



# MEMO ROUTING SLIP

INITIAL

DATE

1.

Ryan Coholan  
Chief Railroad Officer

<sup>DS</sup>

6/30/2021

2.

Jeff Cook  
Chief Procurement and Contract Administration Officer

<sup>DS</sup>

7/1/2021

**Agreement:** MBTA Locomotive Auction Agreement

**Vendor:** Missouri Rail Group, L.L.C. d/b/a Ozark Mountain Railcar

**AUCTION CONTRACT**

THIS AUCTION CONTRACT (“Contract”), is entered into as of the 30th day of June, 2021, by and between Massachusetts Bay Transportation Authority (hereinafter “Seller”) and Missouri Rail Group, L.L.C. d/b/a Ozark Mountain Railcar (hereinafter “OMR”).

**RECITALS**

A. Seller owns certain railroad equipment (the “Goods”) that it desires to sell, and Seller desires to hire OMR to provide Auction Services in order to sell the Goods.

**AGREEMENT**



1. OMR to Conduct Auction. Seller acknowledges that it has good and marketable title to the Goods or the right to sell the Goods, and that upon entering into this Contract and until completion of this Contract, OMR shall have the exclusive right to sell the Goods in an auction format. OMR shall solicit and accept bids for the Goods until such time as the reserve price has been met, if any, or until the time for the auction ends.

Seller shall have the option of selling the Goods with a reserve price, or without. If Seller chooses to sell the Goods with a reserve price, Section 2 below shall apply. If Seller does not wish to set a reserve price, then Seller understands that the Goods will sell to the highest bidder regardless of the price at the end of the auction. Seller acknowledges that OMR cannot accurately predict the outcome of a sale, the time for completing a sale, and/or the sales price, and any such predictions shall be considered mere opinion of OMR.

The auction shall begin within 35 days (“Auction Begin Date”) of entering into this Contract. The auction shall be considered “ended”, 40 days from the Auction Begin Date (“Auction End Date”). In the event the reserve price has not been met by the Auction End Date, and Seller desires to relist the Goods, a new Listing Contract will need to be entered into by the parties; however, the auction will automatically end once the reserve price is met.

2. Reserve Price (If Applicable). Seller acknowledges and accepts that by signing this Contract it has entered into an agreement to offer the Goods for sale at the reserve price as listed in “Exhibit A”. The reserve price is the expected selling price excluding the commissions fees owed to OMR upon completion of the transaction. If Seller desires to lower the reserve price of the Goods, it must notify OMR in writing and the reserve price shall be lowered within 24 hours of receipt of said notice.

3. Compensation of OMR. In exchange for the Auction Services provided by OMR, Seller agrees that OMR shall receive a flat rate premium paid by the Buyer as compensation for services over and above final sale price. Commission scale is outlined in “Exhibit A” Seller agrees that the purchase funds from the auction must be delivered to OMR, who will serve as an escrow agent between Seller and any buyer(s). Seller agrees that OMR, upon receipt of the funds from the buyer(s), can deduct the Compensation from the purchase funds.

OMR Initials   
Seller’s Initials 

4. Delivery. Time is of the essence in the performance of this Contract. Seller will make the Goods available to the Buyer(s) immediately after full payment has been received by Seller. After payment has been completed, a Bill of Sale will be executed between buyer(s) and Seller, and the Transaction will be complete.

5. Seller Representations. The Seller makes the following representations and warranties with respect to the Goods:

- a. The Seller is the owner of and has good and marketable title to the same, and has the exclusive right to sell the Goods, and the Goods are free and clear of all debts, liens, security interests and encumbrances.
- b. Seller has to its knowledge complied with all laws, rules and regulations relating to the Goods; and
- c. Seller makes no representations or warranties as to the quality and/or condition of the Goods, and the Goods are being sold as is.

6. Payment. Once payment has been made by the buyer(s), OMR shall deduct its Compensation and deliver to Seller the remaining balance within 5 business days. OMR will provide Seller with a transaction settlement statement which will signed by the Seller before funds are issued from OMRs escrow account. Funds may be delivered to Seller via wire transfer, or other means agreed upon by the parties.



7. Default. The occurrence of any one of the following shall constitute a material default under this Contract:

- a. The subjection of the Goods to any levy, seizure, general assignment for the benefit of creditors, application, or sale for or by any creditor or government agency.
- b. The failure to make available or deliver the Goods in the time and manner provided for under this Contract.
- c. Failure to comply with any other terms of this Contract or any related agreement(s) between the parties, if any.

