

# PIPE LINE CROSSING AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ by and between ~~OREGON WASHINGTON FLORIDA AND CALIFORNIA RAILROAD COMPANY, a corporation of the State of Oregon, and the City of Portland, Oregon, a municipal corporation, and the~~

PORTLAND TRACTION COMPANY, a corporation of the State of Oregon,

hereinafter ~~called~~ called the "Railroad Company", and  
CITY OF PORTLAND, a municipal corporation,

hereinafter called the "Licensee", WITNESSETH:

WHEREAS, the Licensee desires to construct and thereafter to maintain and operate a storm and sanitary sewer line connection

(hereinafter called the "Pipe Line"), across the right of way and underneath the roadbed and track or tracks of the Railroad Company at or near Kendall County of Multnomah, State of Oregon

in the location indicated in red upon the plat hereto attached, which plat is hereby made a part of this agreement and marked "Exhibit A".

The parties hereto agree as follows:

1. The Railroad Company, for and in consideration of the payments and covenants hereinafter mentioned to be made, kept and performed by said Licensee, does hereby license and permit said Licensee to construct and thereafter, during the term hereof, to maintain and operate the Pipe Line in the location aforesaid.

2. This agreement shall be effective from and after the 2nd day of January 1973, ~~and shall continue in full force and effect until terminated by either party hereafter provided~~  
Portland Traction

3. ~~The Licensee shall and will pay None Dollars to the Railroad Company in consideration for the license and permission hereby granted.~~  
~~\_\_\_\_\_ in advance during the term of this agreement, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).~~

4. The Licensee shall bear the entire expense incurred in connection with the construction, maintenance, renewal and removal of the Pipe Line, including all expense incurred by the Railroad Company in connection therewith for supervision, inspection, or otherwise; and all work performed, and materials used in connection therewith within the limits of the right of way of the Railroad Company shall be done under the direction of and be satisfactory to the Chief Engineer of the Railroad Company or his authorized representative. Direction, supervision or approval of said work by the Railroad Company or its Chief Engineer or his authorized representative shall not operate to relieve the Licensee, in whole or in part, from responsibility for the safe and adequate construction, maintenance and operation of the Pipe Line in accordance with this agreement.

5. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the usefulness or safety of the track or tracks of the Railroad Company, or of any other tracks that hereafter may be constructed within the limits of said right of way. The Railroad Company reserves and shall have the right at any and all times to make such changes in its existing track or tracks and structures, or in the present standards thereof, and to construct, maintain and operate such additional tracks and structures on said right of way in the vicinity of the Pipe Line, and over and across the same, as from time to time it may elect and the Licensee shall bear the expense of making such modifications or changes in the location of the Pipe Line as may be required by the Railroad Company in connection with such changes in said track or tracks and structures, or in the present standards thereof, and such additional tracks and structures. All the terms, conditions and stipulations herein expressed with reference to the maintenance, repair and renewal of the Pipe Line in the location hereinbefore described, shall apply to the Pipe Line as relocated, changed or modified within the contemplation of this section.

6. The Pipe Line and all parts thereof within and outside of the limits of the right of way and premises of the Railroad Company shall be constructed and at all times maintained, repaired, renewed and operated in such manner as

# EXHIBIT 1

to cause no interference whatsoever with the constant, continuous, and uninterrupted use of the tracks, property and premises of the Railroad Company, both as regards operation, maintenance, repairs and renewals, or new construction by the Railroad Company. The Pipe Line and each and every part thereof shall be constructed and maintained at a depth of not less than <sup>(see Exhibit A)</sup> below the base of rail of the Railroad Company's track or tracks.

7. The Licensee shall indemnify and hold harmless the Railroad Company from and against any and all damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which may result from any injury to or the death of any person whomsoever, or from the loss of or damage to property of any kind or nature, including damage to the roadbed, tracks, equipment or other property of the Railroad Company, when such injury, death, loss or damage is due to the existence of the Pipe Line, or to the construction, maintenance, operation, repair or renewal thereof, or to the contents therein or therefrom. The Licensee does hereby release the Railroad Company from all liability for damages on account of injury to the Pipe Line from any cause whatsoever.

