# JOINT USE AND MAINTENANCE AGREEMENT

**Between**

# CITY OF GREENFIELD, INDIANA

**And**

# GREENFIELD MAIN STREET, INC.

**Concerning**

# DECORATIVE WRAPS ON THE TRAFFIC SIGNAL BOXES

# IN ASSOCIATION WITH THE RILEY ARTS TRAIL

This Joint Use and Maintenance Agreement (“Agreement”), made by and between the City of Greenfield, Indiana, acting by and through the Greenfield Board of Public Works and Safety (hereinafter referred to as “GREENFIELD”), and the Greenfield Main Street, Inc. (hereinafter referred to as “GMS”), jointly referred to as the “PARTIES,” is executed pursuant to the terms and conditions set forth herein and shall be effective as of the date of approval by both PARTIES. In consideration of those mutual undertakings and covenants, the PARTIES agree as follows:

# RECITALS

**WHEREAS**, Greenfield Main Street, (“GMS”), a non-profit, has applied for a permit under #T0000202869, install a decorative vinyl wrap of an historic image, (“WRAPS”), on the GREENFIELD and INDOT owned traffic signal boxes (“BOXES”) in Greenfield, Indiana, as depicted in **EXHIBIT A,** (attached and herein incorporated); and

**WHEREAS,** GREENFIELD would like GMS to install the WRAPS to enhance the Riley Arts Trail at no cost or disruption to GREENFIELD; and

**WHEREAS,** GMS shall be solely responsible for ensuring the purchase, installation, removal, replacement, and maintenance of the WRAPS; and

**WHEREAS,** GMS shall be solely responsible for all costs associated with the purchase, installation, maintenance, removal, and upkeep of the WRAP; and

**WHEREAS**, it is of mutual interest for the PARTIES to cooperate in providing aesthetic improvements to the highway; and

**NOW THEREFORE**, in consideration of the premises and the mutually dependent covenants herein contained, the PARTIES hereto agree as follows:

# ARTICLE I. PURPOSE AND TERM

* 1. **Recitals.** The Recitals recorded above are incorporated by reference into this Agreement. All captions, section headings, paragraph titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the interpretation of this Agreement.
	2. **Purpose.** The purpose of this Agreement is to delineate costs and responsibilities for the maintenance of the WRAPS.
	3. **Term.** This Agreement shall be for a ten (10) year period, commencing as of the date of execution by the PARTIES, and shall be subject to renewal upon the same terms for two (2) successive twenty- five (25) year periods. This Agreement shall be subject to cancellation and termination by either party upon giving the other party thirty (30) days written notice of such action.

# ARTICLE II. GMS’ RESPONSIBILITIES

* 1. **Financial Responsibilities**. GMS shall be responsible for all costs associated with the purchase, installation, maintenance, upkeep, and removal of the WRAPS.
	2. **Project Responsibilities**. GMS shall be solely responsible for ensuring the purchase, design, installation, and removal of the WRAPS. GMS understands and agrees that GREENFIELD shall be the sole and final decision maker on anything that is related to or may impact the quality and function of any GREENFIELD ROW. GMS shall ensure their contractor and/or subcontractors, if any, conducts all purchase, design, construction, and installation work in accordance with all applicable federal and state laws as well as GREENFIELD and FHWA standards and good engineering practices, including those set forth in the following: (1) Title 23, US Code, Highways, (2) the regulations issued pursuant thereto, (3) the Americans with Disabilities Act of 1990, (4) I.C. 36, and (5) the policies and procedures promulgated by GREENFIELD and FHWA relative to the Agreement. All plans shall be completed in accordance with all requirements of the most recent edition of INDOT’s Standard Specifications, the Indiana Design Manual, and GREENFIELD technical standards. GMS shall ensure their contractor, and/or subcontractors, if any, complies with all terms and conditions of its Permit.
	3. **Maintenance Responsibilities.** GMS shall perform, or cause to be performed, all necessary routine maintenance for the WRAPS in accordance with all applicable state and federal laws, as well as GREENFIELD standards, policies, and procedures relative to this Agreement. GMS understands and agrees that if WRAPS are damaged and needs to be repaired, it is GMS’ responsibility to repair the WRAPS within ninety (90) days (except in cases of emergency). If GMS has not repaired the WRAPS within ninety (90) days, and GREENFIELD deems it necessary that the WRAP be repaired, GREENFIELD will repair the WRAPS at GMS’ expense. If a WRAP is damaged beyond repair, and GMS has not planned a replacement within ninety (90) days and/or removal within one (1) year, GREENFIELD will remove the WRAPS at GMS’ expense. Maintenance activities performed on any portion of the WRAPS shall not create any adverse impact or interfere with the safety of bicyclists, pedestrians, and the motorized public.

