

**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.*

<b>Date Submitted:</b>	January 2, 2020	<b>Meeting Date:</b>	January 6, 2020
<b>Contact Information:</b>			
<b>Requested by:</b>	Mark Richards		
<b>On Behalf of Organization or Individual:</b> Department of Planning & Engineering			
<b>Telephone:</b>	317-736-3631		
<b>Email address:</b>	mrichards@franklin.in.gov		
<b>Mailing Address:</b>	70 E. Monroe Street, Franklin, IN 46131		
<b>Describe Request:</b>			
Request approval of Interlocal Agreement with Johnson County, Greenwood, and Whiteland memorializing commitments for the Rail Crossing Safety Project.			
<b>List Supporting Documentation Provided:</b>			
Interlocal Agreement			
<b>Who will present the request?</b>			
<b>Name:</b>	Mark Richards	<b>Telephone:</b>	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.*

## INTERLOCAL AGREEMENT

**JOHNSON COUNTY, INDIANA,  
CITY OF FRANKLIN, INDIANA,  
CITY OF GREENWOOD, INDIANA  
AND  
TOWN OF WHITELAND, INDIANA**

### **JOHNSON COUNTY RAIL CORRIDOR SAFETY IMPROVEMENT PROJECT**

This Interlocal Agreement is made and entered this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between Johnson County, Indiana, acting by and through its Board of Commissioners (the "COUNTY"), the City of Franklin, Indiana, acting by and through its Board of Public Works and Safety (the "FRANKLIN BPW&S") and Franklin City Council (Franklin Council), the City of Greenwood, Indiana, acting by and through its Board of Public Works and Safety (the "GREENWOOD BPW&S"), and the Town of Whiteland, Indiana, acting by and through its Town Council (the "COUNCIL"), collectively referred to as the "LOCAL PUBLIC AGENCIES" (LPA's) related to the improvement of at-grade railroad crossings within the jurisdictions of the LPA's.

### **WITNESSETH**

WHEREAS, the LPAs have authority to expend funds for road safety and public improvement projects; and

WHEREAS, Ind. Code § 36-1-7 et seq. authorizes the LPAs to cooperate on projects; and

WHEREAS, the LPAs desire to cooperate in the design, construction, and funding of a project located in Johnson County, Indiana commonly referred to as the "**Johnson County Rail Corridor Safety Improvement Project**", the details of which are described in the attached Exhibit "A" - Scope of Project; and

WHEREAS, the LPAs were successful in the joint pursuit of a federal Highway Safety Improvement Program grant to pay for 90% of the anticipated Project costs up to a maximum of \$4,374,000 in federal funding, with the COUNTY serving as the primary applicant and awarded agency.

NOW, THEREFORE, in consideration of the foregoing premises, exchange for mutual consideration, the receipt and legal sufficiency of which the parties acknowledge, and the terms and conditions contained herein, the LPAs agree as follows:

- 1) **Agreement Duration.** This Agreement will begin upon execution and last until Project completion and final settlement of the Distribution of Costs, but no longer than five (5) years after commencement of the Project.

- 2) **Agreement Purpose.** The purpose of this Agreement is to ensure uniformity of design and construction of the improvements, and to realize cost-savings through the parties' cooperation and joint efforts.
- 3) **Obligations of the Parties, the Manner of Financing, Staffing, and Supplying the Project, and of Establishing and Maintaining a Project Budget.**
- a) Manner of Completion. The Project will be completed as follows:
- i) The COUNTY shall coordinate with the Louisville & Indiana Railroad Company (LIRC) and the Indiana Department of Transportation (INDOT) to prepare, or cause to be prepared, plans for the construction of the Project. The plans shall be subject to approval by each of the LPAs to the extent allowable by federal and state regulations.
  - ii) The COUNTY shall coordinate with LIRC and INDOT to prepare, or cause to be prepared, an engineer's estimate for construction of the Project, and bid the Project. No changes to the Project shall be made to the planned improvements for a crossing within an LPA's jurisdiction without the approval of the LPA's designated project coordinator.
  - iii) The Project shall comply with all applicable federal and state laws, rules and regulations.
  - iv) Each LPA shall designate a Project Coordinator to represent the LPA for the duration of the Project. The Project Coordinator shall serve as the LPA's representative for Project development and construction, approval of necessary cost changes required to complete construction, and review and processing of Project invoices and reimbursements, and shall be the primary source for Project information and updates for each LPA's respective boards and commissions.
  - v) During construction, the COUNTY will serve as the primary contact between the LPA's and LIRC/INDOT. Each LPA's designated project coordinator may inspect the work concerning the Project, and will promptly notify the COUNTY in writing of any known deficiencies in the work concerning the Project. The COUNTY will notify LIRC and INDOT of the deficiencies, and will coordinate with the affected LPA in the development of solutions to correct the deficiencies.
- b) Distribution of Costs. The COUNTY, through additional appropriations, will pay LIRC and INDOT for all project costs. The COUNTY will invoice the FRANKLIN BPW&S, the GREENWOOD BPW&S, their respective City Councils, and the WHITELAND TOWN COUNCIL for each LPA's estimated portion of Project costs, as determined by the estimated costs for each crossing within the LPA's jurisdiction. Each LPA will reimburse the COUNTY the properly allocated sums within sixty (30) days of invoice receipt, as detailed in Exhibit "B" – Project Cost Estimate and summarized as follows:

