

B45791

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

SPECIAL INVESTIGATION REPORT
OF

PUBLIC WORKS
CITY OF BLOOMINGTON
MONROE COUNTY, INDIANA

January 1, 2008 to February 28, 2014



FILED
02/11/2016

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SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Controller	Susan Clark	01-01-08 to 05-04-08
	Michael Trexler	05-05-08 to 01-01-13
	Susan West	01-02-13 to 06-13-14
	Donna Slater (Interim)	06-14-14 to 08-15-14
	(Vacant)	08-16-14 to 09-01-14
	Jeff Underwood	09-02-14 to 12-31-16
Mayor	Mark Kruzan	01-01-08 to 12-31-15
	John Hamilton	01-01-16 to 12-31-19
President of the Board of Public Works	Charlotte Zietlow	01-01-08 to 12-31-15
	Kyla Cox Deckard	01-01-16 to 12-31-16
President of the Common Council	Susan Sandberg	01-01-08 to 12-31-08
	Andy Ruff	01-01-09 to 12-31-09
	Isabel Piedmont-Smith	01-01-10 to 12-31-10
	Susan Sandberg	01-01-11 to 12-31-11
	Tim Mayer	01-01-12 to 12-31-12
	Darryl Neher	01-01-13 to 12-31-14
	Dave Rollo	01-01-15 to 12-31-15
	Andy Ruff	01-01-16 to 12-31-16



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

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TO: THE OFFICIALS OF THE CITY OF BLOOMINGTON

We have conducted a special investigation of the records of the Public Works, City of Bloomington, for the period from January 1, 2008 to February 28, 2014. Our investigation was limited to the following records; contracts, bids, change orders, contract payments and credit card purchases. The purpose of our investigation was to determine if the accountability for cash and other assets are satisfactory and that the transactions related thereto are in compliance with the laws and regulations of the State of Indiana. The results of our investigation are fully described in the Special Investigation Results and Comments, Summary of Charges, and Summary of Questioned Costs, as listed in the Table of Contents.

This report was forwarded to the Office of the Indiana Attorney General, the United States Attorney's Office, and the local prosecuting attorney.

Any Official Response to the Special Investigation Results and Comments, incorporated within this report, was not verified for accuracy.

Paul D. Joyce
Paul D. Joyce, CPA
State Examiner

September 22, 2015

PUBLIC WORKS
CITY OF BLOOMINGTON
SPECIAL INVESTIGATION RESULTS AND COMMENTS

IMPROPER PAYMENTS OF CLAIMS FOR CONSTRUCTION PROJECTS NOT COMPLETED

Payments totaling \$429,074 were made to Reliable Concrete and Construction and Hardin Concrete for invoices for construction projects the companies did not complete. Justin Wykoff, former Senior Project Manager for the City of Bloomington, had a financial interest in these businesses which was not disclosed in a conflict of interest statement. The following table shows the date, contractor, check number, and check amount for financial transactions approved by Justin Wykoff, former Senior Project Manager for the City of Bloomington, and paid by the City to Reliable Concrete and Construction and Hardin Concrete for construction projects not completed.

<u>Date</u>	<u>Contractor</u>	<u>Check Number</u>	<u>Amount</u>
12-10-10	Hardin Concrete	45303	\$ 66,480
07-20-12	Reliable Concrete and Construction	51018	22,690
02-01-13	Reliable Concrete and Construction	52692	27,140
04-12-13	Reliable Concrete and Construction	53194	36,712
06-21-13	Reliable Concrete and Construction	53839	27,250
08-16-13	Reliable Concrete and Construction	54533	36,510
09-13-13	Reliable Concrete and Construction	54831	33,105
10-25-13	Reliable Concrete and Construction	55329	18,452
11-22-13	Reliable Concrete and Construction	55670	11,200
12-06-13	Reliable Concrete and Construction	55858	36,310
12-31-13	Reliable Concrete and Construction	56146	62,012
02-14-14	Reliable Concrete and Construction	56426	<u>51,213</u>
Total Improper Payment of Claims for Construction Work Not Completed			<u>\$ 429,074</u>

Funds misappropriated, diverted or unaccounted for through malfeasance, misfeasance, or nonfeasance in office of any officer or employee may be the personal obligation of the responsible officer or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

Every effort should be made by the governmental unit to avoid unreasonable or excessive costs. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

Indiana Code 35-44-1-3(d), prior to its repeal in 2012, and Indiana Code 35-44.1-1-4(d) state:

"A disclosure must:

- (1) be in writing;
- (2) describe the contract or purchase to be made by the governmental entity;
- (3) describe the pecuniary interest that the public servant has in the contract or purchase;
- (4) be affirmed under penalty of perjury;

PUBLIC WORKS
CITY OF BLOOMINGTON
SPECIAL INVESTIGATION RESULTS AND COMMENTS
(Continued)

- (5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity before final action on the contract or purchase;
- (6) be filed within fifteen (15) days after final action on the contract or purchase with:
 - (A) the state board of accounts; and
 - (B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and
- (7) contain, if the public servant is appointed, the written approval of the elected public servant . . . that appointed the public servant."

