

EXHIBIT "X"

THIS AGREEMENT made and entered into this 20th day of MARCH, 1951, 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"), and the CITY OF PORTLAND, a municipal corporation of the State of Oregon (hereinafter called "City"),

W I T N E S S E T H :

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 the City the right to construct, maintain, repair, renew and use:

First. One extra heavy reinforced concrete sewer pipe thirty-six (36) inches in diameter, under and across the track of the Railroads' main line in W. E. Oregon Street at Railroad Engineer's Station 74+87.5, at the location shown by dashed red line on map Exhibit A, hereto attached and by this reference made a part hereof, at such elevation that the top of said sewer pipe shall be nine (9) feet below base of rail of said track.

Second. One reinforced concrete sewer pipe twenty-seven (27) inches in diameter, under and across the right of way and track of the Railroads' main line at Railroad Engineer's Station 195+72, at the location shown by dashed red line on map Exhibit B, hereto attached and by this reference made a part hereof, at such elevation that the top of said sewer pipe shall be eight and three-tenths (8.3) feet below base of rail of said track; together with one reinforced concrete manhole extending vertically from said sewer pipe to the surface of the ground, in location indicated on Exhibit B by red circle.

Third. One reinforced concrete sewer pipe twelve (12) inches in diameter, and one standard concrete sewer pipe eight (8) inches in diameter, upon, under, along and across the Railroads' Albina yard property, and three tracks thereon, adjacent to and northerly of the center line of N. Russell Street produced westerly, at the location shown by dashed red line on map Exhibit C, hereto attached and by this reference made a part hereof, at such elevation that the top of said twelve (12) inch sewer pipe shall be not less than nine (9) feet below base of rail of said tracks, and the top of said eight (8) inch sewer pipe shall be not less than ten (10) feet below the surface of the ground; together with two reinforced concrete manholes extending vertically from said sewer pipes to the surface of the ground, in locations indicated on Exhibit C by red circles, within said Albina Yard property.

Fourth: Reinforced concrete sewer pipes under and across the tracks of the Railroads' Portland-North Portland Junction main line and other tracks of the Railroads in the following public streets and avenues of the City of Portland: N. Russell Street; N. Larrabee Street; N. Interstate Avenue; N. Essex Avenue; N. Hassan Avenue; N. Randolph Avenue; N. Harding Avenue; N. Clark Avenue; N. Lewis Avenue; N. Albina Avenue; N. Railroad Street; N. Loring Street; N. River Street; N. Thompson Street and N. Kirby Avenue, the number and dimensions of said sewer pipes and the locations of said crossings being indicated on said map Exhibit C by dashed red lines within the aforesaid streets and avenues; together with reinforced concrete manholes extending vertically from said sewer pipes to the surface of said streets and avenues, as indicated by red circles on said Exhibit C. The sewer pipes mentioned in this paragraph Fourth shall be constructed at such elevation that the tops thereof shall be not less than five (5) feet below the base of rail of said tracks.

The sewer pipes and manholes mentioned in this paragraph (a) are hereinafter in this agreement collectively called "sewers".

(b) The rights hereby granted are subject to each and all of the terms, provisions, conditions and covenants contained in this agreement. Said rights are also subject to all outstanding superior rights, whether public or private, and any and all extensions and renewals thereof. The Railroads by this agreement neither grant nor intend to grant any greater estate or right upon property of the Railroads than that hereinbefore expressly described.

(c) Said property of the Railroads shall be used by the City only for the purposes aforesaid and not otherwise, and if said property or any part thereof permanently ceases to be used by the City for said purposes, the rights hereby granted as to said property or parts thereof shall forthwith cease and terminate.

(d) The rights hereby granted on property of the Railroads are subject and subordinate to paramount use of said property for railroad purposes and any other purposes for which the Railroads may desire to use said property. The Railroads reserve the right to use said property for any and all purposes not inconsistent with the rights hereby granted, including the right to change, alter and add to their present tracks, structures and facilities or to change the present standards thereof. The City at its own expense shall make any and all changes in the sewers on property of the Railroads in order to accommodate the needs and requirements of the Railroads.

(e) The Railroads hereby reserve all rights they now have by franchise, license, permit or otherwise, to construct, maintain and operate their tracks and facilities in the public streets and avenues aforesaid, and nothing contained in this agreement shall impair or affect said rights.

Section 2. In consideration for the rights hereby granted, the City shall and will pay Union Pacific Railroad Company upon execution and delivery of this agreement, the sum of Two Hundred Twenty-five Dollars (\$225.00).

