

BOARD OF PUBLIC WORKS AND SAFETY (Form B-01-2012)
Agenda Request Form

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	October 29, 2024	Meeting Date:	November 4, 2024
Contact Information:			
Requested by:	Mark Richards		
On Behalf of Organization or Individual:			
		Department of Planning & Engineering	
Telephone:	317-736-3631		
Email address:	mrichards@franklin.in.gov		
Mailing Address:	70 E. Monroe Street, Franklin, IN 46131		
Describe Request:			
Request approval and execution of Engineering and Construction Agreement between Louisville & Indiana Railroad Company and the City of Franklin for the Paul Hand Reconstruction Project			
List Supporting Documentation Provided:			
Agreement			
Who will present the request?			
Name:	Mark Richards	Telephone:	317-736-3631

In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

PRELIMINARY ENGINEERING AND CONSTRUCTION AGREEMENT

This combined Preliminary Engineering and Construction Agreement (this “**Agreement**”) is made as of _____, 20____, by and between Louisville & Indiana Railroad Company, a Indiana corporation with its principal place of business in Jeffersonville, Indiana (“**LIRC**”), and **City of Franklin**, a body corporate and political subdivision of the **State of Indiana** (“**Agency**”).

PRELIMINARY ENGINEERING EXPLANATORY STATEMENT

1. Agency wishes to facilitate the development of the proposed **reconstruction of roadway at Paul Hand Blvd.** (the “**Project**”).
2. Agency has requested that LIRC proceed with certain necessary engineering and/or design services for the Project to facilitate the parties’ consideration of the Project.
3. Subject to the approval of LIRC, which approval may be withheld for any reason directly or indirectly related to safety or LIRC operations, property, or facilities, the Project is to be constructed, if at all, at no cost to LIRC, under a separate construction agreement to be executed by the parties at a future date.

CONSTRUCTION EXPLANATORY STATEMENT

1. Agency has proposed to construct, or to cause to be constructed, **Reconstruction of Paul Hand Blvd in Whiteland, Johnson County, Indiana; at DOT: 535583T; MP: QSL 16.5; in the Louisville Zone, Louisville Secondary Subdivision** (the “**Project**”).
2. Agency has obtained, or will obtain, all authorizations, permits and approvals from all local, state and federal agencies (including Agency), and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project.
3. Agency acknowledges that: (i) by entering into this Agreement, LIRC will provide services and accommodations to promote public interest in this Project, without profit or other economic inducement typical of other Agency contractors; (ii) neither LIRC nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to LIRC, by or on behalf of Agency or its contractors, pursuant to this Agreement; and (iii) LIRC retains the paramount right to regulate all activities affecting its property and operations.
4. It is the purpose of this Agreement to provide for the terms and conditions upon which the Project may proceed.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

NOW, THEREFORE, in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Project Plans and Specifications

- 1.1 Preparation and Approval. Pursuant to Exhibit A of this Agreement, all plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project shall be prepared, at Agency's sole cost and expense, by Agency or LIRC or their respective contractors. Project plans, specifications, and drawings related to the railroad right of way, which are prepared by or on behalf of the Agency, shall be subject to review and approval by LIRC at their discretion. Such plans, specifications and drawings, as prepared or approved by LIRC, are referred to as the "**Plans**", and shall be incorporated and deemed a part of this Agreement. Plans prepared or submitted to and approved by LIRC as of the date of this Agreement are set forth in Exhibit B to this Agreement.
- 1.2 Effect of LIRC Approval or Preparation of Plans. By its review, approval or preparation of Plans pursuant to this Agreement, LIRC signifies only that such Plans and improvements constructed in accordance with such Plans satisfy LIRC's requirements. LIRC expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of the Plans or improvements constructed in accordance with the Plans.
- 1.3 Compliance with Plans. The Project shall be constructed in accordance with the Plans.

