

DUPLICATE ORIGINAL
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12-inch Gas Pipe Line Crossing
near 6th and Douglas Streets,
Omaha, Nebraska.

C.D. No. 39800

THIS AGREEMENT, made and entered into this

24th day of May, 1954,

by and between UNION PACIFIC RAILROAD COMPANY, a corporation of the State of Utah (hereinafter called "Railroad Company") and METROPOLITAN UTILITIES DISTRICT OF OMAHA, a quasi-municipal corporation of the State of Nebraska (hereinafter called "Licensee"), WITNESSETH:

RECITALS:

The Licensee desires to construct, maintain and operate a 12-inch gas pipe line (hereinafter referred to as "Pipe Line") across the right of way of the Railroad Company near 6th and Douglas Streets, at Omaha, Douglas County, Nebraska, in the location shown by dashed orange line on the print hereto attached dated August 2, 1953, 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 covenants and agreements herein set out to be by the Licensee kept, observed and performed, the Railroad Company hereby grants to the Licensee, subject to the terms and conditions herein stated, the right to construct and thereafter, during the term hereof, to maintain and operate the Pipe Line across said right of way in the location shown by dashed orange line on Exhibit A.

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The foregoing grant is subject and subordinate to the prior and continuing right and obligation of the Railroad Company to use and maintain its entire railroad right 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, telegraph, telephone, signal or other pole and wire lines, pipe lines and other facilities upon, along or across any or all parts of said right of way, all or any of which may be freely done at any time or times by the Railroad Company 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 Railroad Company to renew and extend the same.

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 Licensee and all work on said right of way in connection therewith shall be done under the supervision and to the satisfaction of the Railroad Company. All expenses incurred by the Railroad Company in connection with said work for supervision or inspection, or otherwise, shall be borne by the Licensee.

~~The portion or portions of the Pipe Line located, or to be located, underneath said track or tracks shall consist of~~ pipe, placed at a depth of not less than feet below the base of the rails of said track or tracks, and prior to the commencement of any work in connection with such portion or portions of the Pipe Line (whether of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal), the Licensee 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 track or tracks during the time such work is being done, and, in the event the Railroad Company provides such support, the Licensee 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 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.

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Section 3. NOTICE OF COMMENCEMENT OF WORK.

The Licensee shall notify the Railroad Company at least forty-eight hours in advance of the commencement of any work on said right 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 Licensee shall, at the sole expense of the Licensee, 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, telegraph, telephone, signal or other pole and wire lines, pipe lines and other facilities of the Railroad Company upon said right of way.

All the terms, conditions and stipulations herein expressed with reference to the Pipe Line on said right 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 Licensee that would, in any manner, impair the safety of said tracks or other property.

Section 6. RESTORATION OF RAILROAD COMPANY'S PROPERTY.

In the event the Licensee shall take down any fence of the Railroad Company or, in any manner, move or disturb any other property of the Railroad Company 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 the sole expense of the Licensee, 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 save harmless the Railroad Company from and against 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 disturbing of any other property of the Railroad Company.

Section 7. DISPOSAL OF PROPERTY.

In the event the Railroad Company shall dispose of any of its property upon which the Pipe Line is located, as herein provided, the license or permit herein granted, with respect to the portion of the Pipe Line located upon the property so disposed of, shall forthwith cease and determine.

Section 8. LIABILITY.

The Licensee 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 Licensee does hereby release the Railroad Company from all liability for damages on account of injury to the Pipe Line from any cause whatsoever.

Section 9. 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 Licensee 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 Licensee specifying such default, then the Railroad Company may, at its option, forthwith terminate this agreement.

Section 10. REMOVAL OF PIPE LINE UPON TERMINATION OF AGREEMENT.

