



1167 456 MISC



00904 96 456-464

RECEIVED

JAN 29 2 02 PM '96

GEORGE ...
REGISTERED ...
DOUGLAS COUNTY, NE

00904H 23-06170

FEE	4600	R	FB03-80000
DEL		C/O	COMP (D)
LEGAL PG		SCAN	QW FV

RETURN TO:
OMAHA PUBLIC POWER DISTRICT
% RAIL REGISTRATION DIVISION
444 SOUTH 16TH STREET MAIL
OMAHA, NE 68102-2247

AGREEMENT

THIS AGREEMENT is entered into this 1st day of December, 1995, by and between Omaha Public Power District ("OPPD"), ConAgra Inc. ("ConAgra"), and Opus Corporation ("Opus").

WHEREAS, by virtue an ordinance of the City of Omaha vacating that part of Leavenworth Street set forth therein, Opus will become the owner of certain real property located in the City of Omaha, Douglas County, Nebraska, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property") and as shown on Exhibit "B" attached hereto and incorporated herein by this reference, subject to certain rights reserved to OPPD; Opus also is the owner of the property adjoining the Property to the North, more particularly described on Exhibit "C" attached hereto and incorporated herein by this reference (the "Adjoining Property") and as shown on Exhibit "B"; and

WHEREAS, OPPD has the right to and does maintain certain underground electric facilities consisting of cables, wires, conduits, manholes, drains, and other related equipment on the Property and adjacent to the Property (the "Facilities"), approximately in the locations shown on Exhibit "B"; and

WHEREAS, ConAgra desires to construct a multi-level parking garage (the "Parking Garage") on the Adjoining Property, the second level of which will have an entrance and exit ramp and driveway (collectively the "Drive") which will be constructed on the Property as shown on Exhibit "B"; and

WHEREAS, to properly maintain, operate, replace, remove or repair the Facilities, OPPD may need to close or otherwise restrict use of the Drive or remove, in whole or in part, the Drive.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

1. OPPD grants to ConAgra and Opus the right to construct, operate and maintain the Drive on the Property approximately in the location shown on Exhibit "B", limited only as provided herein.
2. ConAgra and Opus shall reimburse OPPD for the cost of repairing any damage to the Facilities caused by the initial construction or subsequent reconstruction of the Drive or the Parking Garage.
3. ConAgra and Opus agree that OPPD shall have the right to close or otherwise restrict use of the Drive or remove, in whole or in part, the Drive as necessary to maintain, operate, replace or repair the Facilities. OPPD shall determine in its sole discretion what constitutes necessary maintenance, operation, replacement or repair of the Facilities and whether to close or otherwise restrict use of the Drive or remove, in whole or in part, the Drive.

4. In the event OPPD determines that the Drive must be removed, in whole or in part, OPPD shall make all arrangements for and shall pay the entire cost of such removal. Upon completion of the work conducted by OPPD in the maintenance, operation, replacement or repair of the Facilities, ConAgra and/or Opus shall, unless the parties agree otherwise, make all arrangements for reconstruction of the Drive. OPPD shall pay one-half of the cost of reconstructing the Drive to a condition substantially equivalent to the condition of the Drive before its removal. ConAgra and/or Opus shall pay the remaining cost of reconstructing the Drive.

5. In the event OPPD determines that the Drive must be closed, in whole or in part, or use of the Drive must otherwise be restricted to allow for scheduled maintenance, replacement or repair of the Facilities, OPPD shall provide not less than 60 days' written notice to ConAgra and Opus prior to such closure or restriction. In the event OPPD determines that the Drive must be closed, in whole or in part, or the use of the Drive must otherwise be restricted to allow for emergency maintenance, replacement, or repair of the Facilities, OPPD shall provide notice to Opus and ConAgra as soon as reasonably possible under the circumstances then existing; however, no notice shall be required prior to such closure or restriction.

6. In the event OPPD determines that the Drive must be closed, in whole or in part, or use of the Drive must otherwise be restricted to allow for scheduled maintenance, replacement or repair of the Facilities, OPPD shall use reasonable efforts to limit the extent of such closure or restriction and shall complete the maintenance, replacement or repair as soon as reasonably possible.

