

**BOARD OF PUBLIC WORKS AND SAFETY**  
**Agenda Request Form**

(Form B-01-2012)

*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:	07/11/2016	Requested Meeting Date:	07/18/2016		
		Confirmed Meeting Date:			
Received by:					
<b>Contact Information: Please provide all requested information in the fields below. (Print or Type)</b>					
On Behalf of Organization or Individual:			City of Franklin		
Name:	Lynnette Gray		Telephone:	(317) 738-3365	
Title or Position:	City Attorney				
E-Mail:	lynng@jgmlawfirm.com				
Address:	63 E. Court St.				
City:	Franklin	State:	IN	ZIP:	46131
<b>Who will attend the meeting and present the request?</b>					
Name:	Lynnette Gray		Telephone:	(317) 738-3365	
Title or Position:	City Attorney				
E-Mail:	lynng@jgmlawfirm.com				
<b>Please describe the purpose or title of your presentation.</b>					
Consider approval of revised Railroad Pedestrian Trail Crossing Agreement					
<b>Supporting documents: All supporting documents should be submitted with the request form.</b>					
1. Agreement Covering Construction of a Bike/Pedestrian Facilities: Installation of Active Warning Devices; and Construction of a Bike/Pedestrian Grade Crossing;					



hereof by reference.

**Section 2.** Detailed plans and specifications for the project to construct the Crossing shall be prepared by the CITY and approved by INDOT. All plans, specifications, and contract awards affecting the interests of the RAILROAD shall be subject to approval by the Chief Engineer of the RAILROAD before work is started. No changes in the plans affecting the interests of either party hereto shall be made without the written consent of said party.

**Section 3.** The parties hereto shall construct or cause to be constructed in substantial accordance with the plans and specifications, the following items of work:

**(a) Work by the CITY:**

- (1) The CITY shall construct and maintain the bike/pedestrian facilities related to the Crossing;
- (2) The CITY will place and maintain at and near the Crossing railroad advance warning signs and pavement markings in accordance with the current edition of the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways.

**(b) Work by the RAILROAD:**

- (1) The RAILROAD shall construct the bike/pedestrian crossing surface in RAILROAD's right of way to conform with the proposed trail profile and width, as shown on **Exhibit 2** and the signal design set forth on Exhibit 3 to conform with the manufacturer's specifications which are subject to prior approval by INDOT and the Federal Highway Administration, and in accordance with the Indiana Department of Transportation's Special Provisions for construction of Highway-Railway Grade Crossings, revised March 7, 1996, which are incorporated and made a part hereof by reference.
- (2) The RAILROAD shall install new active warning devices as designated on Exhibit 3 and shown on Exhibit 2. The design and installation of such warning devices shall conform with the State of Indiana Special Provisions "Installation of Active Warning Devices at Highway-Railway Grade Crossings" revised March 6, 1997, which are incorporated and made a part hereof by reference and applicable requirements of Part VIII of the current edition of the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways, and any subsequent amendments, revisions, or supplements thereto.

**Section 4.** The RAILROAD shall furnish to INDOT in reproducible form an estimate of costs to be incurred by the RAILROAD for the work to be performed by RAILROAD in the project to construct the Crossing. The force account estimate shall be subject to approval by INDOT, and is made a part of this Agreement and attached hereto as Exhibit 4.

**Section 5.** All materials for the work to be performed by RAILROAD shall be furnished and delivered to the crossing site by the RAILROAD and shall be new, except as otherwise specifically approved by INDOT, prior to installation.

**Section 6.** The construction and installation of the active warning device and the construction of the grade crossing surface shall be performed by the RAILROAD with its own

forces on a force account basis. RAILROAD shall use the contractors identified on **Exhibit 5** hereto (the "RAILROAD CONTRACTORS") to perform all of the work to be performed by RAILROAD pursuant to Section 3(b) hereof or otherwise under this Agreement (the "Work"). The RAILROAD represents and warrants the RAILROAD CONTRACTORS provide services to RAILROAD from time to time and that the fees charged by the RAILROAD CONTRACTORS for the Work shall be consistent with the fees charged by the RAILROAD CONTRACTORS for other projects on behalf of RAILROAD.

