BOOK 4268 PAGE 26 1825-9-56 Sheet 1

Prepared by A. P. Fish, L & N RR Co. 908 W. Broadway, Louisville, Ky.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY MS 2 176

THIS CONTRACT, made and entered into this 6th day of September, 19 68 by and between the LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation, hereinafter called the "Railroad," and PACIFIC CAR AND FOUNDRY COMPANY, a Washington corporation of 1400 North 4th Street, Renton (Street address and City), in the County of King, State of Washington 98055, hereinafter called the "Industry."

WITNESSETH That:

The parties hereto hereby agree that the terms hereinafter set out shall apply to the construction and maintenance of, and to such operations as the Railroad may perform on, an extension to track No. 60 of about 2231.6 feet in total length, which, including switches and all other track material, is (is, are) hereinafter collectively termed "trackage," said trackage being located at or near Edenwold, in the County of Davidson, State of Tennessee, extending from Industrial Lead No. on the Nashville Division of said Railroad, on the south end thereof, 2388.9 feet from its point of switch located at Valuation Station 1906+81.4 233.6 feet east of Mile Post No. 176 from Louisville, Kentucky and running in a southerly direction, in accordance with the following sketch:

SEE PRINT OF CHIEF ENGINEER'S DRAWING NO. Y-439 DATED AUGUST 23, 1968, ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".

I hereby swear or affirm that the actual consideration or true value for this transfer, whichever is greater, is $100.00. Affiant Thomas P. Kavanaday, Jr.
Subscribed and sworn to before me this 12 day of Sept. 1968

Deputy Register A. Gentry

1. CONSTRUCTION. The Industry will construct, or have constructed, the entire trackage including all necessary grading and drainage at its sole cost and expense.

2. MAINTENANCE AND MAINTENANCE EXPENSE. The trackage shall be maintained and kept in safe condition to the satisfaction of the Railroad at the sole cost and expense of the Industry; that is to say, if, at any time the Railroad shall deem it necessary that any repairs or renewals be made to the trackage, the Railroad shall notify the Industry of the need of such repairs or renewals and the nature thereof. Upon the receipt of such notice, the Industry shall, within 15 days, have, or request in writing the Railroad to have, such repairs or renewals made. The Railroad will, at the written request of the Industry, with the Railroad's own forces, or those of an independent contractor, have the needed repairs made at the sole cost and expense of the Industry, which cost and expense the Industry agrees to pay according to accounts kept by the Railroad. The Railroad will be under no obligation to operate engines or cars over the trackage whenever the trackage is in unsafe operating condition in the opinion of the Railroad's operating officials.

3. ADVANCE PAYMENT OF ESTIMATED EXPENSES. The Industry further agrees that it will, within ten (10) days after demand therefor by the Railroad, pay to the Railroad, cash in advance, the estimated cost of the expenditures herein provided to be made by the Railroad subject to reimbursement by the Industry in Section 2, any excess of actual expenditures over the estimate to be paid by the Industry promptly on demand, and any excess of the estimate over actual expenditures to be promptly repaid to the Industry, without demand, or credited upon any existing debt due from the Industry to the Railroad.

4. OWNERSHIP OF TRACKAGE. The Industry shall own the trackage covered by this contract.

5. DAMAGE TO ABUTTING PROPERTY. The Industry further covenants and agrees with the Railroad that it will indemnify and hold harmless the Railroad from and against any and all claims of owners of abutting property who may claim damage to such property for or on account of the construction, maintenance or operation of said trackage.

6. KEEPING TRACKAGE CLEAR OF STRUCTURES AND OBSTRUCTIONS. The Industry agrees (a) as concerns permanent and temporary structures (including stored materials), to maintain on each side of every track of the trackage, between the ground line and a horizontal line twenty-two (22) feet above the top of rail, horizontal clearance of eight (8) feet, measured from and at right angles to the centerline of track; provided, however, that the horizontal clearance of eight (8) feet shall, at every point on every curve, be increased one and one half (1½) inches for every degree of curvature at such point; and (b) to exercise reasonable care to keep the clearance area, and the environs thereof which the Railroad's train-service employes may reasonably be expected to use in serving the Industry, free of obstruction that may endanger the safety of the Railroad's employes or interfere with the safe operation of engines or cars. Knowledge of or notice to the Railroad of a breach of either of the foregoing covenants and its continued operation of the trackage thereafter shall not constitute a waiver of either of them. The Industry agrees to indemnify and hold harmless the Railroad from and against any and all claims for loss of or damage to property or injury to person (including death) resulting from any failure of the industry to perform or abide by either of the foregoing covenants.

7. FIRES. It is understood that the movement of Railroad's locomotives involves some risk of fire and, except in case of the Railroad's negligence, the Industry assumes all responsibility for, and agrees to release and indemnify the Railroad from and against, any and all claims for loss of or damage to property of the Industry or property upon its premises arising from fire caused by locomotives operated by the Railroad on said trackage or in its vicinity for the purpose of serving said Industry, except rolling stock belonging to the Railroad or for which it is responsible and shipments in the course of transportation by the Railroad.