2. Allocation and Conduct of Work

Work in connection with the Project shall be allocated and conducted as follows:

- 2.1 LIRC Work. Subject to timely payment of Reimbursable Expenses as provided by Section 4, LIRC shall provide, or cause to be provided, the services as set forth by Exhibit A to this Agreement. Agency agrees that LIRC shall provide all services that LIRC deems necessary or appropriate (whether or not specified by Exhibit A) to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all applicable federal, state and local regulations and LIRC's contractual obligations, including, but not limited to, LIRC's existing or proposed third party agreements and collective bargaining agreements.
- 2.2 Agency Work. Agency shall perform, or cause to be performed, all work as set forth by Exhibit A, at Agency's sole cost and expense.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

- 2.3 Conduct of Work. LIRC shall commence its work under this Agreement following: (i) delivery to LIRC of a notice to proceed from Agency; (ii) payment of Reimbursable Expenses (as provided by Section 4.1) as required by LIRC prior to the commencement of work by LIRC; (iii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iv) delivery of proof of insurance acceptable to LIRC, as required by Section 9. The initiation of any services by LIRC pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of work for the purposes of this Section. The parties intend that all work by LIRC or on LIRC property shall conclude no later than **October 31, 2025**, unless the parties mutually agree to extend such date.
3. Special Provisions. Agency shall observe and abide by, and shall require its contractors (“**Contractors**”) to observe and abide by the terms, conditions and provisions set forth in Exhibit C to this Agreement (the “**Special Provisions**”). To the extent that Agency performs Project work itself, Agency shall be deemed a Contractor for purposes of this Agreement. Agency further agrees that, prior to the commencement of Project work by any third party Contractor, such Contractor shall execute and deliver to LIRC Schedule I to this Agreement to acknowledge Contractor’s agreement to observe and abide by the terms and conditions of this Agreement.
4. Cost of Project and Reimbursement Procedures
- 4.1 Reimbursable Expenses. Agency shall reimburse LIRC for all costs and expenses incurred by LIRC in connection with the Project, including, without limitation: (1) all out of pocket expenses, (2) travel and lodging expenses, (3) telephone, facsimile, and mailing expenses, (4) costs for equipment, tools, materials and supplies, (5) sums paid to LIRC’s consultants and subcontractors, and (6) LIRC labor in connection with the Project, together with LIRC labor overhead percentages established by LIRC pursuant to applicable law (collectively, “**Reimbursable Expenses**”). Reimbursable Expenses shall also include expenses incurred by LIRC prior to the date of this Agreement to the extent identified by the Estimate provided pursuant to Section 4.2.
- 4.2 Estimate. LIRC has estimated the total Reimbursable Expenses for the Project as shown on Exhibit D (the “**Estimate**”, as amended or revised). In the event LIRC anticipates that actual Reimbursable Expenses for the Project may exceed such Estimate, it shall provide Agency with the revised Estimate of the total Reimbursable Expenses, together with a revised Payment Schedule (as defined by Section 4.3.1), for Agency’s approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of such revised Estimate. LIRC may elect, by delivery of notice to Agency, to immediately cease all further work on the Project, unless and until Agency provides such approval and confirmation.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

4.3 Payment Terms.

4.3.1 Agency shall pay LIRC for Reimbursable Expenses in the amounts and on the dates set forth in the Payment Schedule as shown on Exhibit E (the "Payment Schedule", as revised pursuant to Section 4.2). LIRC agrees to submit invoices to Agency for such amounts and Agency shall remit payment to LIRC at the later of thirty (30) days following delivery of each such invoice to Agency or, the payment date (if any) set forth in the Payment Schedule.

4.3.2 Following completion of the Project, LIRC shall submit to Agency a final invoice that reconciles the total Reimbursable Expenses incurred by LIRC against the total payments received from Agency. Agency shall pay to LIRC the amount by which Reimbursable Expenses exceed total payments as shown by the final invoice, within thirty (30) days following delivery of such invoice to Agency. In the event that the payments received by LIRC from Agency exceed the Reimbursable Expenses, LIRC shall remit such excess to Agency.

