

# OSTER

## Researching Services

12897 Colonial Dr. • Mt. Airy, Md. 21771  
301-253-6040

REGISTRATION # 20412  
DEC 23 1996 - 9 50 AM

December 23, 1996

Mr. Vernon Williams  
Secretary  
Surface Transportation Board  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recording with the Surface Transportation Board is a Master Lease Agreement dated 12/18/96 between the following parties:

Lessor: Norwest Equipment Finance, Inc.  
733 Marquette Avenue  
Minnesota, MN 55479

Lessee: Dakota, Minnesota & Eastern Railroad  
Corporation  
337 22nd Avenue South  
P.O. Box 178  
Brookings, SD 57006

The equipment included in this transaction is as follows:

Equipment: 9, EMD SD40-2 3000 HP Locomotives  
DME 6367; 6369; 6359-6364; 6366

Please record this agreement as a primary document. The filing fee of \$22 is enclosed.

Thank you for your assistance.

Sincerely,

*Mary Ann Oster*

Mary Ann Oster  
Research Consultant

Enclosures

*Counter parts - Mary Ann Oster*



Norwest Equipment Finance, Inc  
 Investors Building, Suite 300  
 733 Marquette Avenue  
 Minneapolis, Minnesota 55479-2048

# Master Lease

Name and Address of Lessee

Master Lease No 20647

Dakota, Minnesota & Eastern Railroad Corporation  
 337 22nd Avenue South  
 P.O. Box 178  
 Brookings, SD 57006

20412  
 DEC 6 1996 4:50 PM

## Master Lease Provisions

- LEASE** Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the personal property described in a Supplement or Supplements to this Master Lease from time to time signed by Lessor and Lessee upon the terms and conditions set forth herein and in the related Supplement (such property together with all replacements, repairs, and additions incorporated therein or affixed thereto being referred to herein as the "Equipment") The lease of the items described in a particular Supplement shall be considered a separate lease pursuant to the terms of the Master Lease and the Supplement the same as if a single lease agreement containing such terms had been executed covering such items
- TERM** The term of this lease with respect to each item of Equipment shall begin on the date it is accepted by Lessee and shall continue for the number of consecutive months from the rent commencement date shown in the related Supplement (the "initial term") unless earlier terminated as provided herein or unless extended automatically as provided below in this paragraph The rent commencement date is the 15th day of the month in which all of the items of Equipment described in the related Supplement have been delivered and accepted by Lessee if such delivery and acceptance is completed on or before the 15th of such month, and the rent commencement date is the last day of such month if such delivery and acceptance is completed during the balance of such month In the event Lessee executes the related Supplement prior to delivery and acceptance of all items of Equipment described therein, Lessee agrees that the rent commencement date may be left blank when Lessee executes the related Supplement and hereby authorizes Lessor to insert the rent commencement date based upon the date appearing on the delivery and acceptance certificate signed by Lessee with respect to the last item of Equipment to be delivered

**AUTOMATIC EXTENSION** Lessee or Lessor may terminate this lease at the expiration of the initial term by giving the other at least 90 days prior written notice of termination If neither Lessee nor Lessor gives such notice, then the term of this lease shall be extended automatically on the same rental and other terms set forth herein (except that in any event rent during any extended term shall be payable in the amounts and at the times provided in paragraph 3) for successive periods of one month until terminated by either Lessee or Lessor giving the other at least 90 days prior written notice of termination

