



# Board of Public Works and Safety

## Agenda Item

### Cover Sheet

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**MEETING DATE:** October 15, 2024

- ☐ Consent Agenda Item
- ☒ New Item for Discussion
- ☐ Previously Discussed Item
- ☐ Miscellaneous

**ITEM #:** 3

**INITIATED BY:** Matt Light, Savannah Wines

- ☒ Information Attached
- ☐ Bring Paperwork from Previous Meeting
- ☐ Verbal
- ☐ No Paperwork at Time of Packets

## **Memorandum of Understanding**

This document constitutes a Memorandum of Understanding (hereinafter referred to as “MOU”) between **Nickel Plate Heritage Railroad, Inc.** (hereinafter referred to as “NPHR”), an Indiana nonprofit corporation, and the City of Noblesville, Indiana, a municipal corporation (hereinafter referred to as “City” or “Noblesville”), is executed pursuant to the terms and conditions set forth herein.

### **Recitals**

Whereas, the City owns property at Forest Park on Cicero Road that includes a railyard, a train depot named Hobbs Station, and associated amenities;

Whereas, pursuant to agreements between NPHR and Hoosier Heritage Port Authority (hereinafter “HHPA”) and between NPHR and the City, NPHR operates train and railbike excursions out of Forest Park;

Whereas, NPHR operates through trained full-time staff, part-time staff, and volunteers under the direction of its governing board, in coordination with the City’s Parks Department;

Whereas, NPHR provides valuable recreational, personal development, economic, tourism, and community connections opportunities and impact;

Whereas, the City has from time to time provided financial support to NPHR to address larger capital repair and renovation needs that go beyond lease obligations and available capital reserves;

Whereas, HHPA’s consultant identified necessary improvements to the rail bridge that runs south of Forest Park and over the White River toward downtown Noblesville, to ensure continued safe operations of trains and railbikes;

Whereas, the City appropriated available American Rescue Plan funding to cover a large portion of the identified improvements;

Whereas, NPHR desires to receive the appropriated funding, to select and manage contractors to complete the necessary work in coordination with the City’s Parks Department, to use the funding consistent with this agreement and American Rescue Plan usage parameters, and to report back to the City an accounting of the use of the funds;

**Now therefore**, in consideration of the mutual promises contained herein and other considerations, the receipt and sufficiency of which are hereby acknowledged; NPHR and the City agree as follows:

- 1. RECITALS.** The representations set forth in the above recitals are material to the MOU and are hereby incorporated into and made a part of the MOU as if fully set forth in the body of the MOU.

**2. DUTIES OF NPHR.** NPHR shall use the funding to complete the improvements set forth or described in Exhibit A, attached to and made a part of this MOU.

**3. TERM AND RENEWAL.**

A. The term of this MOU shall be for one year, beginning on October 15, 2024, and ending on October 15, 2025 unless terminated or modified in accordance with this MOU.

B. The parties may renew or extend this agreement by mutual agreement.

**4. COMPENSATION OF NPHR.**

A. NPHR shall furnish, or contract for the furnishing of, all labor, materials, supplies, and services in accordance with the conditions of this MOU necessary to perform the functions as defined in Exhibit A.

B. Payment will be for the amount of \$110,000, subject to invoice(s) being submitted by NPHR detailing the quote for services to be rendered consistent with this MOU and funding appropriation.

**5. TERMINATION FOR CAUSE OR CONVENIENCE.**

A. If NPHR becomes insolvent, or if it refuses or fails to perform the work and functions provided by this MOU, or if it refuses to perform disputed work or functions as directed pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this MOU, then City may, without prejudice to any other right or remedy, terminate this MOU in whole or in part, in writing, provided that NPHR shall be given, except in the case of emergencies, (a) not less than ninety (90) calendar days' notice of City's intent to terminate, and (b) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to NPHR upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of NPHR's default.

B. This MOU may be terminated in whole or in part in writing by City for City's convenience, provided that NPHR is given (a) not less than ninety (90) calendar days' notice of intent to terminate and (b) an opportunity for consultation with City prior to termination. If City effects termination for convenience, NPHR's compensation shall be equitably adjusted.

**6. TERMINATION FOR FAILURE OF FUNDING.** Notwithstanding any other provision of this MOU and pursuant to Indiana law, if funds for the continued fulfillment of this MOU by City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving written notice documenting the

lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void.

