

PLEASE NOTE: The contents of this contract are to be considered CONFIDENTIAL.
Please do not post online or release to third parties.

EXCLUSIVE BROKERAGE CONTRACT

THIS EXCLUSIVE BROKERAGE CONTRACT (“Contract”), is entered into as of the 1st day of May, 2019 (the “Start Date”), by and between Missouri Rail Group, L.L.C., d/b/a Ozark Mountain Railcar (hereinafter “OMR”), and the City of Noblesville, by and through the Noblesville Parks Department (hereinafter “Client”).

RECITALS

A. Client owns and/or controls certain railroad equipment (“Goods”) that it desires to sell, and it wishes to retain OMR’s services for the purpose of selling said railroad equipment.

AGREEMENT

1. Description of Services. Beginning on the Start Date, OMR will provide the following services to Client (collectively, the “Brokerage Services”) as an independent contractor in order to assist client with sale of railroad equipment as listed in “Exhibit A” also known as the Goods:

- a. Market and/or advertise the Goods to potential buyer(s);
- b. Assist Client with negotiating sales contract with potential buyer(s);
- c. Facilitate the sale of the Goods to potential buyer(s);
- d. Conduct an online auction for the sale of the Goods; and
- e. Complete the transfer of funds from potential buyer(s) to Client.

OMR shall furnish the Brokerage Services in a good and workmanlike manner consistent with generally accepted commercial standards. By entering into this Contract, the parties agree that OMR has the exclusive right to sell the Goods during the entire duration of the Contract. If during the duration of the Contract Client sells the Goods without OMR’s permission or knowledge, Client agrees that it will pay OMR the commission it is entitled as set forth herein.

2. Compensation of OMR. In exchange for the Brokerage Services provided by OMR, Client agrees that OMR shall receive a ten percent (10%) commission (the “Compensation”), which shall be based on the total purchase price of the Goods being sold by Client. Commission will be collected as a Buyer’s Premium added to the final sales price of each item sold. Client agrees to pay OMR a lump sum payment, which shall be due no later than five (5) business days from the completion of the transaction between Client and potential buyer(s). Any compensation not paid to OMR when due shall accrue interest at the rate of eighteen percent (18%) per annum. Should OMR have to retain the services of an attorney and/or collection agency for purposes of collecting the Compensation, Client agrees that it will pay OMR’s reasonable attorney’s fees and costs.

3. Contract Duration. This Contract shall automatically terminate six months from the Start Date, or upon completion by OMR of the Brokerage Services set forth herein.

Client’s Initials SC

Additionally, Client can terminate the Contract at any time upon thirty (30) days' written notice delivered to OMR. In the event this Contract is terminated without completing the sale of the Goods, Client agrees to pay OMR the Compensation described in Section 2 above, if Client sells to a buyer(s) who is on OMR's contact list, or an individual or corporation that has a Buyers Contract with OMR, within 180 days of termination. If client cancels contract without completing the contract term. Client agrees to compensate OMR \$1,000.00 for marketing efforts.

4. Confidential Information. OMR, its employees, agents and/or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of OMR or divulge, disclose or communicate in any manner, any information that is proprietary to Client. OMR, its employees, agents and/or representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after termination of this Contract.

5. Errors or Omissions. Both parties make all reasonable efforts to ensure that all information provided to or through OMR and/or its website is accurate; however, it is possible from time to time there may be occasional errors or omissions, for which neither party shall not be held responsible. Both parties make no representation or warranty, express or implied, as to the accuracy or completeness of the information provided or the contents of either party's website. Neither party nor its related companies, associates, directors, officers, employees or agents shall have any liability to any person(s) or entity(ies) for any direct, special, indirect or consequential damages, or any other damages of any kind whatsoever, or for costs or expenses resulting from their use of information provided by either party or the contents of either party's website. Any and all decisions which may be based on information provided by OMR, its employees, agents and/or representatives, or information provided on its website, are entirely the responsibility of the potential buyer(s).

6. Remedies in the Event Default Occurs. In addition to any and all other rights available according to law, if either party defaults by failing to substantially perform any material provision, term or condition of this Contract (including without limitation the failure to pay the Compensation to OMR), the non-defaulting party may elect to terminate this Contract if such default is not cured within three (15) days of providing written notice of the default to the defaulting party. The notice shall describe with sufficient detail the nature of the default. Unless waived by the party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Contract.

7. Notices. All notices required or permitted under this Contract shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, and addressed as follows:

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If for OMR: Missouri Rail Group d/b/a Ozark Mountain Railcar
P.O. Box 167
Kirbyville, MO 65679

If for Client: City of Noblesville
16 S. 10th Street
Noblesville, IN 46060
Attn: Steve Cooke

8. Severability. If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written and enforced as so limited.

9. Amendment. This Contract may be modified or amended if the amendment is made in writing and is signed by both parties.