Section 3. The City, at its own expense and without expense whatsoever to the Railroads, shall and will construct the aforesaid sewers in the locations shown on map Exhibits A, B and C hereto annexed and complete the same in such manner and condition as not to endanger, interfere with, injure or destroy the property, operations or facilities (including, but not limited to, drainage facilities) of the Railroads or any other lawful user or users of their property or facilities, nor impair the usefulness of the Railroads' property or facilities for any purpose for which the Railroads determine to use the same. Any and all expense incurred by the Railroads, directly or indirectly resulting from the construction, maintenance or operation of said sewers, shall be borne and paid by the City upon presentation of bill or bills therefor, including, but not limited to, expense of watchman or inspector employed by the Railroads during the progress of and in connection with the work referred to in this section.

Section 4. Upon completion of said sewers the City, at its own expense and without expense whatsoever to the Railroads, shall and will maintain, repair and renew said sewers so that they shall at all times be in good condition and repair, and the City shall never at any time permit said sewers or any part thereof to be or become in such condition or state of repair as to damage, injure, destroy or endanger property, facilities or operations of the Railroads or of any other lawful user or users of their property or facilities.

Section 5. So far as it lawfully may do so, the City shall protect, indemnify and save and hold harmless the Railroads and any other lawful user or users of their property or facilities 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, employes and passengers of the Railroads or of any lawful user or users of their property or facilities, as well as other persons) or damage to or destruction of property whatsoever (including property of or in the custody of the Railroads or of any lawful user or users of their property or facilities, as well as other property), directly or indirectly caused by or in any manner resulting from any act or

omission of the City or of its contractors, subcontractors, agents, servants or employes in the construction or maintenance, repair, renewal or use of said sewers. The City hereby assumes the risk of exercising the rights granted by this agreement, and does hereby release the Railroads and any lawful user or users of their property or facilities from any and all liability for damages on account of injury to said sewers or any part thereof from any cause whatsoever.

Section 6. If the City or its contractors, subcontractors, agents, servants or employes, shall in the performance of any work of construction, maintenance, repair or renewal or other work upon or about or in connection with said sewers, injure, damage or destroy any property of the Railroads or of any lawful user or users of their property or facilities, the City shall restore and replace such damage at its own cost and expense.

Section 7. The City shall and will require any contractor or contractors to whom any of the work of constructing said sewers shall be let, to obtain and furnish to the Railroads at the expense of such contractor or contractors, public liability and property damage insurance in favor of the Railroads and any user or users of their property which they may designate. Said insurance policy or policies shall be lawfully issued by a reliable insurance company or companies authorized to do business in Oregon and satisfactory to the Railroads, and shall be in form and substance satisfactory to the Railroads. Said policies shall be such as to insure the Railroads and any user or users designated as aforesaid against liability for injuries to or death of persons whomsoever (including employes and passengers as well as other persons) in the amount of not less than One Hundred Thousand Dollars (\$100,000) for injury to or death of any one person, and not less than Two Hundred Thousand Dollars (\$200,000) for injury to or death of any number of persons in any one accident, and against liability for loss, damage or destruction of or to property whatsoever (including property in the custody of the insured as well as other property), in the amount of not less than One Hundred Thousand Dollars (\$100,000) for loss, damage or destruction of or to property in one accident and not less than Two Hundred Thousand Dollars (\$200,000) for loss, damage or destruction of or to property during the policy period, and said policies shall also insure the Railroads and any user or users designated as aforesaid against loss, damage or destruction of or to property of the Railroads or others designated as aforesaid, or any of them, in the amount of not less than One Hundred Thousand Dollars (\$100,000) for loss, damage or destruction of or to such property in any one accident and not less than Two Hundred Thousand Dollars (\$200,00) for loss, damage or destruction of or to such property during the policy period. Each of such policies shall be delivered to and remain in the possession of the Railroads.

Section 8. If so requested by the Railroads, the City shall require any contractor or contractors to whom any of the work of constructing said sewers shall be let, to make and enter into a written agreement or agreements with the Railroads whereby said contractor or contractors shall undertake and agree to indemnify and hold harmless the Railroads and any lawful user or users of their property from any and all loss, cost, damage, expense, liability, claims, demands and causes of action caused by or in any manner resulting from the prosecution of such contractors' work.

Section 9. It is understood and recognized that safety and continuity of railroad and telegraph 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 (including, but not limited to, drainage facilities) or the operations or facilities of any lawful user or users of their property or 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 any other lawful user or users of their facilities or inflict injury to persons or damage to property for the safety of whom or of which the Railroads or other lawful user or users of their property or facilities may be responsible, or property of the Railroads or of such user or users.

(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 maintenance, repair, renewal or use of said sewers 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.

Section 10. The City shall not without the written consent of the Railroads first had and obtained, transfer or assign the rights hereby granted. Subject to the foregoing, this agreement shall be binding upon and inure 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 _____ 1951.