In cases of an emergency, where GREENFIELD determines, in its sole discretion, that the condition of or damage to the WRAPS poses an imminent threat to the safety of the traveling public, GREENFIELD may immediately take steps to remediate such condition without notice.

* + 1. GMS shall have sole responsibility for the maintenance, repairs, and removal, of the WRAPS.

**2.3.2.** Future maintenance shall include but not be limited to:

* + - 1. If in the future GMS wishes to install lighting near the WRAPS within the ROW, the cost of the design, installation, and maintenance, including utility fees, shall be borne by GMS, and covered by a separate agreement between GREENFIELD and the owner of the lighting. GREENFIELD shall not be responsible for the costs of any fees or costs for future utility services related to the WRAP or any modifications, now or in the future.
			2. GMS shall be responsible for planning out maintenance activities for the WRAPS for the upcoming year. On an annual basis, but no later than March 1st of each year, GMS shall submit to the GREENFIELD CITY ENGINEER (“CITY ENGINEER”) a maintenance plan for approval prior to commencement of any maintenance activities within the ROW. The maintenance plan shall identify the types of maintenance activities to be completed and an estimated schedule of when these activities will occur. The plan shall include a Maintenance of Traffic (“MOT”) plan. The CITY ENGINEER shall promptly notify GMS of any concerns or deficiencies in the plan.

**2.3.3** Modifications to the WRAPS. GMS shall not erect any signs, sculptures, or structures within the ROW without the prior approval of GREENFIELD. If GMS wishes to install additional improvements within the ROW, prior to installation, GMS shall apply for a permit submit a design plan to the CITY ENGINEER for review and approval and enter into an amendment to this Agreement.

**2.3.4** Removal of the WRAPS.

* + - 1. Upon termination of the Agreement pursuant to Section 1.3, GMS may be required to remove the WRAPS at its sole expense upon GREENFIELD’s request. Failure to remove the WRAPS may result in GREENFIELD removing the WRAPS and billing GMS for costs of removal.
			2. In the event that GREENFIELD determines, in its sole reasonable discretion, that GMS is not adequately maintaining the WRAPS, or for any other justified reason (i.e., safety concerns for pedestrians, bicyclists, the motoring public, change in policy, requirement for compliance with federal law or other federal mandate, etc.), GREENFIELD may order GMS to remove or modify the WRAPS at GMS’ expense. Except in cases of emergency (i.e., imminent threat of harm to the traveling public), GREENFIELD will provide ninety (90) days’ written notice to GMS that the WRAPS must be removed or modified. If the WRAPS are not removed or modified to GREENFIELD’s satisfaction within ninety (90) days (except in case of emergency) of issuance of notice under this section, GREENFIELD may remove the WRAPS and bill GMS for the costs of removal.

In cases of an emergency, where GREENFIELD determines in its sole discretion that the condition of or damage to a WRAP poses an eminent threat to the safety of the traveling public, GREENFIELD may immediately take steps to remediate such condition without notice.

C. GMS understands and agrees that it shall not be entitled to any damages or any other compensation in the event that GREENFIELD requires complete or partial removal of a WRAP for any reason.

* 1. **Use of GREENFIELD Right-of-Way.**
		1. Subject to the terms and conditions of this Agreement, GREENFIELD grants permission to GMS, its employees, and its contractors to enter upon ROW for the sole and exclusive purposes of installing, inspecting, maintaining, operating, and repairing the WRAPS. GMS shall notify GREENFIELD of its intent to enter the ROW whenever doing so could affect flow of traffic or the safety of the traveling public on any GREENFIELD ROW at least ten (10) business days before commencing any such work. This includes routine maintenance and repair activities if traffic on any GREENFIELD ROW may be affected. Pursuant to applicable state and federal law, for highway and limited access facilities, GMS must grant written permission for each entry into the ROW, which must be based on specific traffic control and/or worker safety plans. Accordingly, as a condition precedent to giving effective notice, the GMS shall provide to GREENFIELD all such traffic control and worker safety plans and other information as GREENFIELD shall request or require in connection with granting such permission. GMS shall not enter upon the ROW until GMS has received written approval via a permit from GREENFIELD, which shall not be unreasonably withheld, to enter upon the ROW. GREENFIELD shall only be required to approve GMS’ request to enter upon the ROW if GMS’ request is consistent with all applicable federal and state laws and this Agreement.
		2. The Parties understand and agree that the primary purpose of the ROW is for transportation uses (i.e., highway transportation purposes). Any use of the ROW permitted by this Agreement remains secondary to the interest of GREENFIELD to use the ROW for highway or other transportation purposes. GMS agrees that it shall surrender the ROW upon which the WRAPS are located, whether in part or in its entirety, if, in GREENFIELD’s discretion, the ROW or any portion thereof, is required for future expansion, modification, or maintenance of the ROW. The PARTIES understand that this Agreement does not: (1) grant any interest or other rights in the land, either temporarily or permanently; (2) establish a shared-use facility which would require replacement or compensation if GREENFIELD has a need to use the affected property for highway purposes in the future; (3) create publicly owned land or assets within the ROW that may be considered 4(f) property; (4) establish a public park, recreational area, wildlife and waterfowl refuge or historic site as set forth in 49 U.S.C. § 303 within the ROW; or (5) create a break in GREENFIELD’s limited access rights in the ROW.

