

PRIVATE ROAD CROSSING
Portland (South Rivergate),
Multnomah County, Oregon
PLD 9246-32-3

Dept. No. 32848

Exhibit 1

THIS AGREEMENT is made and entered into this day of _____, 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, lessee of the properties of SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, a Washington corporation (hereinafter collectively called "Licensor"), and the CITY OF PORTLAND, an Oregon municipal corporation, and THE PORT OF PORTLAND, an Oregon municipal corporation (hereinafter collectively called "Licensee").

RECITALS:

The Licensee desires:

(a) to construct, maintain and use a private roadway, including appurtenant identification signs, stop signs, and drainage facilities (hereinafter called "Private Roadway"), upon and across the right of way and tracks of the Licensor in Portland (South Rivergate), Multnomah County, Oregon, in the location shown colored red on print D-8998 dated February 26, 1980, attached hereto, marked Exhibit "A", and by this reference made a part hereof; and

(b) to use, and the Licensor to construct and maintain between the rails of the tracks and for one foot on the outside of each rail, a 12-foot-wide plank crossing (hereinafter called "Crossing") on said right of way and over said tracks as a part of said Private Roadway.

The Private Roadway and Crossing described in subparagraphs (a) and (b) above shall hereinafter be referred to collectively as "Road Crossing".

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

Section 1. LICENSOR GRANTS RIGHT.

(a) The Licensor hereby grants to the Licensee, subject to the terms and conditions herein stated, the right to construct, and thereafter during the term hereof, to

maintain said Private Roadway and to use said Road Crossing across said right of way and over said tracks in the location described in the recitals hereof.

(b) In consideration of the license and permission granted herein, the Licensee shall and will do, keep, observe and perform each and all of the terms, provisions, conditions, limitations and covenants herein contained, and shall pay the Licensor the sum of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) upon execution and delivery of this agreement. In addition, upon execution and delivery of this agreement, the Licensee shall pay to the Licensor the sum of FIFTY AND NO/100 DOLLARS (\$50.00) to cover the cost of preparation hereof.

(c) The foregoing grant is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain the Licensor's entire railroad right of way in the performance of the Licensor's public duty as a common carrier, and is also 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 said right of way, 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.

(d) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees, lessees of said right of way, 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. In the event others are or have been authorized by the Licensor to use said Road Crossing, the Licensee may agree with such others as to the use of said Road Crossing and as to the cost of and responsibility for maintenance of said Road Crossing; but no such collateral agreement shall relieve the Licensee of responsibility to the Licensor nor relieve the Licensee from any liability hereunder with respect to said Road Crossing.

Section 2. CONSTRUCTION, MAINTENANCE AND USE.

(a) The Licensee shall be responsible for all costs and expense related to the construction, maintenance and use of the Road Crossing. The Licensor, at the sole expense of the Licensee, shall (1) furnish labor and materials and install the Crossing between the rails and for one foot

on the outside of each rail, together with the stop signs and identification signs on each side of the Crossing; and (2) maintain said Crossing, PROVIDED, however, that such maintenance shall be limited to that required by the Licensor for the safe and efficient operation of its tracks, and such additional maintenance work as is requested by the Licensee, and PROVIDED FURTHER the Licensee shall keep the rail flangeways clear of all obstructions.

(b) The Licensee, at the sole expense of the Licensee, shall construct, perform all grading and surfacing necessary for, and maintain, repair, renew and replace said Private Roadway, and shall install, repair, renew and replace any and all appurtenant drainage facilities, traffic signs or devices, and identification signs shown on Exhibit "A" or required at any time by the Licensor, by law, or by any public authority having jurisdiction. All work performed by the Licensee on said right of way in connection with the construction and maintenance of said Private Roadway shall be done to the satisfaction of the Licensor.

(c) Said Private Roadway shall be constructed and maintained, and said Road Crossing used by the Licensee, in such manner as to cause no interference whatsoever with the operation of said tracks, and nothing shall be done or suffered to be done by the Licensee which would in any way endanger the safety of operation of said tracks.

(d) The Licensee shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay the maintenance and operation of the Licensor's railroad tracks or appurtenant facilities or the facilities or equipment of others lawfully using the Licensor's property. The Licensee shall adequately supervise and police use of said Road Crossing so that no person or vehicle stops or stands on the Licensor's tracks or attempts to cross the Licensor's railroad tracks when a railroad train, engine or car is approaching or occupying the Crossing.

Section 3. MODIFICATION OR RELOCATION OF ROAD CROSSING.

(a) The right herein granted is subject to the needs and requirements of the Licensor in the operation of the Licensor's railroad and the improvement and use of the Licensor's property, and:

(1) the Licensee shall, at the Licensee's sole expense, make any and all modifications or changes in said Private Roadway; and

(2) the Licensor shall, at the Licensee's sole expense, make any and all modifications or changes in said Crossing,

or move the same to such new location as the Licensor may designate, whenever, in the furtherance of such needs and requirements, the Licensor shall find such action necessary or desirable.

