

DUPLICATE ORIGINAL
UP Copy

Private Road Crossing
Near Rogers, Nebraska.

C. D. No. 40661-1

THIS AGREEMENT, made and entered into this
14th day of *April*, 1964,

by and between UNION PACIFIC RAILROAD COMPANY, a corporation of the State of Utah (hereinafter called "Railroad Company"), and LEE A. SMITH, an individual of Omaha, Nebraska (hereinafter called "Licensee"), WITNESSETH:

RECITALS:

The Licensee, who owns the land abutting the Railroad Company's right of way at Mile Post 61.9, desires to continue to maintain and use a 16-foot saturock private road extending across the right of way and over the tracks of the Railroad Company at a point 71 feet distant (when measured along the center line of the Railroad Company's westbound main track) westerly of the east line of Section 11, Township 17 North, Range 4 East of the Sixth Principal Meridian, near Rogers, Colfax County, Nebraska, in the location shown outlined by dashed yellow lines on the print hereto attached dated March 17, 1964, marked "Exhibit A" and hereby made a part hereof.

AGREEMENT:

NOW THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. CONTINUED MAINTENANCE OF CROSSING.

The Licensee shall, at his sole expense, continue to maintain the private road crossing in the location aforesaid, including the grading and gates, and shall keep the rail flangeways at the crossing site free of all obstructions. All work performed by the Licensee on said right of way in connection with the maintenance of said private road crossing shall be done under the supervision and to the satisfaction of the Railroad Company.

Said private road crossing, together with said gates and any other appurtenances thereto, is hereinafter referred to as "Crossing."

Section 2. CROSSING TO BE A STRICTLY PRIVATE ONE.

It is expressly stipulated that the Crossing is to be a strictly private one and is not intended for public use.

Filed May 7, 1964

9:15 a.m.

Book 83 page 389

COMMISSION EXPIRES

July 31, 1969

December 7, 1969

Union Pacific Railroad Company

to

Lee A. Smith

Section 3. MODIFICATION OR RELOCATION OF CROSSING.

The Railroad Company shall have the right to modify the Crossing or to change the location thereof at any time if in the judgment of the Railroad Company such modification or change in location is necessitated by a physical change in the Railroad Company's property or by the requirements of the Railroad Company in the operation of its railroad.

All the terms, conditions and stipulations herein expressed with reference to the maintenance, repair, renewal and use of the Crossing in the location hereinbefore described shall apply to the Crossing as modified or moved to a new location under the terms of this section.

Section 4. GATES TO BE KEPT CLOSED.

Said gates in the right of way fence shall be kept closed by the Licensee at all times except during the time of actual passage through them onto or from the Crossing.

Section 5. TERMINATION.

In the event of a default by the Licensee in the performance of any of the covenants made by the Licensee hereunder continuing for a period of thirty (30) days after written notice from the Railroad Company specifying such default, the Railroad Company may, at its option, terminate this agreement on ten (10) days' written notice, and the Licensee shall be without recourse or redress against the Railroad Company by reason of such termination.

Section 6. REMOVAL OF CROSSING.

Within ten (10) days after the termination of this agreement howsoever, the Licensee shall, at his sole expense, remove said Crossing and restore said premises of the Railroad Company to as good condition as they were in at the time of the construction of said Crossing, all under the supervision and to the satisfaction of the Railroad Company; and if the Licensee fails so to do the Railroad Company may do such work of removal and restoration at the expense of the Licensee.

In the event of the removal of said Crossing as in this section provided, the Railroad Company shall not be liable to the Licensee for any damage sustained by the Licensee for or on account of such removal, and such removal shall not prejudice or impair any right of action for damages or otherwise that the Railroad Company may have against the Licensee.

Section 7. WAIVER OF BREACH

The waiver by the Railroad Company of the breach of any condition, covenant or agreement herein contained, to be kept, observed and performed by the Licensee, shall in no way impair the right of the Railroad Company to avail itself of any subsequent breach thereof.

Section 8. EFFECTIVE DATE - TERM.

This agreement shall take effect as of the 19th day of March, 1964, and shall continue in full force and effect until terminated as herein provided.

Section 9. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this agreement, or any interest therein, without the written consent of the Railroad Company.

Section 10. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 9 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as of the date first herein written:

Witness:

Attest:



UNION PACIFIC RAILROAD COMPANY,

By

W. H. ...
Assistant Vice President

... (Seal)
Assistant Secretary

Witness:

Wynne A. McIntyre

Lee A. Smith
(Lee A. Smith)

APPROVED

H. Peterson
For General Manager

Approved as to form:

G. Johnson

Approved as to execution:

G. Johnson
Attorney

APPROVED

J. S. ...
For Chief Engineer

Comp.

STATE OF NEBRASKA }
COUNTY OF DOUGLAS } ss.

On this 1st day of May, 1944,
before me, a Notary Public in and for said County in the State
aforesaid, personally appeared C. H. Burnett, to me personally
known, and to me personally known to be the Asst. Vice President
of UNION PACIFIC RAILROAD COMPANY, and to be the same person
whose name is subscribed to the foregoing instrument, and who,
being by me duly sworn, did say that he is Asst. Vice President
of Union Pacific Railroad Company; that the seal affixed to
said instrument is the corporate seal of said corporation;
and that said instrument was signed and sealed on behalf of
said corporation by authority of its board of directors; and
the said C. H. Burnett acknowledged said instrument to
be his free and voluntary act and deed, and the free and
voluntary act and deed of said corporation, by it voluntarily
executed, for the uses specified therein.

IN WITNESS WHEREOF, I have hereunto set my hand
and official seal the day and year last above written.

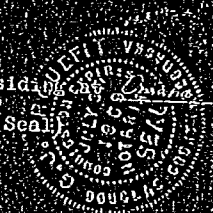
My commission expires July 31, 1949

[Signature]
Notary Public

Residing at Lincoln, Neb.

(Seal)

Comp.

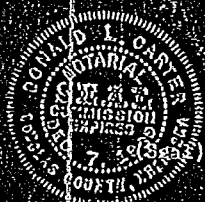


STATE OF Nebraska
COUNTY OF DeWitt } ss

On this 14 day of April
A. D. 1964, before me, a Notary Public duly commissioned
and qualified in and for said County, personally came the
above named LEE A. SMITH
who is personally known to me to be the identical person
whose name is affixed to the foregoing instrument as
Licensee, and then and there acknowledged the execution of
said instrument to be his voluntary act and deed.

WITNESS my hand and notarial seal at Omaha
in said County, on the day and year
last above mentioned.

My commission expires Dec 7, 1969



Donald L. Carter
Notary Public

Residing at Omaha, Neb.