The RAILROAD shall keep complete records of the cost of the Work to be performed by it and shall submit to INDOT or City on request such information as it may require concerning the cost and other details of the work. These records shall be available for audit by representatives of INDOT, City and Federal Highway Administration for a period of three years from the date final payment has been received by the RAILROAD. Except as otherwise provided in this agreement, the Local Project Administrator ("LPA"), through INDOT, shall reimburse the RAILROAD for the actual cost of the Work, performed by the RAILROAD or the RAILROAD CONTRACTOR.

In the event there are increases in the extent of the Work or changes in methods of performing the Work, this amount may be increased by mutual agreement. The eligibility for reimbursement of costs of changes to the RAILROAD's facilities and facilities jointly owned or used by the RAILROAD and utility companies shall be determined in accordance with the regulations as set forth in the Federal Aid Policy Guide 23 CFR, Part 140, Subpart I, Subchapter B, Part 646, Subpart B issued December 9, 1991, and subsequent amendments or supplements thereto, which are incorporated herein by reference. It is agreed that progress payments will be made by INDOT to the RAILROAD for the total amount of Work done as shown on monthly statements or when the amount due the RAILROAD equals \$1,000.00 or more, said progress billing to be paid within thirty-five (35) days of receipt of the RAILROAD's progress bill. Upon receipt of the final bill, the RAILROAD shall be reimbursed for such items of the Work and project expense in such amounts as are proper and eligible for payment and the project shall be submitted for final audit. In the event final audit discloses that INDOT has reimbursed the RAILROAD more than the amount due under the terms of this Agreement, the RAILROAD shall promptly repay INDOT the amount overpaid it. Billings to INDOT shall clearly show whether they are partial or final claims. The LPA, through INDOT, shall reimburse the RAILROAD for any items of Work and expense performed by it at the written direction of the LPA or INDOT, which are not eligible for reimbursement from Federal funds.

The RAILROAD shall not commence any of the Work until notified in writing by INDOT to proceed, and said Work by the RAILROAD shall be commenced within thirty (30) days after such notification to proceed. Buying and assembling of materials shall be construed as compliance with the foregoing thirty- (30-) day provision.

**Section 7.** On all contract construction operations involving direct interference with the RAILROAD's tracks or traffic, the fouling of RAILROAD operating clearances, or reasonable probability of accidental hazard to RAILROAD traffic, the CITY and INDOT shall require the City Contractor to arrange for the necessary RAILROAD personnel (or RAILROAD CONTRACTOR personnel) to protect such operations as required by the regular operating rules of the RAILROAD as determined by the Chief Engineer of the RAILROAD or his authorized representative, except in connection with the RAILROAD force account work as provided in

Section 3b hereof. The RAILROAD will be reimbursed for the actual cost of such protective services furnished by it or its RAILROAD CONTRACTOR, at project expense in accordance with the estimate of force account work, as set forth in Exhibit 4, attached hereto and made a part hereof. The CITY and INDOT shall make final settlement with the City Contractor contingent on a showing that the RAILROAD has been reimbursed for any expenses which are for the sole benefit of the City Contractor, or that satisfactory arrangements have been made for such reimbursement. The City Contractor at his own cost shall provide any watchmen or flagmen necessary to protect or safeguard roadway traffic.

The Crossing shall be constructed and installed to include adequate drainage facilities necessary for the prevention of flooding or any other kind of water damage in the general area which drainage facilities shall be constructed, installed, maintained, repaired, renewed and cleaned at all times and at the sole risk, cost and expense of CITY.

