

A 26.00
New Number &
Supplement

PAULINE E. MYERS
Registered Transportation Practitioner

16324-A

SUITE 554 NATIONAL PRESS BUILDING
529 FOURTEENTH STREET, N. W.
WASHINGTON, D. C. 20045

RECORDATION NO _____ FILED 1425

MAY 10 1989 - 9 15 AM

(202) 737-2188

INTERSTATE COMMERCE COMMISSION

May 10, 1989

16324

No.

RECORDATION NO _____ FILED 1425

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

Date MAY 10 1989 - 9 15 AM

Fee \$ 26.00
INTERSTATE COMMERCE COMMISSION
ICC Washington, D. C.

In Re: Documents for Recordation
Trackage Rights Agreements

Dear Ms. McGee:

I have enclosed an Original and One copy of the documents described below to be recorded pursuant to Section 11303 of Title 49 of the US Code.

The Documents are as follows:

1. Primary Agreement dated September 4, 1986 (never recorded with the Commission) between the D & I Railroad Company, a South Dakota Corporation, and the Burlington Northern Railroad Company, a Delaware Corporation.

D & I Railroad Company 313 S. Phillips (Post Office Box 829) Sioux Falls, SD 57117	Burlington Northern Railroad Company - Northern Region 176 East 5th Street St. Paul, MN 55164
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2. Supplemental Agreement dated February 24, 1989 between the same two railroad carriers, same addresses.
3. Time Table No. 4 is attached as Appendix A.

The Recordation Fee of \$26.00 (for two documents) is enclosed. Please return the Originals, showing Recordation time and date.

Your usual cooperation in this matter is greatly appreciated.

Yours very truly,

Pauline E. Myers

Pauline E. Myers
D & I Railroad's Representative

PEM/s
Enclosure:

Counterpart - C. M. B...

MAY 10 1989 - 9 15 AM

INTERSTATE COMMERCE COMMISSION

TRANSPORTATION AND SWITCHING AGREEMENT

AGREEMENT made this 4th day of September, 1986 between the D&I RAILROAD COMPANY, a South Dakota corporation, hereinafter called "D&I", and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Northern".

WITNESSETH:

WHEREAS, Northern and the State of South Dakota, hereinafter called "State" are parties to an Agreement dated July 1, 1986, wherein Northern agreed to operate certain State owned railroad in the State of South Dakota known as the "State CORE System".

WHEREAS, Northern under the auspices of a certain agreement with the State, Sioux Valley Regional Railroad Authority, hereinafter called "Authority", and D&I also operated and provided rail freight service over Authority trackage; and

WHEREAS, the State, Authority and D&I are parties to an Agreement dated November 1, 1986, wherein the State and Authority granted D&I a license to operate certain Authority trackage previously operated by Northern; and

WHEREAS, D&I desires to operate its trains, engines, cabooses and freight cars in its account over State CORE System trackage operated by Northern; and

WHEREAS, Northern as operator of the State CORE System and pursuant to Agreement dated July 1, 1986 wherein the State granted Northern the right as Operator authority to grant other third parties the right to use State-owned trackage in common with Northern and to switch industries on behalf of Northern, located on Authority trackage as shown on Exhibit "A" (hereinafter described); and

WHEREAS, the parties desire to set forth their understanding with respect to the interchange of cars destined to or from industries situated on the trackage of Authority upon the terms and conditions herein set forth.

NOW, THEREFORE, it is mutually agreed:

PRINTS

Attached hereto, incorporated herein, made a part hereof, and marked Exhibit "A" is print dated September 4, 1986, showing in solid blue lines the Joint Trackage as hereinafter defined between Sioux Falls, South Dakota (MP 74.1) and Canton, South Dakota (MP 49.9) and Elk Point, South Dakota (MP 533.4) and Sioux City, Iowa (MP 512.6). Authority trackage identified on Exhibit "A" is shown in solid red between Canton, South Dakota (MP 49.9) and Elk Point, South Dakota (MP 533.4) and Hawarden, Iowa (MP 0.00) to Beresford, South Dakota (MP 17.8).

DEFINITIONS

For the purposes of this agreement only, the following definitions and terms will apply:

"Agreement" shall mean this agreement dated September 4, 1986.

"Joint Trackage" shall mean the trackage of Northern as shown in solid blue lines on Exhibit "A", including necessary right-of-way and appurtenances,

bridges, signals, interlockers, communications, and facilities of Northern thereon or thereabout, and all Additions thereof now or in the future as are required for the operation of the trains of the parties hereto pursuant to this Agreement.

"Additions shall mean work projects, the cost of which is chargeable in whole or in part to Property Accounts.

