

JOINT USE AND MAINTENANCE AGREEMENT
Between
THE INDIANA DEPARTMENT OF TRANSPORTATION
And
CITY OF GREENFIELD
Concerning
DECORATIVE WRAP ON THE TRAFFIC SIGNAL BOXES AT US 40 &
PENNSYLVANIA STREET AND SR 9 AND US 40

EDS No.

This Joint Use and Maintenance Agreement (“Agreement”), made 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 Greenfield, Indiana (hereinafter referred to as the “CITY”), 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 the Office of the Indiana Attorney General. In consideration of those mutual undertakings and covenants, the PARTIES agree as follows:

RECITALS

WHEREAS, Greenfield Main Street, (“Main Street”), a non-profit, has applied for a permit under #T0000202869, install a decorative vinyl wrap of an historic image, (“WRAP”), on the INDOT owned traffic signal box (“BOX”) at the intersections of US 40 & Pennsylvania Street and SR 9 & US 40 in Greenfield, Indiana, as depicted in **EXHIBIT A**, (attached and herein incorporated); and

WHEREAS, the CITY would like Main Street to install the WRAP to enhance the US 40 corridor at no cost or disruption to INDOT; and

WHEREAS, the CITY shall be solely responsible for ensuring the purchase, installation, removal, replacement, and maintenance of the WRAP; and

WHEREAS, the CITY 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

1.1. 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.

1.2. Purpose. The purpose of this Agreement is to delineate costs and responsibilities for the maintenance of the WRAP.

1.3. Term. This Agreement shall be for a ten (10) year period, commencing as of the date approved as to form and legality by the Attorney General of Indiana, or an authorized representative, 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. CITY'S RESPONSIBILITIES

2.1 Financial Responsibilities. The CITY shall be responsible for all costs associated with the purchase, installation, maintenance, upkeep, and removal of the WRAP.

2.2 Project Responsibilities. The CITY shall be solely responsible for ensuring the purchase, design, installation, and removal of the WRAP. The CITY understands and agrees that INDOT shall be the sole and final decision maker on anything that is related to or may impact the quality and function of US 40 and/or SR 9. The CITY 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 INDOT 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 INDOT 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, and the Indiana Design Manual. The CITY shall ensure their contractor, and/or subcontractors, if any, complies with all terms and conditions of its Permit.

2.3. Maintenance Responsibilities. The CITY shall perform, or cause to be performed, all necessary routine maintenance for the WRAP in accordance with all applicable state and federal laws, as well as INDOT standards, policies, and procedures relative to this Agreement. The CITY understands and agrees that if the WRAP is damaged and needs to be repaired, it is the CITY's responsibility to repair the WRAP within ninety (90) days (except in cases of emergency). If the CITY has not repaired the WRAP within ninety (90) days, and INDOT deems it necessary that the WRAP be repaired, INDOT will repair the WRAP at the CITY's expense. If the WRAP is damaged beyond repair, and the CITY has not planned a replacement within ninety (90) days and/or removal within one (1) year, INDOT will remove the WRAP at the CITY's expense. Maintenance activities performed on any portion of the WRAP shall not create any adverse impact or interfere with the safety of bicyclists, pedestrians, and the motorized public.

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

2.3.1. The CITY shall have sole responsibility for the maintenance, repairs, and removal, of the WRAP.

2.3.3. Future maintenance shall include but not be limited to:

- A. If in the future the CITY wishes to install lighting near the WRAP within the ROW, the cost of the design, installation, and maintenance, including utility fees, shall be borne by the CITY, and covered by a separate agreement between INDOT and the owner of the lighting. INDOT 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.
- B. The CITY shall be responsible for planning out maintenance activities for the upcoming year. On an annual basis, but no later than March 31st of each year, the CITY shall submit to the Greenfield District Permit Manager (“Permit Manager”) 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 Permit Manager shall promptly notify the CITY of any concerns or deficiencies in the plan.

2.3.5. Modifications to the WRAP. The CITY shall not erect any signs, sculptures, or structures within the ROW without the prior approval of INDOT. If the CITY wishes to install additional improvements within the ROW, prior to installation, the CITY shall apply for a permit submit a design plan to the Permit Manager for review and approval and enter into an amendment to this Agreement.

