

PIPELINE CROSSING
Portland, Oregon
PLD 303-0-3.431

EXHIBIT "A"

Dept. No. 32808

THIS AGREEMENT is made and entered into as of the 19th day of May, 1980, by and between the OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, and its lessee, UNION PACIFIC RAILROAD COMPANY, a Utah corporation, and BURLINGTON NORTHERN INC., a Delaware corporation, successor by merger to the interests of the Spokane, Portland & Seattle Railway Company (hereinafter collectively called "Licensor"), and the CITY OF PORTLAND, an Oregon municipal corporation (hereinafter called "Licensee").

RECITALS:

The Licensee desires to construct, maintain and operate a 30-inch wastewater pipeline, encased in a 42-inch steel casing pipe (hereinafter referred to as "Pipeline"), across the right of way and under the Rivergate Lead Track of the Licensor in North Columbia Boulevard, Portland, Multnomah County, Oregon, in the location shown by red line on print R-1390 dated April 17, 1980, attached hereto, marked Exhibit "A", and by this reference made a part hereof.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the parties hereto as follows:

Section 1. LICENSOR GRANTS RIGHT.

(a) In consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, insofar as the Licensor may lawfully do so, the Licensor hereby grants to the Licensee, subject to the terms and conditions herein stated, the right to construct, maintain and operate the Pipeline in the location shown, and in conformity with the dimensions and specifications indicated, on Exhibit "A".

(b) The foregoing grant is subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication or other wire lines, pipelines and other facilities upon, along or across any or all parts of the Licensor's property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(c) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees, lessees of said property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

(a) The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with the Union Pacific Railroad Company's Common Standard Specification 1029 adopted November, 1949, and all amendments thereof and supplements thereto, which, by this reference, hereby is made a part hereof, except as may be modified and approved by the Chief Engineer. In the event said specification conflicts in any detail with the requirements of any Federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects said specification shall apply. This agreement is made subject to all such laws or regulations.

(b) All work performed on said property in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done under the supervision of and to the satisfaction of the Licensor.

(c) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor, plans setting out the method and manner of handling the work and shall not proceed with the work until such plans have been approved by the Chief Engineer of the Licensor, and then only under the supervision of said Chief Engineer or his authorized representative. Said plans shall show shoring and cribbing required to protect the Licensor's operations. The Licensor shall have the right, if it so elects, to provide such support, flagmen or other protection as it may deem necessary for the safety of its said track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline; and in the event the Licensor provides such support, flagmen or other protection, the Licensee shall pay to the Licensor, within fifteen (15) days after bills have been rendered therefor, all expense

incurred by the Licensor 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.

(d) The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

Section 3. NOTICE OF COMMENCEMENT OF WORK. The Licensee shall notify the Licensor at least forty-eight (48) hours in advance of the commencement of any work upon said right of way in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE. The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision or inspection, or otherwise.

Section 5. RELOCATION OR REMOVAL OF PIPELINE.

(a) The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, move all or any portion of the Pipeline to such new location or (unless the Pipeline extends entirely across the property of the Licensor) remove the Pipeline from said property, as the Licensor may designate, whenever, in the furtherance of such needs and requirements, the Licensor shall find such action necessary.

(b) All the terms, conditions and stipulations herein expressed with reference to the Pipeline on said property in the location(s) hereinbefore described, shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. PIPELINE NOT TO INTERFERE WITH LICENSOR'S OPERATION. The Pipeline and all parts thereof within and outside of the limits of the right of way and premises of the Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. CLAIMS AND LIENS FOR LABOR AND MATERIAL AND TAXES.

(a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon said property of the Licensor in connection with the construction, maintenance, repair, renewal or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against said property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee; and the Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished.

(b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon said property, and so that the taxes, charges and assessments levied upon or in respect to said property of the Licensor shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon said property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee, but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon said property as compared with the entire value of said property.

Section 8. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee shall take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then and in that event, the Licensee shall, as soon as possible and at the Licensee's sole expense, restore such fence and/or such other property to the same condition as it was in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, the Licensor's officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorney's fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

Section 9. LIABILITY. Insofar as the Licensee lawfully may do so, the Licensee shall indemnify and hold harmless the Licensor, and other railroad companies which use the property of the Licensor, their officers, agents and employees, against and from any and all liability, loss, damage, claims, demands, costs and expenses of whatsoever nature, including court costs and attorney's fees, which may result from injury to or death of persons whomsoever, or against and from damage to or loss or destruction of property whatsoever (including damage to the roadbed, tracks, equipment or other property of the Licensor and such other railroad companies or property in their care or custody), when such injury, death, loss, destruction or damage grows out of or arises from the bursting of or leaks in the Pipeline, or in any other way whatsoever is due to, or arises because of, the existence of the Pipeline or the construction, operation, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline or any part thereof, or to the contents therein or therefrom; and the Licensee does hereby release the Licensor, the Licensor's officers, agents and employees, from all liability for damages on account of damage to the Pipeline from any cause whatsoever.

