

APR 19 '11 -11 00 AM

SURFACE TRANSPORTATION BOARD

April 14, 2011

Chief, Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Attn: Equipment Recordation

To Whom It May Concern:

I have enclosed for recordation, pursuant to the provisions of 49 U.S.C. 11301, an original and one counterpart of the locomotive lease agreement, as well as a memorandum of lease agreement and a schedule, all of which is dated February 15, 2011, a primary document under the Board's recordation regulations.

The name and addresses of the parties to the enclosed document are as follows:

Lessor: National Railway Equipment Co.
14400 South Robey Street
Dixmoor, IL 60426

Lessee: SMS Rail Service, Inc.
P.O. Box 711
Bridgeport, New Jersey 08014

A description of the equipment covered by the Lease Agreement is as follows:

One B23-7, General Electric Four Axle Locomotive, bearing road # NREX 4211
(per addendum attached to original lease)

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

"Locomotive Lease Agreement" & "Addendum to Locomotive Lease Agreement"



Also enclosed is a check in the amount of \$41.00 payable to the Surface Transportation Board to cover the required recordation fee for the attached agreement.

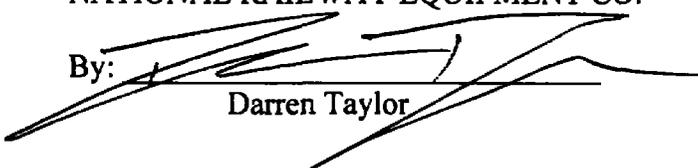
Please date-stamp and return an original copy after recordation to:

Darren Taylor
National Railway Equipment Co.
14400 South Robey Street
P.O. Box 2270
Dixmoor, IL 60426

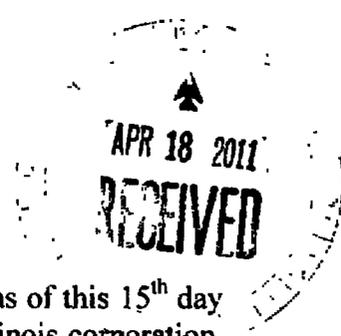
Sincerely,

NATIONAL RAILWAY EQUIPMENT CO.

By:


Darren Taylor

APR 19 '11 -11 00 AM



SUBSTANCE TRANSPORTATION BOARD LOCOMOTIVE LEASE AGREEMENT

THIS LOCOMOTIVE LEASE AGREEMENT ("Lease"). entered into as of this 15th day of February 2011, between the National Railway Equipment Co., an Illinois corporation. ("LESSOR"). and SMS Rail Service. Inc., a Pennsylvania corporation. ("LESSEE").

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. LEASE AND LEASED PROPERTY

Lessee hereby leases from Lessor. the locomotive(s), ("Locomotives"), together with the parts, accessories. attachments and devices, if any. now or hereafter affixed thereto, as described in Schedule "A" attached to and made part hereof.

2. TERM

The term of this Lease for each locomotive shall be the fixed term set forth in Schedule "A", commencing on the date such locomotive is delivered to Lessee ("Commencement Date"). Upon termination of the lease, Lessee shall affect prompt delivery of the locomotive(s) to Lessor at Silvis, Illinois.

3. RENTAL

A. The rental payable shall be the sum identified in Schedule "A" payable in advance monthly installments, with one month of advance rent payable upon purchase order receipt date and. in addition. two months of rent payable upon purchase order receipt date to be held as a security deposit. Lessee shall operate such locomotive(s) in service only on its railroad. If the Commencement Date for any locomotive does not fall on the first day of the month, the first rental payment shall be prorated accordingly.

B. Payments past due for more than five (5) days shall bear interest at the rate of twelve percent (12%) per annum

C. All rentals shall be paid to Lessor at:

National Railway Equipment Co.
1473 Paysphere Circle
Department 1473
Chicago. IL 60674

or at such other address as Lessor may direct in writing.

4. TAXES

Lessee shall pay all use, excise, ad valorem, stamp, documentary and similar taxes on or relating to this lease of the locomotive(s), or the use, registration, rental, maintenance, possession or operation thereof, and shall file any returns required therefore, and shall hold Lessor harmless against any liability and expense (including attorney fees and costs) on account of Lessee's failure to do the same.