County	\$60,021.72
Franklin	\$126,417.61

Greenwood	\$87,501.55
Whiteland	\$58,460.27
<b>Total</b>	<b>\$332,401.16</b>

The parties agree to coordinate in the pursuit of additional funding from outside sources, such as LIRC, to fund a portion of the local Project costs. If funds are acquired for this purpose, the COUNTY will apply these funds to each LPA's Project costs at final settlement, based on the final cost of each crossing within each LPA's jurisdiction.

The parties agree to pay for the actual local Project costs for each crossing within the LPA's jurisdiction, after accounting for INDOT federal funding participation or any other outside contribution. In the event that a change in the Project is encountered during construction that will increase the cost of the Project, the COUNTY will invoice the responsible LPA for the portion of local funding required to cover the cost increases, after determination of federal funding participation by INDOT. At the completion of construction and final determination of Project costs, the COUNTY will perform a final settlement of Project costs and will invoice or reimburse each LPA for the balance of the local Project costs in the LPA's jurisdiction.

- c) **Partial or Complete Termination.** The parties agree to cooperate in the partial or complete termination of this Agreement as required by Ind. Code § 36-1-7-3 in the event partial or complete termination is necessary and will, by agreement, allocate responsibility for completion of the rail crossing improvements in the event this agreement is terminated and to provide for their respective responsibilities and financial commitments in the event of same.
  - d) Upon completion of the improvements, each LPA shall be responsible to maintain the improvements within their respective jurisdictions and not maintained by the railroad at their sole cost and expense.
- 4) **Delegation of Duty.** Pursuant to Ind. Code § 36-1-7-4(a)(3), the Parties hereby delegate the duty to receive, disburse, and account for all monies associated with this Agreement to the Auditor and Treasurer of Johnson County, Indiana, respective of their statutory duties.
  - 5) **Fiscal Body Approval.** Pursuant to Ind. Code § 36-1-7-4(a)(3), this Agreement is subject to approval by the fiscal body of each LPA.
  - 6) **Filing.** Before taking effect, this Agreement will be filed with the Johnson County Recorder, and within sixty (60) day after execution, will be filed with the Indiana State Board of Accounts.
  - 7) **General Requirements.** The parties agree to comply with the requirements of the Indiana Code, as applicable, including the following:
    - a) Requirements of the Indiana Public Bidding law, Ind. Code § 36-1-12 et seq.

- b) Non-Collusion Affidavits will be required of every bidder and submitted on the form provided by the State Board of Accounts.
  - c) Wage Scale Provisions will apply.
  - d) Antidiscrimination Provisions will apply.
  - e) E-Verify Affidavits will be required of all contractors.
  - f) Certification of No Involvement in Iranian Energy Industry will be required of all contractors.
  - g) Certification Regarding Compliance with Indiana Public Works Law
- 8) **Time of Essence.** Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 9) **Breach.** Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said notice, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity, subject however to the compulsory non-binding mediation provided below.
- 10) **Indemnification.** Each party agrees to indemnify and hold harmless the other parties and their officers, officials, employees and agents from and against Claims, including reasonable attorneys' fees, which result or arise from negligent acts or omissions of the party or those for whom the party is responsible, including its officers, officials, employees and agents, arising from or connected with the performance of any of the duties, responsibilities or obligations of the party under this Agreement. Johnson County shall include in any contracts pertaining to the Project appropriate clauses to extend any indemnification and hold harmless obligation of its contractors in favor of the other LPA's.
- 11) **Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, and by the execution of said amendment by the parties or their successors in interest.
- 12) **No Other Agreement.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.
- 13) **Severability.** If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, illegal, or unenforceable by a

