

THIS AGREEMENT made this day of , 1960, by and between OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, and its lessee, UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter collectively called "Railroads") parties of the first part, and CITY OF PORTLAND, a municipal corporation of the State of Oregon (hereinafter called "City"), party of the second part,

W I T N E S S E T H:

RECITALS:

The City has applied to the Railroads for an easement to construct, maintain and operate sewers of the kind hereinafter described upon, along and across the right of way of the Railroads' Albina Yard in Portland, Oregon, at the locations hereinafter identified. The Railroads are willing to grant such easement upon and subject to the terms, provisions and conditions hereinafter stated.

NOW, THEREFORE, it is agreed by and between the parties as follows:

Section 1. (a) The Railroads, so far as they lawfully may do so, hereby grant to the City upon and subject to each and all of the terms, provisions, conditions and covenants of this agreement, an easement to construct, maintain and operate seven (7) concrete storm sewer pipes, each eight inches (8") in diameter (hereinafter collectively called "sewer") on and across the right of way of the Railroads' Albina Yard in the City of Portland, County of Multnomah, State of Oregon, in the locations represented by red lines on map dated January 21, 1960 marked "Exhibit A" hereto attached and by this reference made part of this agreement.

(b) The easement hereby granted is subject to all outstanding superior rights, whether public or private, and to any and all extensions and renewals thereof. The City shall not damage or interfere with property or rights of any party or parties lawfully occupying or using property of the Railroads, and shall hold harmless the Railroads from any claims for any actual or alleged damage or interference.

(c) The City is permitted to use the said property of the Railroads only for the purposes aforesaid and not otherwise, and if at any time said property or any part thereof shall permanently cease to be used for said purposes or shall be used for any purpose unauthorized hereby, the easement hereby granted as to such property or part thereof shall cease and terminate. The Railroads by this agreement neither grant nor intend to grant any greater estate or right than that hereinbefore described, to-wit, an easement for the purposes aforesaid.

(d) Such sewer shall be constructed and at all times maintained in strict accordance with detailed plans and specifications therefor submitted by the City to the Railroads, and approved by the Railroads' Chief Engineer or his representative before construction of said sewer was commenced.

(e) All work of construction, maintenance, operation, inspection and renewal of said sewer by the City, on or in the vicinity of the Railroads' property, shall be properly coordinated with railroad operations and shall be performed by the City in accordance with any and all rules and regulations promulgated by the Railroads and their representatives and in a manner satisfactory to the Railroads and their representatives. Neither the making or the failure to make such rules and regulations by the Railroads, nor the compliance with railroad requirements by the City, shall relieve the City from responsibility for safe and adequate performance of said work and each and every part thereof.

(f) It is understood that the Railroads' tracks at and in the vicinity of the project will be in constant use during progress of the work, and that movement or stoppage of trains, engines and cars may cause delays to the City and its contractors. The City hereby assumes the risk of any and all such delays and will require its contractors to do likewise, and the City and its contractors shall and do release and agree to hold harmless the Railroads for any and all loss and damage resulting from such delays.

Section 3. Upon completion of said sewer the City, at its own expense and without expense to the Railroads, shall and will maintain, repair and renew the same and all appurtenances thereof so that said sewer and appurtenances shall at all times be in good condition and repair, and the City shall never at any time permit said sewer or any part thereof or appurtenances thereof to be or become in such condition or state of repair as to damage, injure, destroy or jeopardize the Railroads' property or operations or those of any non-party lawfully occupying or using the Railroads' property or facilities. Should the City at any time fail to comply with the requirements of this section, the Railroads may (but shall not be obligated to) after giving the City one day's written notice of intention so to do and without prejudice to any other remedies available to the Railroads, make necessary repairs or renewals at the expense of the City, and the City agrees to reimburse the Railroads for the expense thereof with interest at the rate of six per cent (6%) per annum, promptly upon demand by the Railroads.

Section 4. The City shall protect, indemnify and save and hold harmless the Railroads and any railroad companies lawfully using the tracks of the Railroads, and each of them, from and against any and all loss, cost, damage, expense and liability by

reason of injury to or death of persons whomsoever (including officers, agents, servants, employees and passengers of the Railroads or such other railroad companies as well as other persons) or damage to or destruction of property whatsoever (including property of or in the custody of the Railroads or such other railroad companies, as well as other property), directly or indirectly caused by or in any manner resulting from construction, maintenance, repair, renewal or use of said sewer, or from any act or omission of the City or of its contractors, subcontractors, agents, servants or employees in the construction or maintenance, repair, renewal or use of said sewer. The City hereby assumes the risk of exercising the rights granted by this agreement, and does hereby release the Railroads from any and all liability for damages on account of injury to said sewer or any part thereof from any cause whatsoever.

