22/15. We are currently working on punch list items in order to close out the project.
4. Tomlinson and 191st Roundabout
Construction of this has ramped back up now that the 31/32 interchange has reopened. The North and East legs will be closed this week for a period of 4-5 weeks. This will allow for the bulk of construction to take place while still allowing access to the residents east of the intersection.
5. Grand Park Blvd Extension
Construction of this new road is well under way and pavement will go down in the coming weeks. The roadway and half of the Wheeler RAB are currently being constructed. Once that is complete, traffic will shift to the new portion and the remainder of the project will finish.
6. Monon Phase 4
This is also known as the Bridge over the Anna Kendell. This project will connect the current Monon, north to SR32, and includes a short bridge over the Ana Kendell. Construction will begin in the coming weeks with the bridge being set in August. We anticipate this section opening in late October.

Other Notable Projects

City Project Manager: Gary Pence

1. 156th and Spring Mill Roundabout

The project is to put in new 2 lane roundabout replacing a 4 way stop controlled intersection. The project was let on January 14th, but unbalanced bids will require it to bid again. Most utilities are relocated and construction is anticipated this spring. Construction and inspection 100 percent reimbursable, by INDOT

Public Works Department

(317) 804-3100 office
(317) 804-3190 fax

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Westfield, IN 46074
westfield.in.gov

2. 161st and Oakridge RAB

This project is to build a new 2 lane Roundabout in place of the current 4-way stop intersection. This project will be let on Feb 4th through INDOT. Demolition and utilities relocations are expected to start this spring with closure and construction anticipated when the 156th and Springmill RAB opens. Construction and inspection is 100 percent reimbursable, by INDOT.

3. Grand Park Blvd Extension

This project is a new boulevard roadway connection and roundabout from Wheeler Road north to the existing at 186th street RAB. This project is currently in construction with mostly earthmoving and storm drains work presently. Expected open to traffic near the end of June.

4. Ditch Road Extension

This project is a new boulevard roadway section, expending from SR 32 north and connect to a new roundabout at Casey Road. The roadway plans are 99 percent complete and right of way is clear. Utilities are still in need of relocations. The current plan is to split the project into two phases. The first contract would deal with fixing the drainage issues on Ditch Road south of SR 32 and new pipe under SR 32. There is currently no timeline for work, and will proceed when vertical construction plans are presented by the developer.

5. Towne Road for 156th street to 166th street

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

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6. Oak Trace Elementary School Safe Road to School Study

Engineering study to improve safety for Oak Trace Elementary School. Waiting for INDOT funding approval to start study. Expect start August 2015

City Project Manager: Phil Sundling

7. Wheeler Road Extension

- Design at 80%, awaiting final drainage decision
- Roadway reconstruction project that runs from SR 32 to 181st Street
- R/W – Wheeler parcel filed for condemnation last week, should have findings within the next month or two
- Utility Proceeds funding

8. Monon Phase 6

- Design at 90%
- Project runs from 181st to the Monon Elementary School north of 191st
- Trailhead will remain as part of Phase 7 due to the latest design change – won't have time to get R/W clear and include in Phase 6
- R/W – 3 parcels left, should have all cleared in the next few weeks
- MPO funding for PE, CN, CE – match with local Utility Proceeds

9. Westfield Boulevard Extension (West Access Road)

- Design at 85%
- New roadway project that runs from 151st west of Target to new underpass that INDOT built for Union Street
- Awaiting final drainage design

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- We are currently in the R/W acquisition phase
- PE funded via Village Park TIF
- RW, CN funded with Utility Proceeds

10. North Union Sidewalk Extension (CDBG)

- PCS survey finished and sent over on 11/13/14
- R/W line work sent over from Pat McCallister with PB
- \$153k reimbursement from CDBG with the City matching a portion

11. Westfield Boulevard Connector (South Poplar Extension)

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

12. 186th and Springmill RAB

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

13. Red Line Mass Transit

- City committing \$146k match for PE and ENV services
- Multiple stops from 146th, Village Park, Downtown Westfield, Grand Park
- Construction not until 2020 at the earliest

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City Project Manager: Mike Morgan

14. Mill St. Extension

- Home demolition is nearing completion
- We still have 2 properties to acquire before we proceed.
- We are currently in the process of acquiring the necessary permits to construct the bridge.

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