**Section 8.** All work herein provided to be done by the CITY on the RAILROAD's operating right-of-way shall be done in a manner satisfactory to the Chief Engineer of the RAILROAD or his authorized representative, and shall be performed at such times and in such manner as not to interfere unnecessarily with the movement of trains or traffic upon the track and proposed future tracks of the RAILROAD. The CITY and INDOT agree to require the City Contractor to use all reasonable care and precaution in order to avoid accident, damage, or unnecessary delay or interference with the RAILROAD's trains or other property.

**Section 9.** The CITY and INDOT shall require the City Contractor, upon completion of the work of the City Contractor, to remove from within the limits of the RAILROAD's operating right-of-way all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings of City Contractor, and to leave the operating right-of-way in a neat condition, satisfactory to the Chief Engineer of the RAILROAD or his authorized representative.

**Section 10.** The CITY and INDOT shall require the City Contractor to take out, at City Contractor's expense, before work is commenced and to keep in effect until work is completed and accepted, a RAILROAD Protective Public Liability Policy of Insurance in the name of the RAILROAD, said policy to be in the form specified in Federal-Aid Policy Guide 23 CFR, Part 646A, Subchapter G, issued December 9, 1991, and any subsequent amendments or supplements thereto. The maximum dollar amounts of coverage with respect to bodily injury, death, and property damage, is limited to a combined amount of \$2,000,000.00 per occurrence with an aggregate limit of \$4,000,000.00 for the term of the policy. Additionally, the CITY and INDOT shall require the City Contractor to certify that the City Contractor has obtained Contractor's Public Liability and Property Damage insurance in the amounts indicated in the Contract Special Provisions and that RAILROAD and CSX Transportation, Inc. has been named as an additional insured on that policy. The policy of insurance specified in this section shall be with a company authorized to do business in the State of Indiana.

**Section 11.** Upon completion of the project, and so long as the Franklin Trail crosses RAILROAD's right of way, the CITY shall at its own cost and expense maintain, repair and renew the Crossing as follows:

(i) CITY shall maintain, renew and repair (with its own forces or by agreement with contractors) the portion of Crossing up to the distance from RAILROAD's tracks where roadway worker protection would be required (the "Apron"). Upon notice from RAILROAD that maintenance, repair or renewal on the Apron is required, CITY shall promptly perform same. If CITY fails to do so within ten (10) days after receipt of written notice (or such longer period of time, not exceeding thirty (30) days if the necessary maintenance, repair or renewal would take more than thirty (30) days and CITY promptly commences such work), RAILROAD may furnish such materials and perform (or cause to be performed) such work on behalf of CITY and CITY shall be responsible for the reasonable and necessary costs of such maintenance, repair or renewal. Notwithstanding the foregoing or any provision herein to the contrary, (x) if at any time RAILROAD determines that the public safety, requires that repair, maintenance or renewal must be commenced immediately, RAILROAD may do so on behalf of CITY, and (y) CITY shall not enter any portion of RAILROAD's right of way other than the Apron in performing its maintenance, repair and renewal obligations hereunder.

(ii) RAILROAD shall maintain, renew and repair (with its own forces or by agreement with contractors), on behalf of CITY, that portion of the Crossing that is on RAILROAD's right of way and that is not on the Apron, including without limitation the crossing surface (and all related drainage facilities whether or not located in the Crossing) and active warning devices. By February 15th of each year, CITY shall pay to RAILROAD a minimum annual maintenance fee of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00) (the "Minimum Fee") on account of the preceding calendar year (which amount shall be prorated based on a 360-day year for partial years). In addition, CITY shall pay to RAILROAD any additional documented maintenance, repair or renewal costs incurred by RAILROAD under this Section 11(ii) during a calendar year in excess of the Minimum Fee ("Additional Costs"). By January 15th of each year, RAILROAD shall submit to CITY an invoice and supporting documentation for Additional Costs incurred by RAILROAD in the preceding year. CITY shall pay the Minimum Fee and Additional Costs by February 15th.