Section 1. GRANT OF RIGHTS

1.1 Subject to the terms and conditions herein contained, Northern grants to D&I the nonexclusive trackage rights to use the Joint Trackage for the operation of its trains, locomotives, cabooses and cars in its account over the Joint Trackage in common with Northern and such other railroad company or companies as Northern has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or any part of the Joint Trackage, it being understood and agreed that D&I shall not have the right, except as otherwise provided in this Section 1 to:

- (a) set out, pick up, store or switch upon the Joint Trackage or any part thereof, except as necessary for handling locomotives, cabooses or cars bad ordered enroute; or
- (b) serve from the Joint Trackage any industry, team or house track now existing along the Joint Trackage, nor shall it have the right to serve any industry, team or house track hereafter located along the Joint Trackage; or
- (c) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor under the guise of doing

its own business, contract or make any agreement to handle as its own trains, locomotives, cabooses or cars over or upon the Joint Trackage, or any portion thereof, the trains, locomotives, cabooses and cars of any such third party which in the normal course of business would not be considered as the trains, locomotives, cabooses or cars of D&I; or

(d) construct tracks connecting to the Joint Trackage.

1.2 D&I shall have the right to use Northern's Yard Trackage (also referred to as Joint Trackage) at Northern's so-called Sears Tracks at Sioux Falls, South Dakota and the West Yard at Sioux City, Iowa, for the express purpose of delivering to and/or receiving from Northern all general commodity carloads originating and/or terminating on Authority trackage between Canton and Elk Point, South Dakota and Beresford, South Dakota and Hawarden, Iowa. Northern shall have the exclusive right and make reasonable efforts to provide all freight car equipment for traffic originating on Authority trackage. The D&I shall return all empty cars to Northern at Northern's Yard at either Sioux Falls or Sioux City. Said yard trackage and interchange trackage at Sioux Falls and Sioux City shall be designated by Northern's Superintendent and can be changed from time to time. All carloads of aggregate, Standard Commodity Code Numbers 14412, 14919, 14219 and 14413 being shipped to Northern shall be interchanged to Northern as previously done in the past at the former Milwaukee East Side Yard at Sioux City, Iowa and the former Milwaukee 6th Street Yard at Sioux Falls, South Dakota. D&I may originate and terminate carloads of aggregate on Authority trackage, however, said carloads of aggregate shall not be subject to payments made pursuant to this Agreement.

1.3 D&I will grant Northern power of attorney to establish all tariff charges and contracts relative to the transportation of general commodities delivered to and/or picked up from D&I. D&I may establish its own tariffs and contracts only for all aggregate commodities.

Section 2. CONSTRUCTION, REPAIRS, MAINTENANCE, ADDITIONS, OPERATIONS AND CONTROL OF THE JOINT TRACKAGE

2.1 The construction, maintenance and repair of the Joint Trackage shall be under the exclusive direction and control of Northern. Northern shall make any Additions or retirements to the Joint Trackage which Northern deems necessary or desirable for the safe, efficient and economical use of the Joint Trackage by the parties, and additions shall progressively during construction become part of the Joint Trackage. D&I may request Additions to the Joint Trackage which D&I shall deem necessary or desirable for the safe, efficient and economical use of the Joint Trackage by the parties, and Northern shall, if it concurs, at its expense, construct the same and said Additions shall be treated in the same manner as any other Additions made pursuant to this Agreement. Such approval and or disapproval shall not be unreasonably withheld by Northern.

2.2 The management and operation of the Joint Trackage shall be under the exclusive direction and control of Northern and shall be reasonable, just, and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them. Subject to the aforesaid principles, Northern shall have the unrestricted power to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient or proper for the operations thereof herein intended.

2.3 Northern shall employ all persons necessary to operate, maintain, repair and renew the Joint Trackage. The Joint Trackage shall be maintained to

a standard not less than FRA Class 2 standards in effect as of the date of this Agreement, with weight limitations of 263,000 pounds gross per car. Northern shall be bound to use only reasonable and customary care, skill and diligence in the operation, maintenance, repair or management of the Joint Trackage and D&I shall not, by reason of Northern's performing or failing, or neglecting to perform any operation, maintenance, repair or management of the Joint Trackage, have or make against Northern any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom, except as otherwise provided in Section 4 hereof, except when such management service is an overt action solely intended to harm D&I.

2.4 D&I, at its expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of Northern, for operation of trains upon the Joint Trackage.

2.5 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, Northern shall, with reasonable diligence, restore the line for the passage of trains of the parties hereto. During the period of any such interruption or delay, Northern may, if in its sole judgment it deems it operationally feasible or convenient, provide D&I with an alternate route and, in such event and during such period, the terms and conditions, including rental payments, of this Agreement shall apply as though such alternate route was a part of the Joint Trackage. Neither party hereto shall have or make any claim against the other for loss or damage of any kind resulting from such interruption or delay.

2.6 Each party shall be responsible for furnishing, at its own expense, all labor, fuel and train supplies necessary for the operation of its own trains over the Joint Trackage.

2.7 The operation by D&I on or along the Joint Trackage shall at all times be in accordance with the rules, instructions and restrictions of Northern but such rules, instructions and restrictions shall be reasonable, just and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them.

2.8 Each party hereto shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on cars and equipment in each party's account. For the purposes of this section only, Northern cars shall remain in Northern's account for the sole purpose of reporting and paying mileage, per diem, use or rental charges.

