

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

1700 East Golf Road
Schaumburg, Illinois 60173-5860

Direct Dial: (708) 995-6819
Facsimile: (708) 995-6846



19516

JUL 5 1995 11:07 AM

July 5, 1995

RECEIVED
OFFICE OF THE
SECRETARY
JUL 5 11 07 AM '95
LICENSING BRANCH

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
12th and Constitution, N. W.
Washington, DC 20423

0100678008
\$ 21.00

Re: The Atchison, Topeka and Santa Fe Railway Company
Recordation of Interim Use Agreement (Locomotive Lease) Dated
June 8, 1995, with Electro-Motive Division, General Motors Corporation

Dear Mr. Williams:

Enclosed herewith please find an original and one (1) counterpart of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is an Interim Use Agreement (Locomotive Lease) dated as of June 8, 1994, between Electro-Motive Division, General Motors Corporation ("Lessor") and The Atchison, Topeka and Santa Fe Railway Company ("Lessee"), a primary document.

The name and addresses of the parties to this document are:

Lessor:

Electro-Motive Division, General Motors Corporation
9301 W. 55th Street
La Grange, Illinois 60525

Lessee:

The Atchison, Topeka and Santa Fe Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173-5860

CNSIDOC\0387

Counterparts - JWH



Interstate Commerce Commission

Washington, D.C. 20423-0001

7/5/95

Office Of The Secretary

Craig N. Smetko-General Atty.
The Atchison, Topeka and Santa Fe Railway Company
1700 East Golf Road
Schaumburg, Illinois 60173-5860

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/5/95 at 11:15AM, and assigned recordation number(s). 19516.

Sincerely yours,

Vernon A. Williams
Secretary

Enclosure(s)

(0100678008)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature

195/6

INTERIM USE AGREEMENT

THIS AGREEMENT, dated as of June 8, 1995, between GENERAL MOTORS CORPORATION, ELECTRO-MOTIVE DIVISION, a Delaware corporation ("EMD"), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("ATSF").

WITNESSETH:

WHEREAS, EMD and ATSF are entering into an agreement of even date herewith (the "Purchase Agreement") calling for EMD to manufacture and deliver to ATSF, and ATSF to accept and pay for twenty-six (26) SD75M 4300 HP, 6-axle, 6-motor, Turbocharged Diesel Electric Locomotives to bear road numbers 225 to 250, inclusive (collectively, the "Locomotives"); and

WHEREAS, ATSF intends to finance the purchase of the Locomotives from EMD pursuant to one or more permanent forms of financing or to lease the Locomotives (the "Financing"), but deliveries of the Locomotives are scheduled to begin prior to the time ATSF will have completed said Financing; and

WHEREAS, ATSF desires that it be permitted to use the Locomotives pending establishment of such Financing and the purchase under the Purchase Agreement, solely as a bailee thereof, and EMD is willing to grant such temporary custody and possession to ATSF upon the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. EMD, as lessor, hereby agrees to deliver the Locomotives to ATSF, as lessee, FOB at ATSF's Corwith Yard, Chicago, Illinois, for acceptance by ATSF in Chicago, Illinois. With respect to any of the Locomotives which come from EMD's McCook facility, ATSF shall pay the cost of transporting such Locomotives from EMD's McCook facility to Corwith Yard and shall bear the risk of loss of the Locomotives during transport from EMD's McCook facility to Corwith Yard. ATSF covenants to EMD that the Financing will be established, and the purchase price for the Locomotives paid as required by the Purchase Agreement. Except for those provisions of this Agreement which, in order to be given effect should survive termination, this Agreement shall automatically terminate with respect to a Locomotive upon the first to occur of (a) December 31, 1995, or (b) the date the purchase price of such Locomotive is paid to EMD, in either event without further action by or notice to either party hereto.