Section 5. It is understood and recognized that safety and continuity of railroad operations are of the utmost importance, and in order that same may be adequately safeguarded, protected and assured, and accidents prevented and avoided, it is agreed:

(1) Neither the City nor its contractors or subcontractors shall do, suffer or permit anything which will or may obstruct, endanger, interfere with or delay maintenance or operation of the Railroads' railroad, tracks or appurtenant facilities.

(2) The City at its own expense shall adequately police and supervise all work to be performed by it hereunder, and shall regulate and conduct the same in such manner that the prosecution thereof will not endanger, interfere with, hinder or delay the operations of the Railroads or inflict injury to persons or damage to property for the safety of whom or of which the Railroads may be responsible, or property of the Railroads.

(3) If at any time the Superintendent of the Railroads shall be of the opinion that any work contemplated by this agreement is being or about to be done or prosecuted without due regard and precaution for safety and security, the City shall upon receiving notice from the Railroads to that effect, cause such work to be suspended until suitable and adequate protective measures are adopted and provided.

(4) The City shall not permit debris incidental to the construction, maintenance, repair, renewal or use of said sewer to foul the drainage ditches or ballast or roadbed of the Railroads, and if such debris shall be cast thereon, the City shall immediately remove same at its own expense.

(5) The City shall not at any time maintain any open pits, holes or excavations upon the properties of the Railroads.

(6) In the construction, maintenance, repair and renewal of said sewer the City and its contractors shall not place or discharge any explosives on or dangerously near the property of the Railroads.

(7) The City shall give the Superintendent of the Railroads timely notice of its intention to proceed with the work contemplated by this contract, or any part thereof. The City at its own expense shall strictly comply with any and all rules, regulations and requirements of the Railroads or their representatives with respect to said work; but neither the presence of said representatives nor the compliance by the City with such suggestions shall relieve the City from its responsibility for the safe, suitable and adequate performance and completion of said work.

Section 6. This agreement shall become effective as of the first day of February, 1960, or as of the date of commencement of construction of said sewer on the Railroads' property, whichever is earlier.

Section 7. The City shall not without the written consent of the Railroads first had and obtained, transfer or assign the easement hereby granted. Subject to the foregoing, this agreement shall be binding upon and issue to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as of the day and year first herein written, execution thereof by the City having been duly authorized by Ordinance No. _____ passed _____ 19 _____.

OREGON-WASHINGTON RAILROAD &
NAVIGATION COMPANY,
UNION PACIFIC RAILROAD COMPANY

Attest:

By _____
President

Assistant Secretary

CITY OF PORTLAND

By _____
Mayor

Attest:

By _____
Commissioner of Public Works

City Auditor

STATE OF NEBRASKA)
) ss.
 County of Douglas)

On the day of , 1960, personally appeared
 and L. J. Bachman, who, being duly
 sworn, did say that he, the said is the
 President and that he, the said L. J. Bachman, is
 the Assistant Secretary of OREGON-WASHINGTON RAILROAD & NAVIGATION
 COMPANY and UNION PACIFIC RAILROAD COMPANY and that the seals affixed
 to the foregoing instrument are the corporate seals of said corpo-
 rations and that said instrument was signed and sealed in behalf of
 both said corporations by authority of the Executive Committees of
 their Boards of Directors; and they acknowledged said instrument to
 be their voluntary act and deed. Before me:

 Notary Public for Douglas
 County, Nebraska

My commission expires:

Sec. Cor. 21 22
28 27
T. IN. R. I.E.