8. Remedies in the Event Default Occurs. In addition to any and all other rights available according to law, if either party defaults by failing to substantially perform any material provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the non-defaulting party may elect to terminate this Contract if such default is not cured within three (3) days of providing written notice of the default to the defaulting party. The notice shall describe with sufficient detail the nature of the default.

9. Assignment. Neither party may assign or transfer this Contract without prior written consent of the other party, which consent shall not be unreasonably withheld.

10. Confidential Information. Each party acknowledges that during the course of performance of this Contract, each may obtain confidential information regarding the other party's

OMR Initials   
Seller's Initials 

business. Both parties agree to treat all such information and the terms of this Contract as confidential, and to take all reasonable precautions against disclosure of such information to unauthorized third parties during and after the term of this Contract. Upon request of either party, all documents relating to confidential information will be turned over to that party.

11. Notices. All notices required or permitted under this Contract shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, and addressed as follows:

If for OMR: Ozark Mountain Railcar  
P.O. Box 167  
Kirbyville, MO 65679

If for Seller: Massachusetts Bay Transportation Authority  
10 Park Plaza  
Boston MA 02116



12. Amendment. This Contract may be modified or amended if the amendment is made in writing and is signed by both parties.

13. Severability. If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written and enforced as so limited.

14. Entire Agreement. This Contract constitutes the entire agreement between the parties, and no oral agreements or statements will be effective or binding on either party. The provisions of this Contract can only be amended or changed by a written document signed by the parties. This Contract supersedes any prior written or oral agreements that may exist between the parties. Further, by signing below, Seller acknowledges that it has thoroughly read and reviewed this Contract and understands the terms set forth herein and agrees to be bound thereby.

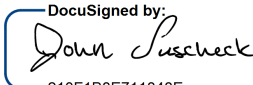
15. Waiver of Contractual Right. The failure of either party to enforce any provision of this Contract shall not be construed as a waiver of limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

16. Construction and Attorney's Fees. This Contract shall be construed under the laws of the Commonwealth of Massachusetts. Jurisdiction for any litigation related to this Contract shall be exclusive to the Commonwealth of Massachusetts. In the event either party has to bring suit on account of the other party's breach of this Contract, the non-breaching party shall be entitled to reimbursement for its reasonable attorney's fees and costs incurred therein. The parties, by entering into this Contract, agree to waive their right to a jury trial in the event it is necessary to file suit.

OMR Initials   
Seller's Initials 

17. Ozark Mountain Railcar’s Liability. It is specifically understood and agreed to by both parties that Missouri Railroad Group, LLC, d/b/a Ozark Mountain Railcar, has made no representations whatsoever based on its knowledge of the Goods subject to this Contract and has made no investigation to verify any representations made by Seller or any prospective buyer(s). Further, other than for breach of a specific provision of this Contract, Seller and OMR agree to waive any and all suits, causes of action, controversies, claims, liabilities and demands whatsoever, which it has or ever had, known or unknown, against each other as a result of the auction or the transfer of the Goods.

“OMR”  
Missouri Rail Group, LLC d/b/a  
Ozark Mountain Railcar

DocuSigned by:  
  
210F1B8E711848E...

By: John Suscheck, CEO

“Seller”  
Massachusetts Bay Transportation Authority


DocuSigned by:  


BY: C8238EF50D624B0...

Printed Name: Jeff Cook  
Title: Chief Procurement and Contract  
Administration Officer  
Phone Number: 617-222-3057  
Email: jcook2@mbta.com

**Exhibit A**

<u>Locomotive #</u>	<u>Suggested Reserve Price</u>	<u>OMR Buyers Premium</u>
1. XMBT 1000	\$40,000.00	\$5,000.00
2. XMBT 1001	\$40,000.00	\$5,000.00
3. XMBT 1002	\$40,000.00	\$5,000.00
4. XMBT 1003	\$40,000.00	\$5,000.00
5. XMBT 1004	\$40,000.00	\$5,000.00
6. XMBT 1005	\$40,000.00	\$5,000.00
7. XMBT 1006	\$40,000.00	\$5,000.00
8. XMBT 1007	\$40,000.00	\$5,000.00
9. XMBT 1008	\$40,000.00	\$5,000.00
10. XMBT 1010	\$40,000.00	\$5,000.00
11. XMBT 1011	\$40,000.00	\$5,000.00
12. XMBT 1012	\$40,000.00	\$5,000.00
13. XMBT 1013	\$40,000.00	\$5,000.00
14. XMBT 1015	\$40,000.00	\$5,000.00
15. XMBT 1017	\$40,000.00	\$5,000.00
<b>TOTAL</b>	<b>\$600,000.00</b>	<b>\$75,000.00</b>

OMR Initials   
Seller’s Initials 