

THIS AGREEMENT made and entered into this                      day  
of                      1949, by and between OREGON-WASHINGTON RAILROAD  
& NAVIGATION COMPANY, an Oregon corporation, and its lessee UNION  
PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter collec-  
tively 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 per-  
mission 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 herein-  
after 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 there-  
after maintain, repair, renew and use one (1) reinforced concrete  
semi-elliptical interceptor sewer, of which that part in Block 18,  
Shoeler's Addition, shall be ninety-six (96) inches (inside measure-  
ment) in diameter, and that part in fractional Block 18, Shoeler's  
Addition, and property of the Railroad Companies southeasterly  
thereof, shall be seventy-two (72) inches, measured horizontally,  
and seventy-eight (78) inches, measured vertically (inside measure-  
ments) 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 30 feet wide situate in Block 18 of  
Shoeler's Addition to the City of East Portland, now a part  
of the City of Portland, Multnomah County, Oregon, being  
parallel with and 10 feet in width, measured at right  
angles, on each side of the hereinafter described center  
line of interceptor sewer of the City of Portland, and  
extending southeasterly from a straight line that is  
parallel with and 10 feet distant southerly from the  
north line of said Block 18 as originally established,  
to the east and south lines of said block;

Also, a strip of land 30 feet wide, being all that  
part of the right of way of the Oregon-Washington Railroad  
& Navigation Company, leased to the Union Pacific Railroad

Company, situate in the Jacob Wheeler Donation Land Claim in Section 34, Township 1 North, Range 1 East of the Willamette Meridian, in the City of Portland, Multnomah County, Oregon, said strip being parallel with and 10 feet in width, measured at right angles and/or radially, on each side of said hereinafter described center line of interceptor sewer of said City of Portland, and extending southeasterly from the west and north lines of Fractional Block 13 of said Wheelers Addition to the northeasterly right of way line of said Railroad Company, which is a straight line drawn from a point in the north line of said fractional Block 13 that is 186 feet distant westerly from the northeast corner thereof, measured along said north line, to a point in the north line of N. E. Glisan Street, 30 feet wide, that is 25 feet distant thereon westerly from the west line of N. E. 2nd Avenue;

Said center line of interceptor sewer, hereinbefore referred to, over and across the above described property, being described as follows:

Beginning at a point that is 57.23 feet distant easterly from the west line of said Block 18, Wheelers Addition, measured along a straight line that is parallel with and 10 feet distant southerly from the north line of said Block 18, as originally established;

thence southeasterly along a straight line a distance of 223.56 feet to a point in the east line of said block that is 34.64 feet distant southerly from the northeast corner of Lot 5 in said Block 18, measured along said east line;

thence continuing southeasterly along the last described line produced, a distance of 88.58 feet to a point;

thence southeasterly along a curve to the left 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 6.11 feet to a point in the west line of said fractional Block 13 that is 7.41 feet distant southerly from the northwest corner thereof, measured along said west line;

thence southeasterly along a straight line that is tangent to the end of the last described curve, a distance of 226.54 feet to a point in said northeasterly right of way line that is 224.05 feet distant westerly, measured at right angles, from the west line of N.E. 2nd Avenue and 241.77 feet distant northerly, measured at right angles, from the north line of said N.E. Glisan Street;

thence continuing southeasterly along the last described straight line produced, a distance of 310.00 feet to a point in the west line of said N.E. 2nd Avenue that is 27.41 feet distant northerly from the north line of said N.E. Glisan Street, measured along said west line.

The above-described real property is represented by yellow outlines on map dated September 27, 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 hereinbefore 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 hereinbefore 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 paramount 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 Two Hundred Seventy-six Dollars (\$276.00).

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. City Interceptor Sewer". Said sewer shall be semi-elliptical in form, and shall be constructed at approximate elevation 46.87 City datum. When the sewer has been completed, the surface and

grade of the property shall be restored in a manner satisfactory to the Railroad Companies. 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 determine 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 whatsoever (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. In constructing said sewer the City shall not disturb or interfere with the lateral support of adjoining property, and shall make adequate provision therefor, and the City shall indemnify and hold harmless the Railroad Companies for any failure of the City so to do.

Section 8. 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 9. 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 secured, 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 10. 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.

Attest:

Assistant Secretary  
of both Companies

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

By President of both Companies

CITY OF PORTLAND

By Mayor

Attest:

By Commissioner of Public Works

City Auditor

STATE OF NEBRASKA     )  
                              ) ss.  
County of Douglas     )

On the                    day of                    1949, 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-HARRINGTON 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. 30416

An Ordinance authorizing execution of an agreement with Oregon-Washington Railroad & 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 said companies for the consideration of \$276.00 to be paid by the City to Union Pacific Railroad Company, providing for the drawing and delivery of a warrant in said amount upon execution and delivery of said agreement, 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 & Navigation Company, and its lessee, Union Pacific Railroad Company, to grant the City an easement permitting the City to construct, maintain, operate, repair, renew and use a sewer upon and across and below the surface of certain property of said companies, in the City of Portland, Oregon, and said companies are willing to grant such easement upon payment by the City to Union Pacific Railroad Company of the consideration of \$276.00 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 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, Commissioner of Public Works and City Auditor be and they hereby are authorized and directed to execute on behalf of the City of Portland an agreement with Oregon-Washington Railroad & 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 as if it were set out fully herein.

Section 2. Upon execution and delivery of said agreement substantially in accordance with the form Exhibit "A" heretofore referred to, approved as to

ORDINANCE No. 6350

form by the City Attorney, the Commissioner of Public Works and Auditor hereby are authorized and directed to draw and deliver a warrant payable to Union Pacific Railroad Company in the amount of \$276.00 to be charged against the appropriation Sewage Disposal Fund (No. 6350).

Section 3. 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 sewer easement; 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, JAN 18 1950

*Wesley M. Cullough*  
Mayor of the City of Portland  
*Will Gibson*  
Attest:

Auditor of the City of Portland

## ORDINANCE No. 00016

## Title

An Ordinance authorizing execution of an agreement with Oregon-Washington Railroad & 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 said companies for the consideration of \$276.00 to be paid by the City to Union Pacific Railroad Company, providing for the drawing and delivery of a warrant in said amount upon execution and delivery of said agreement, and declaring an emergency.

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 HFA-ak

Date January 6, 1950

## NOTED BY THE COMMISSIONER

Affairs

Finance

Safety

Utilities

Works *Bowes*

City Attorney AGB

## NOTED FOR CITY AUDITOR

RSI

## APPROVED

Date

By

*Chief Civil Engineer*

Date 1-6-50

By L G APPERSON

*City Engineer*

Filed JAN 9 3 1950

*Will Gibson.*  
Auditor of the CITY OF PORTLAND

By *W. L. Gibson*  
Deputy