2.9 With respect to operation of trains, locomotives, cabooses and cars on and over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations and orders promulgated by a municipality, board, commission or governmental agency having jurisdiction, and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

2.10 All employees of D&I engaged in or connected with the operations of D&I on or along the Joint Trackage shall be required to pass periodic examinations on the rules of Northern, provided, that with respect to such examinations, that upon request of D&I, Northern shall qualify one or more of

D&I's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of D&I engaged in or connected with D&I's operations on or along the Joint Trackage. Pending qualification of train and engine crews of D&I, Northern shall furnish pilot or pilots, at expense of D&I, as deemed necessary by Northern to assist in operating trains of D&I over the Joint Trackage.

2.11 If any employee of D&I shall neglect, refuse or fail to abide by Northern's rules, instructions or restrictions governing the operations on or along the Joint Trackage, Northern shall, in writing, so notify D&I. Northern shall have the right to require D&I to withhold any such D&I employee from service on the Joint Trackage, pending the result of formal investigation, who in Northern's sole opinion shall have neglected, refused or failed to abide by Northern's rules, instructions or restrictions governing the operations on or along the Joint Trackage. Upon such notice presented in writing, Northern and D&I shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to D&I employees shall be given by D&I officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between D&I and its employees. If, in the judgment of Northern, the result of such investigation warrants, such employee shall, upon written request by Northern, be restricted by D&I from operating on the Joint Trackage, and D&I shall release and indemnify Northern from and against any and all claims and expenses because of such restriction.

2.12 If any cars, cabooses or locomotives of D&I are bad ordered en route on the Joint Trackage and it is necessary that they be set out, such cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by D&I. Unless otherwise agreed, Northern may upon request of D&I and

at D&I's expense furnish required labor and material and perform light repairs to make such bad ordered equipment safe for movement. In the event Northern shall perform any such repairs to freight cars in D&I's account, billing therefore shall be at rates prescribed in the Field and Office manuals of the Interchange Rules adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs and Northern shall prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules and Northern shall prepare and submit billing directly to and collect from D&I for handling line responsibility items as determined under said Interchange Rules. If Northern shall perform repairs to D&I equipment other than freight cars, Northern shall prepare and submit billing directly to and collect from D&I as in this Agreement provided for. In the event cars delivered to D&I by Northern shall become bad ordered on Authority trackage D&I, shall perform light repairs to make such bad ordered equipment safe for movement, and submit appropriate billing to Northern in accordance with interchange rules.

Section 3. COMPENSATION AND BILLING

3.1 For the rights and privileges hereinabove granted, D&I shall pay to Northern the flat rate annual sum of SEVEN THOUSAND NINE HUNDRED TWENTY DOLLARS AND NO CENTS (\$7,920.), hereinafter called "base rate", to cover taxes, normalized maintenance and operating expenses. The payment for the first and last month will be pro-rated. The flat rate shall be adjusted July 1 of each year, beginning July 1, 1987, by the percentage of change in the Association of American Railroads Railroad Cost Recovery Index, Series RCR (1977-100), Table A-1, for the Western District Material Prices, Wage Rates and Supplements Combined (excluding fuel) for the year 1985, which shall be used as the base year, to the calendar year immediately prior to the year in which the change is to be made effective. Thus the percentage change from the year 1985 to the year

1986 will be used to adjust the charge July 1, 1987. In no event shall any adjusted rate be less than the base rate.

(a) The flat rate covers and includes ordinary maintenance and property taxes and does not include any of the following extraordinary expenses and the D&I agrees to assume its use proportion of the extraordinary expenses based on the number of D&I cars handled by or for the D&I divided by the total number of cars handled by or for all parties using the Joint Trackage during the same monthly period in which the incident occurred and/or work is completed. For the purpose of computing such use proportion, cars engaged in work service pertaining to maintenance or operation of and changes in and/or additions to the Joint Trackage shall not be counted. Locomotives shall be counted as two cars.

1. Personal injury or other liability expenses.
2. Large replacement of facilities or renewals or replacements as covered by work orders (AFE's) including retirement losses or expenses associated with Acts of God. Use proportion for this Item 2 shall be based on the last twelve (12) months' experience.
3. Work performed for the purposes of preventing or repairing washouts.
4. Contract work performed by outside firms other than the usual repair work which may be required.

3.2 For the compensation specified in this paragraph, D&I shall pick up and/or deliver loads and/or empty cars at either Sioux Falls, South Dakota and/or Sioux City, Iowa and will move said cars over the Joint Trackage and will switch said cars to industries on Authority trackage. Loaded and/or empty cars

picked up on Authority trackage shall be returned to Northern at point hereinabove designated. Northern shall pay to D&I the flat rate sum of ONE HUNDRED SIXTY-FIVE DOLLARS (\$165.00) per car for each loaded car of general commodity traffic (all rail shipments) interchanged between Northern and D&I that originates and/or terminates on Authority trackage, i.e. between Canton, South Dakota (MP 49.9) and Elk Point, South Dakota (MP 533.4) and Hawarden, Iowa (MP 0.00) and Beresford, South Dakota (MP 17.8).