4.3.3 In the event that Agency fails to pay LIRC any sums due LIRC under this Agreement: (i) Agency shall pay LIRC interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full. As per Indiana Law, the maximum rate of interest permitted is 8% per annum; and (ii) LIRC may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

4.3.4 All invoices from LIRC shall be delivered to Agency in accordance with Section 16 of this Agreement. All payments by Agency to LIRC shall be made by certified check and mailed to the following address or such other address as designated by LIRC's notice to Agency or ACH/EFT:

Louisville and Indiana Railroad Company
500 Willinger Lane
Jeffersonville, IN 47130

Acct# 071000039
ACH ABA# 2337578

4.4 Effect of Termination. Agency's obligation to pay to LIRC Reimbursable Expenses in accordance with Section 4 shall survive termination of this Agreement for any reason.

5. Appropriations Agency represents to LIRC that: (i) Agency has appropriated funds sufficient to reimburse LIRC for the Reimbursable Expenses encompassed by the Estimate attached as Exhibit D; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify LIRC in the event that Agency is unable to obtain such appropriations.

6. Easements and Licenses

6.1 Agency Obligation. Agency shall acquire all necessary licenses, permits and easements required for the Project.

6.2 Temporary Construction Licenses. Insofar as it has the right to do so, LIRC hereby grants Agency a nonexclusive license to access and cross LIRC's property, to the extent necessary for the construction of the Project (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by Railroad and as may be designated on the Plans approved by LIRC.

6.3 Temporary Construction Easements. LIRC may grant without warranty to Agency if required temporary non-exclusive easement for access to the extent necessary for the project on terms and conditions, and at a price acceptable to the parties.

7. Permits. At its sole cost and expense, Agency shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction, maintenance and use of the Project, copies of which shall be provided to LIRC.

8. Termination

8.1 By Agency. For any reason, Agency may, as its sole remedy, terminate this Agreement by delivery of notice to LIRC. Agency shall not be entitled to otherwise pursue claims for consequential, direct, indirect or incidental damages or lost profits as a consequence of LIRC's default or termination of this Agreement or Work on the Project by either party.

8.2 By LIRC. In addition to the other rights and remedies available to LIRC under this Agreement, LIRC may terminate this Agreement by delivery of notice to Agency in the event Agency or its Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by LIRC to Agency.

8.3 Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the Work. Accordingly, they agree that, in such instance a party may continue to perform Work until it has reached a point where it may reasonably and safely suspend the Work. Agency shall reimburse LIRC pursuant to this Agreement for the Work performed, plus all costs reasonably incurred by LIRC to discontinue the Work and protect the Work upon full suspension of the same, the cost

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

of returning LIRC's property to its former condition, and all other costs of LIRC incurred as a result of the Project up to the time of full suspension of the Work. Termination of this Agreement or Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay LIRC for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Work for any reason, LIRC's only remaining obligation to Agency shall be to refund to Agency payments made to LIRC in excess of Reimbursable Expenses in accordance with Section 4.

9. Insurance. In addition to the insurance that Agency requires of its Contractor, Agency shall acquire or require its Contractor to purchase and maintain insurance in compliance with LIRC's insurance requirements attached to this Agreement as Exhibit F. Neither Agency nor Contractor shall commence work on the Project until such policy or policies have been submitted to and approved by LIRC's Risk Management Department.

10. Ownership and Maintenance.

• At Grade Crossings

10.1 By Agency. Agency shall maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans, consisting of roadway pavement up to the outer ends of the railroad cross ties, sidewalks, guardrails, and curbs, in good and safe condition to LIRC's satisfaction. In the event Agency fails to do so after reasonable notice from LIRC (unless an emergency condition exists or is imminent in the opinion of LIRC that requires immediate action), LIRC may perform such maintenance and repair, at Agency's sole cost and expense.

10.2 By LIRC. LIRC shall maintain and repair the crossing surface between the ends of its cross ties and its signal facilities at the crossing, at Agency's sole cost and expense.

10.3 Alterations. Agency shall not undertake any alteration, modification or expansion of the Project, without the prior written approval of LIRC, which may be withheld for any reason, and the execution of such agreements as LIRC may require. LIRC may undertake alterations of its property, track or facilities and shall be reimbursed by Agency for the expenses incurred by LIRC with respect to the removal and restoration of the crossing in connections with such alteration.

