

RESOLUTION _____

A RESOLUTION ESTABLISHING A CONDITIONAL POLICY OF USE SETTING TERMS AND CONDITIONS UNDER WHICH THE INDIANA TRANSPORTATION MUSEUM MAY UTILIZE AND OPERATE ON THE RAILROAD RIGHT OF WAY UNDER THE JURISDICTION OF THE HOOSIER HERITAGE PORT AUTHORITY

Whereas the Hoosier Heritage Port Authority (HHPA) was established to preserve and protect the right of way and has jurisdiction to establish policy and or conditions of use of the line; and

Whereas the Indiana Transportation Museum (ITM) has previously operated Historic Tourist Trains over the HHPA's line of Railroad both under a prior written agreement, which has expired, and most recently under a policy of use; and

Whereas HHPA recently issued an Emergency Suspension; and

Whereas HHPA desires to now establish a new Conditional Policy of Use.

NOW, THEREFORE THE HOOSIER HERITAGE PORT AUTHORITY DOES HEREBY ESTABLISH THE TERMS OF THE FOLLOWING CONDITIONAL POLICY OF USE AS FOLLOWS:

1. ITM's use of the Railroad shall at all times be by permission of the HHPA Board of Directors only. Permission may be suspended by the HHPA at any time between meetings of the Board whenever required reports or information are not timely provided to HHPA's Executive Director, or at any time the HHPA deems conditions of this Policy of Use have not been met. Suspension of Use shall be given in writing to ITM's Board President by the HHPA Executive Director. Reinstatement of use privileges shall only be granted by the HHPA after receipt and review of written notice from ITM that the conditions for suspension have been corrected to the satisfaction of HHPA.
2. At all times the ITM will comply with FRA Requirements as recommended by the HHPA railroad consultant, including but not limited to the following: 49 CFR 210, 213, 214, 217, 218, 220, 222, 223, 225, 228, 229, 230-234, 237, 240, 241 and 242.
3. Safety shall be of primary concern at all times. No trips or excursions will be taken unless any and all FRA requirements and safety guidelines have been met.
4. FRA inspections note concerns about tie and joint conditions at certain locations. All areas in need of repair as noted in the FRA inspections shall be limited to 10 mph at all times per the current Timetable until such conditions are corrected and approved by HHPA's independent consultant. ITM shall provide HHPA with an updated Timetable by August 1st for review and approval of HHPA.
5. FRA inspections were not conducted on all of ITM's engines and/or passenger cars during the recent round of FRA inspections, due to the equipment being out of service. No out of service equipment, including all engines, passenger cars, dining cars and/or cabooses may be operated on the railroad until they are officially inspected by the FRA and the report is

submitted to and accepted by the HHPA and its independent consultant. All equipment used for maintenance and/or inspection activities that have not been inspected by the FRA shall be allowed access to the line only for maintenance and/or inspection activities, but such equipment shall only be operated at 10 MPH or less until all such maintenance and/or inspection activities are completed and approved by HHPA in writing.

6. The FRA has indicated that all ITM Caboose waivers have now expired. No such cabooses may be utilized until and unless an update waiver has been received from the FRA, submitted to and accepted by the HHPA and its independent consultant.
7. FRA inspections were done only from MP5.2 and MP 28.0 of the rail line. No use of the remaining 11.2 miles will be made unless and until an FRA inspection report is received and accepted by the HHPA and its independent consultant.
8. All track equipment including but not limited to radios, extinguishers, first aid kits, reflectors, strobe lights etc. must be updated as indicated in the FRA report in order to utilize the equipment on HHPA's facilities.
9. ITM shall provide proof of insurance with HHPA as an additional named insured on a regular basis not less frequently than semi-annually. Minimum insurance limits will be set by HHPA on an annual basis.
10. Upon approval of this resolution, maintenance in the form of cleaning around bridges and /or culverts as recommended in the bridge inspection report shall be performed or paid for and completed by ITM. In addition, ITM shall provide for weed/vegetation spraying along the line and report to HHPA when such operations are to take place. HHPA shall remove the locks on the line to allow such cleaning/maintenance operations to take place promptly upon approval of the HHPA Board of this resolution. ITM shall provide HHPA with proof of payment for these track maintenance services. ITM and/or its hired contractor shall be allowed to operate maintenance equipment on the line to perform this directed maintenance and all inspections during this interim period between when this resolution is approved and full suspension is lifted. HHPA, through its Executive Director, shall determine when the intent of this items conditions are met and will issue written notice to ITM granting full access to the line for all future operations upon such determination.
11. In lieu of payment for use of the railroad, ITM will perform ongoing maintenance, vegetation control and inspections, in accordance with the detailed maintenance plan submitted by ITM on an annual basis and approved by the HHPA.
12. The following additional documents shall be provided by ITM to the HHPA Executive Director at the frequencies noted :
 - a. A detailed annual maintenance plan (AMP) shall be presented to the HHPA Board for approval by January 1st of each calendar year. The AMP shall include estimated costs for each item of maintenance and calendar month each activity is planned to be completed, along with notation on whether ITM will perform or hire the work out. In addition, ITM shall provide a monthly maintenance report (MMR) to HHPA by the 15th of each month that lists all maintenance activities that occurred during the previous month. The MMR shall include an itemized accounting of materials and labor utilized, along with accompanying receipts and/or invoices, as proof of maintenance

