

RECORDATION NO. 6511 Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

COUNTERPART NO. 5

OF 5 COUNTERPARTS

AGREEMENT

Dated as of March 1, 1972

between

GREENVILLE STEEL CAR COMPANY

and

GULF, MOBILE AND OHIO RAILROAD COMPANY

Covering

100 70-ton Wood Chip Hopper Cars



THIS AGREEMENT, dated as of March 1, 1972, by and between GREENVILLE STEEL CAR COMPANY, a Pennsylvania corporation (Manufacturer), and GULF, MOBILE AND OHIO RAILROAD COMPANY, a Mississippi corporation (GM&O);

WITNESSETH:

WHEREAS the Manufacturer has agreed to construct at its plant at Greenville, in accordance with its Specification No. 4268-00952 and to deliver to GM&O 100 70-ton Wood Chip Hopper Cars (Hopper Cars), to bear GM&O road numbers 866300-866399, inclusive, and GM&O has agreed to accept and pay for all said Hopper Cars, all as provided in that certain Order No. D-4606 dated December 3, 1971, together with the Letter dated the same date to the Manufacturer from GM&O (hereinafter together called the Order). The Order, together with any mutually agreed upon amendments thereto, is by reference made a part of this Agreement as fully as though expressly set forth herein.

WHEREAS delivery of the Hopper Cars by the Manufacturer to GM&O is scheduled to begin on or after February 21, 1972. However, inasmuch as GM&O has not as yet established financing arrangements (pursuant to an Equipment Trust Agreement to be dated as of April 1, 1972), it is not in position to accept

delivery of and pay for the Hopper Cars under the terms of the Order at this time. GM&O represents that such financing arrangement will be established, however, on or before April 1, 1972. GM&O, in order that it may use the Hopper Cars pending completion of the above financing arrangement, has arranged with the Manufacturer to give it temporary custody and possession of the Hopper Cars upon their completion, solely as a bailee of the Hopper Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties do hereby agree as follows:

The Manufacturer hereby delivers to GM&O and GM&O hereby accepts from the Manufacturer the Hopper Cars as of the date each of them is delivered to GM&O at such point or points as may be mutually agreed upon by GM&O and the Manufacturer, for the period ending on the earlier of April 1, 1972, or the date of establishment of the above financing arrangement. At such time this Agreement shall automatically be canceled and superseded without further action by or notice to any party concerned.

After GM&O's representative finds that each Hopper Car upon completion has been built in accordance with the requirements of the Order, he will execute and deliver to the Manufacturer at its plant a certificate of inspection

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certifying to that effect. Upon delivery of each Hopper Car to the delivery point, GM&O's representative will execute a certificate of acceptance acknowledging the receipt of delivery of such Hopper Car under this Agreement. Title to the Hopper Cars shall remain in the Manufacturer and GM&O'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. GM&O, 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, GM&O 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 Hopper Cars.

GM&O agrees that it will permit no liens of any kind to attach to the Hopper Cars; 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 Hopper Cars or the Manufacturer because of its

ownership or because of the use, operation, management or handling of the Hopper Cars by GM&O during the term of this Agreement. GM&O's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

GM&O will, at its own expense, keep and maintain the Hopper Cars in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Hopper Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Hopper Car to GM&O 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 Hopper Car, in contemplation of said financing arrangement, the following legend in letters not less than one inch in height:

"GULF, MOBILE AND OHIO RAILROAD EQUIPMENT TRUST, SERIES U;
ST. LOUIS UNION TRUST COMPANY, TRUSTEE, OWNER AND LESSOR."

GM&O 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 Hopper Cars.

In case, during the continuance of this Agreement,

such markings shall at any time be removed, defaced or destroyed on any Hopper Car, GM&O 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 Hopper Cars as provided in the Order, may be assigned by the Manufacturer and reassigned by an 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 relating to the Hopper Cars. In the event Manufacturer assigns its rights to receive the payments herein and/or under the Order, and GM&O receives written notice 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 GM&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to GM&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Order, 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, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Hopper Cars, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to GM&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by GM&O, 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).

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

GREENVILLE STEEL CAR COMPANY,

by

G. C. Brackett
Vice President

[Corporate Seal]

Attest:

F. B. Jones
Assistant Secretary

GULF, MOBILE AND OHIO RAILROAD
COMPANY,

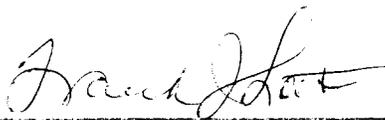
by



Vice President
SENIOR VICE PRESIDENT

[Corporate Seal]

Attest:



Assistant Secretary
Vice President and Secretary

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF MERCER,)

On this *25th* day of *February* 1972, before me personally appeared *L.C. Brecht*, to me personally known, who, being by me duly sworn, says that he is a Vice President of GREENVILLE STEEL CAR 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.

(Notarial Seal)

My Commission Expires:

Leora Smith

LEORA SMITH, Notary Public

Notary Public

STATE OF ALABAMA,)
) ss.:
COUNTY OF MOBILE,)

On this *22nd* day of *February* 1972, before me personally appeared *R.L. Stevens*, to me personally known, who, being by me duly sworn, says that he is a Vice-President of GULF, MOBILE AND OHIO RAILROAD 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.

(Notarial Seal)

My Commission Expires:

June 30, 1975

R.L. Stevens

Notary Public