Justin Wykoff, former Senior Project Manager for the City of Bloomington; Zachary Hardin, owner of Reliable Concrete and Construction; and Roger Dale Hardin, owner of Hardin Concrete, were indicted on May 21, 2014, in the United States District Court, Southern District of Indiana. Charges were for conspiracy to commit wire fraud and multiple counts of wire fraud.

We consider Justin Wykoff, former Senior Project Manager for the City of Bloomington; Zachary Hardin, owner of Reliable Concrete and Construction; and Roger Dale Hardin, owner of Hardin Concrete, to be jointly and severally liable to the City of Bloomington for improper claims for payment of construction in the amount of \$429,074. (See Summary of Charges, page 14)

QUESTIONED COSTS OF CONSTRUCTION PROJECTS

In addition to the improper payment of claims for construction projects not completed, \$444,495.02 was paid to Reliable Concrete and Construction for work that was undocumented and/or may have contained inflated charges. Based on the documentation presented for examination, we were unable to determine what work was completed by the construction company and the validity of the invoices that were paid.

<u>Date</u>	<u>Contractor</u>	<u>Check Number</u>	<u>Amount</u>
05-13-11	Reliable Concrete and Construction	46816	\$ 17,991.75
08-05-11	Reliable Concrete and Construction	47758	14,785.75
10-28-11	Reliable Concrete and Construction	48593	39,112.36
12-23-11	Reliable Concrete and Construction	49195	21,800.26
03-02-12	Reliable Concrete and Construction	49788	24,150.00
03-16-12	Reliable Concrete and Construction	49927	16,438.00
03-30-12	Reliable Concrete and Construction	50026	5,668.40
04-13-12	Reliable Concrete and Construction	50138	15,425.50
05-11-12	Reliable Concrete and Construction	50391	41,000.00
06-22-12	Reliable Concrete and Construction	50768	16,770.00
08-31-12	Reliable Concrete and Construction	51359	69,770.00
10-26-12	Reliable Concrete and Construction	51877	81,728.00
12-07-12	Reliable Concrete and Construction	52268	<u>79,855.00</u>
Total Questioned Cost of Construction Projects			<u>\$ 444,495.02</u>

PUBLIC WORKS
CITY OF BLOOMINGTON
SPECIAL INVESTIGATION RESULTS AND COMMENTS
(Continued)

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for audit to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns Chapter 7)

UNAUTHORIZED PERSONAL CREDIT CARD PURCHASES

Justin Wykoff, former Senior Project Manager for the City of Bloomington, used the City credit cards numerous times for unauthorized personal purchases between January 10, 2008 and November 13, 2013. Personal items such as software, cell phones, equipment, and miscellaneous other items were all charged to the credit cards as follows:

Card Number	2008	2009	2010	2011	2012	2013	Totals
0355	\$2,426.17	\$839.12	\$1,312.06	\$879.73	\$630.46	\$ -	\$6,087.54
7666	-	-	-	-	83.26	-	83.26
Totals	<u>\$2,426.17</u>	<u>\$839.12</u>	<u>\$1,312.06</u>	<u>\$879.73</u>	<u>\$713.72</u>	<u>\$ -</u>	<u>\$6,170.80</u>

It was determined checks were issued from City funds for payment of the unauthorized personal credit card purchases listed above. In some instances there was no supporting documentation for the purchase. The City had a formal policy governing the use of credit cards. Justin Wykoff, former Senior Project Manager for the City of Bloomington, signed the credit card policy when he was issued his City credit card.

Indiana Code 5-11-10-1.6 states in part:

"(b) As used in this section, 'claim' means a bill or an invoice submitted to a governmental entity for goods or services.

(c) The fiscal officer of a governmental entity may not draw a warrant or check for payment of a claim unless:

- (1) there is a fully itemized invoice or bill for the claim;
- (2) the invoice or bill is approved by the officer or person receiving the goods and services;
- (3) the invoice or bill is filed with the governmental entity's fiscal officer;
- (4) the fiscal officer audits and certifies before payment that the invoice or bill is true and correct; and
- (5) payment of the claim is allowed by the v of payment of the claim."

