

THE LAW OFFICES OF
RICHARD F. LORITZ
ORLAND STATE BANK BUILDING • 9533 WEST 143rd STREET
ORLAND PARK, ILLINOIS 60462
708-403-2555

RICHARD F LORITZ
JULIE BURT

Of Counsel
—
David Dineff
Patrick Dwyer
Thomas E Grotta
Sheldon Lebold
—
Telecopier
708-349-6628

January 10, 1992

2-001A024
• 17679
JAN 21 1992 - 10 50 AM
INTERSTATE COMMERCE COMMISSION

Office of the Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RE: Lease of Locomotive Equipment
National Railway Equipment Company, Lessor
Twin Cities & Western Railroad Company

Dear Mr. Secretary:

I have enclosed an original and one copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease of locomotive equipment and is a primary document dated July 27, 1991. The names and addresses of the parties to the documents are as follows:

Lessor

National Railway Equipment Company
An Illinois Corporation
14400 S. Robey Street
P.O. Box 2270
Dixmoor, IL 60426

Lessee

Twin Cities & Western Railroad Company
2110 First Bank Place West
Minneapolis, Minnesota 55402

MOTOR OPERATING UNIT
JAN 21 10 44 AM '92

A description of the equipment covered by the document follows:

<u>Unit No.</u>	<u>Type</u>	<u>General Description</u>
408	GP10	EMD 1750 H.P. Locomotive

Office of the Secretary
January 10, 1992
Page 2

A fee of \$16.00 is enclosed. Please return the original and any extra copies not needed by the commission for recordation to Richard F. Loritz, 9533 W. 143rd Street, Orland Park, IL 60462.

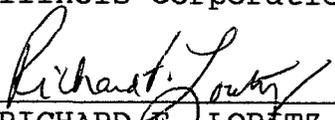
A short summary of the document to appear in the index follows:

A lease of locomotive equipment identified as one (1) locomotive, type GP10, EMD 1750 H.P., with National Railway Equipment Co., as Lessor, and Twin Cities & Western Railroad Company, as Lessee.

Also attached is an Affidavit executed by the attorney in fact for National Railway Equipment Co. and appropriately notarized declaring that the additional copy enclosed herewith is an exact copy of the original document.

Very truly yours,

NATIONAL RAILWAY EQUIPMENT CO.
an Illinois Corporation

BY: 
RICHARD F. LORITZ

ITS: Attorney and Agent in Fact

RFL/sjg

Enclosures

17679
JAN 21 1992 -10 50 AM
INTERSTATE COMMERCE COMMISSION

PURCHASE, MAINTENANCE AND LEASE OF LOCOMOTIVE EQUIPMENT

THIS AGREEMENT, made as of the 27th day of July, 1991, by and between NATIONAL RAILWAY EQUIPMENT CO., (hereinafter referred to as "National") and TWIN CITIES & WESTERN RAILROAD COMPANY, a Minnesota Corporation, (herinafter referred to as "TCW"),

WITNESSETH:

WHEREAS, TCW desires to purchase and National desires to sell five (5) locomotives as described in Exhibit A, at the price and on the terms set forth herein; and

WHEREAS, TCW required the use of a sixth (6th) locomotive, as described in Exhibit B, as backup power on TCW's railroad; and

WHEREAS, National is willing to rent said locomotive to TCW for its exclusive use and possession, subject to the terms and conditions hereof; and

WHEREAS, TCW and National desire to enter into a maintenance contract on the terms set forth herein, with respect to the locomotives described in Exhibit A, the sixth locomotive to be leased from National described in Exhibit B, and two additional locomotives presently used by TCW, described in Exhibit C.

NOW THEREFORE, in consideration of the amounts hereinafter provided, and the performance of the conditions and covenants herein contained, the parties mutually agree as follows:

A. Purchase of Locomotive Equipment

1. Price. The sale price for the locomotives described in Exhibit A shall be One Hundred Seventeen Thousand and NO/100 dollars (\$117,000.00) per locomotive, payable within ten (10) days after TCW start-up of operations or within three (3) days after filing with the Interstate Commerce Commission of releases of any existing liens on the locomotives, whichever period is the longer. After said ten-day period TCW shall be charged prime plus two (2) per cent as interest charges on any unpaid balance until final payment is made.

2. Indemnity. In the event of damage or destruction of the locomotive(s) TCW shall protect, defend and hold harmless National for any and all claims which may arise from the occupancy, operation, use or storage of said locomotive(s) while under the TCW's possession and control

3. Ownership. National covenants and warrants its ownership of said locomotives and guarantees peaceful possession of the locomotives to TCW.

