

MISCELLANEOUS RECORD No. 97

289431-OMAHA PRINTING CO., OMAHA

2. Agreement

Union Pacific Railroad Co.,)
 and)
 City of Omaha,)

THIS AGREEMENT, Made and entered into this 1st day of March, 1932, by and between UNION PACIFIC RAILROAD COMPANY, a corporation of the State of Utah (hereinafter called "Railroad Company"), party of the first part, and CITY OF OMAHA, a municipal corporation of the State of Nebraska, (hereinafter called "City"); party of the second part, WITNESSETH:

RECITALS:

The City desires to construct, maintain and operate a sewer pipe line, known as City Sewer No. 1097, (hereinafter called "Pipe Line"), across the right of way and underneath the track of the Railroad Company known as the "Jetter Brewery Spur" and across the right of way and underneath a spur track of the Railroad Company serving the Jetter Brewery property near 31st and "Y" streets in Omaha (South side) Douglas County, Nebraska, along a line parallel to and 446 feet distant west of the west line of 30th Street, as shown by yellow lines on the print hereto attached, dated February 3, 1932, marked "Exhibit A" and hereby made a part hereof.

AGREEMENT:

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

Section 1. RAILROAD COMPANY GRANTS RIGHT.

In consideration of the conditions, covenants and agreements herein contained, to be by the City kept, observed and performed, the Railroad Company hereby grants to the City the right, subject to the terms and conditions herein stated, to construct and thereafter during the term hereof, to maintain and operate the Pipe Line across said rights of way and underneath said tracks in the locations shown by yellow lines on Exhibit A.

The foregoing grant is subject and subordinate to the prior and continuing right and obligation of the Railroad Company to use its said rights of way in the performance of its public duty as a common carrier, and is also subject to the right and power of the Railroad Company to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, and other facilities upon, along or across any or all parts of said rights of way, all or any of which may be freely done at any time or times by the Railroad Company without liability to the City or to any other party for compensation or damages.

Section 2. CONSTRUCTION AND MAINTENANCE.

The Pipe Line shall be constructed, maintained, repaired, renewed, modified and/or reconstructed by and at the expense of the City and all work on said rights of way in connection therewith shall be done under the supervision and to the satisfaction of the Railroad Company. All expense incurred by the Railroad Company in connection with said work for supervision or inspection, or otherwise, shall be borne by the City.

The Pipe Line where it passes underneath said tracks shall consist of 15-inch vitrified clay pipe encased in a concrete casing having walls six inches in thickness, which said casing shall be placed at a depth of not less than eleven feet below the base of the rails of said tracks, and prior to the commencement of any work on said right of way (whether of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal) the City shall submit to the Railroad Company plans setting out the method and manner of handling the work and shall not proceed with the work until such plans shall have been approved by the Chief Engineer of the Railroad Company and then only under the supervision of said Chief Engineer, or his representative. The Railroad Company shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its tracks during the time such work is being done, and, in the event the Railroad Company provides such support, the City shall pay to the Railroad Company, within fifteen days, after bills shall have been rendered therefor, all expense incurred by the Railroad Company in connection therewith, which said expense shall include

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all assignable costs plus ten per cent (10%) to cover elements of expense not capable of exact ascertainment.

The City shall keep and maintain the soil over the Pipe Line thoroughly compacted and the grade even with the adjacent surface of the ground.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

The City shall notify the Railroad Company at least forty-eight hours in advance of the commencement of any work on said rights of way in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipe line.

Section 4. MODIFICATION OR RELOCATION OF PIPE LINE.

The City shall, at its sole expense, make any and all modifications or changes in the Pipe Line or move all or any part thereof to such new location as may be required by the Railroad Company, at any time, in connection with the construction, maintenance, repair, renewal, use, operation, change, modification or relocation of railroad tracks and other facilities of the Railroad Company upon said rights of way.

All the terms, conditions and stipulations herein expressed with reference to the Pipe Line on said rights of way in the location hereinbefore described shall apply to the Pipe Line as modified, changed or relocated within the contemplation of this section.

Section 5. NO INTERFERENCE WITH RAILROAD OPERATIONS.

