

Exhibit "A"

THIS AGREEMENT made and entered into this day of 1942, by and between OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, and its lessee UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter collectively called "Railroad Companies"), parties of the first part, and the 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 Railroad Companies for permission to construct, maintain and operate a sewer upon, along and across property of the Railroad Companies at Portland, Oregon, and the Railroad Companies are willing to grant such permission 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 Railroad Companies, so far as they lawfully may do so, hereby grant to the City, subject to each and all of the terms, provisions, conditions and covenants hereinafter contained, a license, permit and easement to construct and thereafter maintain, repair, renew and use one (1) reinforced semi-elliptical concrete interceptor sewer, ninety-six (96) inches (inside measurement) in diameter, upon, along and across the following described real property of the Railroad Companies in the City of Portland, County of Multnomah, State of Oregon, below the surface thereof:

A strip of land situate in and being all that part of the right of way of the Oregon-Washington Railroad & Navigation Company, leased to the Union Pacific Railroad Company, in the City of Portland, Multnomah County, Oregon, that lies westerly of the west line of N. Interstate Avenue and southerly and southwesterly of the southerly and southwesterly line of N. Greeley Avenue as now established, and that lies easterly and northeasterly of a line that is parallel with and 12.5 feet distant westerly and southwesterly from the following described center line of 96" interceptor sewer line of the City of Portland, to wit:

Beginning at a point in the west line of N. Interstate Avenue, 70 feet wide, that is 117.5 feet, more or less, distant southerly from the center line of N. Stanton Street produced westerly, measured along said west line;

thence northeasterly along a straight line which forms an angle of $33^{\circ} 58' 30''$ from north to northwest with said west line of N. Interstate Avenue, a distance of 6.34 feet to a point;

thence northerly along a curve to the right having a radius of 50 feet and which is tangent at its point of beginning to the end of the last described line, a distance of 29.49 feet to a point;

thence northerly along a straight line that is tangent to the end of the last described curve, a distance of 84.45 feet to a point in the center line of N. Stanton Street produced westerly, that is 12.31 feet distant westerly from said west line of N. Interstate Avenue;

thence continuing northerly along the last described straight line produced, which forms an angle of $90^{\circ} 11'$ from east to north with said center line of N. Stanton Street produced westerly, a distance of 93.61 feet to a point;

thence northeasterly along a curve to the left having a radius of 277.5 feet and which is tangent at its point of beginning to the end of the last described straight line, a distance of 335.59 feet to a point that is 12.5 feet distant southwesterly, measured at right angles, from the southerly line of N. Greeley Avenue;

thence northwesterly along a straight line that is tangent to the end of the last described curve and which is parallel with and 12.5 feet distant southwesterly, measured at right angles, from said southerly line of N. Greeley Avenue, a distance of 88.77 feet to a point;

thence northwesterly along a curve to the right having a radius of 50 feet and which is tangent at its point of beginning to the end of the last described straight line, a distance of 26.45 feet, to a point;

thence northwesterly along a straight line that is tangent to the end of the last described curve, a distance of 19.03 feet to a point in said southerly line of N. Greeley Avenue.

The above-described real property is represented by yellow outline on map dated June 30, 1949, hereto attached, marked "Exhibit A" and by this reference made a part of this agreement.

(b) The rights hereby granted shall be and are subject to all outstanding superior rights, whether public or private, and to any and all extensions and renewals thereof.

(c) The above-described premises shall be used by the City solely for the purposes aforesaid and not otherwise, and if at any time the property of the Railroad Companies hereinafore in this section described, or any part thereof, shall permanently cease to be used for the purposes aforesaid, or shall be used for any purpose unauthorized hereby, then the license, permit and easement hereby granted as to such property or parts thereof, shall forthwith cease and terminate. The Railroad Companies by this agreement neither grant nor intend to grant any greater estate or right than that hereinafore expressly described, to wit, a license, permit and easement for the purposes aforesaid.

(d) The rights hereby granted shall be and are subject and subordinate to the permanent use of the Railroad Companies' property for railroad purposes and industrial purposes. The Railroad Companies reserve the right to use said property for said purposes and all purposes not inconsistent with the license and permission hereby granted, including the right to change, alter and add to their present facilities, and the City at its own expense shall make any and all changes in the City's said facilities in order to accommodate the needs and requirements of the Railroad Companies; provided, however, that the Railroad Companies shall construct no building directly above said sewer without first obtaining the written consent of the City Engineer.

Section 2. In consideration for the rights hereby granted, the City shall and will pay to Union Pacific Railroad Company upon the execution and delivery of this agreement, the sum of Three Hundred Thirty-eight Dollars (\$338.00).

Section 3. The City, at its own expense and without expense whatsoever to the Railroad Companies, shall and will construct the aforesaid sewer with center line thereof located as shown on map Exhibit A by dashed white line designated as "C.L. of City Interceptor Sewer". Said sewer shall be semi-elliptical in form and the top thereof shall be not less than seven (7) feet below the surface of the ground. All material excavated during construction of said sewer shall be replaced by the City in the trenches when the sewer has been completed, and the City shall slope the ground off to street grade. The City shall complete the construction of said sewer and all work in connection therewith in such manner and condition as not to endanger, interfere with, injure or destroy property, operations or facilities of the Railroad Companies or impair the usefulness of the Railroad Companies' property for any purpose for which the Railroad Companies may continue to use it. Any and all expense incurred by the Railroad Companies directly or indirectly resulting from the construction, maintenance or operation of the sewer shall be paid by the City upon presentation of bill or bills therefor.

Section 4. Upon completion of said sewer the City, at its own expense and without expense whatsoever to the Railroad Companies, shall and will maintain, repair and renew said sewer so that it 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 to be or become in such condition or state of repair as to damage, injure, destroy or endanger the Railroad Companies' property or operations.