(iii) All maintenance, renewal and repair undertaken pursuant to this Section 11 shall be subject to the indemnification and insurance requirements of Section 15 hereof.

**Section 12.** In the event that delays or difficulties arise in securing necessary approvals, or in acquiring necessary right-of-way, or in settling damages or damage claims, or for other reasons, which in the opinion of the CITY render it impracticable to utilize funds from current appropriation for the construction of the project, then at any time before actual construction is started by INDOT or CITY or the Contractor pursuant to proper approval or authority, the CITY through INDOT may serve formal notice of cancellation upon the RAILROAD and this agreement shall thereupon become null and void. The CITY, through INDOT shall reimburse the RAILROAD for all costs incurred by it at the written request of INDOT or CITY on account of the project prior to cancellation.

**Section 13.** It is understood and agreed that any costs incurred by the RAILROAD at the written request of the CITY are to be paid directly by the CITY. It is further understood and agreed that all project costs incurred by the RAILROAD subsequent to the written authorization by INDOT are to be billed through INDOT as set forth in Section 6.

**Section 14. Non-Discrimination**

1. To the extent required by I.C. 22-9-1-10 and Title VI of the Civil Rights Act of 1964, the RAILROAD shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Contract, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Acceptance of this Contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

2. The RAILROAD understands that INDOT is a recipient of Federal Funds. Pursuant to that understanding, the RAILROAD agrees that if the RAILROAD employs fifty (50) or more employees and does at least \$50,000 worth of business with the State and is not exempt, the RAILROAD will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The RAILROAD shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (INDOT's Title VI enforcement shall include the following additional grounds: sex, ancestry, age, income status, religion, disability, and status of a veteran.)

3. During the performance of this Contract, the RAILROAD, for itself, its assignees and successors in interest (hereinafter referred to as the "RAILROAD") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

a. Compliance with Regulations: In the performance of work under this agreement, the RAILROAD shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

b. Nondiscrimination: In the performance of work under this agreement, the RAILROAD, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The RAILROAD shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In the performance of work under this agreement, in all solicitations either by competitive bidding or negotiation made by the RAILROAD for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the RAILROAD of the RAILROAD's obligations under this Contract, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, national origin, religion, disability, ancestry, or status as a veteran.

d. Information and Reports: In the performance of work under this agreement, the RAILROAD shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the RAILROAD is in the exclusive possession of another who fails or refuses furnish this information, the RAILROAD shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Sanctions for Noncompliance: In the performance of work under this agreement, in the event of the RAILROAD's noncompliance with the nondiscrimination provisions of this Contract, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to: (a) withholding payments to the RAILROAD under the Contract until the RAILROAD complies, and/or (b) cancellation, termination or suspension of the Contract, in whole or in part.

f. Incorporation of Provisions: In the performance of work under this agreement, the RAILROAD shall include the provisions of paragraphs a through f in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

**Section 15** Indemnity and Insurance. Subject to the limitations set forth below, CITY shall indemnify, defend and save harmless RAILROAD, CSX TRANSPORTATION, INC. and their respective affiliates (together, the "RAILROAD Indemnitees") from and against all cost, expense (including without limitation reasonable attorneys' fees and expenses), claims, liability and loss (together, "Loss" or "Losses") resulting from death of or injury to persons, or damage to or destruction of property (including without limitation harm to the environment) arising out of or in connection with the construction, use, maintenance, repair, alteration or removal of the Crossing (including without limitation use of the Crossing by the public) or the portions of the Franklin Trail adjacent to or near the Crossing, without regard to whether CITY or RAILROAD (or a RAILROAD CONTRACTOR) has been negligent; provided, that (i) the indemnification obligations of CITY in this Section 15 shall not apply to Losses caused by RAILROAD's (or a RAILROAD CONTRACTOR's) negligence, gross negligence or willful misconduct, and (ii) CITY's indemnification obligation for each incident giving rise to Losses shall not exceed the per

incident or aggregate limit of the Comprehensive General Liability, Commercial Automobile Insurance or Workers Compensation Insurance, as applicable, required in Exhibit 6 hereto. To the extent Losses arise out of violation of law by the CITY or its contractor or agents, breach of this Agreement, or otherwise, such Losses shall not be subject to CITY's indemnification obligations under this Section 15 and shall instead be allocated in accordance with applicable law (including without limitation the provisions of Ind. Code § 34-13-3-1 et seq.).