• Other Improvements

10.1 By Agency. Agency shall own, maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans. In the event Agency fails to do so after reasonable notice from LIRC (no more than thirty (30) days, unless an emergency condition exists or is imminent in the opinion of LIRC, that requires immediate action), LIRC may perform such maintenance and repair, at Agency's sole cost and expense. Upon the cessation of use of the Project by Agency, Agency shall

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

remove the structure and restore LIRC's property to its original condition, at Agency's sole cost and expense, to LIRC's satisfaction.

- 10.2 Alterations. Agency shall not undertake any alteration, modification or expansion of the Project, without the prior approval of LIRC, which may be withheld for any reason, and the execution of such agreements as LIRC may require.

11. Indemnification

- 11.1 Generally. To the maximum extent permitted by applicable law, Agency and its Contractors shall indemnify, defend, and hold LIRC and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death to any person(s) (including, but not limited to the employees of LIRC, its affiliates, Agency or its Contractors), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of LIRC, its affiliates, Agency or its Contractors, and environmental damages and any related remediation brought or recovered against LIRC and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Contractors, Agency, and their respective agents, employees, invitees, contractors, or its contractors' agents, employees or invitees in the performance of work in connection with the Project or activities incidental thereto, or from their presence on or about LIRC's property. The foregoing indemnification obligation shall not be limited to the insurance coverage required by this Agreement, except to the extent required by law or otherwise expressly provided by this Agreement.
- 11.2 Compliance with Laws. Agency shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Agency's Contractors shall indemnify, defend, and hold LIRC and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.
- 11.3 "LIRC Affiliates". For the purpose of this Section 11, LIRC's affiliates include LIRC and all entities, directly or indirectly, owned or controlled by or under common control of LIRC and their respective officers, directors, employees and agents.
- 11.4 Notice of Incidents. Agency and its Contractor shall notify LIRC promptly of any loss, damage, injury or death arising out of or in connection with the Project work.
- 11.5 Survival. The provisions of this Section 11 shall survive the termination or expiration of this Agreement.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

12. Independent Contractor. The parties agree that neither Agency nor its Contractors shall be deemed either agents or independent contractors of LIRC. Except as otherwise provided by this Agreement, LIRC shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by Agency or Agency's Contractors, or the construction practices, procedures, and professional judgment employed by Agency or its Contractor to complete the Project. Notwithstanding the foregoing, this Section 12 shall in no way affect the absolute authority of LIRC to prohibit Agency or its Contractors or anyone from entering LIRC's property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.
13. "Entire Agreement" This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
14. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
15. Assignment. LIRC may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by LIRC and the assumption of LIRC's assignee of LIRC's obligations under this Agreement, LIRC shall have no further obligation under this Agreement. Agency shall not assign its rights or obligations under this Agreement without LIRC's prior consent, which consent may be withheld for any reason.
16. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to LIRC: Louisville and Indiana Railroad Company
500 Willinger Lane
Jeffersonville, IN 47130
Attn: Ryan Barbato

If to Agency: City of Franklin
70 E. Monroe St.
Franklin, IN 46131

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

ATTN: Mark Richards

17. Severability. The parties agree that if any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state, or local law or regulation, such part, term or provision shall be severable, with the remainder of the Agreement remaining valid and enforceable.

18. Applicable Law. This Agreement shall be governed by the laws of the State of **Indiana**, exclusive of its choice of law rules. The parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Clark County, Indiana, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Clark County, Indiana.

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**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

BY SIGNING THIS AGREEMENT, I certify that there have been no changes made to the content of this Agreement since its approval by the LIRC Legal Department on January 1, 2023.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

City of Franklin

By: _____

Name: _____

Title: _____

Louisville and Indiana Railroad Company

By: _____

Name: _____

Title: _____

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

**EXHIBIT A
ALLOCATION OF WORK**

Subject to Section 2.1, work to be performed in connection with the Project is allocated as follows:

- A. Agency shall let by contract to its Contractors:
 - 1. Perform reconstruction of Paul Hand Boulevard.