8. MOVEMENT OF CARS BY INDUSTRY. In case it is necessary for the Industry to move cars from place to place on the trackage, it will delegate for that purpose only employes of the Industry experienced in the handling of cars; and if any cars belonging to the Railroad, or for the safe condition of which it is responsible, are damaged or destroyed, or the lading thereof be damaged or destroyed, or damage results to the tracks or equipment or structures or other property of the Railroad or anyone else, or any injury to person or loss of life occur as a consequence of such movement, then if such damage to or loss of property or injury to person or loss of life shall result from the inexperience of the Industry's employes or from improper or negligent handling of said cars on the part of the Industry's employes, the Industry will, on demand, reimburse the Railroad for all such damage to or loss of its property or property for which it is responsible, and will indemnify and save harmless the Railroad from and against the claims and demands of any and all persons on account of such damage to or loss of property, injury to person or loss of life.

9. WRONG OF INDUSTRY INJURING PERSON OR PROPERTY ON TRACKAGE; JOINT NEGLIGENCE OF BOTH PARTIES. The Industry also agrees to indemnify and hold harmless the Railroad from and against any and all claims for loss, damage, injury or death to the person or property of the parties hereto, their officers, agents and employees, and to the person or property of any other person or corporation, while on or about said trackage, resulting from any wrongful act or omission of the Industry, its officers, agents or employes. If any claim or liability shall arise from the joint or concurring negligence of both parties hereto, their officers, agents or employes, it shall be borne by the parties equally; provided, that nothing in this section contained is intended to or shall relieve the Industry of the obligations of reimbursement, release and indemnity contained in Sections 5, 6, 7, 8 and 10.

10. INFLAMMABLE LIQUIDS. The Industry agrees that in the event it loads, unloads, or stores on said trackage cars containing gasoline, naphtha, liquefied petroleum gas, anhydrous ammonia, or any other inflammable, explosive, toxic or dangerous liquids or gases, it will in loading, unloading, and storing the same conform to all applicable rules and regulations of the Association of American Railroads, as approved by the United States Bureau of Explosives, covering the storage and handling of such liquids or gases, and that in any event it will handle, store, and maintain such liquids or gases, and all cars and equipment containing them, in a manner consistent with the highest standards of safety. The Industry agrees to indemnify and hold harmless the Railroad from and against any and all claims for loss of or damage to property, or injury to persons (including death) resulting from any failure of the Industry to perform or abide by the foregoing covenant.

11. RAILROAD'S RIGHT TO USE TRACKAGE; SHIPMENTS OF OTHERS. The Railroad shall have, without charge, the right to use the trackage for common carrier purposes when such use will not, in the opinion of the Industry, interfere with proper service to the Industry, or the Industry's operations upon or use of its property, but except by mutual agreement in writing between the parties hereto the Railroad will not deliver or receive any shipments on said trackage except shipments of the Industry; and in the event of such mutual agreement such shipments for others than the Industry shall be considered, for the purpose of this contract, to be shipments of the Industry.

12. USE OF TRACKAGE BY OTHER RAILROAD COMPANIES. While this contract is directly between the parties hereto, the trackage may be used by any other Railroad Company to serve the Industry or its designee, provided the Railroad and the Industry mutually agree that such other Railroad Company may serve the Industry or its designee thereover. It is the desire of both parties hereto that in the event of fire, accident, injury, death, loss, or damage of any kind or character, any such Railroad Company shall be afforded the same protection, and be entitled to the same reimbursement, release and indemnity as the Railroad party hereto. It is therefore expressly understood and agreed, for and in consideration of service rendered or to be rendered to the Industry or its designee on said trackage by any such other Railroad Company, that all of the provisions of Sections 5 to 10, inclusive, with respect to reimbursement, release and indemnity shall inure to and be available on behalf of any such Railroad Company which may use said trackage in serving the Industry or its designee.

13. WHEN RAILROAD MAY REQUIRE INDUSTRY TO MAINTAIN LEAD TRACK. Should the business done on said trackage at any time be insufficient, in the reasonable judgment of the Railroad, to justify it in maintaining the turnout in the main track and the lead track across the adjacent property connecting to the Industry's trackage, and if the Industry shall not desire the Railroad to discontinue the portion of the lead track providing service to no other shipper than the Industry, the Railroad may, at its option, require the Industry to bear the entire cost of maintenance and renewal of the turnout and said portion of the lead track; but such requirement shall in no wise affect the right of the Railroad to later disconnect said trackage and remove all track material from the Railroad's property.

14. DISCONTINUING SERVICE UPON DEFAULT BY INDUSTRY. The Industry further agrees that in the event of a default in the payment of the several expenditures contemplated in Section 2, or in the advance payment of the estimated cost of such expenditures contemplated in Section 3, or in the performance of the obligations of reimbursement, release and indemnity contemplated in Sections 5 to 10, inclusive, the Railroad may, without notice, cease to deliver cars to or remove cars from the trackage until such default has been remedied. The right herein granted shall be without prejudice to the rights reserved in Section 15 or Section 16, or to any other rights or remedies of the Railroad at law or in equity.