**Section 16.** Buy America. The RAILROAD agrees that all steel and cast iron materials and products to be used under this agreement will be produced and manufactured in the United States of America pursuant to the requirements of Indiana Code 5-16-8-1, et al. and 23 CFR 635.410.

**Section 17.** It is understood that the project herein contemplated is to be financed with the aid of funds appropriated by the Federal Government and expended under Federal regulations; that all plans, estimates of cost, specifications, awards of contracts, acceptance of work, and procedures in general are subject at all times to all Federal laws, rules, regulations, orders, and approvals applying to it, as a Federal project.

**Section 18.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any must be brought in the State of Indiana.

**Section 19.** This Agreement shall be for the benefit of the parties hereto only, and no person, firm or corporation (other than the RAILROAD Indemnitees other than RAILROAD, which shall be third party beneficiaries of CITY's indemnification obligation under Section 15 hereof) shall acquire any rights whatsoever by virtue of this Agreement, except the LPA, the RAILROAD and their successors and assigns.

**THIS AGREEMENT** shall be binding upon the parties hereto, their successors or assigns

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed by their proper officers' thereunto duly authorized.

**[Remainder of Page Intentionally Left Blank]**

**LOUISVILLE & INDIANA RAILROAD COMPANY**

By \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\*\*\*\*\*

**ACKNOWLEDGMENT for RAILROAD**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, SS:

Before me, the undersigned Notary Public in and for said county personally appeared \_\_\_\_\_, in their official capacity as \_\_\_\_\_ of Louisville & Indiana Railroad Company and acknowledged the execution of the foregoing Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and acknowledged and stated that they are the parties authorized by Louisville & Indiana Railroad Company to execute the foregoing Agreement.

Witness my hand and seal the said last named date.

My Commission Expires

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
County of Residence

\_\_\_\_\_  
Print or type name

(Seal)

**CITY OF FRANKLIN**

By \_\_\_\_\_

Printed Name

Printed Name

Printed Name

Printed Name

**APPROVED AS TO FORM AND LEGALITY**

For the CITY OF FRANKLIN

APPROVED \_\_\_\_\_

Chief Counsel

\_\_\_\_\_

Date

\*\*\*\*\*

**ACKNOWLEDGMENT for CITY**

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, SS:

Before me, the undersigned Notary Public in and for said County, personally appeared:

\_\_\_\_\_ respectively, of the City of Franklin, and acknowledged the execution of the foregoing agreement on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness my hand and seal the said last named date

My Commission Expires

\_\_\_\_\_

Notary Public

County of Residence

Print or type name

(Seal)

**STATE OF INDIANA**

BY \_\_\_\_\_

Kenneth Franklin,  
State Director of Utilities and Railroads  
Capital Program Management  
For: Brandye L. Hendrickson, Commissioner  
Indiana Department of Transportation

**Exhibit 1**

Des 1383225 R-36654  
Bike Pedestrian Facilities  
Franklin, Johnson County

39.50744, -86.061345



**Proposed Trail Profile & Width**

**Exhibit 2**

## Signal Design

Exhibit 3

**Force Account Estimate**

**Exhibit 4**

**Railroad Contractors**

R.J. Corman Railroad Construction, LLC – crossing construction and surface

Highball Signal, Inc. – signal warning device design, installation and commission