10. Assignment. Neither party may assign or transfer this Contract without prior written consent of the other party, which consent shall not be unreasonably withheld.

11. Entire Agreement. This Contract constitutes the entire agreement between the parties, and no oral agreements or statements will be effective or binding on either party. The provisions of this Contract can only be amended or changed by a written document signed by both Client and OMR. This Contract supersedes any prior written or oral agreements that may exist between the parties.

12. Waiver of Contractual Right. The failure of either party to enforce any provision of this Contract shall not be construed as a waiver of limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

13. Construction and Attorney's Fees. This Contract shall be construed under the law of the state of Missouri. Jurisdiction for any litigation related to this Contract shall be exclusive to Taney County, Missouri. In the event either party has to bring suit on account of the other party's breach of this Contract, the non-breaching party shall be entitled to reimbursement for its reasonable attorney's fees and costs incurred therein. The parties, by entering into this Contract, agree to waive their right to a jury trial in the event it is necessary to file suit.

14. Records/Audit. OMR shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Contract. OMR shall make such materials available at its offices at all reasonable times during the Contract period and for three (3) years from termination or the date of final payment under this Contract for inspection and copying by Client or any other authorized representative of Client. Electronic copies thereof, where available, shall be furnished at no cost to Client.

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15. E-Verify. OMR shall enroll in and verify the eligibility status of all newly hired employees of OMR through the E-Verify program as outlined in I.C. § 22-5-1.7; however, OMR shall not be required to verify the work eligibility status of all newly hired employees of Contractor through the E-Verify program if the E-Verify program no longer exists. OMR AFFIRMS, UNDER THE PENALTIES OF PERJURY, THAT OMR DOES NOT KNOWINGLY EMPLOYEE AN UNAUTHORIZED ALIEN.

16. Disclaimer of Warranties. Client makes no warranties, express or implied, to OMR regarding the Goods, including but not limited to as to title, value, condition, design, operation, merchantability, fitness for use or for a particular purpose, maintenance, or marketability of the equipment or the quality of the materials or workmanship in, or the absence of any defect in, the Goods, or any warranties arising from course of performance, course of dealing or usage of trade.

“OMR” By:
Missouri Rail Group, LLC, d/b/a
Ozark Mountain Railcar
John Suscheck
5/1/2019 | 1:53 PM CDT

By: John Suscheck, CEO

“Client” By: Steve Cooke

Steve Cooke

5/1/2019 | 1:55 PM CD

Printed Name: Steve Cooke
Title (if applicable): Deputy Mayor
Phone Number: 317-776-6324
Email: scooke@noblesville.in.us

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Client's Initials _____

Exhibit "A"

1. Atlantic Coastline #8091 – Passenger Diner Car
2. Grand Trunk Western #77956 - Caboose
3. Great Northern RR #661 – Steam Gen
4. Gulf Oil #3746 - Tank Car
5. Jackson model 900 Tamper
6. Louisville & Nashville #112088 - Freight
7. Milwaukee Road #68B – F7B Diesel Locomotive
8. Milwaukee Road #72A – F7A Diesel Locomotive
9. Milwaukee Road #77191 – Freight
10. Milwaukee Road #96C – FP7A Diesel Locomotive
11. New York Central #8222 – Baggage Car
12. Nickel Plate Road #18013 - Box Car
13. Nickel Plate Road #8099 - Box Car
14. Nickel Plate Road #91 – Diesel Locomotive
15. Nickel Plate Road #99 – Diesel Locomotive
16. Nickel Plate Road #X50571 - Camp/Tool Car
17. Pennsylvania #257784 – Hopper Freight Car
18. Pennsylvania #497329 - Box Car
19. Pennsylvania #6523 – Passenger RPO (Postal)
20. Pennsylvania #8007 Sleeper Car
21. Pennsylvania #9026 – Altoona Passenger Car
22. RTW 2170 tie crane with Articulated boom
23. Santa Fe #2400 – Passenger
24. Santa Fe #3083 – Coach
25. Swift Premium #25011 – Freight
26. Swift Premium #25019 – Freight
27. Swift Premium #25023 – Freight
28. U.S. Navy #4828 - Box Car
29. Union Pacific #200 – GP9 Diesel Locomotive
30. Wabash - Outside Frame Box Car
31. Wabash - Outside Frame Box Car
32. Wheeling & Lake Erie #3 – Passenger
33. AOS-2
34. AOS-7
35. AOS-11; large yellow crane inside
36. Wood Side Box Car