4. Condition at Delivery. The locomotives shall be reconditioned prior to delivery and shall meet all Federal Railroad Administration requirements and be equipped as follows:

Replace any wheels that were less than 1-1/2" treadwear,

Qualify all trucks and motors,

Qualify engines, generators, etc.,

Repaint the entire locomotive, exterior and interior, as specified by owner,

Install bay windows,

Install snow plow

Additional equipment requested and applied to locomotives shall

become TCW's responsibility to maintain unless arrangements are made for National to provide maintenance. This additional maintenance shall be negotiated and additional charges decided upon by mutual agreement of TCW and National.

B. Warranty and Maintenance Obligations

1. Warranty. National warrants all parts and components of the locomotives described in Exhibit A and the leased locomotive, if TCW exercises its option to purchase, for a period of five (5) years.

2. Maintenance. National agrees to maintain the locomotives described in Exhibits A and B and C in satisfactory operating condition so as to meet all Federal Railroad Administration requirements. National shall provide at least one qualified employee with a service vehicle on site to perform the maintenance. All repairs to locomotives shall be completed within five (5) calendar days except for major engine or generator repairs which shall be completed within fourteen (14) calendar days. Maintenance payments shall not be paid for each locomotive held out of service for repairs for a longer period of time unless the delay was caused by the unavailability of repair parts from General Motors or other vendor. TCW shall provide routine service for the locomotives and consumables such as fuel, lubricants, sand, filters, brake shoes, fuses, light bulbs, carbon brushes, etc.

TCW, by December 1, 1991 shall provide a shop equipped with an inspection pit, air, 480 3 phase & 110 volt power, water, office and a jib crane or equivalent for repairs and inspection. TCW shall submit the plans for the locomotive shop to National for review and comment prior to beginning construction of such facility. The reduction in maintenance payments for delay in making repairs shall not apply until such time as the

shop is made available to National. The cost of extra labor or repair parts for repairs of physical damage caused by the negligent operation of the locomotives shall be borne by TCW. TCW shall provide for storage of repair parts.

3. Environmental Impact. National shall not be liable for any environmental impact problems that may arise under any present regulations or any future regulations that may be issued by any City, State or Federal authority.

4. Rate. TCW shall pay National to maintain the locomotives described in Exhibits A, B and C or any replacement locomotive at the rate of Sixty-seven and 50/100 dollars (\$67.50) per day per locomotive for a maximum of eight (8) locomotives. If TCW's locomotive fleet falls below seven (7) daily maintenance will increase accordingly. TCW shall bear the expense of repairs described in Exhibit D. Any replacement or additional locomotive that may be subject to the Maintenance Agreement shall also be subject to a thorough inspection by National Railway personnel as to its condition prior to being added to this Agreement.

5. Use by Other Railroads. TCW may permit other railroad companies to use the locomotives described in Exhibit A and C provided, however, that National shall not be responsible for maintaining any locomotives while being used by any other railroad company. Maintenance payments by TCW shall continue during any such use.

6. Termination. This maintenance agreement may be terminated by TCW upon ninety (90) days notice in writing addressed to NATIONAL RAILWAY EQUIPMENT CO., at 14400 S. Robey Street, P.O. Box 2270, Dixmoor, Illinois 60426, or such other address as may be designated from time to time in writing.

C. Lease of Locomotive Equipment

1. Base Terms. National agrees to supply on a lease basis a sixth (6th) locomotive, described in Exhibit B, to be used as backup power on TCW's railroad. TCW agrees to pay National One Hundred and NO/00 dollars (\$100.00) per day as lease rental along with the Sixty-seven and 50/100 dollars (\$67.50) maintenance charges per day for each day TCW operates this leased locomotive. TCW further agrees to operate this unit a minimum of sixty (60) days so that National shall receive a minimum of sixty (60) days lease and maintenance payments prior to December 31, 1991.

2. Option to Purchase. TCW shall have the right to purchase the locomotive, described in Exhibit B, at any time prior to January 31, 1992, for a purchase price of One Hundred Seventeen Thousand and No/100 dollars (\$117,000.00) with sixty (60) per cent of any lease payments made by TCW to be applied toward the purchase price of the locomotive. If TCW does not exercise its right to purchase the locomotive prior to December 31, 1991, TCW will guarantee lease and maintenance renewal through June 30, 1992, under the same conditions, with a minimum of sixty (60) days lease and maintenance payments to be made prior to July 31, 1992.

3. Default. Upon default by the TCW in the payment of any amount due under the terms of this rental agreement, whether as rental or otherwise, or upon the violation by TCW of any of the terms or conditions hereof or if the TCW shall vacate, desert or abandon the locomotive or permit the same to remain vacated, deserted or abandoned for a period of 20 days and the failure to remedy such default within 30 days after notice of such default to TCW, then National may at its option by written notice to TCW declare this rental agreement to be terminated and all rights of TCW in and to said locomotive to be at an end, and National shall become entitled to

the immediate possession of the locomotive. The declaration of a default and the repossession of the locomotive by National shall not excuse TCW from liability to National for any rental earned prior to the termination of said rental agreement, or for any other expense incurred by TCW prior to the termination of said rental agreement. TCW shall further be liable for and shall pay all expenses incurred by National in taking said locomotive into its possession upon such or any default under the terms of this rental agreement.