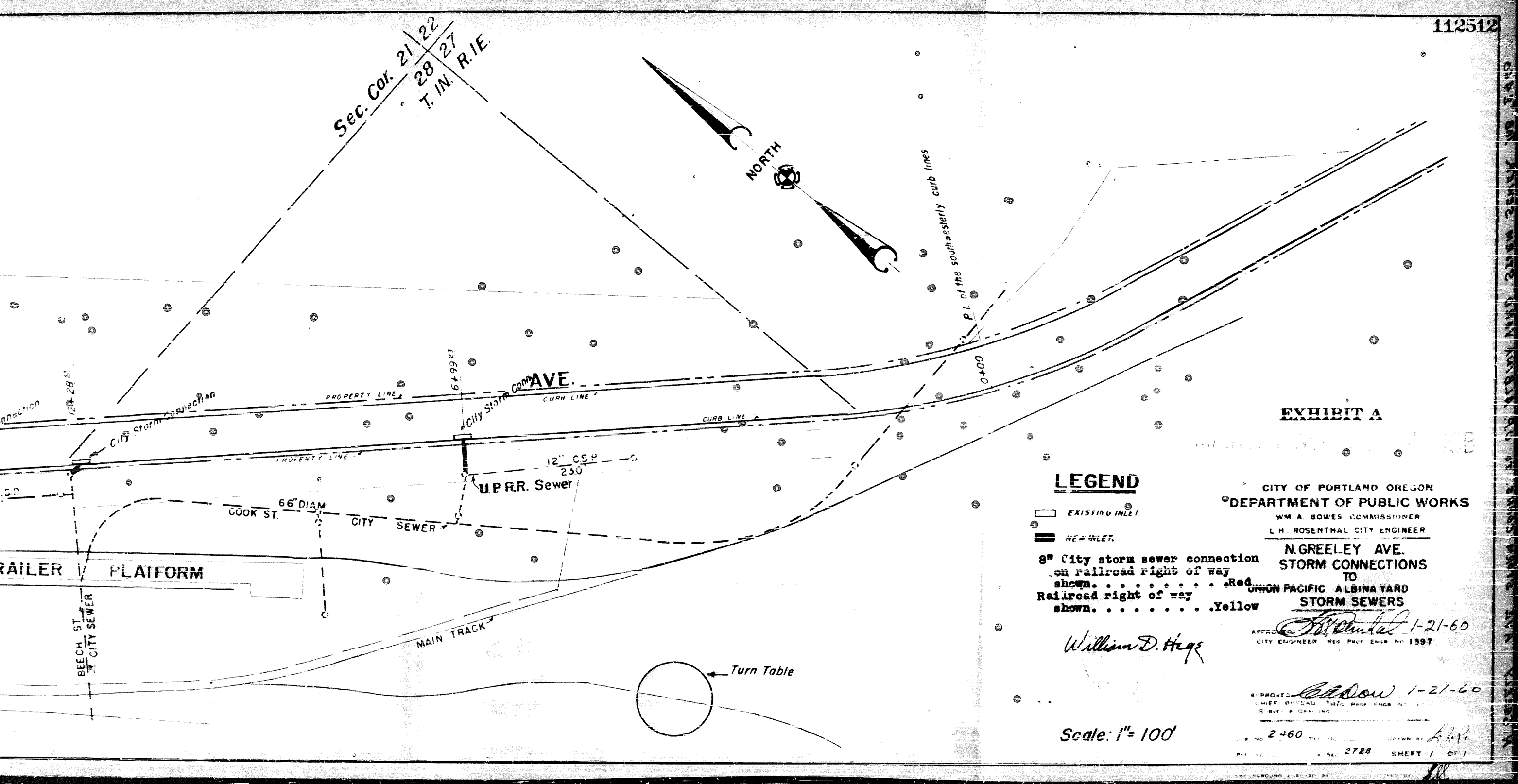
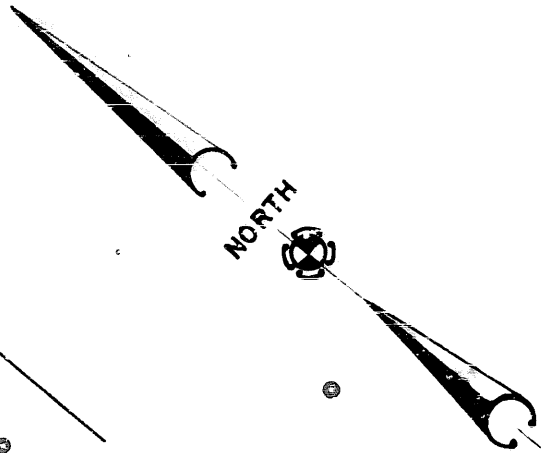




EXHIBIT A

LEGEND

-  EXISTING INLET
-  NEW INLET
- 8" City storm sewer connection on railroad right of way shown Red
- Railroad right of way shown Yellow

