

THIS AGREEMENT, entered into as of the 1<sup>ST</sup> day of <sup>March</sup> February, 1996, by and between Indiana Transportation Museum, Inc. ("Museum") and the Historic Railroad Multi-jurisdictional Port Authority ("Authority").

WITNESSETH:

WHEREAS, Authority owns, a line of railroad in central Indiana; and

WHEREAS, Authority has expressed support for historic locomotive tours in that area; and

WHEREAS, the Authority is a statutory body of the State of Indiana, City of Noblesville and Town of Fishers; and

WHEREAS, Museum owns or had available for its use historic locomotives and passenger cars, and owns or has available for its use other resources and arrangements which are necessary or convenient in the operation of historic locomotive tour trains ("Historic Tour Trains"); and

WHEREAS, Authority has access to a community building, which occupies a site convenient to Authority's line of railroad at Fishers, Indiana; and

WHEREAS, Museum and Authority desire to cooperate in the operation of such Historic Tour Trains.

NOW, THEREFORE, in consideration of the foregoing recitals, the terms and conditions herein made, and intending to be legally bound, the parties hereto agree as follows:

SECTION 1.        GRANT OF TRACKAGE RIGHTS; COOPERATION IN OPERATION  
OF EXCURSIONS

Subject to the terms and conditions herein provided, Authority hereby grants to Museum the right to operate Historic Tour Trains ("Trackage Rights") over the Authority's line of railroad shown on the drawing attached hereto, made a part hereof and marked Exhibit "A" ("Joint Trackage"). Museum hereby agrees to perform or otherwise be responsible for necessary switching movements in the operation of Historic Tour Trains at such times and upon such terms and conditions with third parties as Museum may determine; provided, however, that such operation of Historic Tour Trains shall not conflict with other operations of Authority.

SECTION 2.        USE OF JOINT TRACKAGE

(a) Museum's use of the Joint Trackage shall be in common with Authority and any other user of the Joint Trackage, and Authority's right to use the Joint Trackage shall not be diminished by this Agreement. Authority shall retain the right to grant to other person rights of any nature in the Joint Trackage.

(b) Museum shall not use any part of the Joint Trackage for the purpose of moving freight or the making or breaking up of freight trains; however, this provision shall not prohibit the Museum from using auxiliary tracks as may be necessary for switching and storage of Museum cars and rolling stock upon reasonable notification to the Authority.

(c) Authority shall have exclusive control of the management and operation of the Joint Trackage, unless otherwise delegated in writing.

SECTION 3. MAINTENANCE OF JOINT TRACKAGE

Authority shall maintain, repair and renew the Joint Trackage at its own expense and with its own supervision and labor, or, it may delegate such duty to others under such conditions and circumstances as the Authority deems reasonable. Authority shall use its best efforts to keep and maintain the Joint Trackage in reasonably good condition for the use herein contemplated, but does not guarantee the condition of the Joint Trackage or that operations thereover will not be interrupted from time to time or indefinitely. In the event that the Joint Trackage cannot be maintained in a condition suitable for movement of Museum's rolling stock, the Museum hereby waives any claim which it might otherwise have against the Authority by reason of its inability to use the Joint Trackage. The Museum specifically agrees that it shall not acquire any claim for damages as a result of its inability to use the Joint Trackage from time to time.

SECTION 4. MANAGEMENT AND OPERATION

(a) Museum shall comply with the provisions of the Federal Boiler Inspection Act and the Federal Safety Appliance Act, as amended, and any other applicable federal, state and local laws, regulations, rules and other requirements, respecting the operation, condition, inspection and safety of its locomotives,

cars, and equipment which such locomotives, cars and equipment are being operated over the Joint Trackage. Museum shall indemnify, protect, defend, and save harmless Authority and its officers, agents, and employees from and against all fines, penalties and liabilities imposed on Authority or its officers, agents, and employees under such laws, rules, regulations and requirements by any public authority or court having jurisdiction in the premises, when attributable to the failure of Museum to comply with its obligations in this regard.

(b) Museum shall provide the locomotives, cars and equipment for the operation of its Historic Tour Trains and shall make all necessary arrangements for the handling of passengers, ticket sales, parking, and all supplies and provisions as it may require at its sole cost and expense. Museum shall make all repairs to, and perform all maintenance and service of, its locomotives, cars and equipment. Authority, however, assumes no obligation or responsibility whatsoever for Museum's locomotives, cars and equipment.

(c) In the event that the Authority delegates supervision of the operation of the Joint Trackage to others, the Museum shall be bound by the reasonable rules and regulations established by the operator for use of the Joint Trackage. The locomotives, cars and equipment of Museum, of Authority and of any other present or future user of the Joint Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the

most economical and efficient manner of movement of all traffic. Parties acknowledge the timetable sensitive nature of passenger operations, and commit to best efforts to accommodate.

(d) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a locomotive or car of Museum becomes stalled and unable to proceed under its own power, or fails to maintain the speed required by Authority on the Joint Trackage, or if in emergencies crippled or otherwise defective locomotives or cars are set out of Museum's Historic Tour Trains on the Joint Trackage, Authority or Authority's designated agent shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such locomotives or cars, or to properly move the disabled equipment off the Joint Trackage, and Museum shall reimburse Authority for the cost of rendering any such assistance.