In addition to the flat rate per car payment made by Northern to D&I under the terms of this Agreement, Northern shall also pay D&I a THREE CENTS (\$0.03) per hundred weight charge on all rail shipments on general commodity traffic that originate and terminate on Authority trackage and D&I hereby agrees to continue to make this payment to Authority until such time as the THREE CENTS (\$0.03) per hundred weight payment is terminated by the appropriate State authority. For the purpose of this Agreement the THREE CENTS (\$0.03) per hundred weight charge shall be an average charge of FIFTY-EIGHT DOLLARS AND NO CENTS (\$58.00) per rail shipment.

The flat rate per car payment made to D&I by Northern shall be subject to annual adjustment under the Consumer Price Index published by the US Department of Commerce with the base year being 1985. Said adjustments shall be made on July 1 of each year commencing July 1, 1987. The THREE CENTS (\$0.03) per hundred weight shall not be subject to such annual adjustment.

3.3 Should operating changes occur either party may, upon thirty (30) days' advance written notice to the other party, request a restudy of the rates. If the study results in agreement by the parties as to one or more new rates, any resulting rate will be effective the first day of the following month in which such notice is given. The flat rate may be restudied not more than once per twelve (12) month period.

3.4 Except as otherwise specifically provided for, bills rendered pursuant hereto shall be prepared in conformance with the then current reasonable accounting practices and procedures of the party preparing said bill.

3.5 The parties hereto shall make payments to their Office of the Treasurer or at such other location as Northern and D&I may from time to time designate, all of the compensation and charges of every name and nature which in and by this Agreement both Northern and D&I are required to pay in lawful money of the United States. Bills shall be rendered by the billing party and shall contain a statement of the amount due on account of the expenses incurred and services rendered during the billing period. All bills, rendered pursuant to this Agreement shall be due and payable within thirty (30) days of the receipt thereof. In the event any such bill, shall not be paid within ninety (90) days, the party rendering the bill shall be privileged to add a penalty charge of two percent (2%) of the delinquent bill for each thirty-day (30) period or fraction thereof subsequent to the due date that the bill remains unpaid.

3.6 Clerical errors contained in bills will not be deemed a valid reason for delaying payments. Any bills containing minor errors (items of less than \$1,000) shall be paid subject to adjustment in subsequent billing. Bills containing major errors (items of \$1,000 or more) may be reduced by the amount of major error.

Adjustments of clerical errors of less than \$1,000 requested by either party and not made within sixty (60) days after receipt of such request, shall be considered a disputed item and shall become subject to the one percent (1%) per month charge hereinafter provided for.

Disputed items in excess of \$1,000 per month shall be subject to a one percent (1%) per month charge if payment is due and withheld or a one percent (1%) per month credit if paid and subsequently refunded; provided no exception to any bill shall be honored, recognized or considered if filed after the expiration of three years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three years after the last day of the calendar month in which the expense covered thereby is incurred, except that there will not be any time limitation in connection with liability and casualty claims or capital expenditures (AFEs) or in the case of claims disputed as to amount or liability. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the ICC, retroactive adjustment of wage rates and settlement of wage claims.

3.7 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto.

Section 4. LIABILITY

4.1 For the purpose of this Section 4, the following definitions shall apply:

"Loss or Damage": Includes all claims, liability, cost and expense of every character incident to loss or destruction of or damage to property and injury to or death of persons, arising upon or as a result of the use of the Joint Trackage.

"Joint Employee": An officer, agent, employee, or contractor while engaged in maintaining, repairing, removing, inspecting or operating Joint Property or in making Additions thereto, or retirements therefrom, or in dispatching, giving orders for or directing the movement of trains, or performing other service, for the common benefit of the parties having the right to use the involved zone of the Joint Trackage.

"Joint Property": The Joint Trackage and all trains, locomotives, cabooses, cars and equipment engaged in the maintenance, repair, removal, inspection or operation thereof for the common benefit of the parties having the right to use the involved zone of the Joint Trackage. Any equipment shall be deemed Joint Property while engaged in or incident to the performance of service, the cost of which is included in expense or Loss or Damage for which the parties having the right to use the involved zone are jointly liable.

"Sole Employees" and "Sole Property": Employees, trains, locomotives, cabooses, cars and equipment while engaged or about to engage in switching or handling cars of one of the parties hereto, or in performing other services for the exclusive benefit of one of the parties hereto, shall, for the purpose of this section, be considered Sole Employees and Sole Property of such party. Pilots furnished by Northern to assist in operating trains, locomotives, cabooses or cars of D&I as well as any other Northern employees performing services for the exclusive benefit of the D&I under the terms of this Agreement shall be considered Sole Employees of D&I. Cars and the lading contained therein delivered to D&I by Northern while being handled by D&I under this Agreement shall be considered Sole Property of D&I for purposes in apportioning liability expenses under Section 4 hereof.