~~8. This license may be revoked at any time by the Railroad Company or its successors or assigns, by the giving of thirty (30) days' notice in writing mailed to the Licensee at the address noted below the signature of the Licensee hereto, and should the Pipe Line be permitted to be in bad order or condition for twenty-four (24) hours, then the Railroad Company may at once revoke this license without notice, and in the event of termination of this agreement~~

9. At such time it is determined by the Licensee that the Pipe Line is no longer needed for sewer purposes, the Licensee shall remove all prop-

erty of the Licensee herein provided for from that portion of the right of way of the Railroad Company not occupied by the said roadbed and track or tracks, and shall restore, to the satisfaction of the Railroad Company, the said right of way to as good condition as it was in at the time of the construction of the Pipe Line; and if the Licensee fails so to do, the Railroad Company may do such work of removal and restoration at the cost and expense of the Licensee. The Railroad Company, may at its option, upon such termination, at the entire cost and expense of the Licensee, remove the portion of the Pipe Line located underneath said roadbed and track or tracks, and restore said roadbed to as good a condition as it was in at the time of the construction of the Pipe Line, or it may permit the Licensee to do such work of removal and restoration under the supervision of the Railroad Company; and in the event of the removal by the Railroad Company of the property of the Licensee and of the restoration of said roadbed and right of way as herein provided, the Railroad Company shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages or otherwise that the Railroad Company may have against the Licensee.

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

11. The Licensee shall not assign this agreement or any of the rights hereunder without the written consent of the Railroad Company.

12. This agreement shall be binding upon and inure to the benefit of the Railroad Company, its successors and assigns, the Licensee and the heirs, executors, administrators, successors and assigns of the Licensee. The protective and indemnifying provisions hereof shall also inure to the benefit of any other railroad company or companies or other persons or corporations lawfully using or occupying the tracks or right of way of the Railroad Company.

13. The portion or portions of the Pipe Line located or to be located underneath said track or tracks shall consist of

See Exhibit A

placed at a depth below the base of the rails of said track or tracks as indicated on Exhibit A, and prior to the commencement of any work in connection with such portion or portions of the Pipe Line (whether of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal), the Licensee shall submit to the Railroad Company plans setting out the method and manner of handling the work and shall not proceed with the work until such plans shall have been approved by the Chief Engineer of the Railroad Company and then only under the supervision of said Chief Engineer or his representative. The Railroad Company shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time such work is being done, and, in the event the Railroad Company provides such support, the Licensee shall pay to the Railroad Company, within fifteen days after bills shall have been rendered therefor, all expense incurred by the Railroad Company in connection therewith, which said expense shall include all assignable costs plus ten per cent (10%) to cover elements of expense not capable of exact ascertainment.

14. The Licensee agrees to shore and crib all excavation and/or trenching for the installation and maintenance of said Pipe Line on Railroad Company property in sufficient strength to withstand any vibration caused by operations of the Railroad Company over trackage in the vicinity of such excavation or trenching, to the satisfaction of the Railroad Company, and in the event such work is performed for the Licensee by any contractor or subcontractor, the Licensee shall require such contractor or subcontractor to perform such work in the manner as above provided.

15. Special provisions: It is understood that should the Pipe Line be permitted to be in bad order or condition for forty-eight (48) hours after notice has been given to the Licensee of said bad order or condition, and the Licensee has not taken such steps as are necessary to restore said Pipe Line to good operating condition, then the Railroad Company may at once revoke this license without further notice and in the event of termination of this agreement howsoever, the Licensee shall be without recourse or redress of any character against the Railroad Company by reason thereof nor shall such termination prejudice or impair any right of action for damages or otherwise that the Railroad Company may have against the Licensee.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

~~OREGON TRACTION COMPANY~~  
~~PORTLAND TRACTION COMPANY~~  
PORTLAND TRACTION COMPANY

By.....President ~~XXXXXXXXXXXX~~

CITY OF PORTLAND

By.....