15. DISCONNECTING AND REMOVING; TERMINATION. The Railroad shall have the right to terminate this contract on sixty (60) days' notice in writing to the Industry at its last-known address, provided the Railroad shall first have requested the Industry to maintain the lead track and its turnout as provided for in Section 13 and the Industry shall have declined to reimburse the Railroad for the cost of such maintenance. The Industry shall have the right to terminate this contract on sixty (60) days' notice

in writing to the Railroad at its last known address. Upon termination, the Railroad may disconnect said trackage from its tracks, Any termination of this contract, whether pursuant to this Section 15 or Section 17, or otherwise, shall be without prejudice to any rights or obligations which may have accrued to either party prior to termination.

16. LIEN. The Railroad retains a lien upon all track material furnished by it until the Industry shall have completed payment for said track material and all other expenditures incurred by the Railroad in maintaining said trackage. Whenever and as often as the payment of any sums of money shall become due from the Industry to the Railroad under any of the provisions of this contract, a lien to secure said sums shall forthwith become fixed upon said track material, which lien shall become extinguished only by the payment of the sum or sums due.

17. ASSIGNMENT OF CONTRACT. Except as hereinafter provided, it is expressly understood and agreed that this contract is personal to the Industry and can be assigned only with the written consent of the Railroad, and that as a condition precedent to such consent the Railroad may require the assignee to assume any indebtedness due from the Industry arising under any of the provisions of this contract. In the event the Industry shall attempt to assign this contract without the Railroad's consent in writing, the Railroad shall have the option of (1) terminating this contract as provided for in Section 15, but without regard to the provision for notice contained therein, (2) accepting the attempted assignee as party to the contract in the stead of the Industry, or (3) requiring full performance of this contract by the Industry. The Railroad's consent to assignment hereof by Industry shall not be required when such assignment is to a wholly-owned subsidiary of Industry or to a successor in interest by reason of merger, consolidation, reorganization or sale of assets, provided, however, Industry shall in such event, remain primarily liable for the performance of its obligations hereunder.

18. WHAT COST OF LABOR AND MATERIAL INCLUDES. Whenever, under the terms of this contract, the Industry is required to pay to the Railroad, or to reimburse it for the cost of labor or material or both labor and material, there shall be added to the amount of wages paid to the Railroad's employes in the performance of this contract (1) a reasonable share of vacation allowances, holiday pay, and cost of health and welfare insurance due such employes under contracts between the Railroad and its employes, and (2) the amount of any payroll tax required to be paid by the Railroad based upon such wages; and there shall be included in the cost of material (1) a reasonable addition to the base price thereof to compensate the Railroad for the expense of transporting, handling and storing such material, and (2) the amount of any sale or use tax required to be paid or assumed by the Railroad measured by the cost or value of such material.

19. RIGHT-OF-WAY. The Railroad hereby grants and conveys to the Industry, its successors and assigns, an exclusive right-of-way ~~175~~ feet in width, being 65 feet in width from the centerline of the trackage on the east side and 150 feet in width on the west side between Station 23+88.88 and the Industry's property line at

Station 35+88.88. The rights herein granted are subject to an easement granted by the Tennessee Property Company to Davidson County, Tennessee, 20 feet in total width, for the construction and maintenance of sanitary and storm drainage facilities dated August 6, 1962 crossing the above described trackage at approximate Station 24+78.5.

WITNESS the signatures of the parties hereto this the day and year first above written.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

By _____
As its: GENERAL MANAGER

PACIFIC CAR AND FOUNDRY COMPANY

By _____
As its: Vice President

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FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TENN.

SEP 12 68	CONV	* 100.00			
SEP 12 68 S'TAX			A* .26		
SEP 12 68 PR'FEE			A* .50		
SEP 12 68	MISC		A* 25.50	*	26.26

STATE OF KENTUCKY)
)
JEFFERSON COUNTY)

Personally appeared before me, James L Kuelers a Notary Public in and for said State and County, D.D. Klunch, with whom I am personally acquainted, and who upon oath acknowledged himself to be the General Mgr of the Louisville and Nashville Railroad Company, a corporation, and that he as such General Mgr, of said Company, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation thereto by D D Klunch, as General Mgr of said Company, and affixing the corporate seal thereto.

My commission expires Jan 26, 1970.

Witness my hand and official seal at Louisville, Jefferson County, Kentucky, on this 7 day of September, 1968.

James L Kuelers
Notary Public, State of Kentucky At Large
Registered in Jefferson County, Kentucky

STATE OF Washington)
)
King COUNTY)

Personally appeared before me, Priscilla White, a Notary Public in and for said State and County, M.E. O'Byrne, with whom I am personally acquainted, and who upon oath acknowledged himself to be the Vice President of the Pacific Car And Foundry Company, a corporation, and that he as such Vice President, of said Company, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation thereto by M. E. O'Byrne, as Vice President, of said Company, and affixing the corporate seal thereto.

My commission expires July 1 1969.

Witness my hand and official seal at Renton, King County, Washington, on this 9th day of September, 19 68.

Priscilla White
Notary Public, State of Washington
King County

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