2.3.6. Removal of the WRAP.

- A. Upon termination of the Agreement pursuant to Section 1.3, the CITY may be required to remove the WRAP at its sole expense upon INDOT’s request. Failure to remove the WRAP may result in INDOT removing the WRAP and billing the CITY for costs of removal.
- B. In the event that INDOT determines, in its sole reasonable discretion, that the CITY is not adequately maintaining the WRAP, 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.), INDOT may order the CITY to remove or modify the WRAP at the CITY’s expense. Except in cases of emergency (i.e., imminent threat of harm to the traveling public), INDOT will provide ninety (90) days written notice to the CITY that the WRAP must be removed or modified. If the WRAP are not removed or modified to INDOT’s satisfaction within ninety (90) days (except in case of emergency) of issuance of notice under this section, INDOT may remove the WRAP and bill the CITY for the costs of removal.

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

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

2.4 Use of State Right-of-Way.

2.4.1. Subject to the terms and conditions of this Agreement, INDOT grants permission to the CITY, its employees, and its contractors to enter upon ROW for the sole and exclusive purposes of installing, inspecting, maintaining, operating, and repairing the WRAP. The CITY shall notify INDOT of its intent to enter the ROW whenever doing so could affect flow of traffic or the safety of the traveling public on US 40 and/or SR 9 at least ten (10) business days before commencing any such work. This includes routine maintenance and repair activities if traffic on US 40 and/or SR 9 may be affected. Pursuant to applicable state and federal law, for highway and limited access facilities, INDOT 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 CITY shall provide to INDOT all such traffic control and worker safety plans and other information as INDOT shall request or require in connection with granting such permission. The CITY shall not enter upon the ROW until the CITY has received written approval via a permit from INDOT, which shall not be unreasonably withheld, to enter upon the ROW. INDOT shall only be required to approve the CITY's request to enter upon ROW if the CITY's request is consistent with all applicable federal and state laws and this Agreement.

2.4.2. 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 INDOT to use the ROW for highway or other transportation purposes. The CITY agrees that it shall surrender the ROW upon which the WRAP is located, whether in part or in its entirety, if, in INDOT's discretion, the ROW or any portion thereof, is required for future expansion, modification, or maintenance of US 40 and/or SR 9. 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 INDOT 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 INDOT's limited access rights in the ROW.

ARTICLE III. INDOT'S RESPONSIBILITIES

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

3.2 Project Responsibilities. INDOT shall have the right to review and approve all design plans for the WRAP that are to be constructed, installed, and located within ROW. INDOT shall promptly notify the CITY in the event that changes are required. INDOT shall be the sole and final decision maker on anything that is related to and/or may impact the quality and function of US 40 and/or SR 9. Such review and approval shall be completed in a reasonable period of time. Under no circumstances shall INDOT be responsible for any work associated with the purchase, design, maintenance, installation, or removal of the WRAP.

3.3 Future Maintenance. INDOT shall maintain any INDOT structures located within the ROW. INDOT shall have approval authority for the CITY's maintenance plans and for any improvements to the WRAP located within the ROW. INDOT shall have no maintenance responsibilities regarding WRAP. In the event the CITY fails to timely complete any necessary repairs or maintenance to the WRAP in the interest of the safety of pedestrians, bicyclists, or the motoring public, INDOT may complete any necessary repairs or maintenance and invoice the CITY for the total cost of the repair. The CITY shall pay each invoice within thirty (30) days of issuance of the invoice. If INDOT or its contractors damage the WRAP during maintenance activities that fall under this section, INDOT has no responsibility to repair or to compensate the CITY for the cost of repairs. The WRAP shall not interfere with INDOT's ability to access and maintain the BOX.