5. OWNERSHIP AND LESSOR'S INSPECTION

A. The locomotive (s) shall at all times remain the sole and exclusive property of the Lessor.

B. Upon reasonable notice to Lessee, Lessor or its agents shall have free access to the locomotive(s) at reasonable times for the purpose of inspections.

C. No accessions, additions, alterations or improvements to the locomotive(s) of any nature shall be made without Lessor's consent, but if any are made, they immediately shall become part of the locomotive(s) and shall become Lessor's property.

D. Lessor shall keep the locomotive(s), at all times, free and clear from all claims, liens and encumbrances.

F. This Lease is intended to be a true lease of the locomotive(s) and is not and in no way shall be construed as creating a sale of the locomotive(s) to Lessee.

6. DELIVERY RETURN

Lessee shall accept delivery of the locomotive(s) at the Vermont Railway ("Delivery Location"). Except as set forth in the Lease, upon expiration or other termination of this Lease, Lessee shall return such locomotive(s) to Lessor at Silvis, Illinois in good order and condition, reasonable wear and tear excepted. Lessee shall bear freight return costs. Lessee shall pay or reimburse Lessor for any reasonable and ordinary expenses incurred by Lessor in returning the locomotive(s) to good order and condition, in delivering the locomotive(s) to Lessor or effecting return of the locomotive(s) from Lessee as provided herein. All obligations of Lessee under this Lease shall continue with respect to any locomotive not returned by the expiration or earlier termination as permitted herein until such locomotive is returned to the Delivery Location in accordance herewith including, without limitation, the obligation to pay rent, which shall increase to \$150.00 (one hundred and fifty) dollars per day for the first 45 days the locomotive is late and to 150% of such rate thereafter. Shipment cost and risk of loss during shipment shall be Lessee's responsibility.

7. WARRANTY DISCLAIMER

Lessee hereby acknowledges that Lessee has had or will have the opportunity to inspect the locomotive prior to accepting delivery of same, and that acceptance of delivery of the locomotive by Lessee constitutes acknowledgement that they have been received in good condition and repair.

LESSOR MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE and Lessor hereby disclaims all such representation and warranties. LESSOR SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES.

8. USE AND MAINTENANCE

Lessee agrees that:

A. Lessee shall be responsible and pay for all registrations, certificates, and permits, and all other similar requirements of governmental authorities, whether required to be obtained in the name of the Lessor or Lessee.

B. The locomotive(s) shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee.

C. Lessee shall comply with all federal, state, municipal and local laws, ordinances, and rules, and regulations relating to the lease, possession, insuring, use and operation of the locomotive(s).

D. Lessee shall be solely responsible for the payment of any and all fines, penalties or forfeitures (including without limitation the confiscation of the locomotive(s) levied upon or arising out of the use, operation, maintenance or insuring of the locomotive(s) in violation of any law, ordinance, rule or regulation of any governmental authority.

E. Lessee shall pay all costs, expenses and charges incurred in connection with the maintenance, lease, use and operation of the locomotive(s). The locomotive shall have a 90 day warranty on the engine crank shaft and generator (parts only ex-works Lessor's facility(s) beginning from the date of this agreement as provided by the Lessor.

F. Lessee shall maintain the locomotive(s) in good mechanical condition and running order and in compliance with OEM specifications and safety rules and regulations now or hereafter promulgated by applicable governmental authorities.

G Lessee shall keep and maintain any and all books and records and make any filings required by any governmental authority with respect to the possession, lease, use or operation of the locomotive(s).

9. INSURANCE / INDEMNIFICATION

A. Railroad liability insurance providing coverage in an amount not less than five million (\$5,000,000) dollars combined single limit per occurrence and ten million (\$10,000,000.00) dollars combined in the aggregate shall be provided by Lessee at Lessee's sole expense throughout the term of this Lease as to each locomotive. The insurance policy or policies providing the foregoing coverage shall:

- i. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotive(s) will be used and operated.
- ii. name Lessor and Lessee as insured parties.
- iii. protect the interests of Lessor and Lessee, including Lessee's authorized operators, with respect to liability for injuries to or the death of third party persons and damage to or loss of use of property of third persons resulting from the ownership, maintenance, use or operation of the locomotive(s).
- iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor and show Lessor as additional insured.
- v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty-(30) days prior thereto.

