

46433

Ordinance No. 46433.....

An Ordinance authorizing the Mayor and Commissioner of Public Utilities to execute an agreement with the Portland Electric Power Company, an Oregon corporation, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. That the Mayor and Commissioner of Public Utilities be and they are hereby authorized to execute on behalf of the City of Portland an agreement with the Portland Electric Power Company, an Oregon corporation, reading as follows:

KNOW ALL MEN BY THESE PRESENTS that PORTLAND ELECTRIC POWER COMPANY, an Oregon corporation, hereinafter called the "Power Company", in consideration of the sum of One (\$1.00) Dollar to it in hand paid by the CITY OF PORTLAND, a municipal corporation of the state of Oregon, hereinafter called the "Licensee", and in consideration of the performance by the said Licensee of all of the covenants and conditions in this instrument contained to be by it kept and performed, the Power Company does hereby grant unto the said Licensee THE RIGHT TO CONSTRUCT, RECONSTRUCT, REPAIR AND THEREAFTER MAINTAIN SO LONG AS THE SAME IS ACTUALLY IN USE, and also to operate what is known as the THIRD BULL RUN CONDUIT for the purpose of an additional water supply to the inhabitants of the city of Portland, ACROSS but underneath the right of way, road bed and track or tracks and parcels of real property belonging to said Power Company located, lettered and described as follows, to wit:

(A) Across but underneath the main line of railway of the Power Company known as the Mt. Hood Line, at a point located in the northeast quarter (1/4) of Section twenty-six (26), Township one (1) South of Range four (4) east in Clackamas county, state of Oregon, which point is at Engineer's Station 909+76 on said railway line, and at Engineer's Station 918+30.0 of the City Water Department of the City of Portland.

(B) Across but underneath the main line of railway of the Power Company, known as the Troutdale line, at a point in the southeast quarter (1/4) of section eight (8)

in township one (1) south of range three (3) east of the Willamette Meridian in Multnomah County, state aforesaid, which point is at Engineer's Station 55+57.0 on said railway line and at Engineer's Station 387+12.6 of the City Water Department of the City of Portland.

(C) Across but underneath the main line of railway of the Power Company known as the Mt. Hood line, at a point located in the southwest quarter (1/4) of section eleven (11) in township one (1) south, range three (3) east of the Willamette Meridian in Multnomah County, state aforesaid, which point is at Engineer's Station 516+95.0 on said railway line and at Engineer's Station 587+97.2 of the City Water Department of the City of Portland.

(D) Across but underneath the property of the Power Company north of Baraboo Station on the main line of railway of the Power Company, known as the Mt. Hood line, which point is located in the southwest quarter (1/4) of section thirty (30) in township one (1) south of range five (5) east in Clackamas county, state aforesaid, which point is at Engineer's Station 130+33.15 on said railway line at Engineer's Station 996+20.0 of the City Water Department of the City of Portland, the center line of said right of way and crossing for said conduit being described as follows

Beginning at a point in the west line of said section thirty (30), 605 feet north of the southwest corner of said section; thence south 61° 45' east a distance of 341.8 feet, to the east line of the property of the said Power Company.

(E) Across but underneath a right of way, except for a trestle eighty five (85) feet in length, said right of way being a strip of ground forty (40) feet in width and twenty (20) feet on each side of and adjoining the following described center line, to wit:

Beginning at a point on the north line of section six (6) township two (2) south, range five (5) east in Clackamas county, Oregon, said point being 2640 feet southerly and 315.8 westerly from the quarter corner between section thirty-one (31) and thirty-two (32) in township one (1) south, range five (5) east; thence south 24° 24' east 353.7 feet; thence south 9° 40' west 338.9 feet; thence south 20° 00' east 456.9 feet; thence south 55° 46' east 91.7 feet to a point on the east line of said section six (6), which is 3773.5 feet southerly from the quarter corner between sections thirty-one (31) and thirty-two (32).

(F) Over and across a tract of land twenty (20) feet in width, being a portion of that certain tract conveyed by Henry Metzger and wife to the Oregon Water Power Railway Company, the predecessor in title of the Power Company herein, by deed recorded on the 25th day of April, 1903, in Book 305 at page 330 thereof, Records of Deeds of Multnomah County, state aforesaid, said tract of land being known as the Gresham Depot Grounds of the Power Company and located in Multnomah county, state aforesaid, said 20 foot strip being more particularly described as follows:

Beginning at the intersection of the North line of said tract, with the east line of Main Street (Fairview Road) Gresham; thence along the north line of said tract in an easterly direction 325.8 feet, more or less, to the most easterly corner of said tract; thence in a southwesterly direction, tracing the easterly boundary line of the said tract 27 feet, more or less, to a point; thence in a northwesterly direction parallel with and twenty (20) feet distant from the north line of said tract 297 feet, more or less, to an intersection with a southerly projection of the east line of Main Street, Gresham; thence northerly twenty-two (22) feet, more or less, to the place of beginning, and containing 0.14 acres, more or less.

SUBJECT, HOWEVER, to all of the conditions recited in the deed above referred to and the reversionary clause therein, reference to which is hereby specially made with like effect as if said deed were repeated herein.

There is attached to this instrument a plat of each location described herein, and a plan of typical construction of said conduit under the tracks of the Power Company, all of which are hereby specially referred to and made a part and parcel of this instrument.

It is not intended by this instrument or any provision thereof to grant or attempt to grant to the licensee, its successors or assigns, any right or privilege in or to any part or parcel of the above described property in excess of the mere license to construct, re-construct, operate, maintain and repair said conduit for such period only as the said conduit shall be actually maintained and used for the carrying of said water supply, and this license is subject to the following conditions, a violation of any of which shall terminate the license

without notice and all rights and privileges thereunder or incident thereto.