The Pipe Line shall be constructed, maintained, repaired, renewed, operated, used, modified, reconstructed, relocated and/or removed in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks and other property of the Railroad Company, and nothing shall be done or suffered to be done by the City that would in any manner, impair the safety of said tracks or other property.

Section 6. LIABILITY.

The City shall indemnify and hold harmless the Railroad Company from and against any and all liability, loss, damage, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever (including damage to the roadbed, tracks, equipment or other property of the Railroad Company or property in its care or custody), when such injury, death loss, destruction or damage grows out of or arises from the bursting of or leaks in the Pipe Line, or in any other way whatsoever is due to, or arises because of, the existence of the Pipe Line or the construction, operation, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipe Line or any part thereof, or to the contents therein or therefrom. And the City does hereby release the Railroad Company from all liability for damages on account of injury to the Pipe Line from any cause whatsoever.

Section 7. TERMINATION ON ABANDONMENT OR DEFAULT.

Disuse of the Pipe Line continuing, at any time for a period of one year shall constitute an abandonment thereof, and in the event of such an abandonment the Railroad Company may, at its option, terminate, this agreement.

If the City shall fail to keep and perform all or any of the covenants and agreements herein contained to be by it kept and performed, and such default shall continue for a period of thirty days after written notice from the Railroad Company to the City specifying such default, then the Railroad Company may, at its option, forthwith terminate this agreement.

Section 8. REMOVAL OF PIPE LINE UPON TERMINATION OF AGREEMENT.

Within ninety days after the termination of this agreement howsoever, the City shall, at its sole expense, if requested so to do by the Railroad Company, remove the Pipe Line from said rights of way and restore, to the satisfaction of the Railroad Company, said rights of way and the roadbed of said tracks to as good condition as they were in at the time of the construction

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of the Pipe Line; and if the City fails so to do, the Railroad Company may do such work of removal and restoration at the expense of the City. In the event of the removal of the Pipe Line as in this section provided, the Railroad Company shall in no manner, be liable to the City for any damage sustained by the City for or on account of such removal, and such removal shall, in no manner, prejudice, or impair any right of action for damages, or otherwise, that the Railroad Company may have against the City.

Section 9. WAIVER OF BREACH.

The waiver by the Railroad Company of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the City shall, in no way, impair the right of the Railroad Company to avail itself of any subsequent breach thereof.

Section 10. AGREEMENT NOT TO BE ASSIGNED.

The City shall not assign this agreement without the written consent of the Railroad Company.

Section 11. EFFECTIVE DATE - TERM.

This agreement shall take effect as of the first day of February, 1932, and shall continue in full force and effect until terminated as herein provided.

Section 12. 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 and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate as of the date first herein written.

Witness:

G. W. Uhler

UNION PACIFIC RAILROAD COMPANY,

By F. C. Williams, General Manager.

Witness:

o

CITY OF OMAHA,

By Richard L. Metcalfe, Mayor.

Attest:

James P. Hocter,
City Clerk.

Seal
of the City
of Omaha,
Nebraska

COPY
CITY OF OMAHA
Council Chamber

DUPLICATE

RESOLVED:

That easement given by Union Pacific Railroad Company for construction of City Sewer Dep't Sewer No. 1097 being near 31st and Y Streets be, and is hereby, accepted in duplicate.

AND BE IT FURTHER RESOLVED: That the City Clerk return this easement in duplicate to R. M. Jolley, Division Engineer of Union Pacific Railroad Company at Omaha, Nebraska, one copy of which will be returned to City of Omaha properly signed by the railroad company and to be placed on file. (This resolution in duplicate, one copy for Mr. R. M. Jolley).

Duplicate.

No. 607

(SEAL)

By (Sgd) Joseph Koutsky

Adopted March 1, 1932

Resolution by Mr. Koutsky
Accepting UPR.R. easement on
City Sewer Dep't Sewer No. 1097
31st and Y, one copy to be re-
turned by railroad company.

(Sgd) Richard L. Metcalf
Mayor and President City Council

Attest: James P. Hocter
City Clerk.