# ARTICLE III. GREENFIELD’S RESPONSIBILITIES

**3.1. Financial Responsibilities.** Under no circumstances shall GREENFIELD be responsible for any costs associated with the purchase, installation, removal, or replacement of the WRAPS.

* 1. **Project Responsibilities.** GREENFIELD shall have the right to review and approve all design plans for the WRAPS that are to be constructed, installed, and located within the ROW. GREENFIELD shall promptly notify GMS in the event that changes are required. GREENFIELD shall be the sole and final decision maker on anything that is related to and/or may impact the quality and function of ROW, STREETS, or BOXES. Such review and approval shall be completed in a reasonable period of time. Under no circumstances shall GREENFIELD be responsible for any work associated with the purchase, design, maintenance, installation, or removal of the WRAPS.
	2. **Future Maintenance.** GREENFIELD shall maintain any GREENFIELD structures located within the ROW. GREENFIELD shall have approval authority for GMS’ maintenance plans and for any improvements to the WRAPS located within the ROW. GREENFIELD shall have no maintenance responsibilities regarding the WRAPS. In the event GMS fails to timely complete any necessary repairs or maintenance to the WRAPS in the interest of the safety of pedestrians, bicyclists, or the motoring public, GREENFIELD may complete any necessary repairs or maintenance and invoice GMS for the total cost of the repair. GMS shall pay each invoice within thirty (30) days of issuance of the invoice. If GREENFIELD or its contractors damage the WRAPS during maintenance activities that fall under this section, GREENFIELD has no responsibility to repair or to compensate GMS for the cost of repairs. The WRAPS shall not interfere with GREENFIELD’s ability to access and maintain the BOXES.

# ARTICLE IV. GENERAL PROVISIONS

**4.1 Access to Records.** GMS and its contractors and subcontractors, if any, shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Agreement. They shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for five (5) years from the date of final payment under the terms of this Agreement, for inspection or audit by GREENFIELD, or its authorized representative. Copies thereof shall be furnished free of charge, if requested by GREENFIELD. GMS agrees that, upon request by any agency participating in federally-assisted programs with whom GMS has agreed to or seeks to agree to, GREENFIELD may release or make available to the agency any working papers from an audit performed by GREENFIELD of GMS in connection with this Agreement, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

**4.2 Assignment; Successors**. GMS shall not assign or subcontract the whole or any part of this Agreement without GREENFIELD’s prior written consent. Additionally, GMS shall provide prompt written notice to GREENFIELD of any change in GMS’ legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

**4.3 Audit.** GMS acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with Ind. Code §5-11-1, et. Seq. and audit guidelines specified by GREENFIELD and/or in accordance with audit requirements specified elsewhere in this Agreement.

**4.4 Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, GMS assigns to the State all right, title, and interest in and to any claims the GMS now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this contract.

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

**4.6 Changes in Work.** GMS shall not commence any additional work or change the scope of work until authorized in writing by GREENFIELD. GMS shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Agreement may only be amended supplemented or modified by a written document executed in the same manner as this Agreement.

**4.7 Certification for Federal-Aid Contracts Lobbying Activities.** GMS certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that GMS 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 GMS, 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 Agreements, 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 Agreement, 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 Agreement, 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. GMS also agrees by signing this Agreement that it shall require that the language of this certification be included in all GMS agreements including lower tier subcontracts, which exceed $50,000.00, 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 $10,000.00 and not more than $100,000 for each failure.