## **7. GENERAL PROVISIONS.**

- A. Non-Agent. Notwithstanding anything to the contrary in this MOU or elsewhere, is not an agent of the City and shall not in any way purport to act or speak for or on behalf of the City.
- B. Independent Contractor. The parties agree that NPHR is an independent contractor as that term is commonly used and is not an employee of City. As such, NPHR is solely responsible for all taxes, and none shall be withheld from the sums paid to NPHR. NPHR acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. NPHR has no authority, express or implied, to bind or obligate City in any way.
- C. Subcontracting. The parties agree that NPHR shall not subcontract, assign or delegate any responsibility to perform under this Agreement without prior written approval of City; however, it is understood that NPHR has obtained or will obtain quotes from contractors to perform the work identified in this MOU and the City anticipates approving the subcontracting upon review of updated or final quotes. In the event the City approves of any such subcontracting, assignment or delegation, NPHR shall remain responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. NPHR shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve NPHR of any responsibility for performing under this Agreement.
- D. Necessary Qualifications. NPHR certifies that it will furnish to City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of City, other units of local government, the State of Indiana, and the United States. NPHR further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain all licenses, permits, registrations, authorizations, or certifications, as applicable to the services in force during the term of this Agreement.
- E. Confidentiality of City Information. NPHR understands that the information provided to it or obtained from City during the performance of its responsibilities may be confidential and may not, without prior written consent of City, be disclosed to a person not in City's employ except to employees or agents of NPHR who have a need to know in order to provide the services. The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information, that: (a) was known by NPHR at the time it was received; (b) is, as of the time of its disclosure or thereafter

becomes, part of the public domain through a source other than NPHR; (c) is made known to NPHR by a third person who does not impose any obligation of confidence on NPHR with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena, or court order whereupon NPHR shall provide notice and an opportunity to object to City prior to such disclosure; or (e) information that is independently developed by NPHR without references to the confidential information. NPHR shall not, under any circumstances, release information provided to it by, or on behalf of, City that is required to be kept confidential by City pursuant to Indiana law, except as contemplated by this section, clause (d).

- F. Records: Audit. NPHR shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement. NPHR shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from termination or the date of final payment under this Agreement for inspection by City or any other authorized representative of City. Copies thereof, if requested, shall be furnished at no cost to City. NPHR acknowledges that the funding in this MOU is provided through the City's American Rescue Plan allocation, which carries with it specified reporting documentation obligations, and NPHR will cooperate with the City to ensure those obligations are satisfied. This includes providing proof of payment to contractors and consultants who perform work within the scope of this agreement.
- G. Remedies. Following the occurrence of any default, breach, or other failure to perform, or an act of negligence or misconduct causing damage to either Party, by the other or any of its employees, agents, or subcontractors, the aggrieved party shall have every remedy now or hereafter existing at law or in equity or by statute or otherwise which may be available. This provision shall survive any termination of this Agreement.
- H. Indemnification. NPHR agrees to indemnify, defend, and hold harmless City and its officers, agents, officials, and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any act or omission by NPHR or any of its officers, agents, employees or subcontractors, regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage. This provision shall survive any termination of this Agreement.
- I. Insurance. NPHR shall furnish, or cause to be furnished, City with certification of comprehensive general liability insurance coverage with a minimum limit of Two Million Dollars (\$2,000,000.00) per occurrence. NPHR shall furnish certificates of insurance provided by the insurer, and the certificates shall name the City as additional insured and provide that such insurance is in effect and will not be cancelled during the required period without thirty (30) days prior written notice of such cancellation to City.

- J. Notice. Any notice or other correspondence required to be sent under this Agreement shall be sent to:

**To Noblesville NPHR:**

Nickel Plate Heritage Railroad,  
Inc.  
107 W. South St.  
P.O. Box 435  
Arcadia, IN 46030  
Attn: Emily Reynolds

**To Noblesville:**

City of Noblesville  
16 S. 10th Street  
Noblesville, IN 46060  
Attn: Savannah Wines, Parks  
Director

Copy to:

City of Noblesville  
Attn: City Attorney  
16 S. 10th Street  
Noblesville, IN 46060

- K. Non-discrimination. NPHR and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion, color, sex, sexual orientation, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.
- L. Conflict of Interest. NPHR certifies and warrants to Noblesville that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with Noblesville.
- M. Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster, pandemic, or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds one hundred eighty (180) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.
- N. Applicable Laws: Forum. NPHR agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by Noblesville and NPHR to determine whether the provisions of the Agreement require formal modification.

This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinances, Resolutions, Rules, Regulations, or Codes of Noblesville. Suit, if any, shall be brought in the State of Indiana, County of Hamilton.

- O. Waiver. Neither party's delay or inaction in pursuing the remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of Party's rights or remedies.
- P. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- Q. Attorneys' Fees. Either party shall be liable to the other for reasonable attorneys' fees incurred by in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of the other party from a breach of any provision of this Agreement, from an indemnity obligation, or from a failure to fulfill any provisions or responsibility provided herein. This provision shall survive any termination of this Agreement.
- R. Successors and Assigns. Noblesville and NPHR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, neither party shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of Noblesville or NPHR.