Within ninety days after the termination of this agreement howsoever, the Licensee shall, at the sole expense of the Licensee, remove the Pipe Line from said right of way and restore, to the satisfaction of the Railroad Company, said right of way and the roadbed of said track or tracks 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 Railroad Company may do such work of removal and restoration at the expense of the Licensee. 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 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 damage, or otherwise, that the Railroad Company may have against the Licensee.

Nothing in this section contained shall obligate the Licensee to remove the Pipe Line because of termination of this license with respect to same under the provisions of Section 7 hereof in cases where the Licensee shall have made arrangements for the continuation of the Pipe Line with the grantee or grantees of the Railroad Company.

Section 11. 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 Licensee shall in no way impair the right of the Railroad Company to avail itself of any subsequent breach thereof.

Section 12. AGREEMENT NOT TO BE ASSIGNED.

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

Section 13. EFFECTIVE DATE - TERM.

This agreement shall take effect as of the 3rd day of July, 1953, and shall continue in full force and effect until terminated as herein provided.

Section 14. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 12 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:
Attest: [Signature]
(Seal)
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,
By [Signature]
General Manager ~~Vice President~~

Witness:
Attest: [Signature]
(Seal)
Secretary

METROPOLITAN UTILITIES
DISTRICT OF OMAHA,
By [Signature]
General Manager

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Approved as to form:
[Signature]
Attorney

Approved as to execution:
[Signature] APPROVED,
Attorney

[Signature]
Chief Engineer

EHB
Comp.

STATE OF NEBRASKA)
COUNTY OF DOUGLAS) SS

On this 26th day of October, 1954,

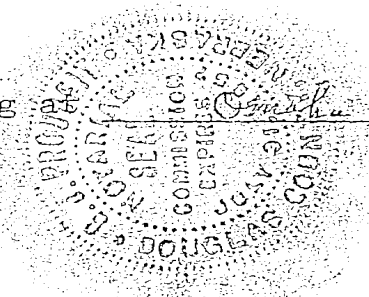
before me, a Notary Public in and for said county in the state
aforesaid, personally appeared E. HICKS
~~XXXXXXXXXXXX~~ to me personally
known, and to me personally known to be the General Manager of
Union Pacific Railroad Company, and to be the same person
whose name is subscribed to the foregoing instrument, 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 corporation by authority of its board of directors; and
the said E. Hicks
~~XXXXXXXXXXXX~~ 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 _____ My Commission Expires July 31, 1957

[Signature]
Notary Public

Residing at _____
(Seal) _____



ehb

Neb.
Corp.

STATE OF Nebraska)
COUNTY OF Douglas) ss

On this 24th day of May

A. D. 1954, before me, a Notary Public duly commissioned and qualified in and for said County, personally came

W. S. Byrne, General Manager

of METROPOLITAN UTILITIES DISTRICT OF OMAHA,

who is personally known to me to be the identical person whose name is affixed to the foregoing instrument as

General Manager of said Metropolitan Utilities

District of Omaha and acknowledged said instrument to be his voluntary act and deed and the voluntary act and deed of said Metropolitan Utilities District of Omaha.

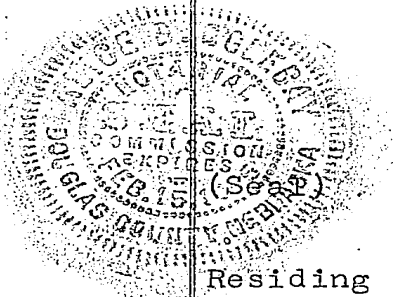
WITNESS my hand and notarial seal at Omaha

_____ in said County, on the day and year above mentioned.

My commission expires Feb 15, 1955.

Alice D. Oglebay
Notary Public

Residing at Omaha, Nebr.



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ENTERED IN NUMERICAL INDEX AND RECORDED IN THE REGISTER OF DEEDS OFFICE IN DOUGLAS COUNTY, NEBRASKA.
24 DAY Nov. 1954 AT 8:31 A. M. THOMAS J. O'CONNOR, REGISTER OF DEEDS.

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