**4.8 Compliance with Laws.**

A. GMS 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 of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by GREENFIELD and GMS to determine whether the provisions of this Agreement require formal modification.

B. GMS and their agents shall abide by all ethical requirements that apply to persons who have a business relationship with GREENFIELD **If GMS has knowledge, or would have acquired knowledge with reasonable inquiry, that a GREENFIELD officer, employee, or special state GREENFIELD appointee has a financial interest in the Agreement, GMS shall ensure compliance with the disclosure requirements in the Indiana Code prior to the execution of this Agreement**. If GMS is not familiar with these ethical requirements, GMS should refer any questions to the GREENFIELD CITY ATTORNEY If GMS or their agents violate any applicable ethical standards, GREENFIELD may, in its sole discretion, terminate this Agreement immediately upon notice to GMS. In addition, GMS may be subject to penalties under the Indiana Code and under any other applicable laws.

C. GMS certifies by entering into this Contract that neither it nor its principal(s) is presently arrears in payment of taxes, permit fees, or other statutory, regulatory, or judicially required payments to GREENFIELD or the State of Indiana. GMS agrees that any payments currently due to GREENFIELD and/or the State of Indiana may be withheld from payments due to GMS. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until GMS are current in their payments and have submitted proof of such payment to the State.

D. GMS warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify GREENFIELD of any such actions. During the term of such actions, GMS agrees that GREENFIELD may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Agreement.

E. If a valid dispute exists as to the GMS's liability or guilt in any action initiated by GREENFIELD, the State or its agencies, and GREENFIELD or the State decides to delay, withhold, or deny work to GMS, GMS may request that it be allowed to continue, or receive work, without delay. GMS must submit, in writing, a request for review to GREENFIELD and the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that GREENFIELD or the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. GMS warrants that GMS and their contractors and consultants, if any, shall obtain and maintain all required permits, licenses, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for GREENFIELD or the State. Failure to do so may be deemed a material breach of this Agreement and grounds for immediate termination and denial of further work with GREENFIELD or the State.

 G. As required by Ind. Code § 5-22-3-7:

* + - 1. GMS and their principals certify that:
				1. GMS, except for de minimis and nonsystematic violations, has not violated the terms of:

Ind. Code § 24-4.7 [Telephone Solicitation Of Consumers];

Ind. Code § 24-5-12 [Telephone Solicitations]; or

Ind. Code § 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if Ind. Code § 24-

4.7 is preempted by federal law; and

* + - * 1. GMS will not violate the terms of Ind. Code § 24-4.7 for the duration of the Agreement, even if Ind. Code § 24-4.7 is preempted by federal law.
			1. GMS and any principals of GMS certify that an affiliate or principal of GMS and any agent acting on behalf of GMS, except for de minimis and nonsystematic violations,
				1. has not violated the terms of Ind. Code §24-4.7 in the previous three hundred sixty-five (365) days, even if Ind. Code § 24-4.7 is preempted by federal law; and
				2. will not violate the terms of Ind. Code §24-4.7 for the duration of the Agreement, even if Ind. Code § 24-4.7 is preempted by federal law.

**4.9 Debarment and Suspension.**

 A. GMS certifies by entering into this Agreement that neither it nor its principals nor any of its contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency, or political subdivision of GREENFIELD or the State of Indiana. The term “principal” for purposes of this Agreement means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of GMS.

 B. GMS certifies that it has verified the state and federal suspension and debarment status for all contractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred contractor. GMS shall immediately notify GREENFIELD if any contractor becomes debarred or suspended, and shall, at GREENFIELD’s request, take all steps required by GREENFIELD to terminate its contractual relationship with GMS for work to be performed under this Agreement.

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

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

 A. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in GMS' workplace and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) GMS’ 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;

 C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify GMS of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

 D. Notifying in writing the State of Indiana and GREENFIELD within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

 E. Within thirty (30) days after receiving notice under subdivision (C)(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

 F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**4.11 Employment Eligibility Verification**. As a condition precedent to entering this contract, and as required by IC § 22-5-1.7 and Executive Order 25-29, GMS swears or affirms under the penalties of perjury that GMS has not knowingly employed, and will not knowingly employ, an unauthorized alien. GMS further affirms that:

 A. GMS has enrolled in and verified the work eligibility status of all its employees through the E-Verify program as defined in IC § 22-5-1.7-3. The GMS is not required to participate should the E-Verify program cease to exist. Additionally, GMS is not required to participate if GMS is self-employed and does not employ any employees.