B. Lessee, at Lessee's sole expense, shall provide collision and comprehensive physical damage insurance on each locomotive. The insurance policy or policies providing the foregoing coverages shall:

- i. is written in standard form by an insurance company acceptable to Lessor.
- ii. provide coverage in an amount not less than the replacement value of the locomotive(s).
- iii. provide for losses to be payable to Lessor and Lessee as their respective interests may appear.

C. Lessee shall furnish Lessor with a certificate(s) of insurance or other evidence

of said insurance coverage.

D. Notwithstanding that Lessee shall provide certain insurance hereunder and irrespective of any responsibility for negligence, Lessee does hereby agree to defend, indemnify, protect and hold harmless Lessor and any assignees or successors of Lessor, and their respective employees and agents, from and against any and all losses, liabilities (including without limitation strict liability imposed by law), damages, injuries, claims, demands and expenses (including legal expenses) of whatsoever kind and nature, resulting from or arising out of the use, condition, operation or ownership of any locomotive. This covenant of indemnity shall continue in full force and effect notwithstanding the termination of this lease or the termination of the lease of any locomotive.

E. Lessee assumes and agrees to indemnify, protect and hold free and harmless Lessor, any assignee or successor of Lessor, and their respective employees or agents, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive. In the event of damage to a Locomotive, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of Locomotive is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of a Locomotive, Lessee shall (at Lessor's option) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of, (a) any installments of 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 Replacement Value of such Locomotive determined in accordance with Schedule A. 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.

F. If Lessee shall fail to obtain or maintain the insurance coverage required in this lease, or shall fail to furnish Lessor with evidence thereof, Lessor at its option, may obtain such required insurance coverage on behalf of Lessee and Lessee's expense.

10. ASSIGNMENT. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVES. Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives 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, it

being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

11. RENEWAL OPTION

So long as no Event of Default shall have occurred and be continuing, the Lessee may upon 30 days notice, elect the option to renew the locomotive lease at the end of the initial lease term. The renewal option is listed on Schedule A. The Lessee shall elect this option through a written notice prior to end of initial term.

12. FINANCIAL DATA

Upon the written request of Lessor, Lessee shall furnish to Lessor, when reasonably available, copies of Lessee's financial statements and such other reports and statements concerning this Lease and the locomotive(s) as Lessor reasonably may request.

13. DEFAULT

A. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default"):

- i. Default in the payment when due of any installment of rental hereunder or of any other obligation for the payment of money now or hereafter owed by Lessee to Lessor.
- ii. Default in the timely performance of any other liability, obligation, covenant or agreement hereunder of Lessee.

14. REMEDIES UPON DEFAULT

A. Upon the occurrence of any Event of Default or at any time hereafter, Lessor, in its sole discretion, may take anyone or more of the following actions with respect to the locomotive(s):

- i. Declare all unpaid lease payments to be immediately due and payable.
- ii. Terminate the lease of any or all locomotives by written notice to Lessee.
- iii. Whether or not the lease is terminated, take possession of any or all locomotive(s) wherever found, and for this purpose Lessor may at Lessor's option enter upon the premises where such locomotive(s) are

located and take immediate possession of and remove the same. all without liability to Lessee for damage to property or otherwise.

iii. Termination of this lease does not terminate, limit, or restrict the rights and remedies of Lessor. In addition to Lessor's right under common law to redress for any breach or violation, Lessee shall indemnify and defend Lessor against all losses, damages, cost and expenses (including, without limitation, interest, penalties, court costs, and attorney's fees and expenses) asserted against, imposed upon, or incurred by Lessor, directly or indirectly, arising out of or resulting from any breach or violation.

iv. Require that Lessee shall, upon demand by Lessor and at Lessee's expense, promptly make available to Lessor at Lessee's expense, any or all locomotives at a place designated by Lessor which is reasonably convenient to both parties.

