

Robert F. Hochwarth
General Attorney



RECORDATION NO. 8682 Filed & Recorded

JAN 28 1977 3 45 PM

INTERSTATE COMMERCE COMMISSION

Law Department
Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
~~216-861-2200~~
216-623-2405
January 26, 1977

REGISTERED MAIL
Return Receipt Requested

Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
12th Street and Constitution Ave. N.W.
Washington, D.C. 20423

7-028A080

Date JAN 28 1977

Fee \$ 50-

ICC Washington, D. C.

FEE OPERATION BR.

JAN 28 3 40 PM '77

RECEIVED

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations, I enclose for filing and recording six counterparts of an Agreement dated as of February 1, 1977 between General Motors Corporation (Electro-Motive Division) and Western Maryland Railway Company. The Agreement is an interim user agreement allowing Western Maryland to use the locomotives pending completion of permanent financial arrangements.

Set out below are the names and addresses of the parties to the transaction:

Bailor: General Motors Corporation
(Electro-Motive Division)
LaGrange, Illinois 60325

Bailee: Western Maryland Railway Company
2 North Charles Street
Baltimore, Maryland 21201

The equipment covered by the enclosed documents consists of 5 3000 HP Model GP 40-2 diesel electric locomotives, to bear Bailee's road numbers 4257 - 4261, inclusive, AAR mechanical designation BB.

The equipment will be lettered "Western Maryland", "WM", "Chessie", "Chessie System", or in some other appropriate manner. The units bearing Bailee's road numbers 4257 - 4260, inclusive, will also be marked "BALTIMORE AND OHIO RAILROAD EQUIPMENT TRUST OF 1977, FIRST PENNSYLVANIA BANK N.A., TRUSTEE, OWNER, LESSOR". The unit bearing Bailee's road number 4261 will also be marked "WESTERN MARYLAND RAILWAY EQUIPMENT TRUST OF 1975, MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, TRUSTEE, OWNER, LESSOR".



Mr. Robert L. Oswald, Secretary
Interstate Commerce Commission
Washington, D.C.

January 26, 1977

Also enclosed is this Company's draft in the amount of \$50 representing the required recordation fee. Please return four recorded counterparts to the undersigned.

PLEASE NOTE: It will be greatly appreciated if you will telephone me collect (216) 623-2405 promptly upon receipt of the enclosed documents.

Very truly yours,



R. F. Hochwarth
General Attorney

RFH:ef
Encls.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

2/4/77

R.F. Hochwarth
Chessie System
Law Dept.
Terminal Tower
P.O.Box 6419
Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 1/28/77 at 3:45pm and assigned recordation number(s) 8682

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

9000
JAN 2 1977 - 8 40 PM
WESTERN MARYLAND RAILWAY COMPANY

EXECUTED IN 6 COUNTERPARTS
OF WHICH THIS IS NO. 4

AGREEMENT

Dated as of February 1, 1977

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

WESTERN MARYLAND RAILWAY COMPANY

Covering

5 3000 HP Model GP 40-2 Diesel Electric Locomotives

THIS AGREEMENT, dated as of February 1, 1977, by and between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (Manufacturer), and WESTERN MARYLAND RAILWAY COMPANY, a Maryland and Pennsylvania corporation (WM);

W I T N E S S E T H :

The Manufacturer and WM heretofore entered into Locomotive Proposal No. 767049, dated August 23, 1976 and accepted by WM on October 15, 1976 (a copy of which Locomotive Proposal is made a part hereof by reference), whereunder the Manufacturer agreed to construct and deliver to WM, and WM agreed to accept and pay for the following locomotives:

- 5 3000 HP Model GP 40-2 diesel electric locomotives, to bear WM's road numbers 4257 - 4261, inclusive, (Locomotives).

Delivery of the Locomotives by the Manufacturer to WM is scheduled to begin on or about February 1, 1977. However, inasmuch as WM has not as yet consummated financing arrangements (pursuant to an Equipment Trust Agreement and a Lease or otherwise), it is not in a position to accept delivery of and pay for the Locomotives under the terms of the Locomotive Proposal at this time. WM represents that such financing arrangements will be consummated, however, on or before April 1, 1977. WM (in order that it may use the Locomotives pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Locomotives on their completion, solely as a bailee of the Locomotives, and the Manufacturer is willing to do so upon the terms and conditions hereafter stated.

In consideration of the premises, the Manufacturer hereby delivers to WM and WM hereby accepts from the Manufacturer the Locomotives as of the

date each of them is delivered to WM at Barr Yard, Chicago, Illinois, or other such place as may be specified by WM, for the period ending on the earlier of April 1, 1977 or the date of consummation of the above financing arrangements. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Locomotives shall remain in the Manufacturer and WM's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. WM, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, WM shall do such other acts as may be required by law or reasonably requested by the Manufacturer for the protection of the Manufacturer's title to and interest in the Locomotives.

WM agrees that it will permit no liens of any kind to attach to the Locomotives, and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Locomotives of the Manufacturer because of its ownership or because of the use, operation, management, or handling of the Locomotives by WM during the term of this Agreement.

WM's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

WM will, at its own expense, keep and maintain the Locomotives in

good order and running condition, and will, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Locomotive to WM under this Agreement, it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each Locomotive, in contemplation of the financings heretofore referred to, the such financing legends in letters not less than one inch in height as shall be specified by WM to the Manufacturer. WM hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Locomotives.

In case, during the effective period of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Locomotive, WM shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Locomotives as provided in the Locomotive Proposal, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time; provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities, or any other obligations contained in this Agreement or in the Locomotive Proposal relating to the Locomotives. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the Locomotive Proposal, and WM receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by

WM under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in a form satisfactory to WM.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Locomotive Proposal, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, setoff, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Locomotives, nor subject to any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to WM by the Manufacturer. Any and all of such obligations howsoever arising shall be and will remain enforceable by WM, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits, or advantages assigned pursuant to this Agreement).

WM agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to B&O of the Locomotives, as contemplated by this Agreement, shall not relieve WM of its obligations to accept, take and pay for the Locomotives in accordance with the terms of the Locomotive Proposal, or impair any of the Manufacturer's rights under the Locomotive Proposal.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By


Vice President

[Corporate Seal]

ATTEST:


Assistant Secretary

WESTERN MARYLAND RAILWAY COMPANY

By L.C. Britt
Assistant Vice President
and Treasurer

[Corporate Seal]

ATTEST:

Patricia Hanady
Assistant Secretary

P. H.
Notary Public

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 14TH day of January, 1977, before me personally appeared P. K. HOGLUND, to me personally known, who being by me duly sworn, says that he is a Vice President of General Motors Corporation (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

My Comm. Exp. July 17, 1977

[Notarial Seal]

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this *11TH* day of January, 1977, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is Assistant Vice President and Treasurer of Western Maryland Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Clara Masuga

CLARA MASUGA
Notary Public, Cuyahoga County, Ohio
My Commission Expires April 21, 1979

[Notarial Seal]