 B. GMS has not knowingly employed or contracted with, and shall not knowingly employ or contract with, an unauthorized alien. GMS has not retained, and shall not retain, an employee, and has not contracted and shall not contract with a person, that GMS subsequently learned or learns is an unauthorized alien.

 C. GMS has required and shall require its contractors and/or subcontractors, if any, who perform work under this Agreement, to certify to GMS that the contractor and/or subcontractor does not knowingly employ or contract with an unauthorized alien and that the contactor and/or subcontractor has enrolled and is participating in the E-Verify program. GMS agrees to maintain this certification throughout the duration of the term of a contract with a contractor or subcontractor and to provide any and all such certifications to GREENFIELD promptly upon request.

GREENFIELD may terminate this agreement for default if the GMS fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

**4.12 Force Majeure.** In the event that either Party is unable to perform any of its obligations under this Agreement 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 or as soon as is reasonably possible under the circumstances give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement 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 Agreement.

**4.13 Funding Cancellation Clause**. when the GREENFIELD CLERK-TREASURER makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Agreement, this Agreement shall be canceled. A determination by the GREENFIELD CLERK-TREASURER that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

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

**4.15 Indemnification.** GMS shall indemnify, defend, exculpate, and hold harmless the State of Indiana and GREENFIELD and their officials and employees from any liability due to loss, damage, injuries, or other causalities of whatever kind, to the person or property of anyone arising out of, or resulting from the performance of this Agreement, from the WRAPS, or work associated therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material with respect to the WRAPS, to the extent such liability is caused by the negligence of GMS, including any claims arising out of any law, ordinance, order or decree. GREENFIELD shall not provide indemnification to GMS. GMS agrees to pay all reasonable expenses and attorney’s fees incurred by or imposed on the State and GREENFIELD in connection herewith if GMS shall default under the provisions of this Section. In addition, to the extent permitted by law, GMS shall indemnify and hold GREENFIELD harmless for any claims to the extent arising out of the WRAPS within the state-owned or controlled right of way or the ROW owned by GREENFIELD. This provision shall survive the termination of this agreement.

**4.16 Independent Entity; Workers’ Compensation Insurance.** GMS is performing as an independent entity under this Agreement. No part of this Agreement shall be construed to represent the creation of an employment, agency, partnership, or joint venture agreement between the PARTIES. No Party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees, or subcontractors of another Party. GMS shall provide all necessary unemployment and workers’ compensation insurance for the GMS’s employees and shall provide GREENFIELD with a Certificate of Insurance evidencing such coverage prior to starting work under this Agreement.

**4.17 Insurance.**

A. GMS, its contractors, and subcontractors (if any) shall secure and keep in force during the term of this Agreement the following insurance coverages (if applicable) covering GMS for any and all claims of any nature which may in any manner arise out of or result from GMS’ performance under this Agreement:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than $1,000,000 per person and $5,000,000 per occurrence unless additional coverage is required by GREENFIELD. GREENFIELD is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement.

2. Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than $1,000,000 per person and $5,000,000 per occurrence. GREENFIELD is to be named as an additional insured on a primary, non-contributory basis.

3. Errors and Omissions liability with minimum liability limits of $1,000,000 per claim and in the aggregate. Coverage for the benefit of GREENFIELD shall continue for a period of two (2) years after the date of service provided under this Agreement.

4. Fiduciary liability if GMS is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than $1,000,000 per cause of action and $5,000,000 in the aggregate.

5. Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.

6. Surety or Fidelity Bond(s) if required by statute or by the agency.

7. Cyber Liability addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than $1,000,000 per occurrence and $5,000,000 in the aggregate.

GMS shall provide proof of such insurance coverage by tendering to the undersigned GREENFIELD representative a certificate of insurance prior to the commencement of this Agreement and proof of workers' compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Agreement involve work outside of Indiana.

B. GMS’ insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.

 2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of GMS.

 3. GREENFIELD will be defended, indemnified and held harmless to the full extent of any coverage actually secured by GMS in excess of the minimum requirements set forth above. The duty to indemnify the State under this Agreement shall not be limited by the insurance required in this Agreement.

 4. The insurance required in this Agreement, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned GREENFIELD agency.

 5. GMS waives and agrees to require their insurer to waive their rights of subrogation against the GREENFIELD.

 C. Failure to provide insurance as required in this Agreement may be deemed a material breach of contract entitling GREENFIELD to immediately terminate this Agreement. GMS shall furnish a certificate of insurance and all endorsements to GREENFIELD before the commencement of this Agreement.