National Railroad Safety Services, Inc. -- flagging

## Insurance Requirements

(a) CITY must, at its sole cost and expense, procure and maintain, for so long as Franklin Trail crosses the right of way of RAILROAD, the following insurance coverage:

(i) **Commercial General Liability Insurance.** A commercial general liability policy naming CITY as the insured and covering the liability and indemnification obligations assumed by it, under this Agreement Covering Construction of a Bike/Pedestrian Facilities; Installation of Active Warning Devices; and Construction of a Bike/Pedestrian Grade Crossing, Between RAILROAD and CITY, dated \_\_\_\_\_. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of Two **Million Dollars (\$2,000,000)** per occurrence, and Four **Million Dollars (\$4,000,000)** in the aggregate, but in no event less than the amount otherwise carried by the CITY. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy must not exclude incidents that occur within fifty (50) feet of railroad property. If the policy excludes incidents that occur within fifty (50) feet of railroad property, then RAILROAD will require (i) confirmation on the face of the Certificate that the insurer has waived such exclusion by endorsement; and (ii) a copy of such endorsement. If the policy does not exclude incidents that occur within fifty (50) feet of railroad property, then RAILROAD will require (i) confirmation on the face of the Certificate that the policy does not include such an exclusion; and (ii) a copy of the policy provision that provides for exclusions. Alternatively, the CITY will be required to provide a railroad protective liability policy.

RAILROAD, Anacostia Rail Holdings Company, and CSX Transportation Inc. shall be named as additional insureds on this policy. RAILROAD will require (i) confirmation on the face of the Certificate that each required party has been named by endorsement as an additional insured on each required policy, and (ii) a copy of each such endorsement. If the agent/broker believes that the terms of a particular policy do not require endorsement to name additional insureds, then RAILROAD will require (i) confirmation on the face of the Certificate that each required party has been named as an additional insured on the policy, and (ii) a copy of the policy provisions that support the agent/broker's position.

This policy must have a waiver of subrogation by the insurer that is acceptable to RAILROAD. If a policy does not include a waiver of subrogation, then RAILROAD will require (i) confirmation on the face of the Certificate that insurers have waived the right of subrogation under the policy by endorsement, and (ii) a copy of each such endorsement. If a policy includes a waiver of subrogation, then RAILROAD will require (i) confirmation on the face of the Certificate the policy in questions includes a waiver of subrogation; and (ii) a copy of the policy provision that provides for the waiver. Any waiver of subrogation shall not be applicable to

claims arising from railroad or railroad contractors' negligence, gross negligence or willful misconduct.

This policy must be primary and non-contributing with respect to any insurance carried by RAILROAD. RAILROAD requires confirmation on the certificate of insurance that the policy meets this requirement.

The coverage limits required under this policy may be fulfilled through a primary policy and an excess or umbrella policy that follows form of the primary policy. If CITY obtains an umbrella or excess policy in order to meet the "per incident" and/or aggregate limits on the policy, RAILROAD requires confirmation on the certificate of insurance that the umbrella policy follows form of the primary policy.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to RAILROAD employees.

**(ii) Commercial Automobile Insurance.** A commercial automobile liability policy naming CITY as the insured and covering the liability and indemnification obligations assumed by it, under this Permit. This insurance shall contain a combined single limit of at least One **Million Dollars (\$1,000,000)** per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

RAILROAD, Anacostia Rail Holdings Company, and CSX Transportation Inc. shall be named as additional insureds on this policy. RAILROAD will require (i) confirmation on the face of the Certificate that each required party has been named by endorsement as an additional insured on each required policy, and (ii) a copy of each such endorsement. If the agent/broker believes that the terms of a particular policy do not require endorsement to name additional insureds, then RAILROAD will require (i) confirmation on the face of the Certificate that each required party has been named as an additional insured on the policy, and (ii) a copy of the policy provisions that support the agent/broker's position.

