

"BNSF"

**Memorandum of Understanding between
BNSF Railway Company and Union Pacific Railroad Company**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into this 22nd day of February, 2010 (the "**MOU Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation, (hereinafter called "**BNSF**"), and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter called "**UP**").

RECITALS:

A. The City of Lincoln desires to develop property owned by BNSF in Lincoln, Nebraska (the "**BNSF Property**"), into a civic center, hotel, offices, parking and a shopping development (hereinafter the "**Haymarket Project**").

B. UP has trackage rights over certain BNSF railroad tracks under an agreement dated April 25, 1997 ("**UP Trackage Rights Agreement**"). UP has also leased certain BNSF railroad tracks under a lease agreement dated May 1, 2003 (the "**Lease**"). The trackage under the UP Trackage Rights Agreement and Lease are located on BNSF Property.

C. BNSF has trackage rights over certain UP railroad tracks under an agreement dated June 27, 1974 ("**BNSF Trackage Rights Agreement**").

D. This MOU confirms the intent of UP and BNSF to cooperate with the City of Lincoln in the development of the Haymarket Project, including, without limitation, (i) amending existing trackage rights agreements between UP and BNSF at the discretion of the parties; and (ii) negotiating the terms and conditions of new trackage rights agreements as necessary to facilitate the Haymarket Project, subject to the terms and conditions of this MOU.

E. This MOU is entered into in order to facilitate further discussion and negotiation of transactions contemplated herein and is subject to (i) the City of Lincoln obtaining all necessary approvals and full funding for the Haymarket Project and (ii) further negotiations between UP and BNSF that result in new trackage rights agreements and amendments of existing trackage rights agreements which are mutually agreeable to both UP and BNSF at their respective sole and absolute discretion.

F. This MOU is not intended to be "all inclusive" but is instead an outline of some, but not all, of the terms and transactions necessary to permit UP and BNSF to cooperate in the development of the Haymarket Project. The final documents or agreements necessary to complete the terms or transactions set forth herein may cover additional matters not addressed by this MOU and may, after further negotiations, reflect changes to the terms summarized below.

Subject to the aforementioned contingencies and recognizing that further mutually agreeable negotiations between UP and BNSF will be required, the parties will proceed to cooperate in the Haymarket Project as follows:

TERMS:

- 1) BNSF agrees to amend the UP Trackage Rights Agreement to relocate UP trackage rights on and over BNSF trackage to be constructed southeast of Salt Creek which will connect UP's Lincoln Subdivision to BNSF's Ravenna Subdivision mainline at approximately BNSF mile post 0.4. BNSF agrees to have sufficient crossovers installed on its mainline to allow UP to access the Omaha, Lincoln and Beatrice Railroad pursuant to the UP Trackage Rights Agreement. BNSF agrees that UP will incur no additional trackage rights expense as a result of the relocation of its trackage rights as provided herein.
- 2) BNSF also agrees to amend the Lease by deleting certain of its provisions related to UP's lease of BNSF's "Horn Track". All other provisions of the Lease will remain in effect.
- 3) UP agrees to amend the BNSF Trackage Rights Agreement to include UP's reconstructed Lincoln Subdivision trackage from Sun Valley Boulevard to a point southeast of Salt Creek as part of BNSF's trackage rights. UP shall continue to own and maintain its Salt Creek Bridge. The relocated trackage rights will connect to BNSF's Ravenna Subdivision mainline at approximately BNSF mile post 0.5, which will be constructed at the end of UP's right of way. UP agrees that BNSF will incur no additional trackage rights expense as a result of the relocation of its trackage rights as provided herein.
- 4) UP also agrees to amend the BNSF Trackage Rights Agreement and grant BNSF the right to construct a connection, at a future date to be determined at BNSF's sole discretion, off UP's Lincoln Subdivision at approximately UP mile post 56.5, to allow BNSF to re-establish access to BNSF customers who are currently not utilizing rail service. The cost of such connection will be at BNSF's sole expense.

It is expressly understood that if (i) the City of Lincoln is unable to obtain all necessary approvals and agreements and full funding for the Haymarket Project and/or (ii) the parties are unable to reach agreement on and complete any of the additional documents and agreements contemplated herein needed to facilitate the Haymarket Project within one (1) year of the MOU Effective Date, this MOU shall automatically terminate without any further obligation by any party.

The parties hereto have caused their duly authorized representatives to execute this MOU on the dates set forth in the signature blocks below to be effective as of the MOU Effective Date.

BNSF RAILWAY COMPANY

UNION PACIFIC RAILROAD COMPANY

By: 
Printed: MARK A SCHULTE
Title: UP OPERATIONS SUPPORT
Date: 3-08-10

By: 
Printed: C.H. REINHOLD
Title: VP NETWORK PLANNING & OPERATIONS
Date: 02/17/10