

MEMORANDUM OF AGREEMENT FOR UP TRACKAGE RIGHTS

Memorandum of Agreement for UP Trackage Rights by and between UNION PACIFIC RAILROAD COMPANY, a Utah corporation ("UPRC") and MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation ("MP"), both of which have offices at 1416 Dodge Street, Omaha, Nebraska 68179 (UPRC and MP, and each of their successors and assigns, are jointly referred to herein as "UP"), and CNW CORPORATION, a Delaware corporation ("CNW"), and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation ("CNWTC") and a wholly owned subsidiary of CNWC, both having offices at One North Western Center, Chicago, Illinois 60606 (CNWC and CNWTC, and each of their successors and assigns, are jointly referred to herein as "CNW").

WITNESSETH:

WHEREAS, the parties have executed and delivered (a) an Agreement for UP Trackage Rights dated July 14, 1989, and (b) a Supplemented Form of Agreement for UP Trackage Rights dated January 31, 1990, as amended (these agreements are jointly referred to herein as the "Trackage Rights Agreement") by which, as approved by the Interstate Commerce Commission in Finance Docket No. 31562, UP has acquired trackage rights over the lines of CNW between Fremont, Nebraska/Council Bluffs, Iowa and Chicago, Illinois (the "Lines"); and

WHEREAS, the parties wish to give notice of the Trackage Rights Agreement and of the rights of the parties under the Trackage Rights Agreement by recording this Memorandum of Agreement for UP Trackage Rights in the office of the Register of Deeds of each of the counties in which the Lines are located.

NOW, THEREFORE, the parties hereby state and agree as follows:

1. The Trackage Rights Agreement. The Trackage Rights Agreement, which created a recordable estate in real property, is now in effect for a period of 999 years commencing December 30, 1990; the real property affected by the Trackage Rights Agreement includes that described on

Recorded _____
G. _____
M. _____
Photostat _____

963
STATE OF NEBRASKA COUNTY OF WASHINGTON SS
CORRECTED ORIGINAL COPY AND FILED FOR RECORD
1990
192
1989-1990
Secretary

11
12
13
14
15
16
17
18
19
20

1900

Exhibit A attached hereto and made a part hereof; the Trackage Rights Agreement contains terms concerning service, compensation, maintenance and other provisions and covenants governing the relationship between the parties including, without limitation, UP's right of first refusal to purchase (as set forth in that certain Stockholders Agreement dated July 14, 1989 referred to in the Trackage Rights Agreement) all or any part of the Lines in the event of their proposed sale ("UP's Right of First Refusal").

2. Third Party Reliance. The certification by CNWTC in any instrument of conveyance, transfer, assignment, grant or other disposition, lease or license that the property or interest thereby conveyed, transferred, assigned, granted or otherwise disposed of, leased or licensed (1) is not subject to UP's rights, including, without limitation, UP's Right of First Refusal, granted by the Trackage Rights Agreement, and (2) may be so conveyed, transferred, assigned, granted or otherwise disposed of, leased or licensed free from the rights and interests of UP under the Trackage Rights Agreement shall conclusively protect the grantee, transferee, assignee, lessee or licensee against any claim based upon the Trackage Rights Agreement and shall be binding upon UP; and UP and CNWTC shall, upon the request of CNWTC and any such grantee, transferee, assignee, lessee or licensee execute and deliver confirmatory releases or certificates evidencing that the property or interest so conveyed, transferred, assigned, granted or otherwise disposed of, leased or licensed (1) is not subject to UP's rights granted by the Trackage Rights Agreement, and (2) is free from the Trackage Rights Agreement and the rights and interests of UP thereunder.

3. Other Terms. The Trackage Rights Agreement contains other terms and conditions which are not set forth herein, and the purpose of this Memorandum of Agreement for UP Trackage Rights is to put all persons on notice that the Trackage Rights Agreement is now in effect.

4. The Memorandum. Except as provided in paragraph 2, nothing contained in this Memorandum of Agreement for UP Trackage Rights shall amend, modify, or otherwise alter the terms, covenants and conditions contained in the Trackage Rights Agreement.

1900

19 1 1991

IN WITNESS WHEREOF, this Memorandum of Agreement for Up Trackage Rights has been executed by the parties this 20th day of MARCH, 1991

Witness:

C. W. Saylor

Witness:

C. W. Saylor

Witness:

Robert B. Smith

Witness:

Robert B. Smith

UNION PACIFIC RAILROAD COMPANY,

By James V. Dlan
Vice President - Law

MISSOURI PACIFIC RAILROAD COMPANY,

By James V. Dlan
Vice President - Law

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY,

By Richard B. Smith
VICE PRESIDENT - REAL ESTATE

CNW CORPORATION,

By Richard B. Smith
VICE PRESIDENT - REAL ESTATE

19 1 1991

1927

STATE OF NEBRASKA)
)ss.:
COUNTY OF DOUGLAS)

On this 6th day of March 1991, before me personally came James V. Dolan, to me known, who, being by me duly sworn, did depose and say that he resides at Omaha, Nebraska, that he is Vice President-Law of Union Pacific Railroad Company, one of the corporations described in and which executed the above instrument and that he signed his name thereto by authority of the Board of Directors of said corporation.