4.2 If equipment of D&I shall become derailed or otherwise disabled upon the Joint Trackage, such that wrecking service is required to clear same, Northern shall, unless otherwise agreed, arrange for such service. All employees of Northern operating wrecker or work trains or assigned thereto or any wrecking service contractor, while clearing wrecks or derailments or engaged in the repair and renewal of the Joint Trackage subsequent to any such wreck or derailment and any machinery, equipment, tools or other property of Northern while engaged in such service, or while en route to such assignment or while returning to the home terminal, incident to the performance of such work shall be deemed the Sole Employees and Sole Property of the party whose employees, cars, locomotives, cabooses or trains were, in the first instance, solely involved in the accident; or, in case of collision, or other accident involving the employees, equipment and lading of both parties hereto such employees and equipment shall be apportioned as provided in Section 4.3. Said employees and equipment shall not be deemed to be the employees and equipment of D&I while en route from the Joint Trackage for the purpose of performing further services for Northern or a third party. Northern shall use its best effort to obtain from wrecking service contractors indemnification and/or insurance coverage which includes the D&I provided, however, that any failure by Northern so to do shall not cast any liability whatsoever on Northern.

4.3 As between the parties hereto only, each party shall bear all Loss or Damage to its Sole Property, its Sole Employees, patrons and others on its engines, cars or trains, or on or about the Joint Property in transaction of business for or with such party, except when the acts or omissions of such party do not contribute to the Loss or Damage and it is due to acts or omissions of Sole Employees of another party or parties or defect in the Sole Property of another party (whether or not contributed to by acts or omissions of Joint

Employees or defect in the Joint Property), in which event it shall be borne by the party or equally by the parties so responsible. Loss or Damage to third parties or to Joint Property or Joint Employees shall, if caused by the acts or omissions of Sole Employees of fewer than all of the parties (whether or not contributed to by acts or omissions of Joint Employees or defect in the Joint Property), be borne by the party whose Sole Employee caused said Loss or Damage and if more than one party's Sole Employee (but fewer than all) caused said Loss or Damage, then equally by the parties whose Sole Employees caused such Loss or Damage. Such Loss or Damage not caused by acts or omissions of a Sole Employee or Employees shall, if the trains, locomotives cabooses or cars of fewer than all of the parties are involved, be borne by the party whose trains, locomotives, cabooses or cars are involved and if more than one, then equally by the parties whose trains, locomotives, cabooses or cars are involved. Such Loss or Damage caused by acts or omissions of Sole Employees of all of the parties or involving the trains, locomotives, cabooses or cars of all of the parties (but not caused by acts or omissions of a Sole Employee or Employees), or involving only Joint Employees or Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about or when such incident occurred, shall be shared between the parties hereto on a use proportion basis the month in which the incident occurred or was discovered.

4.4 It is understood and agreed that a number of vehicular crossings of the Joint Trackage presently exist, or may be constructed. D&I agrees to accept all crossings in whatever condition they may be during the term of this Agreement and will not assert any claim, demand or cause of action against Northern and will hold Northern harmless from any claim, demand or cause of action arising out of any crossing accident on the Joint Trackage in which the engines, cars or trains of D&I only are involved.

4.5 Unceasingly during the entire term of this Agreement, D&I shall, at its expense, procure and maintain a Comprehensive General Liability policy or policies providing bodily injury and property damage with a combined single limit of at least Five Million Dollars (\$5,000,000) for each occurrence. Each of such policies shall provide contractual liability coverage for all of the liability assumed by D&I under this Agreement in the form attached hereto as Exhibit "B" and shall provide that the coverage shall not be cancelled or changed without giving Northern thirty (30) days' prior written notice. Northern shall not be named as either an insured or additional insured in any of said policies. D&I shall furnish Northern with satisfactory evidence of all such policies of insurance properly endorsed.

4.6 Locomotives, cars, equipment, and other property being handled or used by any party hereto shall, unless Joint Property, be considered the Sole Property of that party for purposes of this Section 4.

4.7 D&I hereby agrees that the acts and decisions of Northern in performing any management, maintenance, repair, renewal, removal, improvement, operation or similar function of or for the Joint Property shall be deemed the acts and decisions of a Joint Employee, except when such management, maintenance, repair, renewal, removal, improvement, operation or similar function is an overt action solely intended to harm D&I.

4.8 Each party hereto shall pay all Loss or Damage for which such party shall be liable under the provisions of this Section 4, and shall indemnify and save harmless the other party against such Loss or Damage, including any such damages awarded in any court action. Each party hereto shall have the right to settle, or cause to be settled for it, all claims for Loss or Damage for which such party shall be liable under the provisions of this Section 4, and to defend or cause to be defended all suits for the recovery of

any such Loss or Damage. In case a suit shall be commenced against either party hereto for or on account of Loss or Damage for which the other party hereto is solely or jointly liable under the provisions of this Section 4, the party so sued shall give to such other party notice in writing of the pendency of such suit, and thereupon such other party shall assume or join in the defense of such suit. No party hereto shall be conclusively bound by any judgment against any other party, unless such party shall have had reasonable notice requiring it to defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit.