- B. LIRC shall perform or cause to be performed:
 - 1. Preliminary engineering services.
 - 2. Changes in communication and signal lines.
 - 3. Flagging services and other protective services and devices as may be necessary.
 - 4. Construction engineering and inspection to protect the interests of CSXT.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

EXHIBIT B

PLANS AND SPECIFICATIONS

Plans, Specifications and Drawings:

As of the date of this Agreement, the following plans, specifications and drawings have been submitted by Agency to LIRC for its review and approval:

PLANS TBD

<u>SHEET</u>	<u>DESCRIPTION</u>	<u>PREPARER</u>	<u>DATE</u>
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NOTE: In the event subsequent plan submissions are made by Agency to LIRC for review and approval, once approved, said plans shall be considered to be incorporated into this Exhibit B as of the date of LIRC's written approval.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

EXHIBIT C

LIRC SPECIAL PROVISIONS

DEFINITIONS:

As used in these Special Provisions, all capitalized terms shall have the meanings ascribed to them by the Agreement, and the following terms shall have the meanings ascribed to them below:

“LIRC” shall mean Louisville and Indiana Railroad Company., its successors and assigns.

“LIRC Representative” shall mean the authorized representative of LIRC.

"Agreement" shall mean the Agreement to which this Exhibit C is made a part thereof and as may be amended from time to time.

“Agency” shall mean the **City of Franklin**.

“Agency Representative” shall mean the authorized representative of **City of Franklin**.

“Contractor” shall have the meaning ascribed to such term by the Agreement.

“Work” shall mean the Project as described in the Agreement.

I. AUTHORITY OF LIRC ENGINEER

The LIRC Representative shall have final authority in all matters affecting the safe maintenance of LIRC operations and LIRC property, and his or her approval shall be obtained by the Agency or its Contractor for methods of construction to avoid interference with LIRC operations and LIRC property and all other matters contemplated by the Agreement and these Special Provisions.

II. INTERFERENCE WITH LIRC OPERATIONS

- A. Agency or its Contractor shall arrange and conduct its work so that there will be no interference with LIRC operations, including train, signal, telephone and telegraphic services, or damage to LIRC’s property, or to poles, wires, and other facilities of tenants on LIRC’s Property or right-of-way. Agency or its Contractor shall store materials so as to prevent trespassers from causing damage to trains, or LIRC Property. Whenever Work is likely to affect the operations or safety of trains, the method of doing such Work shall first be submitted to the LIRC Representative for approval, but such approval shall not relieve Agency or its Contractor from liability in connection with such Work.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

- B. If conditions arising from or in connection with the Project require that immediate and unusual provisions be made to protect train operation or LIRC's property, Agency or its Contractor shall make such provision. If the LIRC Representative determines that such provision is insufficient, LIRC may, at the expense of Agency or its Contractor, require or provide such provision as may be deemed necessary, or cause the Work to cease immediately.
- III. NOTICE OF STARTING WORK. Agency or its Contractor shall not commence any work on LIRC Property or rights-of-way until it has complied with the following conditions:
- A. Notify LIRC in writing of the date that it intends to commence Work on the Project. Such notice must be received by LIRC at least ten business days in advance of the date Agency or its Contractor proposes to begin Work on LIRC property. The notice must refer to this Agreement by date. If flagging service is required, such notice shall be submitted at least thirty (30) business days in advance of the date scheduled to commence the Work.
 - B. Obtain authorization from the LIRC Representative to begin Work on LIRC property, such authorization to include an outline of specific conditions with which it must comply.
 - C. Obtain from LIRC the names, addresses and telephone numbers of LIRC's personnel who must receive notice under provisions in the Agreement. Where more than one individual is designated, the area of responsibility of each shall be specified.
- IV. WORK FOR THE BENEFIT OF THE CONTRACTOR
- A. No temporary or permanent changes to wire lines or other facilities (other than third party fiber optic cable transmission systems) on LIRC property that are considered necessary to the Work are anticipated or shown on the Plans. If any such changes are, or become, necessary in the opinion of LIRC or Agency, such changes will be covered by appropriate revisions to the Plans and by preparation of a force account estimate. Such force account estimate may be initiated by either LIRC or Agency, but must be approved by both LIRC and Agency. Agency or Contractor shall be responsible for arranging for the relocation of the third party fiber optic cable transmission systems, at no cost or expense to LIRC.
 - B. Should Agency or Contractor desire any changes in addition to the above, then it shall make separate arrangements with LIRC for such changes to be accomplished at the Agency or Contractor's expense.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