Section 10. TERMINATION. Should the Pipeline be permitted to be in bad order or condition, then the Licensor may repair or contract for the repair of said Pipeline and the Licensor's property or facilities at the cost and expense of the Licensee; and the Licensee will pay or reimburse the Licensor for all costs and charges incurred or necessitated by such repair. Said action may be taken by the Licensor without prejudice to or impairment of any right of action for damages or otherwise which the Licensor may have against the Licensee. In the event the Licensee fails to pay or reimburse the Licensor for any such costs or charges within sixty (60) days following receipt of bill or bills therefor, the Licensor may terminate this agreement. In the event of termination of this agreement howsoever, the Licensee shall be without recourse or redress of any character against the Licensor by reason thereof, and such termination shall not prejudice or impair any right of action for damages or otherwise which the Licensor may have against the Licensee.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT. Within ninety (90) days after the termination of this agreement howsoever, the Licensee shall, at the Licensee's sole expense, remove the Pipeline from those portions of said property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, said portions of said property to as good condition as they were in at the time of the construction of the Pipeline; and if the Licensee fails so to do, the Licensor may do such work of removal and restoration at the cost and expense of the Licensee. The Licensor may, at its option, upon such termination, at the entire cost and expense of the Licensee, remove the portions of the Pipeline located underneath said roadbed and track or tracks and restore said roadbed to as good condition as it was in at the time of the construction of the Pipeline, or it may permit the Licensee to do such work of removal and restoration under the supervision of the Licensor. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of said roadbed and right of way as herein provided, the Licensor 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 Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH. The waiver by the Licensor 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 Licensor to avail itself of any subsequent breach thereof.

Section 13. AGREEMENT NOT TO BE ASSIGNED. The Licensee shall not assign this agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this agreement.

Section 14. LIABILITY INSURANCE.

(a) Before construction of the said Pipeline is begun, the Licensee, without expense to the Licensor, shall require each of the Licensee's contractors to furnish and deliver to the Licensor a public liability and property damage insurance policy or policies in favor of the Licensor; and the Licensee, without expense to the Licensor, at all times during the progress of and until final completion of the project, shall cause such policy or policies to remain in full force and effect.

(b) Said insurance shall provide for a maximum limit of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for all damages arising out of bodily injuries to or death of one person, and, subject to that limit for each person, a total maximum limit of ONE MILLION DOLLARS (\$1,000,000) for all damages arising out of bodily injuries to or death of more than one person in any one occurrence. Said insurance shall provide for a maximum limit of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for all damages arising out of damage to or destruction of property in any one occurrence, and, subject to that limit, a total (or aggregate) maximum limit of ONE MILLION DOLLARS (\$1,000,000) for all damages arising out of damage to or destruction of property during the period of construction.

(c) Each such insurance policy shall be issued by a reliable insurer satisfactory to the Licensor and authorized to do business in the state in which the Pipeline is located, and each such policy shall be in form and substance satisfactory to the Licensor. The original and one true and complete copy of said policy or policies shall be delivered to and remain in the possession of the Licensor.

Section 15. EFFECTIVE DATE; TERM. This agreement shall take effect as of the date first herein written, and shall continue in full force and effect until terminated as herein provided.

Section 16. SUCCESSORS AND ASSIGNS. Subject to the provisions of Section 13 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed, in triplicate, as of the day and year first hereinabove written.

OREGON-WASHINGTON RAILROAD
& NAVIGATION COMPANY
UNION PACIFIC RAILROAD COMPANY

By _____
General Manager

BURLINGTON NORTHERN INC.

By _____
(title) _____

ATTEST: (Seal)

CITY OF PORTLAND

Auditor

By _____
Commissioner of Public Works

Pursuant to Resolution
passed _____
(attach copy).

150129

R-1390

BONNEV
POWER
ADMI
R/V

EASEMENT

P.G.E.

COLUMBIA

RIVERGATE LEAD

TO
BARNES YAKO

44+82± UG 30 INCH
WASTEWATER PIPELINE KING

ST.

TO
EDT

N.

COLUMBIA

BLVD.



~~PIPE MUST BE JACKED
UNDER TRACK(S).~~

Installed in accordance
with U.P.R.R. C.S. 1029

1720
1820
1721
1821

BURGARD
RD.