Section 5. ARBITRATION

5.1 If at any time a question or controversy shall arise between the parties hereto touching the construction of any part of this Agreement or concerning the business or manner of transacting business carried on under its provisions, or concerning the observance or performance of any of the conditions herein contained, or the rights or obligations of any party under or arising from this Agreement upon which question the parties cannot agree, such question or controversy shall be submitted to arbitration by a disinterested person or persons familiar with such business and experienced in railway management as hereinafter provided. Such question or controversy shall be submitted to a single competent disinterested arbitrator if the parties hereto are able to agree upon such single arbitrator within twenty (20) days after the party desiring such arbitration shall notify in writing the other party to such question or controversy. If such single arbitrator cannot be agreed upon before the expiration of such period of twenty (20) days, such arbitration shall

be had before a board of three competent persons to be named as follows: The party demanding such arbitration shall give the other party notice of such demand, stating specifically the question or questions to be submitted for decision or the point or points in controversy, and nominating a person who has the required qualifications to act as one arbitrator. The party hereto to whom such notice is given shall appoint a second arbitrator and give the party hereto demanding arbitration notice in writing of such appointment within twenty (20) days from the time of such notice. If at the expiration of twenty (20) days from the receipt of such notice the party receiving it has not notified the party demanding the arbitration of its nomination of a second arbitrator having like qualifications, the party making the demand may make such selection. The first and second arbitrators chosen shall select a third, and if the arbitrators chosen shall be unable to agree upon a third arbitrator within a period of twenty (20) days from the date of appointment of the second arbitrator, the third arbitrator may be appointed upon ten (10) days' notice upon motion or application of either party hereto by the Chief Judge (or Judge acting as Chief Judge) of the United States District Court for the District of the State of Minnesota, Third Division, St. Paul.

5.2 If the question at issue affects the use of the Joint Trackage by more than two railway companies using the same, such required notice of a demand for arbitration shall be given to each company interested, and each within twenty (20) days thereafter shall have a right and be obligated to agree upon the appointment of a single arbitrator, or to name its arbitrator having the qualifications before stated. Should any company fail within twenty (20) days after receipt of such notice to name its arbitrator, those who shall be named as arbitrators shall select one for the company so failing; and if they cannot agree, he may be appointed on ten (10) days' notice by any judge

hereinbefore in the Article referred to. The arbitrators so chosen, if an even number, shall select one additional arbitrator having the qualifications before stated to complete the board. If they fail to agree upon such additional arbitrator, the same shall, on motion of any one of the companies, be appointed by a judge as and in the manner before stated.

5.3 Upon the selection of the single arbitrator if there shall be just one, or upon completion of the selection of such board of three or more arbitrators, the said arbitrator, or board, shall proceed at once with reasonable diligence to inquire into and determine the questions and controversy at issue pursuant to the rules and procedures of the American Arbitration Association in effect at that time. If any arbitrator shall decline or fail to act, the party (or parties in the case of the single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering the evidence and hearing the testimony and arguments which may be submitted by each party, said single arbitrator, or the majority of such board of arbitrators (as the case may be), shall state such decision or award upon reaching a decision, the decision or award shall be delivered to the parties and shall be final, binding and conclusive, and each party hereby expressly agrees to be bound conclusively thereby as to any of the matters submitted to arbitration. Until the single arbitrator, or board of arbitrators, as the case may be, shall issue said decision or make the award upon any question or controversy so submitted for arbitration, the business, settlements and payments to be transacted and made under the terms of this Agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such questions. Immediately after such decision or award, each party shall forthwith make such changes in the conduct of its business, or such payments of restitution, as the case may be, as are in and by such decision or award required of it to be made.

5.4 The books and papers of all parties, so far as they relate to any matter submitted to arbitration, shall be open to the examination of the arbitrators. The costs, expenses and compensation of the single arbitrator, or the additional arbitrator in any board of arbitrators shall be divided equally between and paid by the parties so involved. Each party to any arbitration hereunder, at its own sole cost and expense, shall assume and bear and be responsible for payment of the compensation, costs and expenses of the arbitrator, in said board of arbitrators appointed and acting on its behalf, and all fees and expenses of its own witnesses, exhibits and counsel.

Section 6. GOVERNMENTAL APPROVAL

6.1 D&I shall, if necessary, at its own cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of this Agreement and the operations to be carried on by D&I hereunder or exemption therefrom. Northern, at its expense, shall assist and support said application or petition and will furnish such information and execute, deliver and file such instrument or instruments in writing as may be necessary or appropriate to obtain such governmental consent, approval or authority. D&I and Northern agree to cooperate fully to procure all such necessary consent, approval or authority.

Section 7. OTHER CONSIDERATIONS

7.1 Nothing in the Agreement contained shall limit the right of Northern to admit other companies to the use of the Joint Trackage of any part thereof on such terms and conditions as are satisfactory to Northern.

7.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, but no sale, assignment, mortgage or lease by either party of any interest or right given it under this Agreement shall be valid or binding without the prior written consent of D&I.

7.3 This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

7.4 All notices, demands, requests or submissions which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing by serving the same upon the President, Vice President Operations, Regional Vice President - Operations, or Secretary of each company.

7.5 All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

7.6 In the event that any court with jurisdiction, agency or any other governmental authority declares any material provisions of this Agreement to be null, void or otherwise nonunenforceable, either party may within sixty (60) days thereafter terminate this Agreement upon thirty (30) days written notice to the other without incurring further liability of any kind.