- RENT** Lessee shall pay as basic rent for the initial term of this lease the amount shown in the related Supplement as Total Basic Rent The Total Basic Rent shall be payable in installments each in the amount of the basic rental payment set forth in the related Supplement plus sales and use tax thereon Lessee shall pay advance installments and any security deposit, each as shown in the related Supplement, on the date it is executed by Lessee Subsequent installments shall be payable on the first day of each rental payment period shown in the related Supplement beginning after the first rental payment period, provided, however, that Lessor and Lessee may agree to any other payment schedule, including irregular payments or balloon payments, in which event they shall be set forth in the space provided in the Supplement for additional provisions If the actual cost of the Equipment is more or less than the Total Cost as shown in the Supplement, the amount of each installment of rent will be adjusted up or down to provide the same yield to Lessor as would have been obtained if the actual cost had been the same as the Total Cost Adjustments of 10% or less may be made by written notice from Lessor to Lessee Adjustments of more than 10% shall be made by execution of a new Supplement reflecting the change in Total Cost and rent but otherwise being the same as the original Supplement

During any extended term of this lease, basic rent shall be payable monthly in the advance on the first day of each month during such extended term in the amount equal to the basic rental payment set forth in the related Supplement if rent is payable monthly during the initial term or in an amount equal to the monthly equivalent of the basic rental payment set forth in the related Supplement if rent is payable other than monthly during the initial term In addition, Lessee shall pay any applicable sales and use tax on rent payable during any extended term

In addition to basic rent, which is payable only from the rent commencement date as provided above, Lessee agrees to pay interim rent with respect to each separate item of Equipment covered by a particular Supplement from the date it is delivered and accepted to the rent commencement date at a daily rate equal to the percentage of Lessor's cost of such item specified in such Supplement Interim rent accruing each calendar month shall be payable by the 10th day of the following month and in any event on the rent commencement date Lessee agrees that if all of the items of Equipment covered by such Supplement have not been delivered and accepted thereunder before the date specified as the Cutoff Date in such Supplement, Lessee shall purchase from Lessor the items of Equipment then subject to the lease within five days after Lessor's request to do so for a price equal to Lessor's cost of such items plus all accrued but unpaid interim rent thereon Lessee shall also pay any applicable sales and use tax on such sale

- SECURITY DEPOSIT** Lessor may apply any security deposit toward any obligation of Lessee under this lease, and shall return any unapplied balance to Lessee without interest upon satisfaction of Lessee's obligations hereunder
- WARRANTIES** Lessee agrees that it has selected each item of Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor ~~LESSOR MAKES NO WARRANTY WITH RESPECT TO THE EQUIPMENT, EXPRESS OR IMPLIED, AND LESSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE EQUIPMENT~~ Lessee agrees to make the rental and other payments required hereunder without regard to the condition of the Equipment and to look only to persons other than Lessor such as the manufacturer, vendor or carrier thereof should any item of Equipment for any reason be defective So long as no Event of Default has occurred and is continuing, Lessor agrees, to the extent they are assignable, to assign to Lessee, without any recourse to Lessor, any warranty received by Lessor
- TITLE** Title to the Equipment shall at all times remain in Lessor, and Lessee at its expense shall protect and defend the title of Lessor and keep it free of all claims and liens other than the rights of Lessee hereunder and claims and liens created by or arising through Lessor The Equipment shall remain personal property regardless of its attachment to realty, and Lessee agrees to take such action at its expense as may be necessary to prevent any third party from acquiring any interest in the Equipment as a result of its attachment to realty
- LAWS AND TAXES** Lessee shall comply with all laws and regulations relating to the Equipment and its use and shall promptly pay when due all sales, use, property, excise and other taxes and all license and registration fees now or hereafter imposed by any governmental body or agency upon the Equipment or its use or the rentals hereunder Upon request by Lessor, Lessee shall prepare and file all tax returns relating to taxes for which Lessee is responsible hereunder which Lessee is permitted to file under the laws of the applicable taxing jurisdiction
- INDEMNITY** Lessee hereby indemnifies Lessor against and agrees to save Lessor harmless from any and all liability and expense arising out of the ordering, ownership, use, condition, or operation of each item of Equipment during the term of this lease, including liability for death or injury to persons, damage to property, strict liability under the laws or judicial decisions of any state or the United States, and legal expenses in defending any claim brought to enforce any such liability or expense
- ASSIGNMENT** WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE, OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE EQUIPMENT, or remove the Equipment from its location referred to above Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Equipment without notice to or the consent of Lessee Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor
- INSPECTION** Lessor may inspect the Equipment at any time and from time to time during regular business hours

