

An Ordinance authorizing the Mayor and Auditor of the City of Portland to enter into an agreement with the Oregon-Washington Railroad and Navigation Company for the privilege to erect, construct and perpetually maintain a concrete viaduct over and across the right of way and tracks of said Railroad Company in Sullivan's Gulch at East 21st Street in the City of Portland.

THE CITY OF PORTLAND DOES ORDAIN AS FOLLOWS:

Section 1: That for the purpose of acquiring the privilege to erect, construct and perpetually maintain a concrete viaduct across the right of way and tracks of the Oregon-Washington Railroad and Navigation Company in Sullivan's Gulch on lines where East 21st Street in Holladay Park Addition in said City, if extended south, would cross said Railroad Company's right of way, the center line of East 21st Street being also the center line of said concrete viaduct, the Mayor and Auditor of the City of Portland be, and they are, hereby authorized to execute, on behalf of the City of Portland, an agreement with the Oregon-Washington Railroad and Navigation Company in the following terms, to-wit:

THIS AGREEMENT, made and entered into in duplicate this first day of September, 1911, by and between OREGON WASHINGTON RAILROAD & NAVIGATION COMPANY, a private corporation, herein-after called the Railroad Company, party of the first part, and THE CITY OF PORTLAND, a municipal corporation, hereinafter called the City, party of the second part,

WITNESSETH: WHEREAS, the Railroad Company is the owner of a railroad right of way through the northeast quarter (NE1/4) of Section thirty five (35), township one (1) north, range one (1) east, W. M., in what is known as "Sullivan's Gulch", situated within the corporate limits of said City of Portland, State of Oregon, and,

WHEREAS, said City desires to erect, construct and perpetually maintain a concrete viaduct across and over the right of way and tracks of the Railroad Company in Sullivan's Gulch on a line where East Twenty-first Street in Holladay Park Addition in said City, if extended south, would cross said Railroad Company's right of way, the center line of East Twenty-first Street, if extended south, being also the center line of said concrete viaduct; and the Railroad Company is willing to grant such permission under and pursuant to the covenants and conditions hereinafter mentioned to be kept and performed on the part of said City;

NOW THEREFORE, for and in consideration of the sum of one dollar (\$1.00) to it in hand paid, the receipt whereof is hereby acknowledged, the Railroad Company does hereby license and permit the City to construct and perpetually maintain a concrete viaduct over and across the right of way and tracks of said Railroad Company at the point hereinbefore described, under and pursuant to the following covenants and conditions, to-wit:

Section 1: The said viaduct is to be constructed for the sole use, benefit and accommodations of pedestrians, teams and vehicles, including street car traffic, in crossing Sullivan Gulch, but the construction of said bridge shall not be deemed to be the opening up of a public street at said point, as far as the property of the first party is concerned, nor consent to the establishment of a street at said point, nor a waiver of damages on the part of the Railroad Company therefor, nor shall any proceedings be instituted at any time by the City for the purpose of creating a street or public highway at the point of crossing aforesaid.

Section 2: It is agreed and understood between the parties hereto that the said viaduct shall not in any way or at any time interfere with the operation of the Railroad Company's business and that the Railroad Company may at any time desire to construct an additional track or tracks upon its right of way to accommodate which the said City agrees in the construction of said viaduct to so construct said viaduct as to leave a clearance of not less than eleven feet (11) between the center line of present tracks and the outside edge of the columns of said viaduct also a clearance of eleven (11) feet, as above stated, between the center line of a proposed track, located parallel to and thirteen (13) feet distant and northerly from said present track.

Said City further agrees that in the construction of said viaduct said viaduct shall be so constructed as to allow a clearance or head room above the base of the Railroad Company's rails of at least twenty-four (24) feet, in the clear.

Section 3: It is further agreed as one of the material considerations for the permission hereby granted and without which the same would not be granted by said Railroad Company that the City expressly assumes all liability of delay to trains, damage or destruction of said Railroad Company's right of way, roadbed, track, signal and telegraph wire or wires and other equipment, including locomotive engines and cars and contents of cars and assumes all liability for personal injury to the officers, agents, employees, passengers, and any other persons whomsoever, including persons traveling over or using said bridge, arising, growing out of, or in connection with, the construction, repair maintenance and use of said viaduct, or any part thereof, without regard as to whether such damage, destruction or personal injury be the result of negligence or misconduct of any person or persons in the employ or service of the City, and the City hereby agrees and undertakes to indemnify and hold harmless the Railroad Company from and against any and all liability, cause of action, claims or demands which any person may hereafter assert, have, claim, or claim to have arising out of, or by reason of, any such loss, injury, damage or destruction, and including delay to trains.

The City agrees to maintain said viaduct in good repair and condition, and so as not to in any way endanger persons and property on the right of way of the Railroad Company. In case of failure so to do, and to repair or put the same into proper and safe condition, within thirty (30) days after notice from the Railroad Company so to do, then this agreement shall be considered terminated and the rights of the City under the same shall be deemed forfeited.

IN WITNESS WHEREOF, the Railroad Company has caused

this agreement to be signed by its General Manager, and the
City by its proper officials hereunto duly authorized by
Ordinance No.

Passed the Council.....DEC 12 1911.....1911.

[Signature]
Auditor of the City of Portland

Submitted to the Mayor. Dec 15 1911.....1911

Approved. Dec 18 1911.....

A. G. RUSHLIGHT

Mayor.