7.7 This Agreement shall be in effect from November 1, 1986 and shall remain in effect until July 1, 2001, provided, however, that either party may terminate this Agreement after each five (5) year period from July 1, 1986, by notifying the other party of its intent to do so by certified mail at least one

hundred eighty (180) days prior to the end of each five year period of operations hereunder, provided, however, such termination shall not affect any of the rights or obligations of the parties to said agreement which may have occurred or liability, accrued or otherwise, which may have arisen prior to such termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers thereunder fully authorized the day and year first above written.

BURLINGTON NORTHERN RAILROAD COMPANY



VICE PRESIDENT

D&I RAILROAD COMPANY



VICE PRESIDENT
Secretary-Treasurer

I, Dennis Sudbeck, certify that this is a true copy of the original transportation and switching agreement.



Dennis Sudbeck



Date MAY 1, 1989 MAY 3, 1989

State of South Dakota
County of Minnehaha



Notary Public
My Commission Expires 6-27-89

EXHIBIT "B"

CONTRACTUAL LIABILITY ENDORSEMENT

In consideration of the premium at which this policy is written, the

agrees that the insuring agreements of the policy to which this Endorsement is attached are extended to cover liability for bodily injuries, including resulting death, and for damage to or destruction of property which liability the insured, D&I RAILROAD COMPANY (L. G. Everist, Inc.) has assumed by virtue of the following wording contained in the agreement entered into by and between the insured and BURLINGTON NORTHERN RAILROAD COMPANY (in said agreement called "Northern") dated September 4, 1986.

"Loss or Damage": Includes all claims, liability, cost and expense of every character incident to loss or destruction of or damage to property and injury to or death of persons, arising upon or as a result of the use of the Joint Trackage.

"Joint Employee": An officer, agent, employee, or contractor while engaged in maintaining, repairing, removing, inspecting or operating Joint Property or in making Additions thereto, or retirements therefrom, or in dispatching, giving orders for or directing the movement of trains, or performing other service, for the common benefit of the parties having the right to use the involved zone of the Joint Trackage.

"Joint Property": The Joint Trackage and all trains, locomotives, cabooses, cars and equipment engaged in the maintenance, repair, removal, inspection or operation thereof for the common benefit of the parties having the right to use the involved zone of the Joint Trackage. Any equipment shall be deemed Joint Property while engaged in or incident to the performance of service, the cost of which is included in expense or Loss or Damage for which the parties having the right to use the involved zone are jointly liable.

"Sole Employees" and "Sole Property": Employees, trains, locomotives, cabooses, cars and equipment while engaged or about to engage in switching or handling cars of one of the parties hereto, or in performing other services for the exclusive benefit of one of the parties hereto, shall, for the purpose of this section, be considered Sole Employees and Sole Property of such party. Pilots furnished by Northern to assist in operating trains, locomotives, cabooses or cars of D&I as well as any other Northern employees performing services for the exclusive benefit of the D&I under the terms of this Agreement shall be considered Sole Employees of D&I. Northern cars and lading while being handled by D&I under this Agreement shall be considered Sole Property of D&I for purposes in apportioning liability expenses under Section 4 hereof.

If equipment of D&I shall become derailed or otherwise disabled upon the Joint Trackage, such that wrecking service is required to clear same, Northern shall, unless otherwise agreed, arrange for such service. All employees of Northern operating wrecker or work trains or assigned thereto or any wrecking service contractor, while clearing wrecks or derailments or engaged in the repair and renewal of the Joint Trackage subsequent to any such wreck or derailment and any machinery, equipment, tools or other property of Northern while engaged in such service, or while en route to such assignment or while returning to the home terminal, incident to the performance of such work shall be deemed the Sole Employees and Sole Property of the party whose employees, cars, locomotives, cabooses or trains were, in the first instance, solely involved in the accident; or, in case of collision, or other accident involving the employees, equipment and lading of both parties hereto such employees and equipment shall be apportioned as provided in Section 4.3. Said employees and equipment shall not be deemed to be the employees and equipment of D&I while en route from the Joint Trackage for the purpose of performing further services for Northern or a third party. Northern shall use its best effort to obtain from wrecking service contractors indemnification and/or insurance coverage which includes the D&I provided, however, that any failure by Northern so to do shall not cast any liability whatsoever on Northern.

As between the parties hereto only, each party shall bear all Loss or Damage to its Sole Property, its Sole Employees, patrons and others on its engines, cars or trains, or on or about the Joint Property in transaction of business for or with such party, except when the acts or omissions of such party do not contribute to the Loss or Damage and it is due to acts or omissions of Sole Employees of another party or parties or defect in the Sole Property of another party (whether or not contributed to by acts or omissions of Joint Employees or defect in the Joint Property), in which event it shall be borne by the party or equally by the parties so responsible. Loss or Damage to third parties or to Joint Property or Joint Employees shall, if caused by the acts or omissions of Sole Employees of fewer than all of the parties (whether or not contributed to by acts or omissions of Joint Employees or defect in the Joint Property), be borne by the party whose Sole Employee caused said Loss or Damage and if more than one

party's Sole Employee (but fewer than all) caused said Loss or Damage, then equally by the parties whose Sole Employees caused such Loss or Damage. Such Loss or Damage not caused by acts or omissions of a Sole Employee or Employees shall, if the trains, locomotives cabooses or cars of fewer than all of the parties are involved, be borne by the party whose trains, locomotives, cabooses or cars are involved and if more than one, then equally by the parties whose trains, locomotives, cabooses or cars are involved. Such Loss or Damage caused by acts or omissions of Sole Employees of all of the parties or involving the trains, locomotives, cabooses or cars of all of the parties (but not caused by acts or omissions of a Sole Employee or Employees), or involving only Joint Employees or Joint Property, or occurring in such a way that it cannot be determined how such Loss or Damage came about or when such incident occurred, shall be shared between the parties hereto on a use proportion basis the month in which the incident occurred or was discovered.

