

AGREEMENT

AGREEMENT made this 1st day of August, 2024 by and between White River Productions, Inc., Kevin EuDaly, President [“Publisher”], and the Feather River Rail Society/Western Pacific Railroad Museum [“Owner(s)”]:

1. Definitions. As hereafter used in this Agreement the following words and phrases shall have the following meanings:

a. Owner shall mean the person or persons, group or other business entity which owns the intellectual property whose publication or other distribution forms the basis for this Agreement, specifically the Feather River Rail Society/Western Pacific Railroad Museum. Where the “Owner” shall be a corporation, partnership, unincorporated association or other business or charitable and eleemosynary organization the term shall be deemed to include its officers and governing body, trustees, successors, assigns, agents, servants and employees.

b. Publisher shall mean the corporation of White River Productions, Inc., Kevin EuDaly, President, its executors, administrators, devisees, heirs, successors, assigns, agents, servants and employees.

c. Manuscripts shall include all textual materials and all illustrations, drawings, paintings, diagrams, photographs or other materials, including but not limited to materials supplied as recordings on magnetic or other media, which shall be or have been supplied by Owner for inclusion in the finished publications.

d. Publications shall mean any or all of the following: A hardcover or soft cover book or booklet, a magazine or other periodical, a brochure, a print, a photograph, a motion picture film, an audiotape, a videotape, a computer compact disc (CD), a computer program or data base and any other device, object or means by which an original work of intellectual property may be reproduced in quantity and distributed to the public.

e. Copyright shall include both common law copyrights and statutory copyrights, both foreign and domestic, whether or not said copyrights shall have been formally perfected.

f. Railroad shall include any business or other venture created or organized in whole or in part for the transportation of people, goods or materials, or any other item(s), using vehicles equipped with flanged wheels and/or operating over a fixed track or structure, and including physical plant and/or signals supplying directional guidance to such vehicles, or any other business where such transportation is an integral part of its operation, together with all rights-of-way, rolling stock, structures and personnel and other property, both realty and personal, necessary to the operation of such a transportation system.

g. All words in this Agreement shall be deemed to be nonspecific as to both gender and number and, for example, “he” shall include “she,” “it,” and “they.”

2. Manuscripts. Owner agrees to provide Publisher with manuscript material and other such materials and technical assistance as Publisher shall deem necessary to produce a periodical publication about the Western Pacific Railroad, and/or including all predecessors and subsidiaries.

3. Title. The publication is to be entitled “The Headlight” or other title mandated by Owner. Owner’s name(s) shall appear on the cover of publication.

4. Submission and Publish Dates. Owner and Publisher agree to work together to procure material for the periodical. Publisher agrees to produce four issues per year at regular intervals, one in approximately each quarter, at the discretion of

Owner.

5. Contributed Photographs. Publisher and Owner agree that photographs used in the publications contemplated under this Agreement may be contributed for the purpose of publication or reproduction in a published work by photographers, libraries, organizations, museums, person or persons, companies, partnerships or corporations. (1) Photographs solicited by Owner for the purposes of this publication shall be submitted to Publisher for final selection. Any and all photographs solicited by Owner shall be reviewed and appropriate images scanned and logged and promptly returned to Owner following reproduction and Owner is then solely responsible for returning photographs solicited by Owner to their respective owner(s). (2) Publisher may elect at his convenience to solicit photographs from any photographer, library, organization, museum, person or persons, companies, partnerships, corporation or himself. Owner shall have no responsibility for the safeguarding or returning these photographs to their owner(s). All digital scans resulting from the collection of photographs for the publication contemplated in this agreement shall be made available to the Owner. (3) All photographs used in the publication contemplated under this Agreement, and any and all photographs solicited or contributed for this publication and used in any other publication shall be attributed as follows: To the original photographer, or when the original photographer is unknown, to the current owner of said photograph, or when required in writing by the owner at time of submission for Publisher’s selection, to the owner and photographer in the manner specified by owner, and if the owner is a legitimate non-profit entity such as a museum, historical society, library or other similar entity open to the general public.

6. Compensation. (1) Photographs: No compensation to Owner or individuals for photographs published is contemplated in this agreement. (2) Publisher agrees to produce The Headlight quarterly for a period of two (2) years beginning with Third Quarter, 2024 (through Second Quarter 2026). Compensation will include the fee for layout, design, and printing of the magazine, including all scanning and other pre-production processes, stuffing and mailing and reimbursement for postage and related supplies. The rate will be determined by specific bid. (3) Compensation for other items including but not limited to books, calendars, brochures, renewal notices, annual meet packets, rate cards, and other published materials will be according to specific bids for each item. (4) Compensation for Publisher’s efforts to sell, market, and distribute Owner’s published items will be determined in advance of such sale on a case by case basis. (5) Hobby shop sales will be done by Publisher at Publisher’s expense, including the printing cost for the extra copies sold to hobby shops. Owner will incur no cost associated with hobby shop sales, nor receive any compensation therefrom.