ARTICLE IV. GENERAL PROVISIONS

4.1. Access to Records. The CITY 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 INDOT, or its authorized representative. Copies thereof shall be furnished free of charge, if requested by INDOT. The CITY agree that, upon request by any agency participating in federally-assisted programs with whom the CITY has agreed to or seeks to agree to, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CITY 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. The CITY shall not assign or subcontract the whole or any part of this Agreement without the State's prior written consent. Additionally, the CITY shall provide prompt written notice to the State of any change in the CITY's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

4.3. Audit. The CITY 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 the State 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, the CITY assigns to the State all right, title, and interest in and to any claims the CITY 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 CITY. The signatory for the CITY warrants that he/she has the necessary authority to enter into this Agreement. The signatory for the CITY represents that he/she has been duly authorized to execute this Agreement on behalf of the CITY and has obtained all necessary or applicable approval to make this Agreement fully binding upon the CITY when his/her signature is affixed to this Agreement.

4.6. Changes in Work. The CITY shall not commence any additional work or change the scope of work until authorized in writing by INDOT. The CITY 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. The CITY certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that the CITY has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

A. No federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, 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.

B. 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.

C. The CITY also agrees by signing this Agreement that it shall require that the language of this certification be included in all the CITY agreements including lower tier subcontracts, which exceed \$100,000.00, 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. The CITY 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 the State and the CITY to determine whether the provisions of this Agreement require formal modification.

B. The CITY and their agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Ind. Code §§ 4-2-6, *et seq.*, 4-2-7, *et seq.*, and the regulations promulgated there under. **If the CITY has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Agreement, the CITY shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Agreement.** If the CITY is not familiar with these ethical requirements, the CITY should refer any questions to the Indiana State Ethics Commission or visit the Indiana State Ethics Commission website at <http://www.in.gov/ig/>. If the CITY or their agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to the CITY. In addition, the CITY may be subject to penalties under Ind. Code §§ 4-2-6 and 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The CITY 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 the State of Indiana. The CITY agrees that any payments currently due to the State of Indiana may be withheld from payments due to the CITY. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the CITY are current in their payments and have submitted proof of such payment to the State.

D. The CITY 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 the State of any such actions. During the term of such actions, the CITY agrees that the State 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 CITY's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the CITY, the CITY may request that it be allowed to continue, or receive work, without delay. The CITY must submit, in writing, a request for review to 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 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. The CITY warrants that the CITY 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 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 the State.

G. [OMITTED—NOT APPLICABLE]

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

(1) The CITY and their principals certify that:

(A) The CITY, except for de minimis and nonsystematic violations, has not violated the terms of:

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

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

(iii) 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

(B) The CITY 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.

(2) The CITY and any principals of the CITY certify that an affiliate or principal of CITY and any agent acting on behalf of CITY or on behalf of an affiliate or principal of the State Educational Institution, except for de minimis and nonsystematic violations,

(A) 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

(B) 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. Condition of Payment. [OMITTED- NOT APPLICABLE.]

4.10. Confidentiality of State Information. [OMITTED—NOT APPLICABLE]

4.11. Continuity of Services. [OMITTED – NOT APPLICABLE]

4.12. Debarment and Suspension.

A. The CITY 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 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 the CITY.

B. The CITY 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. The CITY shall immediately notify INDOT if any contractor becomes debarred or suspended, and shall, at INDOT’s request, take all steps required by INDOT to terminate its contractual relationship with the CITY for work to be performed under this Agreement.

4.13. Default by State. [OMITTED—NOT APPLICABLE]

4.14. Disputes. [OMITTED—NOT APPLICABLE]

4.15. Disadvantaged Business Enterprise Program. [OMITTED—NOT APPLICABLE]

4.16. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the CITY 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 within ten (10) days after receiving actual notice that an employee of the CITY in the State of Indiana has been convicted of a criminal drug violation occurring in CITY’s 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, the CITY 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 the CITY's 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) the CITY'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;

- 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 the CITY 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 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.