(b) All the terms, conditions and stipulations herein expressed with reference to the maintenance and use of the Road Crossing in the location hereinbefore described shall apply to the Road Crossing when modified or moved to a new location under the terms of this section.

Section 4. ROAD CROSSING TO BE A STRICTLY PRIVATE ONE. It is expressly stipulated that the Road Crossing is to be a strictly private one and is not intended for public use. The Licensee shall not at any time permit or suffer said Road Crossing to become or to be used as a public road. The Licensee, without expense to the Licensor, will take any and all necessary action to preserve the private character of said Road Crossing, including the erection and maintenance of such signs, fences and gates, if any, as in the judgment of the Licensor may be necessary or desirable.

Section 5. ASSUMPTION OF RISK; INDEMNIFICATION. The Licensee shall use said Road Crossing at the Licensee's own risk, and the Licensee agrees to and does assume all risks thereof and incidental thereto, including, without limitation, risks incident to the Licensor's train operations over the Road Crossing and defects in the construction and maintenance of said Road Crossing. The Licensee acknowledges that the Road Crossing and the use thereof permitted hereunder will subject the Licensor's property and operations to additional hazards and liability; and as a material consideration for this license, the Licensee, insofar as the Licensee lawfully may do so, 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 loss, damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which may result from injury to or death of persons whomsoever or from loss of or damage to property whatsoever (including

damage to the roadbed, tracks, equipment or other property of the Licensor and such other railroad companies) when such injury, death, loss or damage is due to or arises in connection with or as a result of the construction of said Private Roadway; or:

(a) any work done by the Licensee in connection with the maintenance or removal of said Private Roadway; or

(b) the use of said Road Crossing by the Licensee, or the agents, employees, patrons or invitees of the Licensee, or by others with the consent of the Licensee; or

(c) the breach of any covenant or obligation assumed by or imposed on the Licensee pursuant to this agreement, or the failure of the Licensee to promptly and fully do any act or work for which the Licensee is responsible pursuant to this agreement;

except when such loss, damages, claims, demands, actions, causes of action, or costs and expenses are caused by the sole negligence of the Licensor, the Licensor's agents, servants or employees.

Section 6. TERMINATION ON BREACH AND WAIVER OF BREACH. It is agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by the Licensee shall, at the option of the Licensor, forthwith work a termination of this agreement and all rights of the Licensee hereunder. A waiver by the Licensor of a breach by the Licensee of any covenant or condition of this agreement shall not impair the right of the Licensor to avail the Licensor of any subsequent breach thereof.

Section 7. TERMINATION ON NOTICE. This agreement may be terminated by written notice given by the Licensor to the Licensee on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date on which such notice shall be given.

Section 8. REMOVAL OF ROAD CROSSING.

(a) Upon termination of this agreement howsoever, the Licensor may, at the sole expense of the Licensee, remove said Road Crossing and restore the premises of the Licensor to a condition comparable to that existing immediately prior to the construction of said Road Crossing.

(b) In the event of the removal of the Road Crossing as in this section provided, the Licensor shall not be liable to the Licensee for any damage sustained by the Licensee for or on account of such removal, and such removal shall not prejudice or impair any right of action for damage, or otherwise, which the Licensor may have against the Licensee.

Section 9. 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 10. AGREEMENT NOT TO BE ASSIGNED. The Licensee shall not assign this agreement, or any interest therein, without the written consent of the Licensor.

Section 11. SUCCESSORS AND ASSIGNS. Subject to the provisions of Section 10 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

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

OREGON-WASHINGTON RAILROAD
& NAVIGATION COMPANY
UNION PACIFIC RAILROAD COMPANY

BURLINGTON NORTHERN INC.,
lessee of the properties of
SPOKANE, PORTLAND AND SEATTLE
RAILWAY COMPANY

By _____
General Manager

By _____
(title)

ATTEST:

CITY OF PORTLAND

Auditor

By _____
Mayor

Pursuant to Resolution
passed _____
(attach copy)

ATTEST:

THE PORT OF PORTLAND

Secretary

By _____
Executive Director

A G R E E M E N T

WHEREAS, The City of Portland desires a private road crossing over track of the Oregon-Washington Railroad and Navigation Company, and its Lessee, Union Pacific Railroad Company and Burlington Northern, Inc., Lessee of Spokane, Portland and Seattle Railway Company in South Rivergate, Multnomah County, Oregon, as shown on Print D-8998, and the Port of Portland is land owner in South Rivergate,

NOW THEREFORE, IT IS AGREED by the City of Portland:

1. All costs and expenses related to the construction, maintenance, use and removal of the Road Crossing shall be paid by the City of Portland.