## **8. INTERPRETATION AND INTENT.**

- A. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and NPHR. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or NPHR which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and NPHR.
- B. In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by NPHR or other rights or obligations of City or NPHR, the document or provision thereof imposing the greater obligation upon City and affording the greater right or remedy to City, shall govern.
- C. Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by

virtue of City or City's representatives having drafted all or any portion of this Agreement.

- D. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

Entered into this 10 date of October, 2024.

**Nickel Plate Heritage Railroad, Inc.**

By: Emily Reynolds

Title: Executive Director

All of which is approved by the Board of Public Works and Safety of the City of Noblesville this

\_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
JACK MARTIN, PRESIDENT

\_\_\_\_\_  
JOHN DITSLEAR, MEMBER

\_\_\_\_\_  
LAURIE DYER, MEMBER

\_\_\_\_\_  
ROBERT J. ELMER, MEMBER

\_\_\_\_\_  
RICK L. TAYLOR, MEMBER

ATTEST:

\_\_\_\_\_  
EVELYN L. LEES, CLERK  
CITY OF NOBLESVILLE, INDIANA



## **EXHIBIT A**

Timber tie replacement and related repair work for Bridge 22.62 (over the White River in Noblesville) as the 2023 Railroad Structure Inspection and Rating Report provided by BF&S Civil Engineers to Hoosier Heritage Port Authority.



**GANDRICK**

**10/10/2024**

PRODUCER		CONTACT NAME: <b>Maria Reagan</b>	
<b>Gregory &amp; Appel Insurance</b> <b>433 N Capitol Ave Suite 400</b> <b>Indianapolis, IN 46204</b>		PHONE (A/C, No, Ext): <b>(317) 352-3383</b>	
		FAX (A/C, No):	
		E-MAIL ADDRESS: <b>mreagan@gregoryappel.com</b>	
		INSURER(S) AFFORDING COVERAGE	
		NAIC #	
		INSURER A : <b>Indian Harbor Insurance Co</b>	
		<b>36940</b>	
		INSURER B : <b>Progressive Southeastern</b>	
		<b>38784</b>	
		INSURER C : <b>Eastern Alliance Ins Group</b>	
		<b>10724</b>	
		INSURER D : <b>Ohio Casualty Insurance Co.</b>	
		<b>24074</b>	
		INSURER E :	
		INSURER F :	

NSR LTR	TYPE OF INSURANCE				ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS			
A		COMMERCIAL GENERAL LIABILITY					US00087263LI23A	11/9/2023	11/9/2024	EACH OCCURRENCE		\$ 10,000,000	
		CLAIMS-MADE	<input checked="" type="checkbox"/>	OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)		\$ 50,000	
	<input checked="" type="checkbox"/>	Railroad Liability								MED EXP (Any one person)		\$	
										PERSONAL & ADV INJURY		\$	
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE					\$ 20,000,000			
		POLICY	<input type="checkbox"/>	PRO-JECT	<input type="checkbox"/>					LOC	PRODUCTS - COMP/OP AGG		\$
		OTHER:								LIQUOR LIABILIT		\$ 5,000,000	
B	AUTOMOBILE LIABILITY					978020678	2/8/2024	2/8/2025	COMBINED SINGLE LIMIT (Ea accident)		\$ 1,000,000		
		ANY AUTO OWNED AUTOS ONLY	<input checked="" type="checkbox"/>	SCHEDULED AUTOS					BODILY INJURY (Per person)		\$		
		HIRED AUTOS ONLY	<input type="checkbox"/>	NON-OWNED AUTOS ONLY					BODILY INJURY (Per accident)		\$		
									PROPERTY DAMAGE (Per accident)		\$		
											\$		
	UMBRELLA LIAB		<input type="checkbox"/>	OCCUR					EACH OCCURRENCE		\$		
	EXCESS LIAB		<input type="checkbox"/>	CLAIMS-MADE					AGGREGATE		\$		
	DED	<input type="checkbox"/>	RETENTION \$						\$				
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					01000058640800	11/13/2023	11/13/2024	<input checked="" type="checkbox"/>	PER STATUTE	<input type="checkbox"/>	OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)								E.L. EACH ACCIDENT		\$ 1,000,000		
	If yes, describe under DESCRIPTION OF OPERATIONS below								E.L. DISEASE - EA EMPLOYEE		\$ 1,000,000		
									E.L. DISEASE - POLICY LIMIT		\$ 1,000,000		
D	Equipment Floater					BMO61659143	11/9/2023	11/9/2024	Rolling Stock/Trains		1,230,000		

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
City of Noblesville, Indiana is included as an additional insured on a Primary basis as defined per form RRL 344 0522 with respect to Railroad Liability coverages according to the terms, conditions and exclusions of the policy.

Sabrielle R Andriack