This Endorsement is issued subject to all agreements, exclusions, conditions, declarations, and other terms contained in the policy, except as modified by this Endorsement.

This Endorsement forms a part of Policy No. _____
issued to the D&I Railroad Company (L. G. Everist, Inc.) by the _____
_____ and is effective _____ Central Standard Time.

Countersigned:

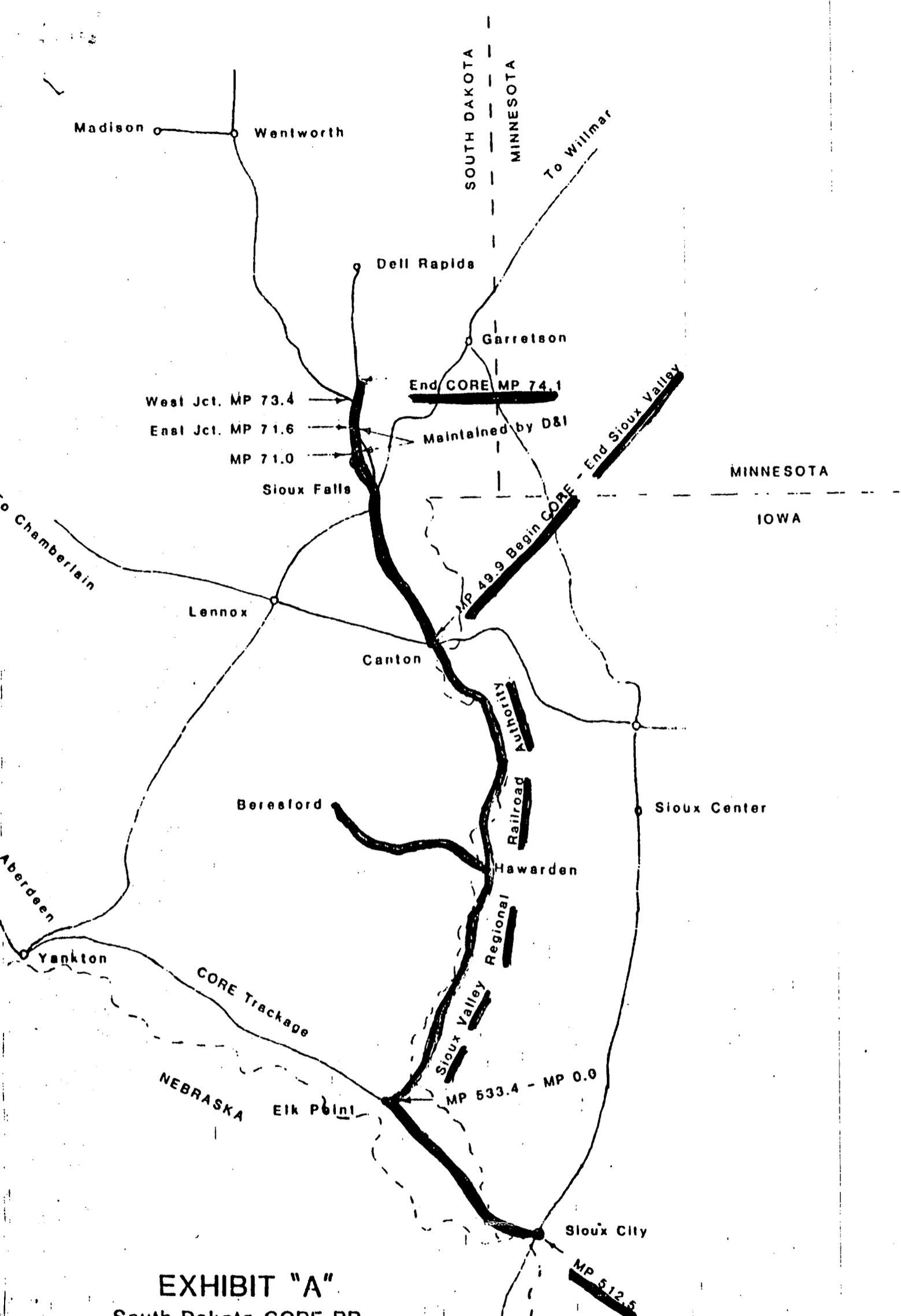


EXHIBIT "A"
South Dakota CORE RR.

Agreement dated 9-3-86 between
 BN RR CO and D&I RR CO covering JOINT USE
 by BN RR CO at D&I RR CO expense
 between SlouX Falls and SlouX City

Chief Engineer Mpls., MN September 4, 1986