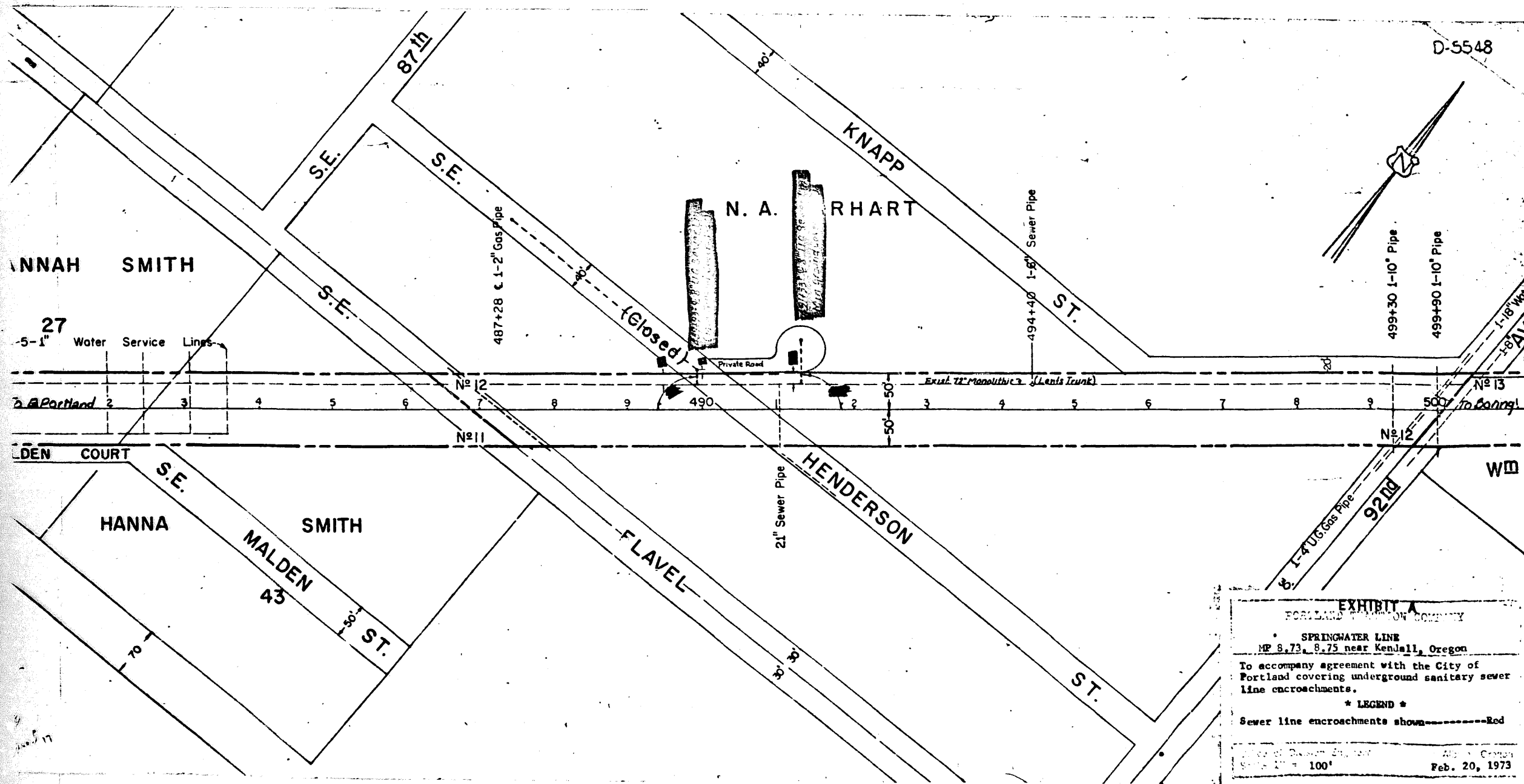
Attest:

By.....

By.....~~XXXXXXXXXXXX~~

By.....