4.17. 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, the CITY swears or affirms under the penalties of perjury that the CITY has not knowingly employed, and will not knowingly employ, an unauthorized alien. The CITY further affirms that:

- A. The CITY 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 CITY is not required to participate should the E-Verify program cease to exist. Additionally, the CITY is not required to participate if the CITY is self-employed and does not employ any employees.
- B. The CITY has not knowingly employed or contracted with, and shall not knowingly employ or contract with, an unauthorized alien. The CITY has not retained, and shall not retain, an employee, and has not contracted and shall not contract with a person, that the CITY subsequently learned or learns is an unauthorized alien.
- C. The CITY has required and shall require its contractors and/or subcontractors, if any, who perform work under this Agreement, to certify to the CITY that the contractor and/or subcontractor does not knowingly employ or contract with an unauthorized alien and that the contractor and/or subcontractor has enrolled and is participating in the E-Verify program. The CITY 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 the State promptly upon request.

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

4.18. Employment Option. [OMITTED—NOT APPLICABLE]

4.19. 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.

4.20. Funding Cancellation Clause. As required by Financial Management Circular 3.3 and IC § 5-22-17-5, 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 Agreement, this Agreement shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

4.21. 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.

4.22. HIPAA Compliance. [OMITTED – NOT APPLICABLE.]

4.23. Indemnification. The CITY shall indemnify, defend, exculpate, and hold harmless the State of Indiana, INDOT and their officials and employees from any liability due to loss, damage, injuries, or other casualties of whatever kind, to the person or property of anyone arising out of, or resulting from the performance of this Agreement, from the WRAP, 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 WRAP, to the extent such liability is caused by the negligence of the CITY, including any claims arising out of any law, ordinance, order or decree. INDOT shall not provide indemnification to the CITY. The CITY agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State and INDOT in connection herewith if the CITY shall default under the provisions of this Section. In addition, to the extent permitted by law, the CITY shall indemnify and hold INDOT harmless for any claims to the extent arising out of the WRAP within the state-owned or controlled right of way. This provision shall survive the termination of this agreement.

4.24. Independent Entity; Workers' Compensation Insurance. The CITY 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. The CITY shall provide all necessary unemployment and

workers' compensation insurance for the CITY's employees and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Agreement.

4.25. Indiana Veteran Owned Small Business Enterprise Compliance. [OMITTED—NOT APPLICABLE]

4.26. Information Technology Enterprise Architecture Requirements. [OMITTED—NOT APPLICABLE]

4.27. Insurance.

A. The CITY, 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 the CITY for any and all claims of any nature which may in any manner arise out of or result from CITY's 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 \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State 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 \$700,000 per person and \$5,000,000 per occurrence. The State 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 the State shall continue for a period of two (2) years after the date of service provided under this Agreement.
4. Fiduciary liability if the CITY 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 \$700,000 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 \$700,000 per occurrence and \$5,000,000 in the aggregate.

The CITY shall provide proof of such insurance coverage by tendering to the undersigned State 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. The CITY's 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 the CITY.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the CITY 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 State agency.
5. The CITY waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

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

4.28. Key Person(s). [OMITTED—NOT APPLICABLE]

4.29. Licensing Standards. The CITY, 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 the CITY pursuant to this Contract. The State will not pay the CITY for any services performed when the CITY, 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, the CITY shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

4.30. 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.

4.31. Minority and Women's Business Enterprises Compliance. [OMITTED—NOT APPLICABLE]

4.32. 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. The CITY 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"). The CITY 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 CITY or any contractor or subcontractor.
- B. CITY 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 the CITY's 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 the CITY or any contractor or subcontractor.

4.33. 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 INDOT:**

Joanne Jones

Highway Engineering Assistant
18 South Broadway, Greenfield, Indiana 46140
Phone: (317) 315-3758
Email: jjones@indot.in.gov

With a copy to:

Chief Legal Counsel and Deputy Commissioner
Indiana Department of Transportation
100 North Senate Avenue, Room N758
Indianapolis, IN, 46204
agrand@indot.IN.gov

B. For The CITY:

Guy Titus, Mayor
City of Greenfield
10 South State Street
Greenfield, Indiana 46140
317-477-4300
Email: gtitus@greenfieldin.org

C. For Main Street:

Heather Condra
Executive Director, Greenfield Main Street
122 West Main Street
Greenfield, Indiana 46140
317-649-0890
Director@greenfieldmainstreet.org

4.35. Order of Precedence; Incorporation by Reference. [OMITTED—NOT APPLICABLE]

4.36. Ownership of Documents and Materials. [OMITTED—NOT APPLICABLE]

4.37. Payment. [OMITTED- NOT APPLICABLE]

4.38. 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 permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

4.39. Progress Reports. [OMITTED—NOT APPLICABLE]

4.40. Public Record. The CITY acknowledges that the State will not treat this Agreement as containing confidential information and the State 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 the State.

