

36-15-11

BOOK 527 PAGE 533

Underground Sanitary Sewer  
Pipe Line Crossing,  
Omaha (Weco), Nebraska.

DUPLICATE ORIGINAL  
UPRR Counterpart

C. D. No. 47730-3

THIS AGREEMENT, made and entered into this

x 27th day of August, 1973,  
by and between UNION PACIFIC RAILROAD COMPANY, a corporation  
of the State of Utah (hereinafter called "Licensor"), and  
SANITARY AND IMPROVEMENT DISTRICT NO. 268 OF DOUGLAS COUNTY,  
a public corporation of the State of Nebraska (hereinafter  
called "Licensee"), WITNESSETH:

RECITALS:

The Licensee desires to construct, maintain  
and operate an underground sanitary sewer pipe  
line (hereinafter referred to as "Pipe Line") across  
the property and under the tracks of the Licensor  
in the location shown by yellow lines on the print  
hereto attached dated June 29, 1973, 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. LICENSOR GRANTS RIGHT.

In consideration of the sum of Five Dollars (\$5.00)  
to be paid by the Licensee to the Licensor upon the execution  
and delivery of this agreement and in further consideration  
of the covenants and agreements herein contained to be by  
the Licensee kept, observed and performed, the Licensor hereby  
grants to the Licensee, subject to the terms and conditions  
herein stated, the right to maintain and operate the Pipe  
Line in the location shown, and in conformity with the dimen-  
sions and specifications indicated, on Exhibit A.

The foregoing grant is subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, telegraph, telephone, signal or other wire lines, pipe lines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

The foregoing grant is also subject to all outstanding superior rights (including those in favor of telegraph and telephone companies, lessees of said right of way, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

## Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

The Pipe Line shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with Union Pacific Railroad Co. Common Standard Specification 1029 adopted November 1949, and all amendments thereof and supplements thereto, which, by this reference, hereby is made a part hereof, except as may be modified and approved by the Chief Engineer. In the event said specification conflicts in any detail with the requirements of any federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects said specification shall apply.

All work performed on said property in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipe Line shall be done under the supervision and to the satisfaction of the Licensor.

Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipe Line where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work and shall not proceed with the work until such plans have been approved by the Chief Engineer of the Licensor and then only under the supervision of said Chief Engineer or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its said track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipe Line, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen days after bills shall have been rendered therefor, all expense incurred by the Licensor in connection therewith, which said expense shall include all assignable costs plus ten per cent (10%) to cover elements of expense not capable of exact ascertainment.

The Licensee 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 Licensee shall notify the Licensor at least forty-eight hours in advance of the commencement, of any work upon said right of way in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipe Line.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipe Line, including any and all expense which may be incurred by the Licensor in connection therewith for supervision or inspection, or otherwise.

Section 5. RELOCATION OR REMOVAL OF PIPE LINE.

The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, move all or any portion of the Pipe Line to such new location or (unless the Pipe Line extends entirely across the property of the Licensor) remove the Pipe Line from said property, as the Licensor may designate, whenever, in the furtherance of such needs and requirements, the Licensor shall find such action necessary or desirable.

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

Section 6. PIPE LINE NOT TO INTERFERE WITH LICENSOR'S OPERATION.

The Pipe Line shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. CLAIMS AND LIENS FOR LABOR AND MATERIAL-TAXES.

The Licensee shall fully pay for all materials joined or affixed to and labor performed upon said property of the Licensor in connection with the construction, maintenance, repair, renewal or reconstruction of the Pipe Line, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against said property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee; and the Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipe Line, to prevent the same from becoming a charge or lien upon said property, and so that the taxes, charges and assessments levied upon or in respect to said property of the Licensors shall not be increased because of the location, construction or maintenance of the Pipe Line or any improvement, appliance or fixture connected therewith placed upon said property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensors, then the Licensee shall pay to the Licensors an equitable proportion of such taxes determined by the value of the Licensee's property upon said property as compared with the entire value of said property.

#### Section 8. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee shall take down any fence of the Licensors or in any manner move or disturb any of the other property of the Licensors in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipe Line, then and in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and/or such other property to the same condition as it was in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensors, its officers, agents and employees, against and from any and all liability, loss, damages, 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, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensors.