v. Use, hold, sell, lease or otherwise dispose of any or all such locomotive(s) as Lessor in its sole discretion may decide, without affecting the obligations of Lessee as provided in this Lease.

vi. Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof or to rescind the lease hereunder of any or all locomotive(s).

vii. Exercise any and all rights and remedies available to Lessor under any applicable law. In addition, Lessee shall be charged with and shall pay to Lessor all damages resulting from the ordinary course of events from the Lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of each Event of Default by Lessee.

viii. In addition to other remedies available, lessor may also recover from lessee the amount which will fully compensate the lessor for any loss or damage to the Lessor's residual interest in the goods caused by the default of the lessee

B. None of the rights and remedies under or referred to is intended to be exclusive, but each such right or remedy shall as to each locomotive be cumulative and may be availed of separately or concurrently with or in addition to any other right or remedy provided or referred to herein or otherwise available to Lessor at law or in equity. Any repossession or subsequent sale or lease by Lessor of any locomotive(s) shall not bar an action against lessee for a deficiency. To the extent permitted by applicable law, **LESSEE WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT**

**TO THE REPOSSESSION OF LOCOMOTIVE BY LESSOR AS A
RESULT OF ANY EVENT OF DEFAULT HEREUNDER BY LESSEE.**

C. Without limitation of any rights of Lessor otherwise existing or otherwise available to Lessor, it is expressly covenanted and agreed by the parties hereto that in the event of any assignment by operation of law of this Lease or of any lease hereunder, or of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease or any one or more leases hereunder.

15. RECORDATION OF LESSOR'S INTEREST

Lessee agrees to execute all recording documents requested by Lessor to show Lessor's interest in the locomotive(s). Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the locomotive(s) without Lessee's signature.

16. MISCELLANEOUS

A. This Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois. Illinois shall be choice of forum for all litigation.

B. Neither this Lease nor any schedule shall be amended, and no provision hereof or of any Schedule shall be waived or varied unless by writing signed by the parties.

C. No delay or omission by Lessor in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Lessor of any Event of Default by Lessee shall not be construed as a waiver of any future occasion.

D. In case any provision (or portions thereof) in this lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions (or portions thereof) hereby shall not in any way be affected or impaired thereby.

E. This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors.

F. All notices permitted or required to be given pursuant to this Lease shall be mailed by Certified or Registered Mail, Return Receipt Requested to the parties at the following addresses or at such other addresses as each party may notify each other.

If to Lessor: National Railway Equipment Co.
200 Aviation Drive
Mt. Vernon, Illinois 62864
Attn: Mr. James M. Wurtz, Jr.
Vice President

If to Lessee: SMS Rail Service, Inc.
P.O. Box 711
Bridgeport, New Jersey 08014
Attn: Mr. Brian Murray
General Manager

WITNESS WHEREOF, the parties have executed this Lease the day and year first mentioned above.

LESSOR:

LESSEE

NATIONAL RAILWAY EQUIPMENT CO.

SMS RAIL SERVICE, INC.

By: _____

James M. Wurtz, Jr.

By: _____

[Signature]

Name: *JAMES M. WURTZ JR*

Name: *Gregory L. Suter*

Title: *VP MARKETING & SALES*

Title: *Pinco*

ATTEST:

ATTEST:

By: _____

By: _____

Title:

Title:

(Corporate Seal)

(Corporate Seal)

SCHEDULE "A"

Attached to and incorporated into the Lease dated the 15th day of February 2011, by and between the National Railway Equipment Co. ("LESSOR") and SMS Rail Service, Inc., ("LESSEE").

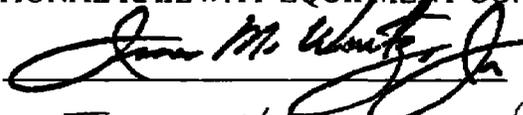
Type and General Description of Locomotive Unit(s), Marks and Numbers:

<u>Unit No:</u>	<u>Type:</u>	<u>General Description:</u>
NREX 4212	B23-7	General Electric Four Axle Locomotive

COMMENCEMENT DATE: February 15, 2011

RENEWAL OPTION: Lessee may renew this lease upon 30 days advance written notice for a period of five (5) years with a purchase buyout option of NREX 4212 at the termination of the lease renewal for \$40,000.00.