2. Upon receipt of each Locomotive in Chicago, Illinois, ATSF's representative shall execute a Certificate of Acceptance, in the form of Exhibit A hereto, acknowledging the receipt of delivery of each such Locomotive under this Agreement. During the term hereof for so long as the purchase price shall not have been paid, title to the Locomotives shall remain in EMD with ATSF's rights and interests therein being solely that of possession, custody and use as bailee hereunder. Transfer of title shall be effected only at the time of EMD's delivery of bills of sale to the party which has paid the purchase price therefor.
3. ATSF agrees to pay to EMD, as rent for such Locomotive, daily interim interest at the prevailing Prime Rate (fully floating) as published in the Wall Street Journal on the purchase price of such Locomotive for the period, if any, during which closing was delayed by ATSF pursuant to Section 2(b) of the Purchase Agreement. Rent shall be paid by ATSF monthly in arrears, within ten (10) days after billing therefor by EMD.
4. ATSF agrees that it (a) shall permit no liens of any kind to attach to the Locomotives and (b) will indemnify and save harmless the EMD from any and all claims, expenses or liabilities of whatsoever kind (other than those attributable to Equipment design or manufacture by EMD or attributable to EMD under the terms and conditions of the Maintenance Agreement of even date herewith between the parties hereto (the "Maintenance Agreement")), including any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or the EMD as a result of the use, operation, management or handling of the Locomotives by ATSF prior to the Closing Date. ATSF's obligations contained in this paragraph shall survive the Closing Date.
5. ATSF will, at its own expense, keep and maintain the Locomotives in good order and running condition and shall, at its option, replace or repair any component or part of any Locomotive damaged or destroyed by any cause (other than those attributable to the design or manufacture of the Locomotives by EMD or attributable to EMD under the terms and conditions of the Maintenance Agreement), prior to the termination hereof or promptly pay to the EMD the purchase price of any Locomotive which may in the opinion of ATSF be damaged beyond economic repair or destroyed by such cause prior to the Closing Date.
6. ATSF acknowledges that it takes its possessory interest in the Locomotives subject to those provisions of the Purchase Agreement relating to warranty. Risk of loss or damage to a Locomotive shall pass to ATSF at such time as such Locomotive is delivered to ATSF in Chicago, Illinois.

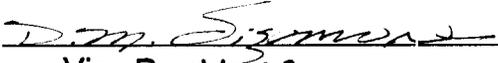
7. If during the term of this Agreement any markings on the Locomotives shall at any time be removed, defaced or destroyed, ATSF shall promptly cause the same to be restored or replaced.
8. In the event ATSF shall fail to perform any of its obligations hereunder, EMD may, in addition to any other remedies it may have, enter upon the premises of ATSF or such other premises where the Locomotives may be and take possession of all or any Locomotives, and thenceforth hold, possess and enjoy the same free from any right of ATSF, or its successors or assigns. In such event, EMD may use the Locomotives for any purposes whatsoever, and may sell and deliver the Locomotives to others upon such terms as EMD may see fit in its sole discretion, it being understood and agreed that, without limiting the foregoing, ATSF shall be liable to EMD for an amount equal to all losses, costs and expenses of EMD incident to such sale including, but not limited to, the expenses of withdrawing the Locomotives from the Service of ATSF, providing for the care and custody of the Locomotives, preparing the Locomotives for sale, and selling the Locomotives. ATSF shall pay the foregoing amounts from time to time upon demand by EMD.
9. ATSF and EMD each represent and warrant to the other that:
 - (a) it is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation, is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement, and has power and authority to own its properties and carry on its business as now conducted;
 - (b) the execution and delivery of this Agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument being binding upon it, and this Agreement is a valid and binding obligation of it enforceable against it in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general equitable principles;
 - (c) the rights of EMD as herein set forth and the title of EMD to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument to which the party making the representation or warranty is a party; and
 - (d) no governmental authorizations, approvals or exemptions are required of it for the execution and delivery of this Agreement or for the validity and enforceability hereof against it or the bailment of the Locomotives hereunder on the terms and conditions provided herein, or, if any such authorizations are

required of it, they have been obtained; and if any such shall hereafter be required of it, they will promptly be obtained.