PUBLIC WORKS
CITY OF BLOOMINGTON
SPECIAL INVESTIGATION RESULTS AND COMMENTS
(Continued)

Public funds may not be used to pay for personal items or for expenses which do not relate to the functions and purposes of the governmental unit. Any personal expenses paid by the governmental entity may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

Justin Wykoff, former Senior Project Manager for the City of Bloomington, was requested to reimburse the City of Bloomington \$6,170.80 for unauthorized personal credit card purchases. (See Summary of Charges, page 14)

ADDITIONAL SPECIAL INVESTIGATION COSTS

The State of Indiana incurred additional costs in the investigation of the Public Works totaling \$35,395.18.

Audit costs incurred because of theft or shortage may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

We consider Justin Wykoff, former Senior Project Manager for the City of Bloomington; Zachary Hardin, owner of Reliable Concrete and Construction; and Roger Dale Hardin, owner of Hardin Concrete, to be jointly and severally liable to the State of Indiana for additional special investigation costs in the amount of \$35,395.18. (See Summary of Charges, page 14)

CRIME INSURANCE POLICY

The City of Bloomington was covered by a crime insurance policy to cover employees as follows:

<u>Period</u>	<u>Charge</u>
01-01-08 to 01-01-09	\$ -
01-01-09 to 01-01-10	-
01-01-10 to 01-01-13	89,170
01-01-13 to 01-01-16	339,904

INTERNAL CONTROL

Internal controls over public works projects and credit card usage were insufficient as discussed herein:

- The City did not have internal controls in place to monitor compliance with the requirements of the Public Works Law as outlined in Indiana Code 36-1-12.
- The controls over the City's credit cards were not effective at monitoring compliance with their policy.

PUBLIC WORKS
CITY OF BLOOMINGTON
SPECIAL INVESTIGATION RESULTS AND COMMENTS
(Continued)

- The City did not have internal controls in place to monitor the construction and payment of Public Works Projects.

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objective, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets, and all forms of information processing are necessary for proper internal control.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements and incorrect decision making. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

PUBLIC WORKS PROJECTS

Payments were made to Reliable Concrete and Construction, Hardin Concrete, and Roger Dale Hardin for various public works projects throughout the City from January 1, 2008 to February 28, 2014. Based on the payment amount, a quote or bid should have been placed with the Board of Public Works. Payments for the projects which did have quotes presented and were approved by the Board of Public Works were not paid in accordance with the approved quote. No change orders were approved in the Board of Public Works minutes. Payments were 20 percent above the quote or bid received.

The table below outlines the projects which Reliable Concrete and Construction was paid:

Project	Payments Made	Quote Received	Bid Received
Smith Ave. Improvement at S. Walnut	\$ 39,112	none noted	none noted
Allent St. Bike Improvements	41,000	none noted	none noted
College Ave. Improvements	82,235	\$ 32,870	none noted
Southdowns Dr. Sidewalk	69,263	none noted	none noted
W. 3rd St. at Cory Lane Improvements	79,855	none noted	none noted
Rogers St.	303,394	none noted	none noted
Walnut St. curb and sidewalk	36,510	none noted	none noted

The table below outlines the projects which Hardin Concrete was paid:

Project	Payments Made	Quote Received	Bid Received
Holiday Dr. sidewalk	\$ 66,480.00	none noted	none noted
2nd St. and Woodcrest sidewalk	55,726.30	none noted	none noted

PUBLIC WORKS
CITY OF BLOOMINGTON
SPECIAL INVESTIGATION RESULTS AND COMMENTS
(Continued)

The table below outlines the projects which Roger Dale Hardin was paid:

Project	Payments Made	Quote Received	Bid Received
Coolidge and Bryan curb and sidewalk	\$ 39,561.00	none noted	none noted
2nd St. sidewalk	34,975.00	none noted	none noted
17th St. sidewalk (Lindburgh to Arlington Park)	39,223.50	none noted	none noted
Kirkwood Ave. brick crosswalk replacement	36,320.00	none noted	none noted
Byran Park Entrance and Allen St.	34,992.00	none noted	none noted
Allen St. retaining wall	41,560.00	none noted	none noted
2nd St. island	30,430.00	none noted	none noted
Brick St. repairs and mainenance	57,264.60	none noted	none noted
Bryan Park sidewalk and drive	27,760.00	none noted	none noted
Traffic Calming W. 7th (Diamond Gardens)*	51,792.50	\$25,513.00	none noted
Madison St. sidewalk*	61,839.00	\$40,100.00	none noted
Fee Lane/Countryside Lane islands	45,600.60	none noted	none noted
17th St. and Crescent St. traffic calming island curbing	35,645.00	none noted	none noted
2nd St. and Landmark Dr. sidepath curbs and ramps	49,275.00	none noted	none noted

*payments were made to Roger Dale Hardin and Hardin Concrete for the indicated projects.
The amounts shown are all inclusive.