This policy must have a waiver of subrogation by the insurer that is acceptable to RAILROAD. If a policy does not include a waiver of subrogation, then RAILROAD will require (i) confirmation on the face of the Certificate that insurers have waived the right of subrogation under the policy by endorsement, and (ii) a copy of each such endorsement. If a policy includes a waiver of subrogation, then RAILROAD will require (i) confirmation on the face of the Certificate the policy in questions includes a waiver of subrogation; and (ii) a copy of the policy provision that provides for the waiver.

This policy must be primary and non-contributing with respect to any insurance carried by RAILROAD. RAILROAD requires confirmation on the certificate of insurance that the

policy meets this requirement.

This policy must contain a “cross liability” and a “severability of interest” clause that shall have the effect of insuring each person, firm or corporation insured thereunder in the same manner and to the same extent as if a separate policy had been issued to each. RAILROAD requires confirmation on the certificate of insurance that the policy meets this requirement.

The coverage limits required under this policy may be fulfilled through a primary policy and an excess or umbrella policy that follows form of the primary policy. If CITY obtains an umbrella or excess policy in order to meet the “per incident” and/or aggregate limits on the policy, RAILROAD requires confirmation on the certificate of insurance that the umbrella policy follows form of the primary policy.

**(iii) Workers Compensation and Employers’ Liability Insurance.** A worker’s compensation and employers’ liability policy naming CITY as the insured and covering the liability and indemnification obligations assumed by it, under this Agreement. This insurance shall include coverage for, but not limited to:

- CITY’s statutory liability under the worker’s compensation laws of the state(s) in which the work or services are to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers’ Liability (Part B) with limits of at least **One Million Dollars (\$1,000,000)** each accident, **One Million Dollars (\$1,000,000)** by disease policy limit, and **One Million Dollars (\$1,000,000)** by disease each employee.
- CITY shall submit its worker’s compensation and employer’s liability policies to RAILROAD for review.

**(b) In addition to the foregoing, the following other requirements shall apply to this Permit:**

(i) Each insurance policy above must not have a deductible or self-inured retention in excess of **Twenty-Five Thousand Dollars (\$25,000)**. Any deductible, self-insured retention or other financial responsibility for claims must be covered directly by CITY in lieu of insurance. Any and all RAILROAD liabilities that would otherwise, in accordance with the provisions of this Permit, be covered by CITY’s insurance will be covered as if CITY elected not to include a deductible, self-insured retention or other financial responsibility for claims. The amount of any deductible or self-insured retention must be indicated on the certificate of insurance for each policy above.

(ii) Prior to commencing any work or performing any services under this Agreement, CITY must furnish to RAILROAD an acceptable certificate of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments.

(iii) CITY must furnish to RAILROAD an acceptable certificate of insurance including an original signature (or facsimile) of the authorized representative evidencing the

required coverage, endorsements, and amendments.

(iv) Each insurance policy above must be written by a reputable insurance company reasonably acceptable to RAILROAD, and authorized to do business in the state(s) in which the work reflected in this Permit is to be provided.

(v) CITY represents that this Permit has been thoroughly reviewed by CITY's insurance agent(s)/broker(s), who have been instructed by CITY to procure the insurance coverage required by this Permit. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

(vi) If any portion of the operation is to be subcontracted by CITY, CITY must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming RAILROAD as an additional insured, and requiring that the subcontractors release, defend and indemnify RAILROAD to the same extent and under the same terms and conditions as CITY is required to release, defend and indemnify RAILROAD herein.

(vii) Failure to provide evidence as required herein will entitle, but not require, RAILROAD to immediately suspend all work or services provided under this Permit until such evidence is provided. Acceptance of a certificate of insurance that does not comply with this section will not operate as a waiver of CITY's obligations hereunder.

(viii) In the event of a claim or lawsuit involving RAILROAD arises out of this Permit, CITY will make available any required policy covering such claim or lawsuit.