



BILL OF SALE AND SALES AGREEMENT

Southern Pacific SD9 Locomotive 4404

This agreement, hereinafter referred to as “Agreement” is between the Feather River Rail Society, a California, non profit, 501(c)(3) public benefit corporation, with mailing address of: P.O. Box 608, Portola, CA 96122, hereinafter referred to as the “**Seller**” and Western Rail, Inc., with mailing address of: 11610 W. McFarlane Road, Airway Heights, WA 99001, hereinafter referred to as “**Buyer**”, witnesseth:

Recitals

WHEREAS, Seller owns one (1) used railroad Locomotive, hereinafter referred to as “Locomotive” which the Seller is willing to sell to Buyer and

WHEREAS, Buyer desires to purchase said Locomotive

NOW THEREFORE, in consideration of the terms and conditions set forth in this Agreement, Seller and Buyer hereby agree and contract with one another as follows:

1. **Sale of Locomotive:** Seller hereby bargains and agrees to sell to Buyer the Locomotive. Buyer hereby bargains and agrees to purchase from Seller the Locomotive as herein described, all on the terms and conditions herein set forth.

2. **Identity of Locomotive:**

a. The Locomotive which Seller sells to Buyer is described as follows:

<u>Quantity</u>	One (1)
<u>Manufacturer</u>	Electro-Motive Division of General Motors
<u>Current Road Number</u>	Southern Pacific 4404
<u>Type</u>	SD9 model diesel-electric locomotive
<u>Built Date</u>	April 1955
<u>Builder Number</u>	20206
<u>Original Owner</u>	Southern Pacific Company
<u>Original Number</u>	Southern Pacific 5428

3. **Sale Price:** Buyer agrees to pay to Seller the sum of \$40,000.00 (Forty Thousand) U.S. Dollars upon the execution of this Agreement. Funds to be deposited to FRRS and held in escrow for a period of one (1) month. At this point, payment will be considered non-refundable.

4. **Sale Location:** The Locomotive subject to this Agreement is sold and purchased on an as is, where is basis, FOB the Western Pacific Railroad Museum, Portola, CA. The Seller agrees to provide all parts acquired with and currently attached to the Locomotive. Buyer acknowledges it has examined, or will examine within 6 months, the Locomotive and attached parts and expressly represents that it is satisfied with the condition of the Locomotive. Buyer further warrants it has performed all required due diligence in determining the condition of the Locomotive.

Seller further agrees to store locomotive free of charge and protected for a period of up to 18 months for Buyer.

It is further agreed that Buyer, if it so chooses, will be able to scrap and/or part out locomotive at its current location at no further charge. Seller will logistically provide reasonable help in doing so, such as spotting flat cars so they can be loaded near locomotive at no charges, providing electrical power, water for crew needs and a location for work. Buyer agrees to provide appropriate insurances for its own employees / workers or ensure that contract workers provide appropriate insurances. Scope of assistance to work will be covered in a separate agreement between Buyer and Seller.

5. **Work Required:** Buyer acknowledges that the locomotive requires modification of the couplers to conform to Union Pacific requirements for alignment control before placement for interchange. If it so chooses Buyer agrees to provide all required parts and labor to convert this locomotive to acceptable condition for interchange.

If locomotive is modified for interchange, Seller agrees to place the Locomotive at the interchange of the Union Pacific Railroad in Portola, CA, at no charge to Buyer following acceptance of the Locomotive for interchange. Exact timing of interchange will be coordinated by the Seller and Buyer separate from this agreement.

6. **Storage:** Seller agrees to store locomotive at the Sellers property free of Charge for a period of up to 12 months following completion of sale. Starting with the first day of the 13th month following completion of sale, a storage rate of \$300 per month will become effective.
7. **Taxes:** Buyer agrees to accept responsibility for dealing with all taxing authorities for payment of any and all taxes, (sales, use, etc.) in connection with the trade, purchase and sale of the Locomotive. Seller verifies that the Locomotive is free of all liens or claims for sales or use taxes arising from any prior transaction of Seller.

8. **Indemnification:**
 - a. Buyer hereby assumes liability for and agrees to defend, indemnify, protect and hold Seller and its officers, directors, employees, agents and affiliates harmless from and against all liabilities (including without limitation any obligation based on strict liability and tort), claims, suits, judgments, damages, losses, fines, penalties, costs and expenses including attorneys' fees and costs arising out of or in any manner connected with the ownership, use, operation or disposition of the Locomotive on and after the Closing Date.