Indiana Code 36-1-12-4(a) (Version a, effective until July 1, 2012)(Version b, effective July 1, 2012) states in part: "This section applies whenever the cost of a public work project will be: (1) . . . at least one hundred fifty thousand dollars (\$150,000)."

Indiana Code 36-1-12-4(b) (Version a, effective until July 1, 2012)(Version b, effective July 1, 2012) states in part:

"The board must comply with the following procedure:

- (1) The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition. . . .
- (2) The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required by subdivision (3).
- (3) Upon the filing of the plans and specifications, the board shall publish notice in accordance with IC 5-3-1 calling for sealed proposals for the public work needed."

Indiana Code 36-1-12-4.7 states in part:

"(a) . . . whenever a public work project is estimated to cost: . . . at least fifty thousand dollars (\$50,000) and less than one hundred fifty thousand dollars (\$150,000) . . .

(b) The board must proceed under the following provisions:

PUBLIC WORKS
CITY OF BLOOMINGTON
SPECIAL INVESTIGATION RESULTS AND COMMENTS
(Continued)

- (1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.
- (2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.
- (3) The board shall award the contract for the public work to the lowest responsible and responsive quoter."

Indiana Code 36-1-12-5 states in part:

"(b) The board must proceed under the following provisions:

- (1) The board shall invite quotes from at least three (3) persons known to deal in the class of work proposed to be done by mailing them a notice stating that plans and specifications are on file in a specified office. The notice must be mailed not less than seven (7) days before the time fixed for receiving quotes.
- (2) The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before.
- (3) The board shall award the contract for the public work to the lowest responsible and responsive quoter.
- (4) The board may reject all quotes submitted. . . .

(i) Quotes for public works projects costing less than twenty-five thousand dollars (\$25,000) may be obtained by soliciting at least three (3) quotes by telephone or facsimile transmission. The seven (7) day waiting period required by subsection (b)(1) does not apply to quotes solicited under this subsection."

Indiana Code 36-1-12-13.1(a) states in part:

". . . the appropriate political subdivision or agency:

- (1) shall require the contractor to execute a payment bond to the appropriate political subdivision or agency, approved by and for the benefit of the political subdivision or agency, in an amount equal to the contract price if the cost of the public work is estimated to be more than two hundred thousand dollars (\$200,000)."

Indiana Code 36-1-12-18(d) states in part: "The total of all change orders issued that increase the scope of the project may not exceed twenty percent (20%) of the amount of the original contract."

PUBLIC WORKS
CITY OF BLOOMINGTON
SPECIAL INVESTIGATION RESULTS AND COMMENTS
(Continued)

The cost of a single public work project may not be divided into two or more projects for the purpose of avoiding the requirement to solicit bids. The cost is defined by IC 36-1-12-19(a) to include cost of materials, labor, equipment rental, and all other expenses incidental to the performance of the project.

Any board member or officer of the political subdivision, bidder, quoter, or other person who is party to a public work contract who knowingly violates IC 36-1-12-19 commits a Class A infraction. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

REIMBURSED UNAUTHORIZED PERSONAL CREDIT CARD PURCHASES

Multiple City officials and employees used City credit cards for unauthorized personal purchases. The City's procurement card policy states personal or non-business purchases are not to be purchased with the City card. It also states, "if it is determined that the cardholder has used or permitted a card to be used for personal or non-business purchases . . . the cardholder will be responsible for all such charges . . ." Payments made to the credit card company from other governmental entities, employees, officials, and not-for-profits for personal purchases were as shown in the table below:

<u>Years</u>	<u>Outside Payments</u>
2008	\$2,141.85
2009	13,588.19
2010	11,576.00
2011	4,265.93
2012	9,013.23
2013	3,462.39

Assets of the governmental unit may not be used in a manner unrelated to the functions and purposes of the governmental unit. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

PUBLIC WORKS
CITY OF BLOOMINGTON
EXIT CONFERENCE

The contents of this report were discussed on September 22, 2015, with Mark Kruzan, Mayor; Adam Wason, Deputy Mayor; Margie Rice, Corporation Counsel; Jeff Underwood, Controller; Dave Rollo, President of the Common Council; and Daniel Sherman, Council Attorney.