performed. The MMP shall also provide a listing that matches the current work completed to the AMP and describe in detail why any work listed in the AMP was not completed by ITM. Any work not completed in the month planned shall be revised in the AMP and resubmitted to the HHPA for approval. The HHPA Board shall review and approve the AMP on an annual basis. The HHPA Executive Director shall review each MMR for compliance and report any discrepancies to the HHPA Board. The Board shall have sole discretion to suspend this Policy of Use due to non-compliance with the AMP. A detailed AMP for the remainder of 2016 shall be provided by July 18, 2016. Any non-compliance items shall be corrected by ITM within 15 business days of written notice from the HHPA. If non-compliance items remain uncorrected after 15 business days, HHPA may issue a written suspension notice to ITM until such deficiencies are corrected.

- b. A complete copy of ITM's annual budget and grant report shall be provided each year. A copy of the most recent reports shall be provided by July 18th, 2016. In addition, an annual financial audit, prepared by a professional accounting firm, shall be submitted to HHPA for review by April 15th of each subsequent year.
- c. A copy of ITM's Programs for the Qualification and Certification of Locomotive Engineers, Railroad Conductors, Brakemen and Dispatchers, as approved by FRA. If not approved by FRA then the same shall be submitted to HHPA for review and acceptance by a Railroad consultant of HHPA's choice. Proof of program compliance including but not limited to copies of written exams, training requirements, National Driving Record, Hearing and Vision Test and Drug and Alcohol Test results. This information shall be provided to HHPA before current suspensions are lifted and shall be submitted on an annual basis by January 1st of each subsequent year for review by HHPA.
- d. A copy of ITM's Railway Worker Safety Program
- e. A complete copy of ITM's Internal Control Plan
- f. A complete copy of Monthly and Annual Injury & Illness Reports as they are timely filed with FRA
- g. Complete copies of required Signal Inspection Reports that are completed on monthly, quarterly, six months, annual and 3 year timeframes
- h. Complete copies of weekly Track Inspection Reports in a format reviewed and approved by HHPA
- i. A complete copy of an Annual Bridge Report and plan for work that is needed
- j. A complete copy of Timetable and Operating Rules (updated)
- k. Copies of all FRA Accident/Incident Reports
- l. Copies of the Monthly Hours of Service FRA Forms by the 15th of each month for the prior month and a copy of the annual report by January 31st of each year.
- m. On or before the 25th day of each month, ITM shall provide to HHPA a complete listing of all scheduled or planned trips or uses of the railroad for the following month. As trips or excursions are added during the month, notice of the same will be provided

to HHPA within 24 hours of adding an excursion. Failure to provide such notice may result in termination of use privileges.

- n. Any and all other information requested by the Board shall be provided by ITM in a timely manner.
- o. Unless otherwise noted, initial copies of all required materials shall be provided no later than July 18th 2016.

13. References to ITM or Indiana Transportation Museum herein shall include Indiana Transportation Museum Inc., ITM Assets, LLC, ITM Railroad Operations, LLC, Indiana Transportation Museum Foundation, LLC and any and all other related entities.

ALL OF WHICH IS RESOLVED THIS 11TH DAY OF July, 2016.

HOOSIER HERITAGE PORT AUTHORITY