(e) Authority reserves the right to impose restrictions required to insure safe movement over the Joint Trackage and shall have the right, but not the duty, to inspect Museum's locomotives, cars and equipment to insure that they are in good mechanical condition and safe for operation on the Joint Trackage. Authority, in its sole reasonable discretion, may refuse to permit the operation of an Historic Tour Train over Joint Trackage if Museum's locomotives, cars or equipment, or conditions of the Joint Trackage, do not meet safety or regulatory requirements. In that event, Authority shall promptly notify Museum advising requirements necessary to remedy such

defects or deficiencies in Authority's locomotives, cars or equipment. In the event of a defect or deficiency in the Joint Trackage, Authority will make reasonable efforts to remedy such defect or deficiency, but shall not be required to incur any material cost or expense to remedy such defect or deficiency.

SECTION 5. NOTICE

Prior to any operation of an Historic Tour Train on Joint Trackage, upon request, Museum shall give Authority or Authority's designated agent written notice in advance of such operation. Any notice required or permitted to be given by one party to the other under this Agreement shall be by personal delivery, certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

(a) If to Authority:

Executive Director  
11601 Municipal Drive  
Fishers, IN 46038

(b) If to Museum:

Executive Director  
P.O. Box 83  
Noblesville, IN 46060-0083

(c) Either party may provide changes in the above addresses to the other party by personal delivery or certified mail.

SECTION 6. REIMBURSEMENT FOR COSTS

The parties hereby acknowledge the special relationship that exists between the Museum, the Joint Trackage, and the Authority, and provide that Museum's use of Joint Trackage shall be at

either no cost, or at the most economical terms consistent with generally accepted public policy. In the event other operations of the Authority are expressed on a cost per car per day or cost per move basis, Museum shall be granted license to operate at the same rate, but measured on a daily basis regardless of the number of moves or trips within the day. Any costs imposed by Section 4(d) shall be paid by Museum to Authority within 45 days of invoice.

SECTION 7.        LIABILITY

Museum shall and does hereby assume responsibility for and agrees to indemnify and hold harmless Authority, its successors and assigns, from and against all loss, costs and expenses, including attorney's fees, claims, suits, and judgments whatsoever in connection with injury to or death to any person or persons whomsoever (including employees and agents of the parties hereto) or loss of or damage to any property whatsoever caused by or in any way connected with the operation of an Historic Tour Train, and whether such injury, death, loss or damage results from negligence of Authority, its agents, employees or otherwise. It is understood and agreed, however, that the liability assumed by the Museum in this Agreement shall be limited to the insurance coverage stipulated in Section 8 below.

SECTION 8.        INSURANCE

Museum, at its sole cost and expense, shall procure and shall maintain during the continuance of this Agreement, liability insurance covering liability assumed by Museum under

this Agreement with a limit of not less than FIVE MILLION DOLLARS (\$5,000,000) combined single limit for personal injury and property damage per occurrence. Museum shall furnish certificates of insurance evidencing the above coverage and the form of the policy (or policies) to Authority upon request. The insurance carrier shall have a Best's Rating of A+, or shall be subject to the prior approval of Authority. Such insurance shall contain a contractual liability endorsement which will cover the obligations assumed by Museum under this Agreement. In addition, such insurance shall contain notification provisions whereby the insurance company agrees to give thirty (30) days written notice to Authority and Museum of any change or cancellation of the policy. All of these endorsements and notice provisions shall be stated on the certificate of insurance which is to be provided to Authority.

SECTION 9. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of Museum to perform its obligations under this Agreement and its continuance in such default for a period of thirty (30) days after written notice thereof by certified mail from Authority, Authority shall have the right at its option after first giving ten (10) days written notice thereof by certified mail, and notwithstanding any waiver by Authority of any prior breach thereof, to terminate the Trackage Rights and Museums's use of the Joint Trackage. The exercise of such right by Authority shall not impair either party's rights under this Agreement or



any cause or causes of action either party may have for the recovery of damages.

SECTION 10. TERM

(a) This Agreement shall continue in full force and effect for a period of ten (10) years from the date this Agreement is entered into between the parties hereto; provided, however, that Museum shall have the right to terminate this Agreement upon giving ten (10) days written notice to Authority. Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to such termination.

~~(b) Museum may renew this Agreement for one (1) additional ten (10) year term upon approval by the Authority, such approval not to be unreasonably withheld, and further, subject to Museum's above stated right to terminate. The Museum shall give written notice to the Authority of its desire to renew not less than 60 days prior to the expiration of the initial term of this Agreement, and the Authority shall respond thereto with its approval or denial within 30 days of the receipt of the written notice requesting renewal.~~

SECTION 11. JOINT VENTURE

This Agreement is not intended to constitute, create, give effect to or otherwise recognize a joint venture, partnership or other form of business entity of any kind, and the rights and obligations of the parties hereto shall be limited to those expressly set forth herein and neither party shall hold itself

out, directly or implied as the agent of the other for any matter whatsoever.

SECTION 12. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachment annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties hereto.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

(e) As used in this Agreement, whenever reference is made to the locomotives, cars or equipment of Museum, such expression means the locomotives, cars and equipment in the possession of or operated by Museum and includes such locomotives, cars, and equipment which are owned by, in the control of or leased to Museum.

(f) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

SECTION 13. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, including, without limitation, the successors and assigns of Authority's interest in the Joint Trackage or any portion thereof. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of the other party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

INDIANA TRANSPORTATION MUSEUM, INC.

John M. Davis  
NAME: John M. Davis  
TITLE: CHAIRMAN

WITNESS:

Wanda Woodridge

HISTORIC RAILROAD  
MULTI-JURISDICTIONAL PORT AUTHORITY

*Dennis R. Blind*

NAME: DENNIS R. BLIND

TITLE: PRESIDENT

WITNESS:

*Ray Hoptis*