- b. Seller hereby assumes liability for and agrees to defend, indemnify, protect and hold Buyer and its officers, directors, employees, agents and affiliates harmless from and against any and all liabilities (including without limitation and obligation based in strict liability and tort), claims, suits, judgments, damages, losses, fines, penalties, costs and expenses, including reasonable attorneys' fees and costs arising out of or in any manner connected with the ownership, use or operation of the Locomotive prior to the Closing Date and prior to interchange.
9. **No Warranties:** SELLER MAKES NO WARRANTIES, GUARANTEES OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO THE LOCOMOTIVE SUBJECT TO THIS AGREEMENT INCLUDING BUT NOT LIMITED TO, WARRANTIES REGARDING DESIGN, QUALITY, DURABILITY, OPERATION, MERCHANTABILITY OR FITNESS FROM A COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, OR FITNESS FOR A PARTICULAR PURPOSE. BUYER HEREBY WAIVES ALL WARRANTIES OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE RESPECTING THE LOCOMOTIVE, ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT AGAINST THE SELLER WHETHER ARISING FROM SELLER'S NEGLIGENCE, ACTUAL OR IMPUTED (INCLUDING BUT NOT LIMITED TO ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR ANY LIABILITY OF BUYER TO ANY THIRD PARTY), OR FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.
10. **Closing Date and Delivery:** The Closing Date and Delivery of the Locomotive shall take place upon confirmation by the Seller of the receipt of purchase payment by the escrow account, as agreed to herein, and the full endorsement of this Agreement by all parties hereto. At the Closing Date, all Seller's right, title and interest shall pass to Buyer. The Closing Date of sale to be set at one (1) month from final signing of agreement. After that date, payment is declared non-refundable and will be released from escrow.
11. **No Broker or Agent:** Neither Buyer or Seller represents it has dealt with any broker, agent or other representative in connection with this transaction.
12. **Clean and Clear Title:** Seller warrants that title is being transferred to Buyer free of all liens and encumbrances and certifies that no prior obligations under previous contracts shall be transferred or imposed inadvertently or otherwise by this Agreement.
13. **Defaults and Remedies:** If any material obligations under this Agreement are not performed as provided there shall be the following remedies:
 - a. If Buyer is in default, at the Seller's option, Seller may declare the Agreement null and void, thereby releasing both parties from all obligations and duties arising hereunder, or Seller may treat this Agreement as being in full force and effect and seller shall have the right to an action for specific performance of the Agreement, damages or both.

- b. If Seller is in default, at the Buyer's option, Buyer may declare the Agreement null and void, thereby releasing both parties from all obligations and duties arising hereunder, or Buyer may treat this Agreement as being in full force and effect and Buyer shall have the right to an action for specific performance of the agreement, damages or both.
 - c. Buyer shall provide Seller with a Certificate of Insurance evidencing off-premises General Liability in the amount of no less than \$1,000,000 per Occurrence and California Workers Compensation with an Employers Legal Liability Limit of no less than \$1,000,000/\$1,000,000/\$1,000,000 before work commences on Sellers premises. Certificate of Insurance shall include the Seller as an Additional Insured with Primary Wording, and, a Waiver of Subrogation in favor of Seller.
14. **Attorney Fees:** The parties under this agreement agree that in event of any action taken (whether by way of suit or otherwise) to enforce any provision of this agreement, the prevailing party shall be entitled to recover such party's cost and expenses, including reasonable attorney's fees.
15. **Governing Law:** The parties intend that this agreement be governed by the laws of the State of California including the California Uniform Commercial Code and shall be litigated, if needed, in Plumas County, CA.
16. **Binding on Heirs and Assigns:** This agreement and each of its provisions shall be binding upon the heirs, executors, administrators, successors, and assigns of each of the parties hereto. However, Buyer shall deem nothing contained in this clause as consent to the sale, assignment or transfer of the Locomotive or the obligations under this agreement.
17. **Sole and Only Agreement:** This agreement constitutes the sole and only agreement between the parties respecting the Locomotive and correctly sets forth the rights, duties and obligations of each to the other with respect to the Locomotive as of the date of endorsement of this agreement. Any amendment hereto must be in writing.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly empowered and authorized representatives as of the date first endorsed below.

Feather River Rail Society

Rod McClure
President

Date: 2013

BUYER - Western Rail, Inc.

SIGNATURE

PRINT NAME

TITLE

Date: _____ 2013