

## **Additional Terms Concerning Removal of Equipment from Forest Park**

Seller (the City of Noblesville, by and through the Noblesville Parks Department) owns certain real property located in the City of Noblesville, Hamilton County, State of Indiana, and generally known as Forest Park, a portion of which was previously leased to the Indiana Transportation Museum (“ITM”).

Pursuant to the June 29, 2018 Findings of Fact, Conclusions of Law, and Order issued in Cause No. 29C01-1805-PL-004434, all structures, additions, equipment, or property on the Forest Park premises previously leased by ITM was deemed abandoned if not removed by ITM by July 12, 2018 (“Eviction Order”), and the Eviction Order was not appealed.

Among the terms included in the Railroad Equipment Sales and Removal Contract that will be required of the successful bidder (“Buyer”) are:

- Removal of Goods. Upon completion of the Transaction (as defined in the contract), Seller will allow Buyer access to Forest Park for removal of the Goods. Buyer will provide plans for the removal of the Goods from Forest Park for the Seller’s reasonable prior approval. In accessing Forest Park, Buyer will comply with all directives of Seller. Access to Forest Park shall be limited to persons approved by Seller, and removal of the Goods must occur during hours approved by Seller, generally between the hours of 7:30 a.m. and 3:30 p.m. Monday through Friday. Notwithstanding anything to the contrary, neither ITM nor its officers, members, representatives, or affiliates will be permitted access to Forest Park. Buyer will be solely responsible for all expenses related to the removal of the Goods from Forest Park, and must comply with the Seller’s memorandum concerning environmental controls for the removal of the Good from Forest Park. Buyer shall remove the Goods from the Forest Park, in accordance with said memorandum, no later than September 2, 2019. Buyer will pay a fee of \$100 per day for each piece of Goods left by Buyer at Forest Park after that date. In addition, any property or equipment of Buyer remaining at Forest Park after September 9, 2019 is abandoned by Buyer and may be removed and disposed of by any means by Seller, and Buyer will reimburse Seller for all costs incurred in such removal and disposition. Buyer shall follow all of Seller’s reasonable rules and directives when on Seller’s property. BUYER SHALL INDEMNIFY, DEFEND, AND SAVE HARMLESS SELLER AGAINST ANY AND ALL CLAIMS, ACTIONS, SUITS, DAMAGES, LIABILITY, COSTS, AND EXPENSES FOR INJURY TO, OR DEATH OF, BUYER, OR BUYER’S EMPLOYEES, AGENTS OR INVITEES, OR ANY OTHER PERSON, WHILE SUCH INDIVIDUALS ARE ON OR ABOUT SELLER’S PROPERTY PURSUANT TO THIS CONTRACT, OR ARISING OUT OF BUYER’S REMOVAL OF THE GOODS FROM FOREST PARK, EXCEPT TO THE EXTENT PROXIMATELY CAUSED BY SELLER’S NEGLIGENCE.
- Responsibility for Damage. Buyer shall be responsible for any and all damage that occurs on or about Forest Park as a result of its activities and/or removal of the Goods. The Seller may, at its option and the sole cost and expense of Buyer, perform such repairs

as are necessary due to Buyer's activities, and Buyer shall reimburse the Seller for said costs upon demand from the Seller.

- Condition of Forest Park. Buyer will personally inspect Forest Park prior to any activities by Buyer thereon and accepts the same "AS IS", and it is understood and agreed that the Seller is not making and has not at any time made any representations or warranties of any kind or character, express or implied, with respect to Forest Park. The Seller assumes no obligation to make any improvements to, or to provide any security for, Forest Park. Buyer agrees that all of Buyer's property of every kind or description which may at any time be on Forest Park shall be on Forest Park at Buyer's sole risk or at the risk of those claiming through or under Buyer, and in no event shall the Seller be liable for the same.
- Insurance. Prior to any entry onto Forest Park and until all of Buyer's activities at Forest Park are completed, Buyer shall add and maintain the Seller as an additionally named insured on a Comprehensive General Liability ("CGL") insurance policy acceptable to the Seller, with coverage being primary and non-contributory with respect to any insurance carried by the Seller and shall also waive all rights of subrogation against the Seller. The CGL insurance policy shall provide coverage on an occurrence basis with a per occurrence limit of no less than two million dollars (\$2MM) for bodily injury and broad form property damage. Buyer shall furnish certificates of insurance provided by the insurer, and the certificates shall provide that such insured is in effect and will not be cancelled during the required period without thirty (30) days prior written notice of such cancellation to the Seller.
- Seller Representations and Disclaimer of Warranties. Buyer agrees it is hereby purchasing the Goods "AS IS" and "WHERE IS" and "WITH ALL FAULTS" and Seller make no warranties of any kind, express or implied, regarding the Goods, their quality and/or condition, title, marketability, or otherwise, except for the following limited representations:
  - a. The Goods were abandoned to the Seller by the Eviction Order, and, to Seller's knowledge, the Goods are free and clear of all debts, liens, security interests and encumbrances; and
  - b. Seller has to its knowledge complied with all laws, rules and regulations relating to the Goods.