V. HAUL ACROSS RAILROAD

- A. If Agency or Contractor desires access across LIRC property or tracks at other than an existing and open public road crossing in or incident to construction of the Project, the Agency or Contractor must first obtain the permission of LIRC and shall execute a license agreement or right of entry satisfactory to LIRC, wherein Agency or Contractor agrees to bear all costs and liabilities related to such access.
- B. Agency and Contractor shall not cross LIRC's property and tracks with vehicles or equipment of any kind or character, except at such crossing or crossings as may be permitted pursuant to this section.

VI. COOPERATION AND DELAYS

- A. Agency or Contractor shall arrange a schedule with LIRC for accomplishing stage construction involving work by LIRC. In arranging its schedule, Agency or Contractor shall ascertain, from LIRC, the lead time required for assembling crews and materials and shall make due allowance therefore.
- B. Agency or Contractor may not charge any costs or submit any claims against LIRC for hindrance or delay caused by railroad traffic; work done by LIRC or other delay incident to or necessary for safe maintenance of railroad traffic; or for any delays due to compliance with these Special Provisions.
- C. Agency and Contractor shall cooperate with others participating in the construction of the Project to the end that all work may be carried on to the best advantage.
- D. Agency and Contractor understand and agree that LIRC does not assume any responsibility for work performed by others in connection the Project. Agency and Contractor further understand and agree that they shall have no claim whatsoever against LIRC for any inconvenience, delay or additional cost incurred by Agency or Contractor on account of operations by others.

VII. STORAGE OF MATERIALS AND EQUIPMENT

Agency and Contractor shall not store their materials or equipment on LIRC's property or where they may potentially interfere with LIRC's operations, unless Agency or Contractor has received LIRC Representative's prior written permission. Agency and Contractor understand and agree that LIRC will not be liable for any damage to such materials and equipment from any cause and that LIRC may move, or require Agency or Contractor to move, such material and equipment at Agency's or Contractor's sole expense. To minimize the possibility of damage to the railroad tracks resulting from the unauthorized use of equipment, all grading or other construction equipment that is left parked near the

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

tracks unattended by watchmen shall be immobilized to the extent feasible so that it cannot be moved by unauthorized persons.

VIII. CONSTRUCTION PROCEDURES

A. General

1. Construction work on LIRC property shall be subject to LIRC's inspection and approval.
2. Construction work on LIRC property shall be in accord with LIRC's written outline of specific conditions and with these Special Provisions.
3. Contractor shall observe the terms and rules of the LIRC Safe Way manual, which Agency and Contractor shall be required to obtain from LIRC, and in accord with any other instructions furnished by LIRC or LIRC's Representative.

B. Blasting

1. Agency or Contractor shall obtain LIRC Representative's and Agency Representative's prior written approval for use of explosives on or adjacent to LIRC property. If permission for use of explosives is granted, Agency or Contractor must comply with the following:
 - a. Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of Agency or Contractor.
 - b. Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way train radios.
 - c. No blasting shall be done without the presence of an authorized representative of LIRC. At least 10 days' advance notice to LIRC Representative is required to arrange for the presence of an authorized LIRC representative and any flagging that LIRC may require.
 - d. Agency or Contractor must have at the Project site adequate equipment, labor and materials, and allow sufficient time, to (i) clean up (at Agency's expense) debris resulting from the blasting without any delay to trains; and (ii) correct (at Agency's expense) any track misalignment or other damage to LIRC's property resulting from the blasting, as directed by LIRC Representative, without delay to trains. If Agency's or Contractor's actions result in

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

delay of any trains, including Amtrak passenger trains, Agency shall bear the entire cost thereof.