court of competent jurisdiction, the provision shall be stricken and all other provisions, covenants, and agreements shall continue in full force and effect.

- 14) **Construction and Interpretation of Agreement / Indiana Law.** This Agreement shall be construed in accordance with the laws of the State of Indiana. The parties agree that they and their attorneys have each reviewed this Agreement, and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party or parties shall not be used in the interpretation of this Agreement. This Agreement shall include, and incorporate by reference, any provisions, covenant or condition required or provided by law or regulation of any state or federal regulatory funding agency. Suit, if any, shall be brought in a forum appropriate for Johnson County, Indiana, and no party will remove it therefrom.
- 15) **Waiver Ineffective.** No waiver, modification or amendment of any term, condition or provision of this Agreement shall be valid or have any force or effect unless made in writing and signed by the parties.
- 16) **Notices.** All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the COUNTY: Johnson County Board of Commissioners  
86 West Court Street  
Franklin, IN 46131

To the FRANKLIN BPW&S: Franklin Board of Public Works and Safety  
Attn: Mayor  
70 East Monroe Street  
Franklin, IN 46131

To the GREENWOOD BPW&S: Greenwood Board of Public Works and Safety  
Attn: Mayor  
300 South Madison Avenue  
Greenwood, IN 46142

To the COUNCIL: Whiteland Town Council  
Attn: Town Manager  
549 Main Street  
Whiteland, IN 46184

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. In the event notice delivered by registered mail is refused or otherwise undeliverable, said notice may be delivered by regular mail. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

- 17) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

- 18) **Assignment.** The rights and obligations contained in this Agreement may not be assigned without the express prior written consent of the parties.
- 19) **No Third-Party Beneficiaries.** This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third-party.
- 20) **Effective Date.** Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement.
- 21) **Submission of Disagreements to Mediation.** In the event the parties disagree as to any material matter (such as, but not limited to, whether a default has occurred, whether 'Substantial Completion' has occurred, whether one party has a duty to act or a duty to refrain from acting, or whether an ambiguity exists as to the scope and terms of the parties' agreements), the parties will meet and in good faith attempt to resolve the issue(s). If the parties cannot agree on a resolution, the parties may agree to submit the the dispute to non-binding meditation under the Indiana Rules of Alternative Dispute Resolution; if not, the parties may pursue any other remedy provided by law.

**AGREED BY:**

**JOHNSON COUNTY, INDIANA  
Board of Commissioners**

By: \_\_\_\_\_  
Brian P. Baird, Chairman

By: \_\_\_\_\_  
Kevin M. Walls, Member

By: \_\_\_\_\_  
Ronald H. West, Member

Attest:

\_\_\_\_\_  
Pamela J. Burton, Auditor



**AGREED BY:**

**CITY OF GREENWOOD, INDIANA  
Board of Public Works & Safety**

By: \_\_\_\_\_  
Kevin Hoover

By: \_\_\_\_\_  
Shan Rutherford

By: \_\_\_\_\_  
Jeff Colvin

**AGREED BY:**

**CITY OF FRANKLIN, INDIANA  
Board of Public Works and Safety**

By: \_\_\_\_\_  
Steve Barnett, Mayor

By: \_\_\_\_\_  
Melissa Jones, Member

By: \_\_\_\_\_  
Robert Swinehamer, Member

**AGREED BY:**

**TOWN OF WHITELAND, INDIANA  
Town Council**

By: \_\_\_\_\_  
David Hawkins, President

By: \_\_\_\_\_  
Scot Ford, Vice-President

By: \_\_\_\_\_  
Laura Fleury, Member

By: \_\_\_\_\_  
Brad Goedeker, Member

By: \_\_\_\_\_  
Joe Sayler, Member

**FISCAL BODY APPROVAL  
FOR JOHNSON COUNTY, INDIANA**

Approved this \_\_\_\_ day of \_\_\_\_\_, 2019.