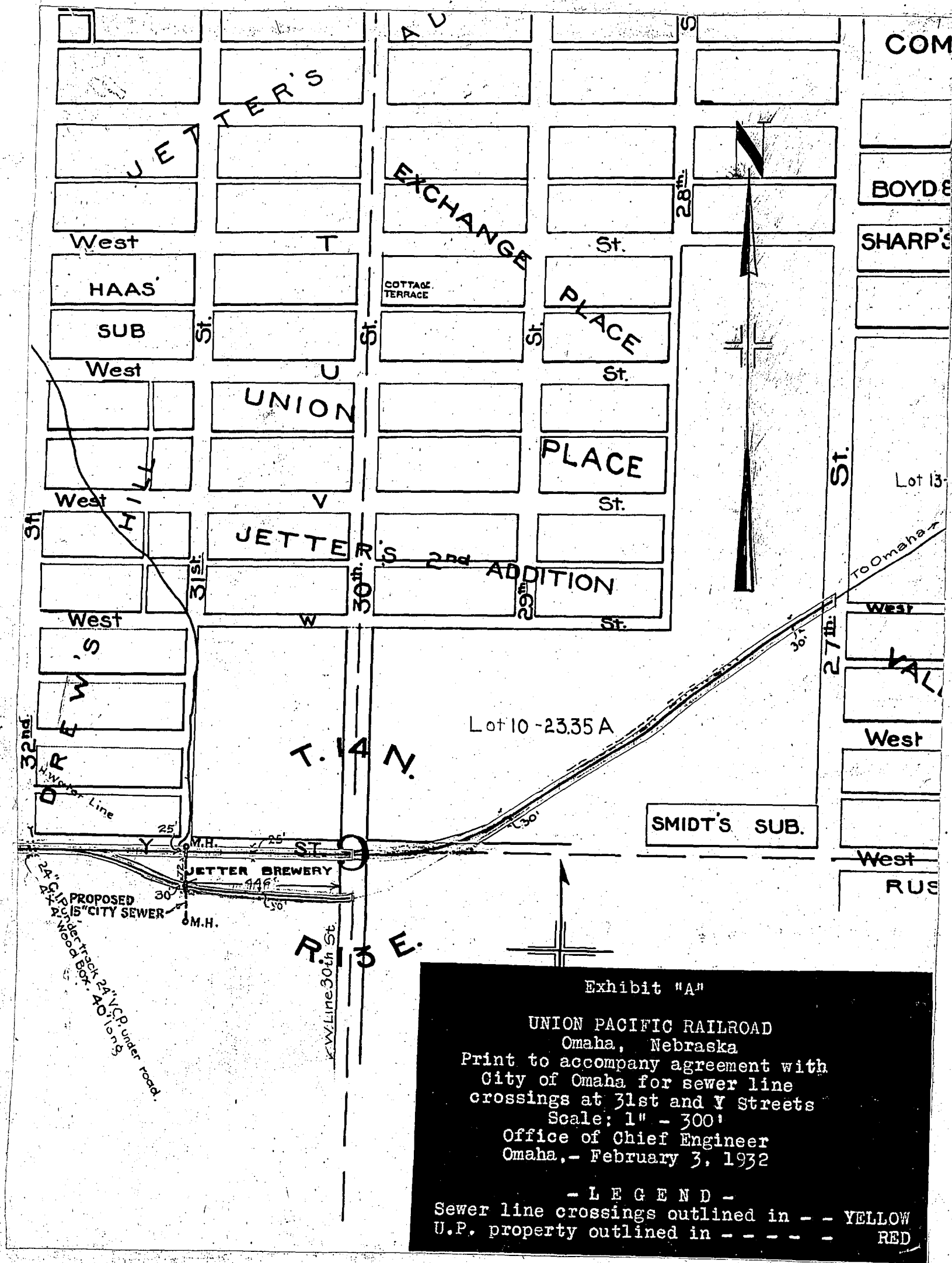
Presented to Council
March 1, 1932.

Adopted

James P. Hocter - City Clerk.
Approved Herman Beal 3-1-32
City Engineer

Received Mar 1, 1932
Presented to Council:-
Mar 1, 1932
Approved
James P. Hocter
City Clerk.

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State of Nebraska,)
 County of Douglas,) ss.

Entered in Numerical Index and filed for Record in
 the Register of Deeds Office of said County, the 15th
 day of April, A. D., 1932, at 10:10 o'clock A. M.

Chris A. Tracy,

Acting Register of Deeds,

Compared by R&G.