#### Section 9. LIABILITY.

The Licensee shall indemnify and hold harmless the Licensors, and other companies which use the property of the Licensors, their officers, agents and employees, against and from 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 Licensors and such other companies or property in their 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 Licensee does hereby release the Licensors, its officers, agents and employees, from all liability for damages on account of injury to the Pipe Line from any cause whatsoever.

Section 10. TERMINATION ON NONUSER OR DEFAULT.

If the Licensee does not use the right herein granted or the Pipe Line for one year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensors to the Licensee specifying such default, the Licensors may, at its option, forthwith terminate this agreement. Notice of default and notice of termination may be served upon the Licensee by mailing to the last known address of the Licensee.

Section 11. REMOVAL OF PIPE LINE UPON TERMINATION OF AGREEMENT.

Within ninety days after the termination of this agreement, however, the Licensee shall, at Licensee's sole expense, remove the Pipe Line from those portions of said property not occupied by the roadbed and track or tracks of the Licensors and shall restore, to the satisfaction of the Licensors, said portions of said property to as good condition as they were in at the time of the construction of the Pipe Line; and if the Licensee fails so to do, the Licensors may do such work of removal and restoration at the expense of the Licensee. The Licensors may, at its option, upon such termination, at the expense of the Licensee, remove the portions of the Pipe Line located underneath said roadbed and track or tracks and restore said roadbed to as good condition as it was in at the time of the construction of the Pipe Line, or it may permit the Licensee to do such work of removal and restoration under the supervision of the Licensors. In the event of the removal of the Pipe Line as in this section provided, the Licensors shall in no manner be liable to the Licensee for any damage sustained by the Licensee 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 Licensors may have against the Licensee.

Section 12. WAIVER OF BREACH.

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

Section 13. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensors, and it is agreed that any transfer or assignment or attempted transfer or assignment of this agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensors, shall terminate this agreement.

Section 14. EFFECTIVE DATE - TERM.

This agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

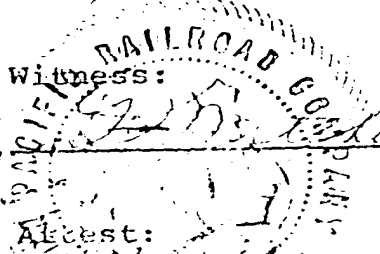
Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 13 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, 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:

Attest:

  
(Seal)  
Assistant Secretary

Witness:

\_\_\_\_\_

Attest:

  
(Seal)  
Secretary  
CLERK

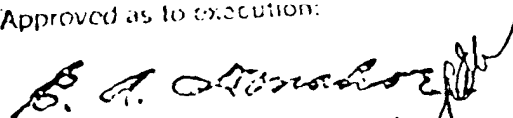
UNION PACIFIC RAILROAD COMPANY,

By \_\_\_\_\_  
General Manager

SANITARY AND IMPROVEMENT DISTRICT  
NO. 268 OF DOUGLAS COUNTY,

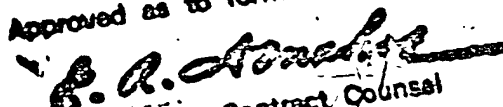
By \_\_\_\_\_  
Chairman, Board of Trustees

Approved as to execution:

  
General Contract Counsel

OMAHA  
UNION PACIFIC  
LAW DEPT. C. D.

Approved as to form:

  
General Contract Counsel

APPROVED

  
For Chief Engineer

RESOLUTION

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WHEREAS, UNION PACIFIC RAILROAD COMPANY has tendered to SANITARY AND IMPROVEMENT DISTRICT NO. 268 OF DOUGLAS COUNTY, State of Nebraska, an agreement covering the construction, maintenance and operation of an underground sanitary sewer pipe line across the right of way and under the tracks of the Railroad Company at Omaha, (Weco), Nebraska; said agreement being identified as the Railroad Company's C. D. No. 47730-3; and

WHEREAS, the Board of Trustees of said Sanitary and Improvement District No. 268 of Douglas County, State of Nebraska, has said proposed agreement before it and has given it careful review and consideration; and

WHEREAS, it is considered that the best interests of said District will be subserved by the acceptance of said agreement;

THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF SANITARY AND IMPROVEMENT DISTRICT NO. 268 OF DOUGLAS COUNTY, STATE OF NEBRASKA:

That the terms of the agreement submitted by Union Pacific Railroad Company as aforesaid be, and the same are hereby, accepted in behalf of said District;

That the Chairman of the Board of Trustees of said Sanitary and Improvement District No. 268 of Douglas County, State of Nebraska, is hereby authorized, empowered and directed to execute said agreement on behalf of said Sanitary and Improvement District No. 268 of Douglas County, State of Nebraska, and that the Secretary of said District is hereby authorized and directed to attest said agreement and to attach to each duplicate original of said agreement a certified copy of this resolution.