**THIS AGREEMENT CONTAINS ADDITIONAL PROVISIONS SET FORTH ON THE REVERSE SIDE HEREOF, ALL OF WHICH ARE MADE A PART HEREOF.**

Dated as of December 18, 1996

Lessor: NORWEST EQUIPMENT FINANCE, INC

By Brian Danielson  
 Its VP

Dakota, Minnesota & Eastern Railroad Corporation  
 LESSEE:

By X [Signature]

Its X Kurt V. Feaster, Chief Financial Officer  
 Treasurer & Ass't Secretary

- 11 **REPAIRS** Lessee will use the Equipment with due care and for the purpose for which it is intended. Lessee will maintain the Equipment in good repair, condition and working order and will furnish all parts and services required therefor, all at its expense, ordinary wear and tear excepted. Lessee shall, at its expense, make all modifications and improvements to the Equipment required by law, and shall not make other modifications or improvements to the Equipment without the prior written consent of Lessor. All parts, modifications and improvements to the Equipment shall, when installed or made, immediately become the property of Lessor and part of the Equipment for all purposes.
- 12 **LOSS OR DAMAGE** In the event any item of Equipment shall become lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of any item of Equipment, Lessee shall promptly pay Lessor the sum of (a) the amount of all rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the amount of all unpaid rent with respect to such item for the balance of the term of this lease not yet due at the time of such payment discounted from the respective dates installment payments would be due at the rate implicit in the schedule of rental payments when applied to the cost of such item plus (c) twice the amount of any investment tax credit recaptured by Lessor on account of early disposition of such item plus (d) 10% of the cost of such item as shown in the related Supplement. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer. Any insurance or condemnation proceeds received shall be credited to Lessee's obligation under this paragraph and Lessor shall be entitled to any surplus.
- 13 **INSURANCE** Lessee shall obtain and maintain on or with respect to the Equipment at its own expense (a) liability insurance insuring against liability for bodily injury and property damage with a minimum limit of \$500,000 combined single limit and (b) physical damage insurance insuring against loss or damage to the Equipment in an amount not less than the full replacement value of the Equipment. Lessee shall furnish Lessor with a certificate of insurance evidencing the issuance of a policy or policies to Lessee in at least the minimum amounts required herein naming Lessor as an additional insured thereunder for the liability coverage and as loss payee for the property damage coverage. Each such policy shall be in such form and with such insurers as may be satisfactory to Lessor, and shall contain a clause requiring the insurer to give to Lessor at least 10 days prior written notice of any alteration in the terms of such policy or the cancellation thereof, and a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirements hereof.
- 14 **RETURN OF THE EQUIPMENT** Upon the expiration or earlier termination of this lease, Lessee will immediately deliver the Equipment to Lessor in the same condition as when delivered to Lessee, ordinary wear and tear excepted, at such location within the continental United States as Lessor shall designate. Lessee shall pay all transportation and other expenses relating to such delivery.
- 15 **ADDITIONAL ACTION** Lessee will promptly execute and deliver to Lessor such further documents and take such further action as Lessor may request in order to carry out more effectively the intent and purpose of this lease, including the execution and delivery of appropriate financing statements to protect fully Lessor's interest hereunder in accordance with the Uniform Commercial Code or other applicable law. Lessee will furnish, from time to time on request, a copy of Lessee's latest annual balance sheet and income statement.
- 16 **LATE CHARGES** If any installment of interim rent or basic rent is not paid when due, Lessor may impose a late charge of up to 5% of the amount of the installment but in any event not more than permitted by applicable law. Payments thereafter received shall be applied first to delinquent installments and then to current installments.
- 17 **DEFAULT** Each of the following events shall constitute an "Event of Default" hereunder: (a) Lessee shall fail to pay when due any installment of interim rent or basic rent, (b) Lessee shall fail to observe or perform any other agreement to be observed or performed by Lessee hereunder and the continuance thereof for 10 calendar days following written notice thereof by Lessor to Lessee, (c) Lessee or any guarantor of this lease or any partner of Lessee if Lessee is a partnership shall cease doing business as a going concern or make an assignment for the benefit of creditors, (d) Lessee or any guarantor of this lease or any partner of Lessee if Lessee is a partnership shall voluntarily file, or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt, or similar relief under the federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver, or liquidator shall be appointed of it or of all or a substantial part of its assets, (e) any individual Lessee, guarantor of this lease, or partner of Lessee if Lessee is a partnership shall die, (f) any financial or credit information submitted by or on behalf of Lessee shall prove to have been false or materially misleading when made, (g) an event of default shall occur under any other obligation Lessee owes to Lessor, (h) any indebtedness Lessee may now or hereafter owe to Norwest Bank Minnesota, National Association or any affiliate thereof shall be accelerated following a default thereunder or, if any such indebtedness is payable on demand, payment thereof shall be demanded.
- 18 **REMEDIES** Lessor and Lessee agree that Lessor's damages suffered by reason of an Event of Default are uncertain and not capable of exact measurement at the time this lease is executed because the value of the Equipment at the expiration of this lease is uncertain, and therefore they agree that for purposes of this paragraph 18 "Lessor's Loss" as of any date shall be the sum of the following: (1) the amount of all rent and other amounts payable by Lessee hereunder due but unpaid as of such date plus (2) the amount of all unpaid rent for the balance of the term of this lease not yet due as of such date discounted from the respective dates installment payments would be due at the rate of 5% per annum plus (3) 10% of the cost of the Equipment subject to this lease as of such date.