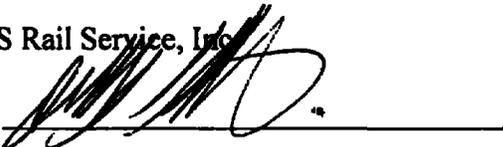
LESSOR: NATIONAL RAILWAY EQUIPMENT CO.

By: 

Name: JAMES M. WURTZ JR.

Title: VP MARKETING & SALES

LESSEE: SMS Rail Service, Inc.

By: 

Name: February L. Smith

Title: Pres.

MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT

THIS MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT has an effective date of February 15, 2011, and is by and between National Railway Equipment Co. ("Lessor"), and SMS Rail Service, Inc. ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor the Locomotive model(s) described herein. This MEMORANDUM OF LEASE AGREEMENT evidences a lease.

Each locomotive is fully-described in a certain Lease Agreement with an effective date of February 15, 2011, (the "Lease"), between Lessor and Lessee. A schedule of the equipment is attached hereto.

2. All terms of the LOCOMOTIVE LEASE AGREEMENT are hereby referred to and incorporated in this memorandum by reference.

The MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT may be executed counterpart constituting an original but all together only one MEMORANDUM OF LEASE AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed or caused this MEMORANDUM OF LEASE AGREEMENT to be executed as of the date first above written.

LESSEE:

SMS RAIL SERVICE, INC.

By: 

Name: Jeffrey L. Sutch

Title: President

LESSOR:

NATIONAL RAILWAY EQUIPMENT CO.

By: 

Name: JAMES M WURTZ JR

Title: VP MARKETING & SALES

STATE OF New Jersey)
) SS.
COUNTY OF Gloucester)

On this 11th day of Feb., 2011, before me appeared Jeffrey L. Sutch, the person who signed this instrument who acknowledged that (s) he is the Pres. of Sms Rail and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

Katherine A Rowand

Notary Public
Katherine A. Rowand
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 6, 2015

[Seal]

My Commission Expires:

April 6, 2015

STATE OF Illinois)
) SS.
COUNTY OF Cook)

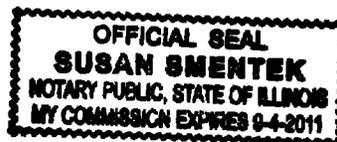
On this 23rd day of Feb, 2011, before me appeared James M. Wurtz, the person who signed this instrument who acknowledged that (s) he is an officer of National Railway Equipment Co. and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.

Susan Smentek

Notary Public

[Seal]

My Commission Expires:



SCHEDULE OF EQUIPMENT

Lessor: SMS Rail Service, Inc.

Lessee: National Railway Equipment Co.

Approved by:

(Lessee to initial each page)

Equipment Schedule No.: See Schedule "A"

<u>Unit No:</u>	<u>Type:</u>	<u>General Description:</u>
NREX 4212	B23-7	General Electric Four Axle Locomotive

ADDENDUM TO LOCOMOTIVE LEASE AGREEMENT

APR 18 2011

RECEIVED

THIS ADDENDUM is made and entered into by and between National Railway Equipment Co., an Illinois corporation. ("Lessor"), and SMS Rail Service, Inc., a Pennsylvania corporation, ("Lessee").

IT IS ACKNOWLEDGED that Lessor and Lessee entered into a Locomotive Lease Agreement dated the 15th day of February, 2011.

IT IS ALSO ACKNOWLEDGED that Lessor and Lessee now desire to amend and modify a portion of said Lease. specifically, amend **Schedule "A"** of the Lease as well as provide a different **Commencement Date**.

IT IS LASTLY ACKNOWLEDGED that Lessor and Lessee enter into this addendum for the purpose of accomplishing such amendment and modification and in that regard Lessor and Lessee specifically agree to the following:

- (1) That the B23-7 Locomotive, bearing unit number NREX 4212, is to be changed to a unit number bearing NREX 4211.
- (2) That the Commencement Date will be changed from the 15th day of February, 2011, to the 28th day of February, 2011.
- (3) That the changes before mentioned are to be recognized throughout the Lease in its entirety.