7. Representations and Warranties of Owner. Owner expressly represents and warrants to Publisher that he is the owner and sole creator of original unpublished works of intellectual property and that the rights to publication of the work have not been previously sold or assigned to another. Owner expressly represents and warrants to Publisher that he has obtained all necessary permissions to utilize any photograph, painting, drawing or other illustration used or contained in Owner’s manuscripts and supporting materials which is not his own personal creation and/or for which he does not own all of the copyrights or other intellectual property rights. (1) Owner agrees

to indemnify, protect and hold harmless Publisher, its employees, agents, contractors, servants, successors and assigns from any and against all claims, demands, injuries, losses, damages, and expenses, including legal expenses, of whatever nature, arising out of, incidental to, connected with or in any way caused by the manuscript and supporting material furnished by Owner to Publisher. This shall include causes of action of any kind and nature whatsoever arising from any actual or alleged violation by Publisher of the ownership rights, copyright, intellectual property rights or rights of privacy of any individual or other entity which is caused or alleged to have been caused by the publication of the manuscript or any photograph, painting, drawing or other illustration contained therein and supplied by Owner. (2) Publisher is an independent contractor and nothing contained in this Agreement shall authorize Owner or any other person to incur or impose any liability of obligation for or on behalf of Publisher. (3) The indemnities and assumptions of liabilities and obligation herein provided for shall continue in full force and effect notwithstanding the termination to or cancellation of this Agreement, whether by expiration of time, by operation of law, or otherwise.

8. Ownership of Manuscripts. Publisher expressly agrees that all textual materials, photographs, and other items used for illustration of the manuscript shall be returned to their owner(s) by Publisher as soon as practicable in the manner specified in paragraph five (5).

9. Risk of Loss. Owner agrees to bear the risk of loss or damage of any and all materials submitted to Publisher by Owner, and Publisher shall not be responsible for any such loss or damage while these materials are in Publisher's possession, whether or not any such loss or damage is caused or alleged to have been caused by Publisher's own neglect or the neglect of Publisher's agents, servants, employees, contractors, successors and assigns, and Publisher shall not, under any event or circumstance, be responsible for any such loss or damage to such materials while in the possession of any other party during the process of producing or manufacturing the finished publication, or while such materials are in the care or possession of the United States Postal Service or any other courier, delivery or express company or service.

10. Copyright. Publisher hereby sells and assigns any right, title, or interest which he might have or which he might hereafter acquire in the common law and statutory copyright attaching to, or to any other intellectual property right arising from, his creation of the original work which forms the subject matter of this Agreement. It is the intent of the parties by this Agreement to transfer from Publisher to Owner the complete ownership and an exclusive and unrestricted right of publication in the aforesaid original work anywhere in the world. Publisher further agrees, upon request, to assist Owner in any way reasonably necessary to protect and/or perfect a statutory or common copyright for this work both in the United States and in any foreign country and, in addition, to assist Owner in any reasonable way in supporting or defending any other intellectual property right which might attach to or arise from Publisher's creation of the work.

11. Right to Edit. Owner agrees that Publisher shall have the right, in his sole discretion, to edit, expand, omit matters from, abridge, rewrite, redesign, reformat or otherwise exercise editorial control over the final wording, selection of photographs, maps, drawings, paintings or any other illustration, and the ap-

pearance of the publication. Owner shall have both the right and the duty to review any editorial changes made or proposed by Publisher and advise Publisher promptly when, in the opinion of the Owner, the proposed changes render the publication historically inaccurate or otherwise erroneous, and, if requested by Publisher, provide good and reasonable documented evidence to support any suppositions, assumptions or statements of fact made by the Owner.

12. Disclaimer. Publisher has the right to publish the works contemplated under this Agreement with all faults and "as-is." Publisher makes no representations or warranties and shall not in any way be liable for any representations or warranties, express or implied, except as specifically described herein. There are no warranties which extend beyond the face of this instrument. Publisher has made no verbal or written statements of representations to Owner except those contained within this document.

13. Invalid Provision. Any provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.

14. Successors and Assigns. The terms, covenants and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Publisher and the successors and assigns of the Owner.

15. Drafted by Both Parties. This Agreement shall be deemed to be drafted by both parties. This Agreement shall not be construed against either party.

16. Oral Agreements and Representations. There are no verbal or written agreements between the parties relating to the publication contemplated in this Agreement not contained herein or in attachments hereto. There are no representations or warranties, which modify or affect this Agreement. Owner acknowledges to Publisher that in entering into this Agreement, Owner is not relying on any warranties, representations or statements of Publisher, its employees, agents, servants or contractors, except those expressly set forth herein.

17. Attorney's Fees. In the event that any action or arbitration shall be had to enforce any provision of this Agreement, the prevailing party shall be paid his attorney's fees, arbitrators fees, deposition costs and court costs.

18. No Waiver. No Waiver by Publisher of any breach of any covenant, condition or agreement herein contained shall operate as a permanent waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof.

19. Entire Agreement. This Agreement contains the entire understanding between the parties thereto, and cannot be changed, altered, amended, modified or terminated, except by written instrument subsequently executed by the parties hereto, except as otherwise provided elsewhere in this Agreement.

20. Implementation. Each party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of materials and documents) as may be reasonably requested by either party for the implementation of continuing performance of this Agreement.

21. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgement on the award rendered by the arbitrator(s) may be entered in any

court having jurisdiction thereof. In the event any party seeks a Temporary Restraining Order or Preliminary Injunction or other emergency relief, he shall do so in the Court of Anderson County, Texas, and after the granting or denial of such relief then the parties shall arbitrate as provided herein.

22. Applicable Law and Venue. This Agreement shall be construed and interpreted in accordance with the law and statutes of the State of Texas. In the event of any arbitration, litigation or lawsuit between the parties, the same shall occur in Anderson County, Texas.

23. Notice. Notices required by this Agreement will be deemed given when mailed to the parties at the following addresses by certified mail, postage paid:

Owner:
Feather River Rail Society/Western Pacific Railroad Museum
PO Box 608
Portola, CA 96122-8636

Publisher:
White River Productions, Inc.
996 FM 860
Palestine, TX 75803

Publisher: White River Productions, Inc., Kevin EuDaly, President

By:  _____

Date Signed: 8/01/2024

Owner: Feather River Rail Society/Western Pacific Railroad Museum, Greg Elems, President

By: _____

Date Signed: _____