Upon the occurrence of an Event of Default and at any time thereafter, Lessor may exercise any one or more of the remedies listed below as Lessor in its sole discretion may lawfully elect, provided, however, that upon the occurrence of an Event of Default specified in paragraph 17(d), an amount equal to Lessor's Loss as of the date of such occurrence shall automatically become and be immediately due and payable without notice or demand of any kind.

- (a) Lessor may, by written notice to Lessee, terminate this lease and declare an amount equal to Lessor's Loss as of the date of such notice to be immediately due and payable, and the same shall thereupon be and become immediately due and payable without further notice or demand, and all rights of Lessee to use the Equipment shall terminate but Lessee shall be and remain liable as provided in this paragraph 18. Lessee shall at its expense promptly deliver the Equipment to Lessor at a location or locations within the continental United States designated by Lessor. Lessor may also enter upon the premises where the Equipment is located and take immediate possession of and remove the same with or without instituting legal proceedings.
- (b) Lessor may proceed by appropriate court action to enforce performance by Lessee of the applicable covenants of this lease or to recover, for breach of this lease, Lessor's Loss as of the date Lessor's Loss is declared due and payable hereunder, provided, however, that upon recovery of Lessor's Loss from Lessee in any such action without having to repossess and dispose of the Equipment, Lessor shall transfer the Equipment to Lessee at its then location upon payment of any additional amount due under clauses (d), (e) and (f) below.
- (c) In the event Lessor repossesses the Equipment, Lessor shall either retain the Equipment in full satisfaction of Lessee's obligation hereunder or sell or lease each item of Equipment in such manner and upon such terms as Lessor may in its sole discretion determine. The proceeds of such sale or lease shall be applied to reimburse Lessor for Lessor's Loss and any additional amount due under clauses (d), (e) and (f) below. Lessor shall be entitled to any surplus and Lessee shall remain liable for any deficiency. For purposes of this subparagraph, the proceeds of any lease of all or any part of the Equipment by Lessor shall be the amount reasonably assigned by Lessor as the cost of such Equipment in determining the rent under such lease.
- (d) Lessor may recover twice the amount of any investment tax credit taken with respect to the Equipment recaptured by Lessor on account of early disposition of the Equipment.
- (e) Lessor may recover interest on the unpaid balance of Lessor's Loss from the date it becomes payable until fully paid at the rate of the lesser of 8% per annum or the highest rate permitted by law.
- (f) Lessor may exercise any other right or remedy available to it by law or by agreement, and may in any event recover legal fees and other expenses incurred by reason of an Event of Default or the exercise of any remedy hereunder, including expenses of repossession, repair, storage, transportation, and disposition of the Equipment.