3. Uses. The locomotive is to be used by the TCW for commercial railway hauling and/or passenger purposes; and TCW shall comply with all governmental laws, regulations and requirements, and with all rules of the Association of American Railroads, the Interstate Commerce Commission and the Federal Railroad Administration, or any successors thereto, with respect to use, maintenance and operations of the locomotive while in the possession of TCW.

4. Fees and Taxes. TCW shall be liable for and pay and satisfy every lawful claim and liability arising against the use or operation of said locomotive during the term of this rental agreement and, as additional rental, assumes hereunder all license fees, taxes, charges and penalties imposed by the state of operation or any other state, governmental, or municipal subdivision in which said locomotive may be situated, or may be operated, during the term of this rental agreement. TCW may in good faith contest the lawfulness of the imposition of all such license fees, taxes, charges, and penalties and National shall cooperate with TCW in such contest.

5. Ownership. National covenants and warrants its ownership of said locomotive and guarantees peaceful possession of the locomotive to TCW at all times during the term of this agreement.

6. Insurance. TCW will provide and maintain for the said locomotive while under lease, insurance to cover both National and TCW against claims of third persons as follows:

- a. Public liability and property damage coverage protecting National and TCW with respect to their liability for injuries and/or death to third persons and damage, destruction or loss of use of property of third persons, as provided in the insurance policy or policies.
- b. Said liability coverage shall provide for an aggregate limit of not less than Five million dollars (\$5,000,000), to the extent commercially available, for all damages arising out of the bodily injuries to or death of persons and for all damages to or destruction of property within one year, and with a maximum self-insured retention of One Hundred Thousand and NO//100 dollars (\$100,000.00) to the extent commercially available.
- c. National shall not be required to provide any insurance coverage in connection with said leased locomotive.
- d. TCW further agrees to provide and maintain physical damage insurance coverage for loss and damage to said locomotive due to fire, theft, windstorm, flood and other risks and hazards covered by the standard type of policy regularly issued therefore. National shall be a named insured in the above physical damage policy.

- e. In the event that TCW fails to procure or maintain the above insurance, National may procure or maintain the insurance. The resultant cost shall be repayable to National as part of the next rental payment, and TCW's failure to pay this cost shall have the same effect as the failure to pay rent.
- f. TCW shall provide National with a certificate of such insurance from the insurer which shall provide that insurer will notify TCW in writing at least thirty (30) days prior to cancellation or refusal to renew any policy.
- g. TCW shall indemnify National against any loss, liability, damage or expense which it may incur by reason of any claim made by third parties growing out of the operation of said locomotive, except for any loss, liability damage or expense caused or resulting from any failure of National to perform its obligations hereunder.

National shall provide and maintain insurance to cover both the National and TCW against claims of third persons as follows:

- a. Claims arising under Workers' or Workmens' Compensation Acts with respect to employees of National performing maintenance service under Section 14 hereof.
- b. Public liability and property damage coverage protecting National and TCW with respect to their liability for injuries and/or death to third persons and damages, destruction or loss of use of property of third persons as

a result of the ownership or use of motor vehicles in connection with National performing maintenance services under Section 14 hereof.

- c. Said liability coverage shall provide for a limit of not less than \$1,000,000 for all damages arising out of each occurrence.
- d. National shall provide TCW with a certificate of such insurance from the insurer which shall provide that insurer will notify TCW in writing at least thirty (30) days prior to cancellation or refusal of renew any policy.
- e. National shall indemnify TCW against any loss, liability or damage or expense which it may incur by reason of any claim made by third parties growing out of the operation of said motor vehicles used in connection with National performing maintenance services under Section 14 hereof.

7. Non-Assignment. TCW agrees that it will not assign, transfer, sublet or lease its rights under this lease, without the prior written consent of National which consent shall not be unreasonably withheld, and will not pledge, mortgage or otherwise encumber or permit to exist upon or be subjected to any lien or charge, any right or interest of TCW hereunder. TCW agrees to keep appropriate signs and/or plaques on the locomotive to clearly show that the locomotive is not the property of TCW and is owned by others. The locomotive may be lettered with the name or initials or other insignia of TCW. TCW shall have the right to permit other railroad companies to use the locomotive pursuant to power exchange agreements between TCW and such other railroad companies, provided however that National shall not be responsible for maintaining any locomotive while

being so used by such other railroad company. National shall be satisfied that the maintenance performed by the using railroad is of a standard satisfactory to National. Any maintenance or repairs made shall be verified with written records.

