

CROSSING CLOSURE & SETTLEMENT AGREEMENT

This Crossing Closure and Settlement Agreement ("Agreement") is dated the 9th day of April, 2020 is made by and between the Indiana Rail Road Company ("INRD"), and Brown County, by and through its Board of Commissioners ("Board"), jointly the "Parties."

RECITALS

1. On May 20, 2019, INRD petitioned the Board to close a railroad grade crossing located at Indian Hill Road, DOT #292 193F, in Brown County, Indiana, pursuant to Indiana Code section 8-6-7.7-3.2.
2. The Board has not held a public hearing to vote to grant or deny the petition.

NOW, THEREFORE, in consideration of the costs to be borne, including the expenses of holding a public hearing and litigation, in addition to the potential availability of public funds, the Parties seek to amicably agree to close the crossing and to settle this matter and all related claims, and the Parties agree as follows:

ARTICLE I

RULES OF CONSTRUCTION

Section 1.01. Recitals, Articles, Sections, etc. Unless stated otherwise in this agreement, references in this Agreement to Recitals, Articles and Sections are references to Recitals, Articles, and Sections of this Agreement. Each Recital is by reference incorporated into this Agreement.

Section 1.02. Mutual Drafting; No Construction Against Drafter. All Parties have engaged in the drafting of this Agreement. As such, no inference in favor of, or against, any Party in this Agreement shall be drawn from the fact that such party has drafted any portion of this Agreement.

ARTICLE II

TERMS

Section 2.01. Crossing Closure. The Board agrees to vote to close the railroad crossing identified above. The Board agrees to take all reasonable and necessary steps to conduct and finalize such a vote as promptly as possible, but no later than sixty (60) days from the execution of the Agreement. The Board agrees to notify all Parties and INDOT, by letter, of its decision and vote.

Section 2.02. Exclusion from Inventory. The Board also agrees to exclude the crossing from all future written or electronic inventories, documents, or other records in the County's control listing or memorializing current railroad crossings.

Section 2.03. Withdraw of Petition. Upon satisfaction of Section 2.01, INRD agrees to serve a letter withdrawing its petition to close the crossing at issue.

Section 2.04. Good Faith. As a sign of good faith by INRD, INRD agrees to assist the Board, as needed, with its application to INDOT for crossing closure funds. INRD also agrees to take the following actions, as may be applicable at that crossing, at its expense, to assist with closing the crossing:

- Installing barricades on the crossing;
- Removing crossing signals or crossbucks;
- Removing the crossing's surface; and
- Installing ditch lines to the roadway near the former crossing.

Section 2.05. Payment. Within sixty (60) days from the Board's completion of the terms provided in Section 2.01, INRD agrees to remit a one-time, lump sum payment of three thousand seven hundred and fifty (\$3,750.00) dollars, payable to the Brown County, Indiana Highway Department. This check will be mailed c/o Lauren M. Box & Jacob A. German, Barnes & Thornburg, LLP, 11 S. Meridian Street, Indianapolis, IN 46204.

ARTICLE III MISCELLANEOUS

Section 3.01. Amendments. No waiver, termination, amendment or other modification of any provision of this Agreement shall, in any event, be effective unless the same shall be in writing and signed by the Parties. Then such waiver, termination, amendment or other modification, shall be effective only in the specific instance and for the specific purpose for which it is given. For purposes of this Section, no writing shall be effective unless such writing shall be signed by officers, or other duly authorized employees or representatives, of the Parties.

Section 3.02. Entire Agreement. This Agreement constitutes the entire agreement by and between the Parties, including any understandings and negotiations, both written and oral, by and between Parties with respect to the subject matter of this Agreement. The Parties understand that the Indiana Department of Transportation is the sole entity responsible for the award of any crossing closure awards or grants and that entitlement to these funds are dependent on the Board's application, the characteristics of the crossing, and the availability of funds. No representation, warranty, inducement, promise, understanding or condition which is not set forth in this Agreement has been made or relied upon by the Parties.

Section 3.03. Costs, Expenses, and Attorney's Fees. If any dispute between the Parties arises during the performance of the Agreement, the prevailing party shall be entitled to its costs, expenses, and attorney's fees incurred in enforcing any term of this Agreement.

Section 3.04. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall be ineffective, as to such jurisdiction, to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

Section 3.05. Captions. The headings of the Articles, Sections, Subsections, Paragraphs and other divisions of this Agreement are included for the convenience of reference only and

shall not in any way limit or affect the construction or interpretation of any provision of this Agreement.

Section 3.06. Governing Law. This Agreement shall be governed by, and construed in all respects in accordance with, the laws of the State of Indiana, without regard to the conflicts of law rules of any other state.

Section 3.07. Consent to Jurisdiction and Venue. Parties consent to and agree that the exclusive venue and jurisdiction for any claim under the terms of this Agreement or any matter referenced in the Recitals to this Agreement shall be filed in the courts of Marion County, Indiana.

Section 3.08. Notices. All notices, requests, demands, directions, consents and other communications to any party under or in connection with this Agreement shall be in writing and shall be sent via certified or registered mail, return receipt requested, via personal delivery, or via express courier delivery service, addressed to such party in a written notice given to the other party complying as to delivery with the terms of this section:

If to INRD: Tyler L. Jones & John C. Duffey, Stuart & Branigin, LLP, 300 Main St., Ste. 900, P.O. Box 1010, Lafayette, IN 47902

If to the Board: Lauren M. Box & Jacob A. German, Barnes & Thornburg, LLP, 1 S. Meridian Street, Indianapolis, IN 46204

All such notices, requests, directions, consents, and other communications shall be deemed given when given and receipted for (or upon the date of attempted delivery when delivery is refused).

Section 3.09. Acknowledgment. Each of the Parties acknowledges that it has read this Agreement and that it fully knows, understands, and appreciates this Agreement and executes them voluntarily and of his or its own free will, and by executing this Agreement signifies its ascent to and willingness to be bound by the terms. The individual executing on behalf of any entity represents that he or she is authorized to execute this Agreement on its behalf.

Section 3.10. Execution of Counterpart. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or via email shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or email shall be deemed to be the original signatures for all purposes.

Section 3.11. No Admission of Liability. The execution of this Agreement is not an admission on the part of any of the Parties of any liability, fault, or obligation whatsoever.

Section 3.12. Time is of the Essence. Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

IN WITNESS THEREOF, THE PARTIES HAVE EACH DULY EXECUTED THIS AGREEMENT AS OF THE DAY FIRST SET FORTH.

The Indiana Rail Road Company

By: 

Peter Ray, Vice President Engineering

On: April 9, 2020

As to form: /s/ Tyler L. Jones

Tyler L. Jones

Stuart & Branigin, LLP

300 Main St.,

Ste. 900

P.O. Box 1010

Lafayette, IN 47902

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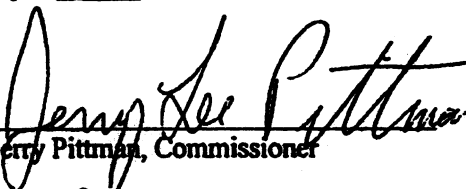
Counsel for INRD

By: 
Dave Anderson, Commissioner

On: April 21, 2020

By: 
Diana Biddle, Commissioner

On: April 21, 2020

By: 
Jerry Pittman, Commissioner

On: April 21, 2020

As to form:

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Counsel for the Board

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