No remedy given in this paragraph is intended to be exclusive, and each shall be cumulative but only to the extent necessary to permit Lessor to recover amounts for which Lessee is liable hereunder. No express or implied waiver by Lessor of any breach of Lessee's obligations hereunder shall constitute a waiver of any other breach of Lessee's obligations hereunder.

- 19 **NOTICES** Any written notice hereunder to Lessee or Lessor shall be deemed to have been given when delivered personally or deposited in the United States mails, postage prepaid, addressed to recipient at its address set forth above or at such other address as may be last known to the sender.
- 20 **NET LEASE AND UNCONDITIONAL OBLIGATION** This lease is a completely net lease and Lessee's obligation to pay rent and amounts payable by Lessee under paragraphs 12 and 18 is unconditional and not subject to any abatement, reduction, setoff or defense or any kind.
- 21 **NON-CANCELLABLE LEASE** This lease cannot be cancelled or terminated, except as expressly provided herein.
- 22 **SURVIVAL OF INDEMNITIES** Lessee's obligations under paragraphs 7, 8, and 18 shall survive termination of this lease.
- 23 **DETERMINING UNPAID EXTENDED RENT** If a casualty under paragraph 12 or a declaration that Lessor's Loss is due under paragraph 18 occurs after 90 days before the expiration of the initial term at a time when no notice of termination has been given so that under paragraph 2 the initial term of the lease is extended, then the expiration date of this lease shall be the same as if notice of termination had been given under paragraph 2 on the date of such casualty or declaration of Lessor's Loss, as the case may be, and the unpaid rent for the balance of the term of this lease for purposes of paragraphs 12 and 18 shall be calculated accordingly.
- 24 **MISCELLANEOUS** This Master Lease and related Supplement(s) constitute the entire agreement between Lessor and Lessee. Any provision of this lease which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this lease, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. This lease shall in all respects be governed by, and construed in accordance with, the substantive laws of the State of Minnesota.



Norwest Equipment Finance, Inc.  
 Investors Bldg., Suite 300  
 733 Marquette Avenue  
 Minneapolis, MN 55479-2048

# Supplement to Master Lease

Name and address of Lessee

Dakota, Minnesota & Eastern Railroad Corporation  
 337 22nd Avenue South  
 P.O. Box 178  
 Brookings, SD 57006

Supplement Number

20647-100

Master Lease No. 20647-

Date of Master Lease:

December 18, 1996

This is a Supplement to the Master Lease identified above between Lessor and Lessee (the "Master Lease"). Upon the execution and delivery by Lessor and Lessee of this Supplement, Lessor hereby agrees to Lease to Lessee, and Lessee hereby agrees to lease from Lessor, the equipment described below upon the terms and conditions of this Supplement and the Master Lease.