8. Condition at Delivery. The locomotive subject to this lease shall be reconditioned prior to delivery, shall be in compliance with the Federal Railroad Administration requirements, and shall be equipped as set forth under Part A, paragraph 6 (Condition at Delivery).

9. Warranty and Maintenance. National's warranty and maintenance obligation with respect to the locomotive shall be as set forth under Part B herein, (Warranty and Maintenance Obligations).

10. Damage to Locomotives. TCW shall pay for all damages caused by failure of TCW to maintain an adequate level of crankcase oil in the air compressor or engine of the locomotive or other neglect of TCW or TCW's employees or other persons using said locomotive while the locomotive is in TCW's possession, regardless of whether the damage is discovered while the locomotive is in the possession of TCW or upon inspection when the locomotive is returned to National. TCW shall assume responsibility for expenses and repairs set forth in Appendix C. TCW further understands that National assumes no liability for injuries sustained by any person or employee of TCW from the use of the locomotive except for injuries to National's employees resulting from the performance of National's obligations hereunder. National does not assume any liability for failure to keep the locomotive in proper condition or repair except as provided in Section 9 of this part.

11. Return of Locomotives. If TCW does not exercise its option to purchase under Section 2 of this part, TCW shall return said locomotive to National at the end of the lease term, June 30, 1992, in a condition as good as that in which received, normal wear and tear excepted and further excepting any condition resulting from the failure of National to maintain said locomotive in accordance with Section 9 hereof or a breach of the warranty in Section 9.

Failure of TCW to return the locomotive to the National at Dixmoor, Illinois, at the expiration of the lease term shall be construed as an extension of this lease from month to month under the same terms and conditions hereof, at National's sole option.

D. General Provisions

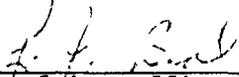
1. Payments. All payments or notices hereunder to be sent pursuant to this agreement shall be in writing and shall be addressed, if to National to NATIONAL RAILWAY EQUIPMENT, CO., at 14400 S. Robey Street, P.O. Box 2270, Dixmoor, Illinois 60426, and if to the TCW to TWIN CITIES & WESTERN RAILROAD COMPANY at 2110 First Bank Place West, Minneapolis, Minnesota 55402 or such other address as may be designated from time to time by either party in writing. All payments in arrearage shall bear eighteen percent (18%) per annum interest until date paid.

2. Independent Contractors. It is the intention of the parties that National is and will remain an independent contractor with respect to all services furnished pursuant to this contract and that all persons performing services for National pursuant to the lease shall be employees

or agents of National and not employees or agents of TCW.

IN WITNESS WHEREOF, the parties have signed this agreement.

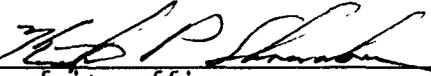
NATIONAL RAILWAY EQUIPMENT CO.,
an Illinois Corporation by:



One of its officers

(SEAL)

TWIN CITIES & WESTERN RAILROAD COMPANY,
a Minnesota Corporation by:



One of its officers

EXHIBIT A

<u>LOCOMOTIVE TYPE</u>	<u>PREVIOUS ROAD NUMBER</u>	<u>TC&W LOCOMOTIVE ROAD NUMBER</u>
EMD GP10, 1750 H.P.	8091	407
EMD GP10, 1750 H.P.	8118	406
EMD GP10, 1750 H.P.	8146	403
EMD GP10, 1750 H.P.	8251	405
EMD GP10, 1750 H.P.	8270	404

EXHIBIT B

<u>LOCOMOTIVE TYPE</u>	<u>PREVIOUS ROAD NUMBER</u>	<u>TC&W LOCOMOTIVE ROAD NUMBER</u>
EMD GP10, 1750 H.P.	8028	408

EXHIBIT C

LOCOMOTIVE TYPE

TC&W LOCOMOTIVE
ROAD NUMBER

EMD GP10, 1750 H.P.

401

EMD GP10, 1750 H.P.

402

EXHIBIT D

DAMAGE BY TCW. Due to the extreme conditions these locomotive shall be working in, TCW shall be liable and shall be solely responsible for any expenses and repairs required by reason of any of the following:

1. Any frame damage to the locomotive caused by the plowing of snow.
2. Any main generator damage caused by snow entering the main generator compartment as a result of a defect that has not been reported to Lessor.
3. Any traction motor damage resulting from improper operation.
4. Any freeze damage or frozen pipes resulting from operator neglect due to improper drainage provided adequate valves are available.

Any labor and material cost resulting from the above will be payable from TCW to National and will be due within thirty (30) days of billing.

TC&W 1/35