2. The City of Portland agrees to defend, save harmless and indemnify the Port of Portland from and against all claims, damages, actions, costs and expenses of any nature which may result from or arise in connection with the construction, maintenance, use and removal of the Private Roadway as identified on Print D-8998, dated February 26, 1980; and further identified as Private Road Crossing, PLD 9246-32-3 attached hereto and made a part hereof.

Dated this _____, 1980

THE CITY OF PORTLAND

AUDITOR

COMMISSIONER OF PUBLIC WORKS

An Ordinance authorizing the city to enter into agreements with Oregon Washington Railroad & Navigation Company and its lessee, Union Pacific Railroad Company, and Burlington Northern, Inc., and the Port of Portland for a private crossing of the railroad's right-of-way and tracks in the Port of Portland's South Rivergate Industrial District, to be utilized for transporting treated sludge from the Columbia Boulevard Wastewater Treatment Plant to the Port of Portland property, providing for the payment of fees and expenses in the amount of \$150 and construction costs estimated at \$1500, providing for the recording of the agreement by the Auditor, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

- (1) The Bureau of Wastewater Treatment desires to dispose of treated sludge generated at the Columbia Boulevard Wastewater Treatment Plant.
- (2) The Port of Portland has agreed to allow the sludge to be placed on nearby Port property.
- (3) In order to transport the sludge from the treatment plant site to said Port property, trucks must cross the right-of-way and tracks of said railroad company.
- (4) The City Engineer and the Commissioner of Public Works recommends the city enter into agreements with the railroads covering the crossing and construction of a temporary roadway across said railroad right-of-way and tracks and for a hold harmless agreement with the Port of Portland as landowner in South Rivergate.
- (5) The payment for the fees for the crossing and the crossing construction and for the recording of the agreements will be made from funds budgeted to the Bureau of Wastewater Treatment.

NOW, THEREFORE, the Council directs:

- (a) The Commissioner of Public Works and the Auditor are hereby authorized to execute a private roadway and crossing agreement to be substantially in accordance with the form of agreement marked Exhibit "1", attached to the original only of this ordinance.
- (b) The Commissioner of Public Works and Auditor are authorized to execute a hold harmless agreement with the Port of Portland to be substantially in accordance with the form of agreement marked Exhibit "2", attached to the original only of this ordinance.
- (c) The Mayor and Auditor are hereby authorized to draw and deliver warrant(s) chargeable to the 1979-80 budget; Sewage Disposal, Bureau of Wastewater Treatment, Maintenance Division, 15000139, Project No. 6216, when demand is presented, approved by the proper authorities.

ORDINANCE No.

(d) Upon execution of the agreements by the three parties, the City Auditor will have same recorded in the Multnomah County Records, fees to be paid by city.

Section 2. The Council declares:

Inasmuch as this ordinance is necessary for the immediate preservation for the public health, peace and safety of the City of Portland and in order that there be no delay in the enactment and effectiveness of this ordinance which could delay disposal of sewage sludge, therefore, an emergency is hereby declared to exist and this ordinance shall be in force and effect from and after its passage by the Council.

ORDINANCE NO. 110101

Calendar No. 110101

Title

An Ordinance authorizing the City to...

Filed APR 16 1980

GEORGE ALSTROM

City Auditor

Passed by the Council, **APR 16 1980**
Commissioner Lindberg
April 2, 1980
SOTorgrimson/fg

George Alstrom
Mayor of the City of Portland

Attest:

George Alstrom
Auditor of the City of Portland

Calendar No. 1342

ORDINANCE No. 149464

Title

An Ordinance authorizing the city to enter into agreements with Oregon Washington Railroad & Navigation Company and its lessee, Union Pacific Railroad Company, and Burlington Northern, Inc., and the Port of Portland for a private crossing of the railroads' right-of-way and tracks in the Port of Portland's South Rivergate Industrial District, to be utilized for transporting treated sludge from the Columbia Boulevard Wastewater Treatment Plant to the Port of Portland property, providing for the payment of fees and expenses in the amount of \$150 and construction costs estimated at \$1500, providing for the recording of the agreement by the Auditor, and declaring an emergency.

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

FOUR-FIFTHS CALENDAR	
Ivancie	
Jordan	
Lindberg	
Schwab	
McCready	

Filed APR 10 1980

GEORGE YERKOVICH
Auditor of the CITY OF PORTLAND

By *[Signature]*
Deputy

INTRODUCED BY
Commissioner Lindberg

NOTED BY THE COMMISSIONER
Affairs
Finance and Administration
Safety
Utilities
Works <i>MLSA</i>

BUREAU APPROVAL
Bureau: Wastewater Treatment
Prepared By: S. O. Torgrimson Date: 04-02-80
Budget Impact Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Not required
Bureau Head: <i>[Signature]</i> Howard H. Harris, Supt.

NOTED BY
City Attorney
City Auditor
City Engineer <i>[Signature]</i>