4.41. Renewal Option. This Agreement may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with Ind. Code § 5-22-17-4. The term of the renewed agreement may not be longer than the term of the original agreement.

4.42. 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.

4.43. Status of Claims. The CITY shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the CITY resulting from services performed under this Agreement.

4.44. Substantial Performance. [OMITTED-NOT APPLICABLE]

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

4.46. Termination for Convenience. This Agreement may be terminated, in whole or in part, by the State, whenever, for any reason, the State 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 termination effective date, specifying the extent to which performance of services under such termination becomes effective.

4.47. Termination for Default. [OMITTED—NOT APPLICABLE]

4.48. Travel. [OMITTED—NOT APPLICABLE]

4.49. 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 the State'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 the CITY shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the CITY's negligent performance of any of the services furnished under this Agreement.

4.50. Work Standards. [OMITTED—NOT APPLICABLE]

4.51. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in *2022 SCM Template*) in any way except as follows: Not Applicable, Multiple Changes Were Made for Federal Compliance and Other Reasons.

[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 state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, the Party attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Agreement by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Agreement to the State of Indiana. I understand that my signing and submitting this Agreement in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Agreement and this affirmation. I understand and agree that by electronically signing and submitting this Agreement in this fashion I am affirming to the truth of the information contained therein. I understand that this Agreement will not become binding on the State until it has been approved by the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:

https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTR_CTS.GBL

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.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

CITY GREENFIELD

Executed by:

Guy Titus, Mayor

Date: _____

STATE OF INDIANA
Indiana Department of Transportation

Executed By:

_____(FOR)
Lyndsay Quist, Commissioner

Date: _____

APPROVALS

STATE OF INDIANA
Budget Agency

By: (FOR)
Chad Ranney, Director

Date:

STATE OF INDIANA
Department of Administration

By: (FOR)
Brandon Clifton, Commissioner

Date:

Approved as to Form and Legality:
Office of the Attorney General

By: (FOR)
Theodore E. Rokita
Attorney General

Date:

This instrument was prepared for the Indiana Department of Transportation, 100 N. Senate Avenue, Indianapolis, IN 46204, by Chris Devlin, Attorney # 29221-49.

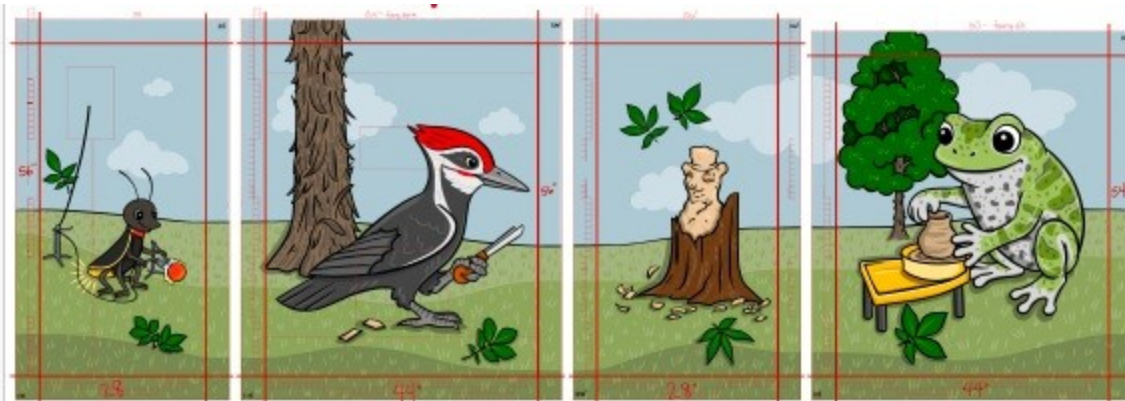


Exhibit A