JOHNSON COUNTY COUNCIL

By: \_\_\_\_\_  
Pete Ketchum

By: \_\_\_\_\_  
Rob Henderson

By: \_\_\_\_\_  
Jonathan Myers

By: \_\_\_\_\_  
James Ison

By: \_\_\_\_\_  
John Myers

By: \_\_\_\_\_  
Josh McCarty

By: \_\_\_\_\_  
Josh Turner

Attest:

\_\_\_\_\_  
Pamela J. Burton, Auditor

**FISCAL BODY APPROVAL  
FOR THE CITY OF FRANKLIN, INDIANA**

Approved this \_\_\_\_ day of \_\_\_\_\_, 2020.

City of Franklin, Indiana, By its Common Council:

Voting Affirmative:

Voting Opposed:

\_\_\_\_\_  
Kenneth Austin

\_\_\_\_\_  
Kenneth Austin

\_\_\_\_\_  
Daniel J. Blankenship

\_\_\_\_\_  
Daniel J. Blankenship

\_\_\_\_\_  
Andrew Eggers

\_\_\_\_\_  
Andrew Eggers

\_\_\_\_\_  
Robert D. Heuchan

\_\_\_\_\_  
Robert D. Heuchan

\_\_\_\_\_  
Anne McGuinness

\_\_\_\_\_  
Anne McGuinness

\_\_\_\_\_  
Chris Rynerson

\_\_\_\_\_  
Chris Rynerson

\_\_\_\_\_  
Shawn Taylor

\_\_\_\_\_  
Shawn Taylor

Attest:

\_\_\_\_\_  
Jayne Rhoades  
City Clerk-Treasurer

**FISCAL BODY APPROVAL  
FOR THE CITY OF GREENWOOD, INDIANA**

Approved this \_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF GREENWOOD COMMON COUNCIL

By: \_\_\_\_\_  
Mike Campbell, President

By: \_\_\_\_\_  
Linda Gibson

By: \_\_\_\_\_  
Ezra Hill

By: \_\_\_\_\_  
Bruce Armstrong

By: \_\_\_\_\_  
Ron Bates

By: \_\_\_\_\_  
J. David Hopper

By: \_\_\_\_\_  
David Lekse

By: \_\_\_\_\_  
Brent Corey

By: \_\_\_\_\_  
Chuck Landon

Attest:

\_\_\_\_\_  
Jeannine Myers – Clerk – City of Greenwood

**FISCAL BODY APPROVAL  
TOWN OF WHITELAND, INDIANA**

Approved this \_\_\_\_ day of \_\_\_\_\_, 2019.

TOWN COUNCIL, TOWN OF WHITELAND

By: \_\_\_\_\_  
David Hawkins, President

By: \_\_\_\_\_  
Scot Ford, Vice-President

By: \_\_\_\_\_  
Laura Fleury, Member

By: \_\_\_\_\_  
Brad Goedeker, Member

By: \_\_\_\_\_  
Joe Saylor, Member

Attest:

\_\_\_\_\_  
Debra Hendrickson – Clerk-Treasurer – Town of Whiteland

This document was prepared by: Insert names and addresses of all attorneys involved.

Shena Johnson  
86 West Court Street  
Franklin, IN 46131

We affirm under penalties for perjury, that we have taken reasonable care to redact each Social Security Number in this document, unless required by law. /s/

### **EXHIBIT “A” – SCOPE OF PROJECT**

The project shall improve at-grade crossings of the Louisville & Indiana Railroad (LIRC) within the jurisdictions of the City of Greenwood, Town of Whiteland, City of Franklin, and Johnson County. Gate arms, warning beacons, and audible warning equipment will be installed at each location where those devices are not currently provided, or where crossings are not planned to be closed. No right-of-way acquisition is anticipated; all work will be performed within existing right-of-way.

Work will be performed by qualified railroad design and inspection consultants and construction contractors. At the completion of the project, the LIRC will assume ongoing operations and maintenance costs for the gate arms, warning beacons, and audible warning equipment.



(Insert Exhibit “B” – Project Cost Estimate)