Section 5. So far as it lawfully may do so, the City shall protect, indemnify and save and hold harmless the Railroad Companies and any railroad or terminal companies from time to time lawfully operating upon the tracks of the Railroad Companies, 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 Railroad Companies or such other railroad or terminal companies, as well as other persons) or damage to or destruction of property whatsoever (including property of or in the custody of the Railroad Companies or such other railroad or terminal companies, 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 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 Railroad Companies from any and all liability for damages on account of injury to said sewer or any part thereof from any cause whatsoever.

Section 6. If the City or its contractors, subcontractors, agents, servants or employees, shall in the performance of any work of construction, maintenance, repair or renewal or other work upon or about or in connection with said sewer, injure, damage or destroy any property of the Railroad Companies, or of any railroad or terminal companies from time to time lawfully operating upon the tracks of the Railroad Companies, or of any other corporation, person or firm lawfully occupying the premises of the Railroad Companies, the City shall restore and replace such damage at its own cost and expense.

Section 7. If so requested by the Railroad Companies, the City shall and will require any contractor or contractors to whom any of the work of constructing said sewer shall be let, to make and enter into an agreement with the Railroad Companies whereby said contractor shall undertake and agree to indemnify and hold harmless the Railroad Companies 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 said contractor's work, which contract shall be supported by a corporate surety bond; or require such contractor or contractors

at his or their own expense to obtain and furnish to the Railroad Companies an insurance policy or policies protecting the Railroad Companies from all loss, cost, damage, expense, liability, claims, demands and causes of action in connection with said work. Such contract, bond or policy or policies shall be in form and substance satisfactory to the Railroad Companies. The amount of said bond, policy or policies shall be not less than Fifty Thousand Dollars (\$50,000) and the surety on said bond or the insurer on said policy or policies shall be such as are satisfactory to the Railroad Companies.

Section 2. 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 Railroad Companies' 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 Railroad Companies or inflict injury to persons or damage to property for the safety of whom or of which the Railroad Companies may be responsible, or property of the Railroad Companies.

(3) If at any time the Superintendent of the Railroad Companies 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 Railroad Companies 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 sewer to foul the drainage ditches or ballast or roadbed of the Railroad Companies, 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 Railroad Companies.

Section 3. The City shall not without the written consent of the Railroad Companies first had and obtained, transfer or assign the license, permission and easement 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 _____ 1949.

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)
) ss.
 County of Douglas)

On the day of 1949, personally
 appeared and L. J. Sachman, who, being duly
 sworn, did say that he, the said is the
 President and that he, the said L. J. Sachman, 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 _____



Exhibit "A"
 O.V.R. & N. Co.
 Union Pacific Railroad Co. (Lessee)
 PORTLAND (ALBINA), OREGON

To accompany agreement with
 City of Portland covering easement
 for 96" sewer line encroachment
 Scale: 1" = 100'
 Office of Chief Engineer
 Omaha, Nebr., June 30, 1949

LEGEND

Easement area outlined Yellow
 R.R. right of way outlined Red

ORDINANCE No. 30501

An Ordinance authorizing execution of an agreement with Oregon-Washington Railroad and Navigation Company and its lessee, Union Pacific Railroad Company, granting to the City an easement to construct and maintain a sewer upon and across certain property of the grantors for the consideration of \$338.00 to be paid by the City to said grantors, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. The Council finds that the City has requested the Oregon-Washington Railroad and Navigation Company and its lessee, Union Pacific Railroad Company, to grant the City an easement permitting the City to construct, maintain, repair, renew and use a sewer upon and across and below the surface of certain property of said companies in Portland, Oregon, and said companies are willing to grant such easement upon payment by the City to said companies of the consideration of \$338.00 as provided in the form of agreement herein referred to below and subject to the terms, provisions and conditions set forth in said agreement; that the terms of said agreement are reasonable; and that it is to the advantage of the City that said agreement should be executed in order to avoid the expense and delay of condemnation proceedings; 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 and Navigation Company and its lessee, Union Pacific Railroad Company, substantially in accordance with the form attached hereto, marked Exhibit "A" and hereby made a part of this ordinance.

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: No undue delay should prevent the prompt acquisition of said property rights; 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,

OCT 13 1949

Harry M. Callough
Mayor of the City of Portland

Attest:

Will Gibson

Auditor of the City of Portland

Calendar No. 6309

ORDINANCE No. 30501

Title

An Ordinance authorizing execution of an agreement with Oregon-Washington Railroad and Navigation Company and its lessee, Union Pacific Railroad Company, granting to the City an easement to construct and maintain a sewer upon and across certain property of the grantors for the consideration of \$338.00 to be paid by the City to said grantors, and declaring an emergency.

THURSDAY

OCT 19 1949

Filed.....

Will Gibson.
Auditor of the CITY OF PORTLAND
ROBERT L. MCCOY

By.....
Deputy

THE COMMISSIONERS VOTED AS FOLLOWS:

	Yeas	Nays
Bean	/	
Bowes	/	
Cooper	/	
Peterson		
Lee		

FOUR-FIFTHS CALENDAR

Bean	
Bowes	
Cooper	
Peterson	
Lee	

INTRODUCED BY

Commissioner Bowes

DRAWN BY

HFA-ak

Date September 30, 1949

NOTED BY THE COMMISSIONER

Affairs

Finance

Safety

Utilities

Works Bowes

City Attorney AGB

NOTED FOR CITY AUDITOR

RSI

JHL

APPROVED

Date 10-5-49

By L. G. Apperson
Chief Civil Engineer

Date 10-6-49

By Ben S. Morrow
City Engineer

HFA