- e. Agency and Contractor shall not store explosives on LIRC property.
2. LIRC Representative will:
- a. Determine the approximate location of trains and advise Agency or Contractor of the approximate amount of time available for the blasting operation and clean-up.
 - b. Have the authority to order discontinuance of blasting if, in his or her opinion, blasting is too hazardous or is not in accord with these Special Provisions.

IX. MAINTENANCE OF DITCHES ADJACENT TO LIRC TRACKS

Agency or Contractor shall maintain all ditches and drainage structures free of silt or other obstructions that may result from their operations. Agency or Contractor shall provide erosion control measures during construction and use methods that accord with applicable state standard specifications for road and bridge construction, including either (1) silt fence; (2) hay or straw barrier; (3) berm or temporary ditches; (4) sediment basin; (5) aggregate checks; and (6) channel lining. All such maintenance and repair of damages due to Agency's or Contractor's operations shall be performed at Agency's expense.

X. FLAGGING / INSPECTION SERVICE

- A. LIRC has sole authority to determine the need for flagging required to protect its operations and property. In general, flagging protection will be required whenever Agency or Contractor or their equipment are, or are likely to be, working within fifty (50) feet of live track or other track clearances specified by LIRC, or over tracks.
- B. Agency shall reimburse LIRC directly for all costs of flagging that is required on account of construction within LIRC property shown in the Plans, or that is covered by an approved plan revision, supplemental agreement or change order.
- C. Agency or Contractor shall give a minimum of 10 days' advance notice to LIRC Representative for anticipated need for flagging service. No work shall be undertaken until the flag person(s) is/are at the job site. If it is necessary for LIRC to advertise a flagging job for bid, it may take up to 90-days to obtain this service, and LIRC shall not be liable for the cost of delays attributable to obtaining such service.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

- D. LIRC shall have the right to assign an individual to the site of the Project to perform inspection service whenever, in the opinion of LIRC Representative, such inspection may be necessary. Agency shall reimburse LIRC for the costs incurred by LIRC for such inspection service. Inspection service shall not relieve Agency or Contractor from liability for its Work.
- E. LIRC shall render invoices for, and Agency shall pay for, the actual pay rate of the flagpersons and inspectors used, plus standard additives, whether that amount is above or below the rate provided in the Estimate. If the rate of pay that is to be used for inspector or flagging service is changed before the work is started or during the progress of the work, whether by law or agreement between LIRC and its employees, or if the tax rates on labor are changed, bills will be rendered by LIRC and paid by Agency using the new rates. Agency and Contractor shall perform their operations that require flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

XI. UTILITY FACILITIES ON LIRC PROPERTY

Agency shall arrange, upon approval from LIRC, to have any utility facilities on or over LIRC Property changed as may be necessary to provide clearances for the proposed trackage.

XII. CLEAN-UP

Agency or Contractor, upon completion of the Project, shall remove from LIRC's Property any temporary grade crossings, any temporary erosion control measures used to control drainage, all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings belonging to Agency or Contractor. Agency or Contractor, upon completion of the Project, shall leave LIRC Property in neat condition, satisfactory to LIRC Representative.

XIII. FAILURE TO COMPLY

If Agency or Contractor violate or fail to comply with any of the requirements of these Special Provisions, (a) LIRC may require Agency and/or Contractor to vacate LIRC Property; and (b) LIRC may withhold monies due Agency and/or Contractor; (c) LIRC may require Agency to withhold monies due Contractor; and (d) LIRC may cure such failure and the Agency shall reimburse LIRC for the cost of curing such failure.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

EXHIBIT D

INITIAL ESTIMATE ATTACHED

LIRC Schedule PA

PAYMENT SUBMISSION FORM

Project Description: _____

Payment may be made via paper check or ACH/EFT payment as detailed below.
Payment due prior to work commencing.

