



## **BILL OF SALE AND SALES AGREEMENT**

### **Feather River and Western Plymouth ML-8 Locomotive 1**

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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 Brett Tallman, with mailing address of: 1303 W 10th Street, Alturas, CA 96101, 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>	Plymouth Locomotive Works
<u>Current Road Number</u>	Feather River and Western 1
<u>Type</u>	ML-8 diesel mechanical locomotive
<u>Built Date</u>	July 1943
<u>Builder Number</u>	4504
<u>Original Owner</u>	U S Army Transportation Corp
<u>Original Number</u>	U S Army 7623

3. **Sale Price:** Buyer agrees to pay to Seller the sum of \$4,000.00 (Four Thousand) U.S. Dollars upon the final execution of this Agreement. Initial payment of \$2,000 (Two Thousand) U.S. Dollars to be paid upon signing of agreement. Final payment to be made upon acceptance of locomotive. Funds to be deposited to FRRS and held in

escrow for a period of one (1) month. One month after final payment, all payments will be considered non-refundable.

4. **Additional Considerations:** As part of this transaction, the Buyer agrees to deliver a Whitcomb diesel mechanical locomotive of similar size (identification to be provided) to a prepared location along State Highway 70 in Portola, California. Location to be specified by the City of Portola or its designated representative. Locomotive to be painted in black by the Buyer in a manner and to a quality specified by the City of Portola or its designated representative.

Failure to provide and paint this Whitcomb locomotive within 24 months of acceptance of this agreement will constitute a breach of this agreement by the Buyer, and Seller shall be entitled to liquidated damages in the amount of \$50.00 per day beginning on the 1st day of the 25th month after acceptance of this agreement.

5. **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 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.

6. **Interchange and Movement:** Buyer acknowledges that the locomotive is not legal for interchange and will require movement by either truck or flat car. Buyer to provide all movement from Seller's property and provide all tie down and related arrangements. Buyer is responsible for all insurances, permits and other requirements of the movement.

7. **Storage:** Seller agrees to store locomotive at the Sellers property free of Charge for a period of up to 18 months following initiation of sale. Starting with the first day of the 18<sup>th</sup> month following completion of sale, a storage rate of \$300 per month will become effective.

8. **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.

9. **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.

10. **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.

11. **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 Sellers right, title and interest shall pass to Buyer. The end of escrow 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.

12. **No Broker or Agent:** Neither Buyer or Seller represents it has dealt with any broker, agent or other representative in connection with this transaction.

13. **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.

14. **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.

15. **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.
16. **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.
17. **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.
18. **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**

Steve Habeck  
President

Date: August 16, 2016

**BUYER - Brett Tallman**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE

Date: \_\_\_\_\_ 2016