CITY OF PORTLAND OREGON
 DEPARTMENT OF PUBLIC WORKS
 WM. A. BOWES COMMISSIONER
 L.H. ROSENTHAL CITY ENGINEER

**N. GREELEY AVE.
 STORM CONNECTIONS
 TO
 UNION PACIFIC ALBINA YARD
 STORM SEWERS**

William D. Hege

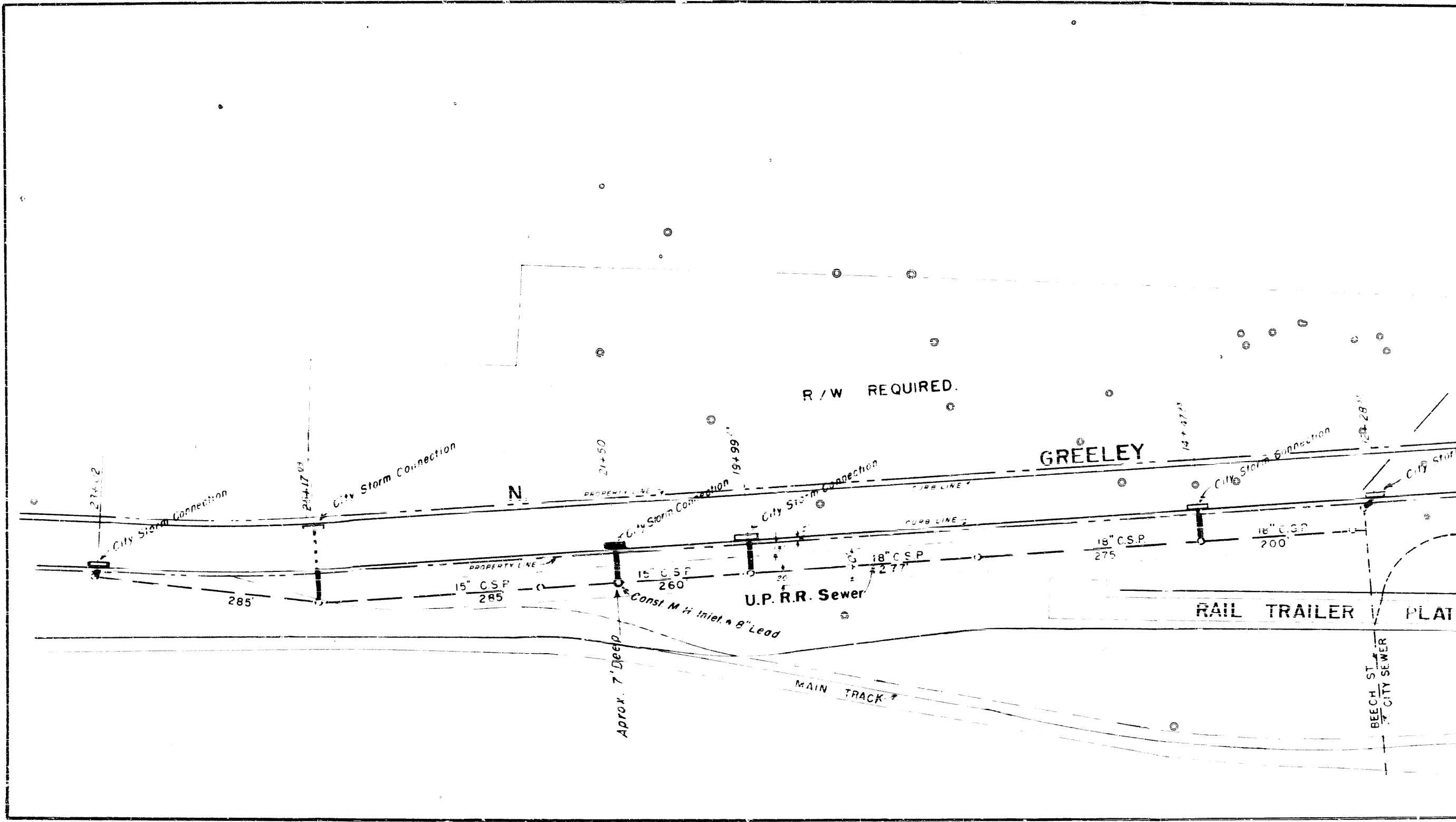
APPROVED: *[Signature]* 1-21-60
 CITY ENGINEER REG. PROF. ENGR. NO. 1397

APPROVED: *[Signature]* 1-21-60
 CHIEF BUILDING & REG. PROF. ENGR. NO. 1397

Scale: 1" = 100'

PL. NO. 2460 SHEET 1 OF 1
 DATE 1-21-60

V. GREELY AND
2300 W. CORNER TO
N. 10th ST. AND
2300 W. CORNER
TO 10th ST.



R / W REQUIRED.