STATE OF NEBRASKA       )  
                                  )       ss  
COUNTY OF DOUGLAS     )

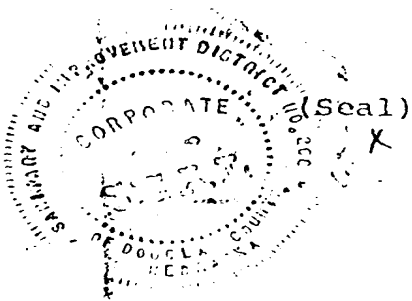
I, ROGER D. HONEY, <sup>CLERK</sup> Secretary of Sanitary and Improvement District No. 268 of Douglas County, State of Nebraska, hereby certify that the above and foregoing is a true, full and correct copy of a resolution adopted by the Board of Trustees of said Sanitary and Improvement District No. 268 of Douglas County, State of Nebraska, at a meeting held according to law at Omaha, Nebraska, on the 27th day of AUGUST, 1973, as the same appears on file and of record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand

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and affixed the corporate seal of said Sanitary and Improvement District No. 268 of Douglas County, State of Nebraska, this

27th day of August, 1973.



R. D. Hume  
Secretary of Sanitary and Improve-  
ment District No. 268 of Douglas  
County, State of Nebraska.  
CLERK

STATE OF NEBRASKA    )  
                              )   ss  
COUNTY OF DOUGLAS    )

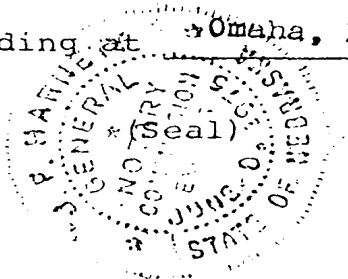
On this 26<sup>th</sup> day of September, 1973,  
before me, a Notary Public in and for said county in the state  
aforesaid, personally appeared O. A. DURRANT, to me personally  
known, and to me personally known to be the General Manager of  
Union Pacific Railroad Company, and to be the same person  
whose name is subscribed to the foregoing instrument, and who,  
being by me duly sworn, did say that he is the General Manager  
of Union Pacific Railroad Company; that the seal affixed to said  
instrument is the corporate seal of said corporation; and that  
said instrument was signed and sealed on behalf of said corpora-  
tion by authority of its board of directors; and the said  
O. A. Durrant acknowledged said instrument to be his free and  
voluntary act and deed, and the free and voluntary act and deed  
of said corporation, by it voluntarily executed, for the uses  
specified therein.

IN WITNESS WHEREOF, I have hereunto set my hand and  
official seal the day and year last above written.

My commission expires June 8, 1975.

J. F. Harnett  
Notary Public

Residing at Omaha, Nebraska.



STATE OF X NEBRASKA )

COUNTY OF X DOUGLAS )

SS

The foregoing instrument was acknowledged before

me this X 23RD day of X AUGUST,

19 73, by X ROGER D. HONEY,

CLERK ~~Secretary~~, of SANITARY AND IMPROVEMENT

DISTRICT NO. 268, a Nebraska

corporation, on behalf of the corporation.



Diann Ericksen  
Notary Public

X (Serial Number, if any)

(Seal)

X

Corp.