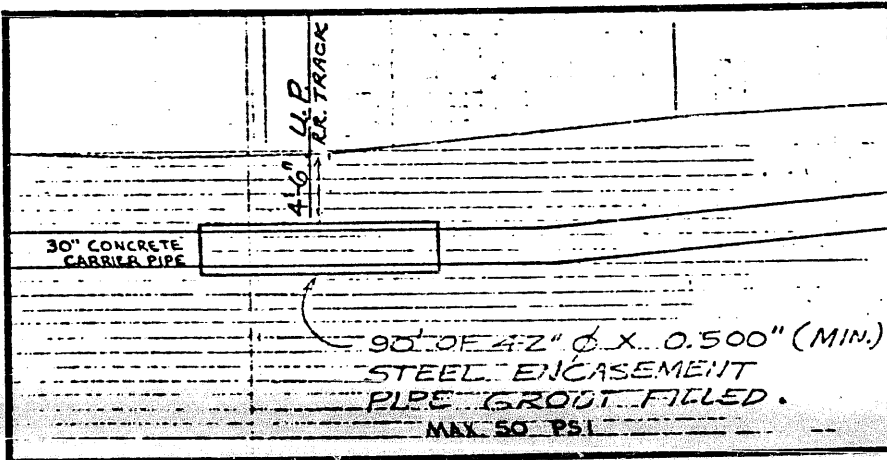


EXHIBIT "A"
OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY
UNION PACIFIC RAILROAD COMPANY (LESSEE)
BURLINGTON NORTHERN INC.

Rivergate Lead Track - Portland, Oregon

SCALE: 1" = 200'

OFFICE OF DISTRICT REAL ESTATE DIRECTOR
Portland, Oregon April 17, 1980

To accompany agreement with the City of Portland
covering underground 30-inch wastewater pipeline
crossing.

* LEGEND *

U.G. 30-inch wastewater pipeline crossing
shown.....RED

Section 36, T2N, R1W, W.M., Multnomah County

ORDINANCE NO. 150129

An Ordinance authorizing the City to enter into an agreement with Oregon-Washington Railroad & Navigation Company and its lessee, Union Pacific Railroad Company, and Burlington Northern Inc. (hereinafter collectively referred to as Railroad) to construct and maintain a 30 inch diameter sewer pipeline across and under the Railroad's Rivergate lead track and easement therefore located in N. Columbia Blvd. (N. Lombard Street), and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. The City, in connection with construction of the Lombard Wastewater Pump Station and Pressure Line, proposes to construct a 30 inch diameter sewer pressure line under the Railroad's lead track located in N. Columbia Blvd. (N. Lombard Street), said lead track being located in an easement granted to Railroad prior to the dedication of said N. Columbia Blvd.
2. The Railroad is willing to enter into an agreement allowing construction and maintenance of said 30 inch diameter sewer line through its easement and under its lead track subject to certain conditions approved by the City Engineer, and such agreement should now be authorized.

NOW, THEREFORE, the Council directs:

- a. The Commissioner of Public Works and Auditor are authorized to sign on behalf of the City, triplicate counterparts of an agreement approved as to form by the City Attorney, allowing the construction and maintenance of a 30 inch diameter wastewater sewer line across the easement and under the lead track of the Railroad, said agreement to be substantially in accordance with Exhibit "A" attached to the original only of this Ordinance and by this reference made a part thereof.
- b. The Auditor is directed to forward the signed agreements to Union Pacific Railroad Company, 628 Pittock Block, Portland, Oregon 97205, Attention: L. James Bergmann, General Solicitor, for signature on the part of the Railroad.
- c. That upon receipt by the Auditor of the fully executed agreement, said agreement shall be filed in the appropriate City records.

ORDINANCE No.

Section 2. The Council declares an emergency exists, because a delay in entering into this agreement may cause delays and extra cost to a sewer project presently under contract; therefore, this ordinance shall be in force and effect from and after its passage by the Council.

ORDINANCE No. 150129

JUL 30 1980

Auditor of the City of Portland

George A. Brock

Passed by the Council, **JUL 30 1980**

Commissioner Mike Lindberg
Carl Short/sg
July 18, 1980

Attest:

George A. Brock
Auditor of the City of Portland

Calendar No. 2748

ORDINANCE No. 150129

Title

An Ordinance authorizing the City to enter into an agreement with Oregon-Washington Railroad & Navigation Company and its lessee, Union Pacific Railroad Company, and Burlington Northern Inc. (hereinafter collectively referred to as Railroad) to construct and maintain a 30 inch diameter sewer pipeline across and under the Railroad's Rivergate lead track and easement therefore located in N. Columbia Blvd. (N. Lombard Street), and declaring an emergency.

Filed JUL 24 1980

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

Gordon Brock
Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Ivancie	1	
Jordan		1
Lindberg	1	
Schwab	1	
McCready	1	

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

INTRODUCED BY	
Commissioner Mike Lindberg	
NOTED BY THE COMMISSIONER	
Affairs	
Finance and Administration	
Safety	
Utilities	
Works <i>ML Lang</i>	
BUREAU APPROVAL	
Bureau:	
Sanitary Engineering	
Prepared By: <i>CS</i>	Date: 7/18/80
Carl Short/sg	
Budget Impact Review:	
<input type="checkbox"/> Completed	<input checked="" type="checkbox"/> Not required
Bureau Head:	
<i>Joe P. Niehuser</i>	
Joe P. Niehuser	
NOTED BY	
City Attorney	
City Auditor	
City Engineer	
APPROVED:	
John M. Lang, P.E.	
BY: <i>Joe P. Niehuser</i>	