October 5, 2015

State Board of Accounts
302 W. Washington Street, Room E 418
Indianapolis, IN 46204-2765

RE: OFFICIAL RESPONSE from the City of Bloomington – Justin Wykoff

The City of Bloomington appreciates the review and analysis provided by the State Board of Accounts. There are several aspects of the State's audit which warrant a response.

Measures Implemented

The City has already implemented several changes to address the items cited in the State's audit. The City eliminated all blanket funding approvals, so that all funding is project-specific and cost-specific. Segregation of duties were implemented throughout the City in order to prevent and detect similar incidents in the future. Additionally, the City eliminated the use of credit cards except in exceptional circumstances and limited the total number of physical credit cards issued to two. Furthermore, the City hired a permanent purchasing manager to oversee and standardize purchasing throughout the City.

Recoveries

The City has already recovered some of the funds misappropriated by Mr. Wykoff. As the State notes, the City received \$89,592.60 in seized assets, and one of Mr. Wykoff's co-defendants signed-over a \$5,449 check to the City. To date, the City has received \$95,041.60.

As soon as the State Board of Account's audit report is made public, the City will file a proof of loss with its employee dishonesty insurer, Travelers Insurance. Upon filing, the City anticipates recovering an additional \$250,000, bringing the City's total recovery to \$345,041.60.

Additionally, Mr. Wykoff and his co-defendants were ordered by the court to forfeit four parcels of property. The parcels will be auctioned, and any proceeds will be sent to the City.

As a final measure, the City will assiduously pursue Mr. Wykoff and his co-defendants for additional restitution upon their release from prison in an effort to make a full recovery of all lost funds.

Thank you,



Mark Kruzan, Mayor
City of Bloomington

PUBLIC WORKS
CITY OF BLOOMINGTON
SUMMARY OF CHARGES

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
Justin Wykoff, former Senior Project Manager for the City of Bloomington; Zachary Hardin, owner of Reliable Concrete and Construction; and Roger Dale Hardin, owner of Hardin Concrete, jointly and severally: Improper Payments of Claims for Construction Projects Not Completed, pages 4 and 5 Additional Special Investigation Costs, page 7	\$ 429,074.00 <u>35,395.18</u>	\$ - <u>-</u>	\$ 429,074.00 <u>35,395.18</u>
Total - Justin Wykoff, former Senior Project Manager for the City of Bloomington; Zachary Hardin, owner of Reliable Concrete and Construction; and Roger Dale Hardin, owner of Hardin Concrete, jointly and severally	<u>464,469.18</u>	<u>-</u>	<u>464,469.18</u>
Justin Wykoff, former Senior Project Manager for the City of Bloomington: Unauthorized Personal Credit Card Purchases, pages 6 and 7	<u>6,170.80</u>	<u>-</u>	<u>6,170.80</u>
Total Charges	<u><u>\$ 470,639.98</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 470,639.98</u></u>

This report was forwarded to the Office of the Indiana Attorney General, the United States Attorney's Office, and the local prosecuting attorney.

PUBLIC WORKS
CITY OF BLOOMINGTON
SUMMARY OF QUESTIONED COSTS

	<u>Amount</u>
Questioned Costs of Constuction Projects	<u>\$ 444,495.02</u>

This report was forwarded to the Office of the Indiana Attorney General, the United States Attorney's Office, and the local prosecuting attorney.

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AFFIDAVIT

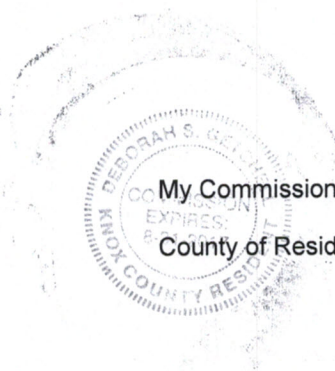
STATE OF INDIANA)
Knox COUNTY)

I, M. Annette Ladson, Field Examiner, being duly sworn on my oath, state that the foregoing report based on the official records as described in our letter to the officials of the City of Bloomington, Monroe County, Indiana, for the period from January 1, 2008 to February 28, 2014, is true and correct to the best of my knowledge and belief.

M. Annette Ladson
Field Examiner

Subscribed and sworn to before me this 11 day of February 2016

Deborah S. Mitchell
Notary Public



My Commission Expires: 8-31-2017
County of Residence: Knox