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

By _____
President of Both Companies

Attest:

Assistant Secretary
of Both Companies

CITY OF PORTLAND

By _____
Mayor

By _____
Commissioner of Public Works

Attest:

City Auditor

STATE OF NEBRASKA)
County of Douglas) ss.

On the _____ day of _____ 1951, 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 corporations 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 _____

ORDINANCE No. 94331

An Ordinance authorizing execution of an agreement with Oregon-Washington Railroad & Navigation Company and Union Pacific Railroad Company granting sewer easements to the City under and across said Railroads' Albina Yard property, under and across certain other Railroad properties at Railroad Engineer's Stations No. 74+87.5 and 195+72, and at certain points located on the Portland-North Portland Junction Main Line and on other tracks within the City of Portland, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. The Council finds that the Union Pacific Railroad Company and Oregon-Washington Railroad & Navigation Company are willing to enter into an agreement with the City in accordance with Exhibit "X", incorporated by reference herein below, whereby said companies would grant to the City certain sewer easements needed by the City under and across the Railroads' Albina Yard property and under and across certain other Railroad properties at points designated as Railroad Engineer's Stations No. 74+87.5 and 195+72, and at certain other points under the tracks of the Portland-North Portland Junction Main Line in the following streets and avenues of the City: N. Russell Street; N. Larrabee Street; N. Interstate Avenue; N. Essex Avenue; N. Hassan Avenue; N. Randolph Avenue; N. Harding Avenue; N. Clark Avenue; N. Lewis Avenue; N. Albina Avenue; N. Railroad Street; N. Loring Street; N. River Street; N. Thompson Street and N. Kerby Avenue, the particular locations of said easements being delineated on maps designated as Exhibits "A", "B", and "C" which are incorporated by reference in said agreement Exhibit "X" and are attached only to the duplicate originals of said Exhibit "X", as prepared for execution; that said agreement provides for payment by the City of the consideration of \$225.00 to the Union Pacific Railroad Company for said easements; that the terms of said agreement as incorporated in said Exhibit "X" are reasonable and it is to the advantage of the City that said easements should be purchased and said agreements executed in order that the expense and delay of condemnation proceedings be avoided; now, therefore, the Mayor, City Auditor and Commissioner of Public Works be and they hereby are authorized to execute on behalf of the City of Portland an agreement with the Oregon-Washington Railroad & Navigation Company and the Union Pacific Railroad Company, approved as to form by the City Attorney, substantially in accordance with the form attached hereto marked Exhibit "X" and hereby made a part of this ordinance as if it were fully set out herein, whereby said Railroad Companies grant to the City sewer easements in particular locations identified in said

ORDINANCE No. 94331

Exhibit "X" as particularly delineated on maps Exhibit "A", Exhibit "B" and Exhibit "C", said maps being incorporated by reference in said Exhibit "X", but attached only to the duplicate originals of said Exhibit "X", as prepared for execution.

Section 2. The City Auditor and the Commissioner of Public Works hereby are authorized upon the delivery of an agreement granting sewer easements substantially in accordance with Exhibit "X", duly executed and approved as to form as provided in Section 1 hereof, to draw and deliver a warrant payable to Union Pacific Railroad Company in the amount of \$225.00 to be charged to the Sewage Disposal Fund (6350).

Section 3. The City Auditor hereby is directed to have said agreement, when duly executed and approved as provided in Section 1 hereof, placed on record, and a copy of this ordinance forwarded to the County Assessor.

Section 4. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: That there should be no undue delay in the acquisition of property rights or easements necessary to the construction of adequate sewage facilities; 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, JUN 6 1951

Thomas M. Gullough Lee
Mayor of the City of Portland
Will Gibson.

Attest:

Auditor of the City of Portland

ORDINANCE No. 94331

Title

An Ordinance authorizing execution of an agreement with Oregon-Washington Railroad & Navigation Company and Union Pacific Railroad Company granting sewer easements to the City under and across said Railroad's Albina Yard property, under and across certain other Railroad properties at Railroad Engineers' Stations No. 74+87.5 and 195+72, and at certain points located on the Portland-North Portland Junction Main Line and on other tracks within the City of Portland, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Bean	/	
Bennett	/	
Bowes	/	
Peterson	/	
Lee	/	

FOUR-FIFTHS CALENDAR	
Bean	
Bennett	
Bowes	
Peterson	
Lee	

INTRODUCED BY
Commissioner Bowes

DRAWN BY
HFA HFA:gm
Date 5/31/51

NOTED BY THE COMMISSIONER

Affairs

Finance

Safety

Utilities

Works Wm. A Bowes v

City Attorney MCR

NOTED FOR CITY AUDITOR

JHL

APPROVED

Date

By
Chief Civil Engineer

Date

By
City Engineer

Filed JUN 8 1951

Will Gibson.
Auditor of the CITY OF PORTLAND

By.....ROB'T L. McCOY.....
Deputy