GREELEY

RAIL TRAILER PLATFORM

BEECH ST
CITY SEWER

MAIN TRACK

N

PROPERTY LINE

PROPERTY LINE

CURB LINE

PROPERTY LINE

15" C.S.P.
285

15" C.S.P.
260

18" C.S.P.
277

18" C.S.P.
275

18" C.S.P.
200

APPROX. 7' DEEP

Const. M H Inlet & 8" Lead

U.P. R.R. Sewer

City Storm Connection

City Storm Connection

City Storm Connection

City Storm Connection

City Storm Connection

City Storm Connection

27+02

28+17

21+50

19+99

14+47

12+28

285

285

260

277

275

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U.P. R.R. Sewer

APR-7-61

03967

- VII A

0.00

RECEIPT

Nº 11783

OFFICE OF
SI COHN, COUNTY CLERK
MULTNOMAH COUNTY, OREGON

RECORDING DEPARTMENT

NAME

*City of Post
Ordinance
112512*

FILE NO.

| DOCUMENT | PARTIES | | |
|--------------|---|---------------|--|
| <i>Agree</i> | <i>Old R & N RR City of Post</i> | <i>att</i> | |
| | <i>Recorded</i> | <i>4/7/61</i> | |
| | <i>Book</i> | <i>2056</i> | |
| | <i>page</i> | <i>172</i> | |
| | <i>See Deed #</i> | <i>7377</i> | |
| | <i>(City Ord. # 112512 sent to Assessor 4/7/61)</i> | | |

ORDINANCE No. 112512

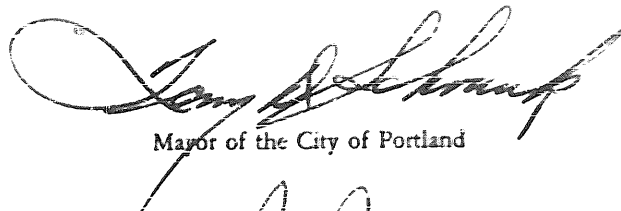
An Ordinance authorizing an agreement between the City and Oregon Washington Railroad & Navigation Co. and Union Pacific Railroad Company, its lessee, covering easements in favor of the City for N. Greeley Avenue storm connections, defining the conditions and responsibilities of the parties, and declaring an emergency.

The City of Portland does ordain as follows;

Section 1. The Council finds that it is necessary to obtain certain easements through the Albina Yards, property of Oregon, Washington Railroad & Navigation Co. and the Union Pacific Railroad Company, its lessee, for storm sewer connections in N. Greeley Avenue; that the railroad companies have agreed to grant the necessary easements to the City, subject to the City's agreement to assume certain conditions and responsibilities; that a formal agreement between the parties should be entered into setting forth the responsibilities and duties of the parties; now, therefore the Mayor and Commissioner of Public Works hereby are authorized and directed to enter into an agreement with Oregon, Washington Railroad & Navigation Co. and the Union Pacific Railroad Company, its lessee, granting certain easements to the City for sewer purposes across the Albina Yard property of said companies, which agreement shall be in accordance with the form of agreement attached to the original of this ordinance, marked Exhibit "A" and by this reference made a part hereof.

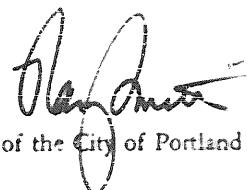
Section 2. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: In order that the necessary sewer easements may be obtained without unnecessary delay; therefore, an emergency hereby is declared to exist and this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, SEP 12 1960



Mayor of the City of Portland

Attest:



Auditor of the City of Portland

Calendar No. 21100

ORDINANCE No. 112510

Title

An Ordinance authorizing an agreement between the City and Oregon Washington Railroad & Navigation Co. and Union Pacific Railroad Company, its lessee, covering easements in favor of the City for N. Greeley Avenue storm connections, defining the conditions and responsibilities of the parties, and declaring an emergency.

INTRODUCED BY
Commissioner Boves

DRAWN BY
RLH: gm
Date 9-1-60

NOTED BY THE COMMISSIONER
Affairs
Finance
Safety
Utilities
Works *TDS*

City Attorney *RLH*

NOTED FOR CITY AUDITOR
RLH

APPROVED
Date
By *RLH*
City Engineer
Date
By

THE COMMISSIONERS VOTED AS FOLLOWS:

| | Yeas | Nays |
|---------|------|------|
| Bean | 1 | |
| Boves | 1 | |
| Earl | 1 | |
| Grayson | 1 | |
| Schrunk | 1 | |

FOUR-FIFTHS CALENDAR

| | |
|---------|--|
| Bean | |
| Boves | |
| Earl | |
| Grayson | |
| Schrunk | |

Filed SEP 1 - 1960

RAY SMITH
Auditor of the CITY OF PORTLAND

By *RLH*
Deputy