

26075

Ordinance No. 26075

An Ordinance accepting agreement of the Oregon and California Railroad Company and the Southern Pacific Company in the matter of a right of way for the construction of the Vermont Street trunk sewer.

The City of Portland does ordain as follows:

Section 1. That the following agreement proposed by the Oregon and California Railroad Company and the Southern Pacific Company, in the matter of a right of way for the construction of the Vermont Street trunk sewer, be and is hereby accepted by the City of Portland:

"KNOW ALL MEN BY THESE PRESENTS, That the OREGON & CALIFORNIA RAILROAD COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Oregon, lessor, and the SOUTHERN PACIFIC COMPANY, a corporation created by and existing under laws of the State of Kentucky, lessee, first parties, in consideration of the sum of ONE (\$1.00) DOLLAR, and the covenants and agreements hereinafter contained to be kept and performed on the part of the CITY OF PORTLAND, a municipal corporation, second party, do hereby license and permit said City of Portland to install, construct and perpetually maintain a sewer, to be constructed of concrete, and to be placed at a depth so that the top of said sewer shall not be less than three (3) feet below the road bed of the first parties, or where said sewer runs through property not covered with tracks, the top of said sewer shall be not less than three (3) feet below the surface of the ground; said sewer to be located at Engineer Station 215/11, near Vermont Street, as per red inked lines on blue print hereto attached and made a part hereof, and shall not exceed twenty-four inches in diameter inside measurement.

This license and permit is to apply to the lands and right of way of the first parties situated within the corporate limits of the City of Portland, State of Oregon, and does not grant or convey to the City of Portland any right or title to the surface of the soil along the route of said sewer, but is intended, and the said City of Portland agrees, that it shall be construed solely and exclusively as a license and permit granting to said City of Portland the right to construct and perpetually maintain said sewer along, over and across the right of way of the first parties as hereinbefore mentioned, and it is fully understood and agreed that the construction and maintenance of said sewer over and across the property of the

first parties, does not contemplate the opening, laying out and establishing of any streets across the property of said first parties which will be occupied by an extension of such streets if the same were extended across the property of the first parties aforesaid.

The said first parties hereby grant the right and permission to the said City of Portland, under reasonable regulations as may be prescribed by the parties of the first part, to enter upon the property of the first parties at any time for the purpose of inspecting, restoring, replacing, repairing and renewing said sewer.

Said sewer shall be constructed in a good and workmanlike manner under the direction and to the satisfaction of the first parties, and shall be kept and maintained in a good and safe condition and repair at all times, and so as not to interfere with the safe operation of the first parties' business, including the movement of trains, engines and cars upon said property of the first parties, or with the safety of passengers, employees or other persons that may be on or passing over said property, and at any time said sewer is allowed to become or remain in an unsafe condition in the judgment of the first parties, or either of them, said City of Portland shall make such repairs or make such changes as shall be required by the first parties, to render said right of way and tracks of the first party safe, and in default of said City of Portland to make any such repairs required by the first parties, or either of them, then said first parties, or either of them may make such repairs and the said City of Portland agrees and undertakes to reimburse said first parties therefor immediately upon bills being rendered by said first parties, or either of them, to the said City of Portland.

It is further agreed and understood that the covenants of the preceding paragraph relating to the condition and repair of said sewer shall extend to and include the condition of the first parties' lands upon completion of said sewer and the City of Portland agrees that the said lands and right of way shall not be left in an unsafe or unsightly condition by reason of the excavation for said sewer or other operations, and work upon said lands and right of way of the first parties incident to the construction of said sewer, and that in the event of the soil used in the filling of the excavation for the said sewer settling below the surface of the adjoining ground or below the established grade of the first parties' road bed, said City of Portland agrees and undertakes that the opening thus created shall be filled to the proper grade and rolled in a manner satisfactory to the first parties, or either of them, and that the surplus soil and debris shall be removed or otherwise disposed of as directed by the first parties.

It is further agreed that any and all work in connection with said sewer whether of original construction or repairs, replacements, or renewals within the limits of the first parties' property shall be done at such times and in such manner and under the direction of the first parties, or either of them, so as not to interfere with the safe operation of the first parties' business including the movement of trains, engines and cars, and it is further understood and agreed as one of the material considerations of this permit, and without which the same would not be granted by the first parties, that the said City of Portland for itself, its contractors, sub-contractors, or its or their employes, expressly undertakes and agrees to assume any and all liability of damage to or destruction of property, equipment and appliances of the first parties, including locomotive engines, trains and cars, telegraph signal and other equipment, and for accidents resulting in the death of or injury to the passengers of said first parties or other persons, and will protect and hold harmless the said first parties, or either of them against any and all liability, causes of action, claims or demands which any person may hereafter assert, have, claim or claim to have, arising out of or by reason of the construction and maintenance of said sewer.

The first parties agree to and do hereby waive any damages to the land of the said first parties by reason of the construction and maintenance of said sewer through said lands of the first parties, provided that this shall not be construed as abrogating or limiting any of the terms and conditions hereinbefore specified, and the said City of Portland agrees and undertakes to pay any assessments which may be made against the right of way and lands of the said first parties within one hundred (100) feet, measured at right angles, on each side of the center line of said sewer, for the cost of constructing the same.

If at any time or times any work of construction, reconstruction, maintenance, inspection, removal, alteration or change in location of said sewer, is to be performed or done by a contractor for said second party, first parties hereby reserve the right to require any such contractor to enter into a written agreement with first parties satisfactory to them, and to also require any such contractor to give an indemnity bond in favor of first parties in such amount as first parties shall specify before permitting any such contractor to perform or do any of said work on property of first parties.

IN WITNESS WHEREOF the first parties have caused this instrument to be executed on their behalf by their proper officers thereunto duly authorized, and said City of Port-

land has caused this instrument to be executed on its behalf by its proper officers thereunto duly authorized by ordinance number _____ this _____ day of _____, 1912."

Section 2. That the Auditor of the City of Portland be and is hereby directed to have the agreement set forth in Section 1 of this ordinance placed on record.

Passed the Council, OCT 9 1912

A. L. BARBUR
Auditor of the City of Portland.

Submitted to the Mayor, Oct 10 1912

Approved, October 17, 1912.

A. G. RUSHLIGHT
Mayor.