



MEMO ROUTING SLIP

Case # 2018-000

INITIAL

DATE

1.

Ryan Coholan
Chief Railroad Officer, Railroad Operations

^{DS}

8/16/2021

2.

Jeff Cook
Chief Procurement & Contracts Administration Officer

^{DS}

8/23/2021

Agreement: Sales Contract Form for out of service locomotives auction

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

Rob Weiner
Sourcing Manager

^{DS}

8/16/2021

NOTE: This contract contains confidential information including wire transfer instructions. We ask that this document DOES NOT get emailed, please sign only through Docusign.

RAILROAD EQUIPMENT SALES CONTRACT

THIS RAILROAD EQUIPMENT SALES CONTRACT (“Contract”), is entered into as of August 16, 2021 by and between Massachusetts Bay Transportation Authority. (hereinafter “Seller”) and Precision Locomotive Leasing and Sales L.L.C. (hereinafter “Buyer”).

RECITALS

- A. Seller owns certain railroad equipment that it desires to sell to Buyer, and Buyer desires to purchase certain railroad equipment owned by Seller, see EXHIBIT “A”.
- B. Buyer acknowledges that the railroad equipment is being sold “as is” and that Seller makes no representations or warranties as to the quality and/or condition of said railroad equipment.

AGREEMENT

1. Buyer to Sign Contract. Buyer acknowledges that it has thoroughly read and reviewed this Contract and understands the terms set forth herein. Buyer agrees to sign and return this Contract to Ozark Mountain Railcar (hereinafter “OMR”) on or before August 20th 2021.

2. Items Purchased. Seller agrees to sell, and Buyer agrees to buy, the railroad equipment and/or items (“Goods”) listed on Exhibit “A “attached hereto, and in accordance with the terms and conditions set forth herein (the “Transaction”).

3. Special Conditions. The following special conditions, if any, apply to this Contract:

- a. Locomotives(s) are sold “As Is Where Is”
- b. Buyer hereby acknowledges that any work performed on the purchased Goods by said Buyer, or Agent of the same prior to removal is limited to only work required for interchange. Buyer is granted 60 days from the execution date written below to remove the purchased Goods from MBTA property and acknowledges personal responsibility for payment of storage fees in the amount of \$100/day, per locomotive, past 60 day removal period. Furthermore, all costs associated with the transfer of possession of the Goods, including interchange and transportation, is the responsibility of the Buyer.
- c. Buyer and their contractors, employee’s will submit a completed liability waiver before entering railroad property.

4. Delivery. Time is of the essence in the performance of this Contract. Seller will make the Goods available to Buyer immediately after full payment has been received by Seller.

Buyer’s Initials NE

Seller’s Initials K

After payment has been completed, a Bill of Sale will be executed between Buyer and Seller, and the Transaction will be complete.

5. Seller Representations. The Seller makes the following representations and warranties to the Buyer, all of which shall survive the Closing:

- a. The Seller is the owner of and has the 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 Buyer understands that the Goods are being sold as is.

6. Payment. Buyer has agreed to pay seller the total price indicated on Exhibit "A" attached hereto. Payment schedule is as follows:

- a. Payment to be made in full on or before August 20th 2021. All payments are to be made via wire transfer. **Wire instructions are included the last page of this document.**

In Process

ALL DELINQUENT PAYMENTS SHALL ACCRUE A 20% LATE CHARGE FOR EACH WEEK THAT THE PAYMENT IS LATE

7. Failure to Timely Pay is a Breach of the Contract. In addition to any other right or remedy provided by law, if Buyer fails to pay for the Goods when due, the Seller, at its option, may treat such failure to pay as a material breach of this Contract, and may cancel this Contract and/or seek other available legal remedies.

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

- a. Failure to make the required payment when due.
- b. The insolvency or bankruptcy of either party.
- c. 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.
- d. The failure to make available or deliver the Goods in the time and manner provided for under this Contract.

9. 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.

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NE

Seller's Initials ^{DS}
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10. Assignment. Neither party may assign or transfer this Contract without prior written consent of the other party, which consent shall not be unreasonably withheld.

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

12. 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 Seller: Massachusetts Bay Transportation Authority
10 Park Plaza
Boston, MA 02116

If for Buyer: Precision Locomotive Leasing and Sales L.L.C.
P.O. Box 2068
Staunton, VA 24402

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

14. 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.

15. 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 both Buyer and Seller. This Contract supersedes any prior written or oral agreements that may exist between the parties.

16. 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.

17. Construction and Attorney's Fees. This Contract shall be construed under the law of the state of Missouri. Jurisdiction for any litigation related to this Contract shall be exclusive to 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

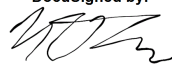
Buyer's Initials NE

Seller's Initials SC

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.

18. 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 Railroad Rolling Stock and Equipment/Parts and has made no investigation to verify any representations made by either Buyer or Seller. Further, it is agreed by both Buyer and Seller to waive any and all claims they may have against OMR as a result of this Contract.

Buyer: Precision Locomotive Leasing and Sales L.L.C.