**4.18 Licensing Standards.** GMS, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards, and any other laws, rules, or regulations governing services to be provided by GMS pursuant to this Contract. GREENFIELD will not pay GMS for any services performed when GMS, its employees or subcontractors, are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, GMS shall notify GREENFIELD immediately and the State, at its option, may immediately terminate this Contract.

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

**4.20 Non-Discrimination** Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1- 10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act:

A. GMS covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). GMS certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this subparagraph may be regarded as a material breach of this Contract, including for purposes of Indiana Code § 5-11-5.5-2, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the GMS or any contractor or subcontractor.

B. GMS covenants that it does not and shall not operate any programs or engage in any practices promoting Diversity, Equity, and Inclusion (DEI), or other similar goals, that violate Indiana or Federal Civil Rights Laws by treating a person differently on the basis of race or sex, such as by considering race or sex when making recruitment, hiring, disciplinary, promotion, or employment decisions; requiring employees to participate in training or educational programs that employ racial or sex stereotypes; or attempting to achieve racial or sex balancing in GMS’ workforce. The PARTIES agree that a breach of this subparagraph is a material breach of this Contract, including for purposes of Indiana Code § 5-11-5.5-2, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of GMS or any contractor or subcontractor.

**4.21 Notice to Parties.** Whenever any notice, statement or other communication is required under this Agreement, it will be sent by E-mail or first-class U.S. mail service to the following addresses, unless otherwise specifically advised:

**A. For Greenfield:**

**Guy Titus, Mayor**

**City of Greenfield**

**10 South State Street**

**Greenfield, Indiana 46140**

**317-477-4300**

**Email:** **gtitus@greenfieldin.org**

**B. For GMS:**

**Heather Condra**

**Executive Director, Greenfield Main Street 122 West Main Street**

**Greenfield, Indiana 46140**

**317-649-0890**

**Email:** **Director@greenfieldmainstreet.org**

**4.22 Penalties, Interest and Attorney’s Fees**. GREENFIELD 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 permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34- 13-1 and IC § 34-52-2.

**4.23 Public Record.** GMS acknowledges that GREENFIELD will not treat this Agreement as containing confidential information and GREENFIELD will post this Agreement on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Agreement shall not be considered an act of GREENFIELD.

**4.24 Renewal Option.** This Agreement may be renewed under the same terms and conditions, subject to the approval of the GREENFIELD BOARD OF PUBLIC WORKS AND SAFETY. The term of the renewed agreement may not be longer than the term of the original agreement.

**4.25 Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

**4.26 Status of Claims**. GMS shall be responsible for keeping GREENFIELD currently advised as to the status of any claims made for damages against GMS resulting from services performed under this Agreement.

**4.27 Taxes**. The State GREENFIELD is exempt from most state and local taxes and many federal taxes. GREENFIELD will not be responsible for any taxes levied on any contractors hired as a result of this Agreement.

**4.28 Termination for Convenience**. This Agreement may be terminated, in whole or in part, by GREENFIELD, whenever, for any reason, GREENFIELD determines that such termination is in its best interest. Termination shall be affected by delivery to the Notice at least thirty (30) days prior to the effective termination date, specifying the extent to which performance of services under such termination becomes effective.

**4.29 Waiver of Rights.** No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither GREENFIELD’s review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and GMS shall be and remain liable to GREENFIELD in accordance with applicable law for all damages to the State caused by GMS’ negligent performance of any of the services furnished under this Agreement.

# [REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**Non-Collusion and Acceptance**

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Party, or that the undersigned is the properly authorized representative, agent, member, or officer of the Party. Further, to the undersigned’s knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Party, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a GREENFIELD officer, employee, or GREENFIELD appointee has a financial interest in the Agreement, the Party attests to compliance with the disclosure requirements in the Indiana Code.**

**In Witness Whereof**, the PARTIES have, through their duly authorized representatives, entered into this Agreement. The PARTIES, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

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**GREENFIELD BOARD OF PUBLIC WORKS AND SAFETY**

**Executed by:**

Guy Titus, Mayor

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Larry Breese

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Katherine Locke

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Brent Robertson

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Glenna Shelby

Date:

**GMS**

**Executed By:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Heather Condra, Executive Director

Date:

This instrument was prepared by Gregg H. Morelock, Attorney for City of Greenfield, Indiana, 6 W. South St., Greenfield, Indiana 46140, Attorney No. 9871-30.