Mary R. Holewinski
Notary Public

Notary Seal 

STATE OF NEBRASKA)
)ss.:
COUNTY OF DOUGLAS)

On this 6th day of March 1991, before me personally came James V. Dolan, to me known, who, being by me duly sworn, did depose and say that he resides at Omaha, Nebraska, that he is Vice President-Law of Missouri Pacific Railroad Company, one of the corporations described in and which executed the above instrument and that he signed his name thereto by authority of the Board of Directors of said corporation.

Mary R. Holewinski
Notary Public

Notary Seal 

1927

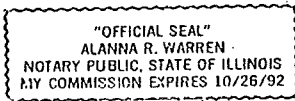
1991

STATE OF ILLINOIS)
) SS.:
COUNTY OF C O O K)

On this 20th day of March 1991, before me personally came Richard B. Taylor, to me known, who, being by me duly sworn, did depose and say that he resides at Arlington Heights, Illinois, that he is Vice President - Real Estate of Chicago and North Western Transportation Company, one of the corporations described in and which executed the above instrument and that he signed his name thereto by authority of the Board of Directors of said corporation.

Alanna R. Warren
Notary Public

Notary Seal

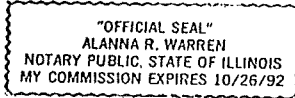


STATE OF ILLINOIS)
) SS.:
COUNTY OF C O O K)

On this 20th day of March 1991, before me personally came Richard B. Taylor, to me known, who, being by me duly sworn, did depose and say that he resides at Arlington Heights, Illinois, that he is Vice President - Real Estate of CNW Corporation, one of the corporations described in and which executed the above instrument and that he signed his name thereto by authority of the Board of Directors of said corporation.

Alanna R. Warren
Notary Public

Notary Seal



1991

1945

Exhibit "A"

WASHINGTON COUNTY, NEBRASKA

The rights-of-way, trackage, and facilities appurtenant to the Chicago, Illinois to Fremont, Nebraska Main Line of CNW in Washington County, Nebraska, in, over and across the legal subdivisions identified as follows:

<u>Subdivision</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Meridian</u>
NW $\frac{1}{4}$	8	18 N.	12 E.	Sixth P.
NE $\frac{1}{4}$, NW $\frac{1}{4}$	7	"	"	"
NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$	12	18 N.	11 E.	"
SE $\frac{1}{4}$, NE $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$	11	"	"	"
SE $\frac{1}{4}$	10	"	"	"
NE $\frac{1}{4}$, SE $\frac{1}{4}$	15	"	"	"
NE $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$	22	"	"	"
NW $\frac{1}{4}$, SW $\frac{1}{4}$	27	"	"	"
NE $\frac{1}{4}$, SE $\frac{1}{4}$	28	"	"	"
NW $\frac{1}{4}$	34	"	"	"
NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$	33	"	"	"
NW $\frac{1}{4}$	4	17 N.	11 E.	"
NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$	5	"	"	"
NW $\frac{1}{4}$	8	"	"	"
NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$	7	"	"	"
NW $\frac{1}{4}$	18	"	"	"
NE $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$	13	17 N.	10 E.	"
SE $\frac{1}{4}$, SW $\frac{1}{4}$	14	"	"	"
SE $\frac{1}{4}$, NE $\frac{1}{4}$, NW $\frac{1}{4}$	15	"	"	"
SW $\frac{1}{4}$	10	"	"	"
SE $\frac{1}{4}$, SW $\frac{1}{4}$	9	"	"	"
NW $\frac{1}{4}$	16	"	"	"

1945

1955

Exhibit "A"

WASHINGTON COUNTY, NEBRASKA - CONTINUED

<u>Subdivision</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Meridian</u>
NE $\frac{1}{4}$, NW $\frac{1}{4}$	17	17 N.	10 E.	Sixth P.
NE $\frac{1}{4}$, NW $\frac{1}{4}$	18	"	"	"
NE $\frac{1}{4}$, NW $\frac{1}{4}$, SW $\frac{1}{4}$	13	17 N.	9 E.	"

Also, the accretion lands originally in Section 8, T. 18 N., R. 12 E. of the Sixth Principal Meridian in Washington County, Nebraska, and that portion of the former bed of the Missouri River, that are now lying between the west line of Lot 4 of Section 13, T. 78 N., R. 46 W. in Harrison County, Iowa and the present east bank of the Missouri River.

Office of Contracts and Real Estate
Omaha, Nebraska
October 29, 1990

PREPARED BY:

John R. Zachary, C&RE Department
Union Pacific Railroad Company
1416 Dodge Street, Room 1200
Omaha, NE 68179 (402) 271-3753

RETURN TO:

John R. Zachary, C&RE Department
Union Pacific Railroad Company
1416 Dodge Street, Room 1200
Omaha, NE 68179

1955