DocuSigned by:

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In Process

Printed Name: Nate Evans


Massachusetts Bay Transportation Authority

DocuSigned by:

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Printed Name: Jeff Cook

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EXHIBIT A

<u>Item Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Buyer's Premium</u>
1. EMD F-40PH Locomotive #1000	1	\$20,000.00	\$5,000.00
2. EMD F-40PH Locomotive #1001	1	\$20,000.00	\$5,000.00
3. EMD F-40PH Locomotive #1002	1	\$20,000.00	\$5,000.00
4. EMD F-40PH Locomotive #1003	1	\$20,000.00	\$5,000.00
5. EMD F-40PH Locomotive #1004	1	\$20,000.00	\$5,000.00
6. EMD F-40PH Locomotive #1005	1	\$20,000.00	\$5,000.00
7. EMD F-40PH Locomotive #1006	1	\$20,000.00	\$5,000.00
8. EMD F-40PH Locomotive #1007	1	\$20,000.00	\$5,000.00
9. EMD F-40PH Locomotive #1010	1	\$20,000.00	\$5,000.00
10. EMD F-40PH Locomotive #1011	1	\$20,000.00	\$5,000.00
11. EMD F-40PH Locomotive #1012	1	\$20,000.00	\$5,000.00
12. EMD F-40PH Locomotive #1015	1	\$20,000.00	\$5,000.00
13. EMD F-40PH Locomotive #1017	1	\$20,000.00	\$5,000.00
Sub Totals		\$260,000.00	\$65,000.00

Total: \$ 320,000.00

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This form contains confidential financial information and should only be shared with trusted and known individuals/businesses.

Ozark Mountain Railcar Wire Transfer Instructions

Note: Due to the ownership structure of our bank, our wire instructions may differ from other banks. If the sending bank has any questions, please contact Central Bank's wire desk at 573-634-1160.

INCOMING WIRE INSTRUCTIONS

Receiving Bank: 086500634
Central Bank
Jefferson City, MO, USA

Beneficiary Bank: 081518375 Central Bank of Branson
Beneficiary: **081518375 Acct# 124124603**
Missouri Rail Group L.L.C d/b/a Ozark Mountain Railcar
315 Mincy Lane, Kirbyville, MO 65679

Additional Information: Please reference Buyers' name and item being purchased as it appears on the sales contract.

INTERNATIONAL INCOMING WIRE INSTRUCTIONS

SWIFT CODE: CTUSUS44

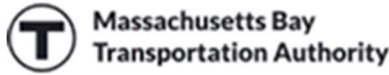
Bank: Central Bank
238 Madison Jefferson City, MO, USA

Beneficiary: **081518375 Acct# 124124603**
Missouri Rail Group L.L.C d/b/a Ozark Mountain Railcar
315 Mincy Lane, Kirbyville, MO 65679

Additional Information: Please reference Buyers' name and item being purchased as it appears on the sales contract.

Buyer's Initials NE

Seller's Initials NC



**RIGHT OF ENTRY AGREEMENT
AND
RELEASE AND WAIVER OF LIABILITY**

EACH AND EVERY PERSON ENTERING THE PROPERTY IN CONNECTION WITH A PRE-AUCTION INSPECTION OF THE PROPERTY, MUST SIGN AND ACCEPT THE TERMS OF THIS AGREEMENT PRIOR TO ENTERING THE PROPERTY

In consideration of being granted the right to access and inspect the Massachusetts Bay Transportation Authority ("MBTA") (the "Seller") Locomotives located at 45 Kings Highway West Wareham, MA 02576 (the "Property") and which is the subject of an auction to be conducted by Missouri Rail Group, LLC d/b/a Ozark Mountain Railcar ("OMR") (the "Auction Company"), PO Box 167 Kirbyville, Missouri 65679 and its licensed broker(s), and in consideration of my voluntary decision to enter the Property, I agree and warrant as follows:

1. I hereby assume all risk of accidents, personal injury, death and property loss or damage sustained or incurred as a result of my presence at the Property (including, but not limited to, during my participation in any site tours), including those caused as a result of negligence on the part of the Released Parties (as defined below).
2. I further agree to release, discharge, waive, indemnify and hold harmless from and against all liabilities, actions, causes of actions, suits, damages, losses, judgments, claims and demands whatsoever, in law or in equity, including legal fees and disbursements, which I, any company or business entity that I represent, or my heirs, executors, administrators, legal representatives, successors, or assigns may now or hereafter have against MBTA, its Contractors, and OMR for any personal injury, death or property damage (the "Released Parties").
3. I acknowledge that it is my sole responsibility to evaluate carefully the risks inherent in visiting the Property and that I have fully considered those risks, including, without limitation, dangers posed by willful or negligent conduct of myself and/or by others.
4. I acknowledge and agree that I shall not conduct any invasive tests or inspections on the Property, and shall bear full responsibility, including costs and expenses, to repair any damage to the Property as a result of my entry upon the Property.
5. I agree that if any portion of this document is held invalid, the remaining provisions shall be binding and continue in full force and effect.
6. I agree that I will follow all the instructions specified by any onsite managers, or representatives or agents of the MBTA, its Contractors, and OMR on the Property.

By signing this Right of Entry Agreement and Release and Waiver of Liability ("Release"), I certify that I have read this Release and fully understand it and that I am not relying on any statements or representations made by the Released Parties. The undersigned represents and warrants that he/she is at least 18 years of age, and voluntarily agrees to all of the terms of this Release.

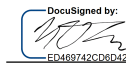
Precision Locomotive Leasing and Sales LLC
Company

646-423-5795

Phone Number

nate@pnlxrail.com

Email



Signature

Nate Evans

Print Name

8/19/2021

Date

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Ozark Mountain Railcar (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures

electronically from us.

How to contact Ozark Mountain Railcar:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: sales@ozarkmountainrailcar.com

To advise Ozark Mountain Railcar of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at sales@ozarkmountainrailcar.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

To request paper copies from Ozark Mountain Railcar

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to sales@ozarkmountainrailcar.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Ozark Mountain Railcar

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to sales@ozarkmountainrailcar.com and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	Allow per session cookies

** These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Ozark Mountain Railcar as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Ozark Mountain Railcar during the course of my relationship with you.