7. Any notices required herein may be given by mailing such notice by regular United States mail, postage prepaid, to the following addresses, except that notices in emergency situations shall be given by facsimile transmission and/or telephone communications to the following telephone numbers:

Notice to OPPD: Alison Rider
Address: OPPD
444 S. 16th Street Mall
Omaha, Nebraska 68102
Telephone No.: (402) 636-3642
Fax No.: (402) 636-3660

Notice to ConAgra: Janet Richardson
Vice President/Facilities
Address: ConAgra Headquarters Building
One ConAgra Drive
Omaha, Nebraska 68102
Telephone No.: (402) 595-4136
Fax No: (402) 595-4701

Notice to Opus: Opus Corporation
Address: 800 Opus Center
9900 Bren Road East
Minnetonka, Minnesota 55343

Telephone No: (612) 936-4444
Fax No.: (612) 936-4529

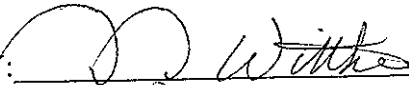
8. ConAgra and Opus agree to indemnify and hold harmless OPPD, its officers, directors, servants, agents, employees, administrators, successors and assigns, from any and all claims, demands, causes of action, judgments, liabilities, and damages (including attorneys' fees and costs) that may be asserted by any person or entity arising out of, resulting from, or alleged to arise out of or result from, the closure or other restriction on the use of the Drive or the initial construction or subsequent reconstruction of the Drive by ConAgra or Opus.

9. The parties agree to execute whatever additional agreements as may become necessary to effectuate the purposes of this Agreement.


10. This Agreement contains the entire agreement between the parties and shall be binding on the parties, their heirs, successors and assigns. The parties acknowledge that this Agreement may be recorded.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

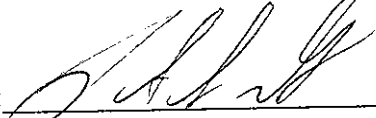
OMAHA PUBLIC POWER DISTRICT

BY: 
ITS: Vice President

CONAGRA

BY: 
ITS: JANET RICHARDSON
**VICE PRESIDENT
CORPORATE FACILITIES**

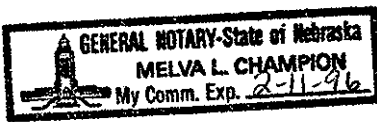
OPUS CORPORATION

BY: 
ITS: Vice President-Construction

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 1st day of December, 1995, before me, a notary public in and for said county and state, personally came D.D. Wittke, Vice President of Omaha Public Power District, known to me to be the identical person who signed the foregoing Agreement and acknowledged the execution thereof to be his/her voluntary act and deed and the voluntary act and deed of said Omaha Public Power District.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.



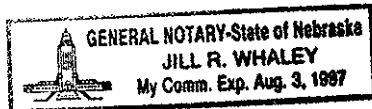
Melva L. Champion
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

On this 1st day of December, 1995, before me, a notary public in and for said county and state, personally came Janet Richardson, V.P. Corporate Facilities of ConAgra, known to me to be the identical person who signed the foregoing Agreement and acknowledged the execution thereof to be his/her voluntary act and deed and the voluntary act and deed of said ConAgra.

WITNESS my hand and notarial seal at Omaha, in said county and state, the day and year last above written.



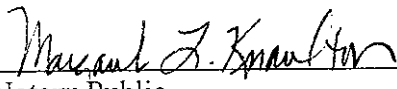
Jill R. Whaley
Notary Public

NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

MINNESOTA)
STATE OF ~~NEBRASKA~~)
HENNEPIN) ss.
COUNTY OF ~~DOUGLAS~~)

On this 10th day of January, ~~1995~~ ¹⁹⁹⁶, before me, a notary public in and for said county and state, personally came Patrick S. Dady, ^{Vice President} ~~Construction~~ of Opus Corporation, known to me to be the identical person who signed the foregoing Agreement and acknowledged the execution thereof to be his/her voluntary act and deed and the voluntary act and deed of said Opus Corporation.

WITNESS my hand and notarial seal at ~~Omaha~~ in said county and state, the day and year last above written.