10. ATSF agrees that the execution by EMD of this Agreement or the delivery by EMD of the Locomotives as contemplated by this Agreement, shall not relieve ATSF of its obligations to accept, take and pay for the Locomotives in accordance with the terms of the Purchase Agreement.
11. The execution of a Certificate of Acceptance in the form of Exhibit A hereto pertaining to any such Locomotive shall constitute acceptance of such Locomotive hereunder, and any warranty or other time period set forth in the Purchase Agreement applicable to such Locomotive shall be deemed to commence from the date of EMD's delivery of the Locomotives at Chicago, Illinois.
12. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, each party hereto has caused this Interim Use Agreement to be executed by its authorized representative in Illinois, as of the 8th day of June, 1995.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

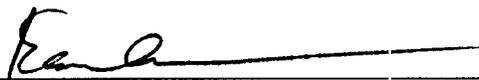
By: 
Its: Vice President &
Chief Mechanical Officer

[CORPORATE SEAL]

ATTEST:

By: 
Craig N. Smetko
Assistant Secretary

GENERAL MOTORS CORPORATION,
ELECTRO-MOTIVE DIVISION

By: 
Its: Director of Treasury & Finance
Assistant Secretary

[CORPORATE SEAL]

ATTEST:

By: 

State of Illinois)
) ss:
County of Cook)

On this 12 day of June, 1995, before me personally appeared A. M. Sizemore, to me personally known, who, being by me duly sworn, says that he is V.P. CHIEF MECHANICAL OFFICER of The Atchison, Topeka and Santa Fe Railway Company, that the foregoing instrument was executed 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]

Lois M. Melkovitz
Notary Public

My Commission expires:



State of Illinois)
) ss:
County of Cook)

On this 24 day of June, 1995, before me personally appeared KEITH A. McCANLESS, to me personally known, who, being by me duly sworn, says that he is ASST. SECRETARY of GENERAL MOTORS CORPORATION, ELECTRO-MOTIVE DIVISION, that the foregoing instrument was executed 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]

M. A. Gonzalez
Notary Public

My Commission expires:

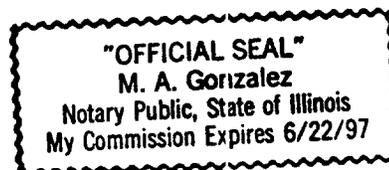


EXHIBIT A

Certificate of Acceptance

This is to certify that the following equipment covered by that certain Purchase Agreement dated as of June 8, 1995 has been accepted in Chicago, Illinois, by The Atchison, Topeka and Santa Fe Railway Company ("ATSF") under the Interim Use Agreement dated June 8, 1995, between General Motors Corporation, Electro-Motive Division and ATSF this _____ day of _____, 1995.

Description of Equipment

Number of Units

Description

Road Numbers

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

By: _____

Its: _____

Mr. Vernon A. Williams
July 5, 1995
Page 2

The equipment covered by the Interim Use Agreement (Locomotive Lease) consists of twenty-six (26) Electro-Motive Division, General Motors Corporation Diesel Locomotives, bearing Road Nos. 225 to 250 (both inclusive).

For the convenience of the parties, I have enclosed one (1) additional counterpart of the Interim Use Agreement, which I would like to have returned to me bearing the recordation information.

Enclosed please find a check for payment of the Commission's prescribed recordation fee.

A short summary of the enclosed document to appear in the Commission's Index is:

Primary Document

Interim Use Agreement dated as of June 8, 1995, between Electro-Motive Division, General Motors Corporation ("Lessor") and The Atchison, Topeka and Santa Fe Railway Company ("Lessee") relating to twenty-six (26) Electro-Motive Division, General Motors Corporation Diesel Locomotives, bearing Road Nos. 225 to 250 (both inclusive).

If you have any questions or comments concerning this request, please contact me.

Very truly yours,



Craig N. Smetko
General Attorney

CNS:cns
Enclosures

cc: Sharon Hatchet, Esq.