EXHIBIT 1



**EXHIBIT A**  
 PORTLAND WATERWORKS COMPANY  
 SPRINGWATER LINE  
 MP 8.73 - 8.75 near Kendall, Oregon  
 To accompany agreement with the City of  
 Portland covering underground sanitary sewer  
 line encroachments.  
 \* LEGEND \*  
 Sewer line encroachments shown-----Red  
 City of Portland, Oregon  
 Date: Feb. 20, 1973

# ORDINANCE No. 137356

An Ordinance authorizing the City to enter into a Pipeline Crossing Agreement with Portland Traction Company to cover the location, construction and maintenance of storm and sanitary sewer connections to the Lents Trunk sewer in railroad right of way near SE Henderson Court, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds that in connection with construction of storm and sanitary sewers in SE Henderson Court north of SE Henderson Street it is necessary to cross railroad right of way to connect to the City's existing Lents Trunk Sewer located in said right of way; that the railroad company, Portland Traction Company, is willing to enter into an agreement with the City allowing such crossings under certain conditions; that the City Engineer and Commissioner of Public Works recommends the City enter into such agreement; now therefore, the Mayor and Commissioner of Public Works are hereby authorized to execute a Pipeline Crossing Agreement, approved as to form by the City Attorney, which will allow the City to construct and maintain storm and sanitary sewer connections to the Lents Trunk Sewer, through and across railroad property, said agreement to be substantially in accordance with the form of agreement marked "Exhibit 1", attached to the original only of this ordinance.

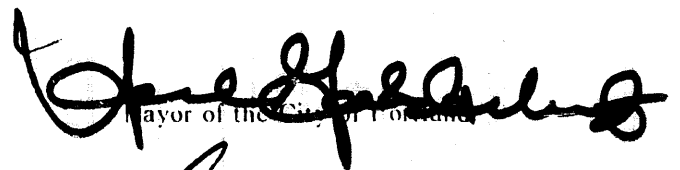
Section 2. Upon execution of said agreement by both parties, the City Auditor is hereby directed to record the same in the Multnomah County Deed Records.

Section 3. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: In order that needed sewer line connections may be provided without unnecessary delay, an emergency is hereby declared to exist, and this ordinance shall be in force and effect from and after its passage by the Council.

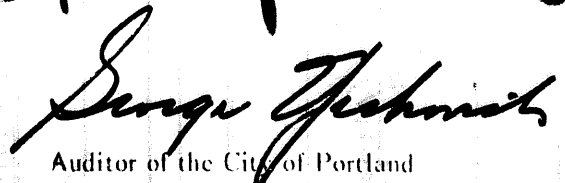
Passed by the Council, OCT 17 1973

LLOYD E. ANDERSON, Commissioner  
Department of Public Works

RAM:jd  
10/5/73

  
Mayor of the City of Portland

Attest:

  
Auditor of the City of Portland

Calendar No. 3231

ORDINANCE No. 137356

Title

An Ordinance authorizing the City to enter into a Pipeline Crossing Agreement with Portland Traction Company to cover the location, construction and maintenance of storm and sanitary sewer connections to the Lents Trunk Sewer in railroad right of way near SE Henderson Court, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Anderson	1	
Ivancie	1	
McCready	1	
Schwab	1	
Goldschmidt	1	

FOUR-FIFTHS CALENDAR	
Anderson	
Ivancie	
McCready	
Schwab	
Goldschmidt	

Filed OCT 9 1973

GEORGE YERKOVICH  
Auditor of the CITY OF PORTLAND

By Jordan Hoell  
Deputy

INTRODUCED BY  
Commissioner Anderson

DRAWN BY  
RAM:jd  
Date 10/5/73

NOTED BY THE COMMISSIONER

Affairs  
Finance and Administration  
Safety  
Utilities  
Works *J. Blum*

City Attorney

NOTED BY THE CITY AUDITOR

*GC*

APPROVED

Date 10-8-73  
By James L. Apperson  
City Engineer  
JAMES L. APPERSON  
Date  
By