*****Mail a Check*****

Mail this form, along with your paper check (do not send the Agreement) to the following address:

Louisville and Indiana Railroad Company
500 Willinger Lane
Jeffersonville, IN 47130

When submitting payment VIA EITHER CHECK OR ACH/EFT, send a photocopy of the check or associated ACH/EFT payment info, along with this form via email/mail to:

Ryan Barbato – Road Master
500 Willinger Lane
Jeffersonville, IN 47130
rbarbato@anacostia.com
Office: (812) 406-4585

And

Matt Donnelly – Crouch Engineering
5115 Maryland Way
Brentwood, TN 37027
mdonnelly@crouchengineering.com
Office: (615) 932-8144

(All information below to be completed by Agency providing Payment)

<u>Sponsor Name</u>	<u>Payment Date</u>	<u>Check #</u>	<u>Amount</u>
_____	_____	_____	_____

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

EXHIBIT E

PAYMENT SCHEDULE

Advance Payment in Full

Upon execution and delivery of notice to proceed with the Project, Agency will deposit with LIRC a sum equal to the Reimbursable Expenses, as shown by the Estimate. If LIRC anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, LIRC will request an additional deposit equal to the then remaining Reimbursable Expenses which LIRC estimates that it will incur. LIRC shall request such additional deposit by delivery of invoices to Agency. Agency shall make such additional deposit within 30 days following delivery of such invoice to Agency.

Payment Date

Payment

Total:

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

EXHIBIT F

INSURANCE REQUIREMENTS

I. Insurance Policies:

Agency and Contractor, if and to the extent that either is performing work on or about LIRC's property, shall procure and maintain the following insurance policies:

1. Commercial General Liability coverage at their sole cost and expense with limits of not less than \$5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such policies shall name LIRC as an additional named insured. The policy shall include endorsement ISO CG 24 17 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
2. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against LIRC and its affiliates (if permitted by state law).
3. Commercial automobile liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence, and such policies shall name LIRC as an additional named insured. The policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
4. Railroad protective liability insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000, which insurance shall satisfy the following additional requirements:
 - a. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
 - b. LIRC Transportation must be the named insured on the Railroad Protective Insurance Policy.
 - c. Name and Address of Contractor and Agency must appear on the Declarations page.
 - d. Description of operations must appear on the Declarations page and must match the Project description.

**Roadway Reconstruction of Paul Hand Boulevard
Whiteland, Johnson County, Indiana
Louisville Zone, Louisville Secondary Subdivision
QSL 16.5**

- e. Authorized endorsements must include the Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.
 - f. Authorized endorsements may include:
 - (i). Broad Form Nuclear Exclusion - IL 00 21
 - (ii) 30-day Advance Notice of Non-renewal or cancellation
 - (iii) Required State Cancellation Endorsement
 - (iv) Quick Reference or Index - CL/IL 240
 - g. Authorized endorsements may not include:
 - (i) A Pollution Exclusion Endorsement except CG 28 31
 - (ii) A Punitive or Exemplary Damages Exclusion
 - (iii) A "Common Policy Conditions" Endorsement
 - (iv) Any endorsement that is not named in Section 4 (e) or (f) above.
 - (v) Policies that contain any type of deductible
5. All insurance companies must be A. M. Best rated A- and Class VII or better.
6. The LIRC OP number or LIRC contract number, as applicable, must appear on each Declarations page and/or certificates of insurance.
7. Such additional or different insurance as LIRC may require.

II. Additional Terms

1. Contractor must submit the original Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policies to:

Insurance Department
LIRC Transportation, Inc.
500 Water Street, 14th Floor
Jacksonville, FL 32202
Phone: 904-366-3804

OR

insurancedocuments@LIRC.com

2. Neither Agency nor Contractor may begin work on the Project until it has received LIRC's written approval of the required insurance.

SCHEDULE I

CONTRACTOR'S ACCEPTANCE

To and for the benefit of LIRC Transportation, Inc. ("LIRC") and to induce LIRC to permit Contractor on or about LIRC's property for the purposes of performing work in accordance with the Agreement dated _____, 20__, between **City of Franklin** and LIRC, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to Exhibits C and F to the Agreement, and Sections 3, 9 and 11 of the Agreement.

Contractor: _____

By: _____

Name: _____

Title: _____

Date: _____

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