Notary Public



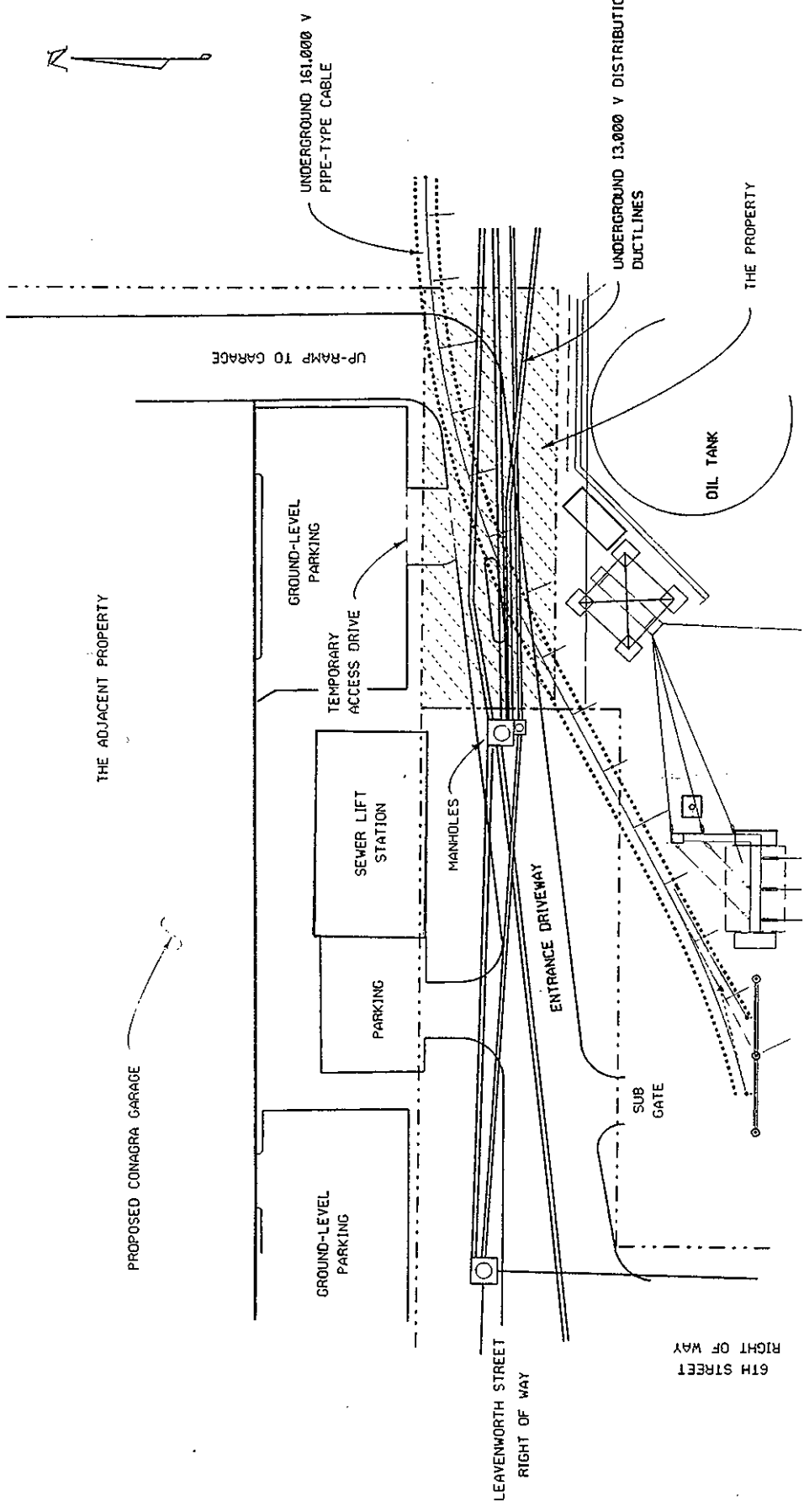
NOTARIAL SEAL AFFIXED
REGISTER OF DEEDS

EXHIBIT "A"

That part of vacated Leavenworth Street, Original City of Omaha, Douglas County, Nebraska, described as follows:

Commencing at the Northeast corner of Lot 2, Block 208, Original City of Omaha; thence North a distance of 50 feet along the East line of said Lot 2 extended to the point of beginning; thence continuing North along said East line of said Lot 2 extended a distance of 50 feet to the North line of Leavenworth Street; thence East along said North line of Leavenworth Street a distance of 163 feet; thence South a distance of 50 feet to the South line of Leavenworth Street; thence West along said South line of Leavenworth Street a distance of 163 feet to the point of beginning.

EXHIBIT "B"



PROPERTY LINE

OPP SUBSTATION 1201

NO.	REVISION	DATE	BY	CR

SCALE	1" = 30'
DRAFT	9-28-95
CHECK	R. L. SIMSON
NOTED	
NOTED	
APPD.	
APPD.	
ELECT.	TRANSMISSION

PROPOSED CONAGRA DRIVEWAY ACROSS OPPD UNDERGROUND FACILITIES

5TH & LEAVENWORTH ST.

C-6354

17" x 22"

EXHIBIT "C"

23-06170

Lot 14 of Central Park East a subdivision in the City of Omaha in Douglas County,
Nebraska.