### EQUIPMENT DESCRIPTION

Quantity	Serial number	Type and model number
		Two (2) EMD Model SD40-2 3,000 Horsepower Diesel Electric Locomotives, Equipment Numbers: DME6367, and DME6369

Location of equipment (if different from Lessee's address)

Rent commencement date	SCHEDULE OF PAYMENTS		
December 31, 1996	Basic rental payment	Number of installments	Advance payments
Term in months from rent commencement date	\$10,972.09 <small>plus applicable sales or use tax</small>	84	<del>XXXX</del> payments due on signing this Lease
Rental payment period (check one)	TOTAL COST \$ 800,000.00		
<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Semi-Annually	TOTAL BASIC RENT \$ 921,655.15		
<input type="checkbox"/> Quarterly <input type="checkbox"/> Annually	INTERIM RENT	Daily rate % of Lessor's cost	Cutoff date
<input type="checkbox"/> Other - see additional provisions		.046 %	March 6, 1997
	SECURITY DEPOSIT	\$ N/A	

Additional provisions

Dakota, Minnesota & Eastern Railroad Corporation

Lessee

NORWEST EQUIPMENT FINANCE, INC.

By Brian Samelso

Its VP

By Kurt V. Feaster

Its Kurt V. Feaster, Chief Financial Officer  
Treasurer & Ass't Secretary

Dated as of December 18, 1996



Norwest Equipment Finance, Inc.  
 Investors Bldg., Suite 300  
 733 Marquette Avenue  
 Minneapolis, MN 55479-2048

# Supplement to Master Lease

Name and address of Lessee

Dakota, Minnesota & Eastern Railroad Corporation  
 337 22nd Avenue South  
 P.O. Box 178  
 Brookings, SD 57006

Supplement Number

20647-101

Master Lease No. 20647

Date of Master Lease.

December 18, 1996

This is a Supplement to the Master Lease identified above between Lessor and Lessee (the "Master Lease"). Upon the execution and delivery by Lessor and Lessee of this Supplement, Lessor hereby agrees to Lease to Lessee, and Lessee hereby agrees to lease from Lessor, the equipment described below upon the terms and conditions of this Supplement and the Master Lease.

### EQUIPMENT DESCRIPTION

Quantity	Serial number	Type and model number
		Seven (7) EMD Model SD40-2 3,000 Horsepower Diesel Electric Locomotives, Equipment Numbers: DME6359, DME6360, DME6361, DME6362, DME6363, DME6364, and DME6366

Location of equipment (if different from Lessee's address)

Rent commencement date

December 31, 1996

Term in months from rent commencement date

Eighty-Four (84)

Rental payment period (check one)

- Monthly       Semi-Annually  
 Quarterly       Annually  
 Other - see additional provisions

### SCHEDULE OF PAYMENTS

Basic rental payment	Number of installments	Advance payments
\$38,402.30 <i>plus applicable sales or use tax</i>	84	First <del>and last</del> payments due on signing this Lease
<b>TOTAL COST</b>	<b>\$ 2,800,000.00</b>	
<b>TOTAL BASIC RENT</b>	<b>\$ 3,225,793.20</b>	
<b>INTERIM RENT</b>	Daily rate % of Lessor's cost .046 %	Cutoff date March 6, 1997
<b>SECURITY DEPOSIT</b>	<b>\$ N/A</b>	

Additional provisions

Lessee Dakota, Minnesota & Eastern Railroad Corporation

NORWEST EQUIPMENT FINANCE, INC.

By Brian Danielson

Its VP

By X [Signature]  
 Its X Kurt V. Feaster, Chief Financial Officer  
 Treasurer & Ass't Secretary

Dated as of December 18, 1996

**Corporate Form of Acknowledgment**

State of SOUTH DAKOTA

County of BROOKINGS ss:

On this 18<sup>th</sup> day of December, 1996 before me personally appeared Kurt V. Fender to me personally known, who being by me duly sworn, says that she / he is the Chief Financial Officer of Dakota Minnesota and Eastern Railroad that the foregoing instruments

Master Lease dated December 18, 1996  
Supplements to Master Lease numbers 20647-100 and 20647-101 dated December 18, 1996

were signed by her / him on behalf of said corporation by authority of its Board of Directors, and she / he acknowledged that the execution of the foregoing Instruments was the free act and deed of said corporation.

[Notarial Seal]



Keresa M. Torley  
signature of Notary Public

My commission expires 6-6-99