Book 527-543

*Drawings*

**DRAWINGS IN BACK OF BOOK**

5 ENTERED IN NUMERICAL INDEX AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRASKA  
5 DAY OF *October* 19*73* AT *9:49 A*. M. C. HAROLD CSTLER, REGISTER OF DEEDS

33.25

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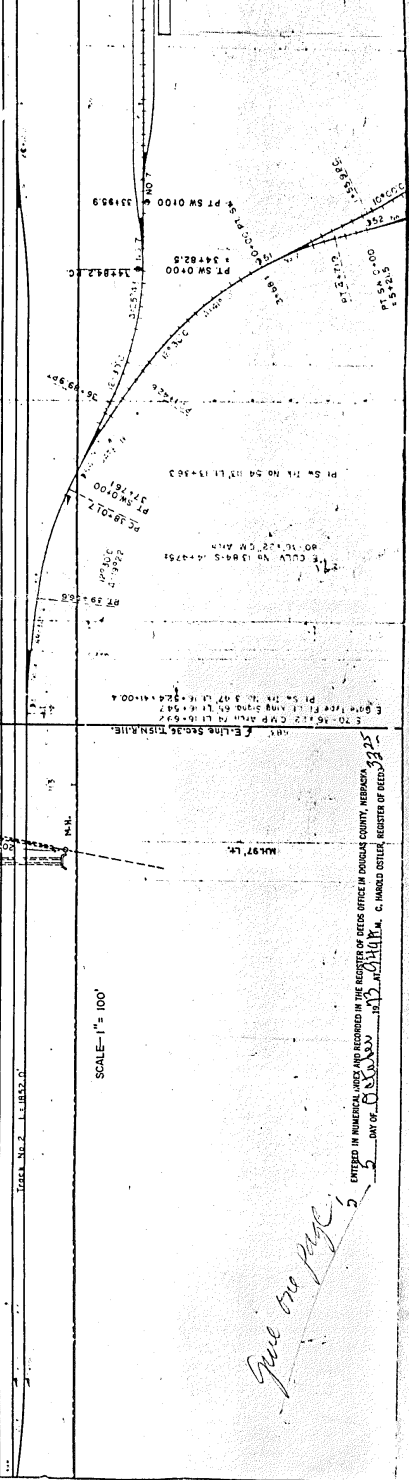
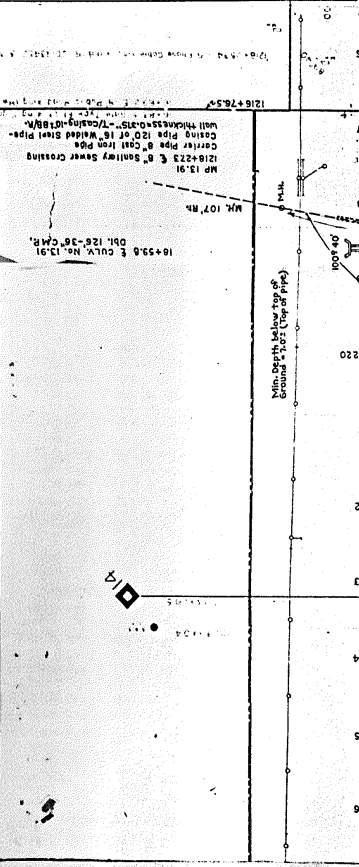
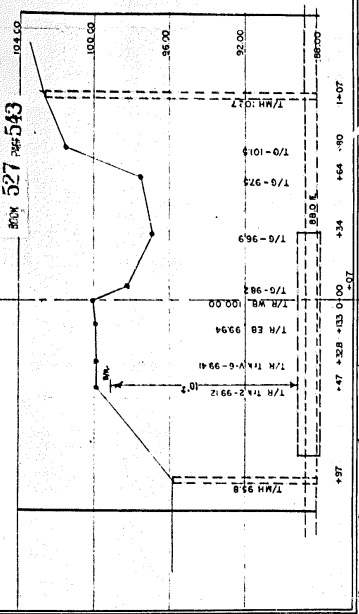


Exhibit 'A'  
U. P. R. R. CO.  
Omaha, Douglas Co., Nebraska (Seco)  
Atty. 5171 - Main Line  
To accompany agreement with  
City of Omaha, Nebraska  
No. 263 covering sanitary sewer  
pipe line crossing.

Scales As shown  
Office of Division Engineer  
Omaha, Mo., June 29, 1973  
L E G E M D  
Seam pipe crossing shown. Yellow  
L.P. 104 outlined. . . . . Red

ENTITLED IN NUMERICAL ORDER AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN POLK COUNTY, IOWA, MAY 1973, BOOK 11, PAGE 325.

Give two page.