1. The license granted hereunder covers only such rights in the properties described as have been heretofore acquired by said Power Company and is subject to all the restrictions and conditions running with the Power Company's right to occupy said properties.

2. This instrument does not grant to the licensee any right or title to the surface of the soil along or within the route of said conduit or to the ground or space under the same, but the purpose of this instrument is to permit the excavation for and laying down of said conduit and the privilege of inspecting, operating, maintaining, restoring, repairing and replacing the same.

3. The center line of said conduit shall be located approximately as shown in red on said blue print hereto attached.

4. The licensee shall bear the entire cost and expense, directly or indirectly connected with the excavation for laying, construction, operation, repair and renewal of said conduit, including any and all expense which may be incurred by the Power Company for any purpose in connection therewith, including supervision, inspection and incidentals.

5. Said conduit where constructed on any of the aforesaid properties or rights of way of the Power Company, shall be of permanent construction, safe and sound in all respects, free from seepage or leakage, and where the same passes under the railway track or tracks of the Power Company, at such elevation that the top of said conduit shall in no place be less than three (3) feet below the base of rail, unless permission shall hereafter be granted by the Power Company for a different elevation at some special location.

6. The manner of excavation for and laying the said conduit shall in all respects be satisfactory to said Power Company and subject to the approval of its engineer or other person duly appointed for the purpose and no earth or other waste material from the construction of said conduit shall be permitted to remain on the Power Company's right of way or other properties hereinabove described, without the written consent of the Power Company indicating the location and amount of such material and to what elevation it shall be spread.

7. All crossing gates shall be kept closed except when in actual use, and all right of way fences injured or damaged shall be properly and promptly replaced, and no right of way fences shall be broken or opened without first obtaining the permission of the engineer of the Power Company so to do.

8. There shall be no interference with the Power Company's tracks or the operation of the same, its poles, towers, wires, station buildings, property or walks, during the construction of said conduit or thereafter, and if damage of any nature is done to the Power Company's property by reason of said work, or the maintenance or repair or renewal of said conduit, or any part thereof, or any work in connection therewith or from breakage or seepage or leakage of said conduit or any appliance or contrivance used in connection therewith, from any cause whatsoever, the licensee, its successors or assigns shall compensate the Power Company fully therefor, as well as all costs, charges and expenses sustained by said Power Company on account of necessary repairs to its tracks or road bed or any other of its property or rights.

9. If it becomes necessary to change or re-locate any poles, wires, crossings, or other structures by reason of the laying of said pipe, the City shall compensate the Power Company for the cost of such changes, same to be made by the Power Company.

10. If any of the present crossing, culverts, pipe lines, poles, appliances or structures of the Power Company are interfered with by the construction or location of said conduit or the maintenance or repair, or renewal of the same, the licensee shall provide at its own expense temporary crossings, culverts, pipe lines, poles, wires, appliances or structures during the construction period, and after said period shall replace said crossings, culverts, pipe lines, poles, wires, appliances or structures in a good and substantial manner satisfactory to the engineer of the Power Company; provided, however, that the Power Company may elect to furnish all or any materials or all or any of the work required by this section of this contract, or to superintend the said work or any part thereof, all at the expense of the licensee.

11. The Power Company shall not be liable for any damage to said pipe by reason of electrolysis or other causes, or by reason of any structures, or any works, erected, made, or done by said Power Company upon its said rights of way, or upon its said land.

12. In all cases where the present drainage of said right of way is interfered with or obstructed by said conduit, the licensee shall at its own expense provide new ditches for such drainage and cause the drainage to flow in a natural channel away from said right of way, all to the satisfaction of and subject to the approval of the Power Company's engineer.

13. The licensee shall allow no trespass by its employees, contractors, subcontractors or others connected with the construction or maintenance of said conduit, at any time upon the operating road bed of the Power Company, nor shall the licensee allow any material to be placed or stored upon said right of way during the construction period in dangerous proximity to the tracks of the Power Company, such line to be determined and marked out by the engineer of the Power Company.

14. Dynamite or other explosive material shall not be used upon said right of way during construction unless written permission is first obtained therefor from the Power Company.

15. At the close of the construction period the licensee shall clean up and remove all debris, materials and apparatus from said right of way, leaving the same in as clean a condition as it was before the placing of said conduit, all to the satisfaction of the engineer of the Power Company.

16. The Power Company expressly reserves the right to use the surface of the ground included within this license for all purposes, and the right to use the sub-surface for all purposes not inconsistent with the use of the same for said conduit, and notwithstanding this license nothing shall be done or suffered to be done by the licensee at any time that shall in any manner impair the usefulness of the right of way of the Power Company or safety of the track or tracks, poles, towers, and/or transmission lines and other structures that now or may hereafter be constructed by the Power Company within the limits of said properties, or any part thereof; and the Power Company reserves and shall have the right at any and all times to make such changes in said existing track or tracks, poles, towers and transmission lines or in the present standard thereof, and to construct, maintain and operate any additional tracks, poles, towers, and transmission lines on said right of way as from time to time it may elect, and the obligation of the licensee in this

agreement prescribed with reference to the maintenance, repair and removal of said conduit, as originally constructed, shall apply to said conduit as changed or modified within the contemplation of this section.

And the licensee shall, at its own cost and expense make such changes in the location of manholes in said conduit, or other changes which do not interfere with the utility of said conduit as shall be required by said Power Company, and the obligation of the licensee in this agreement prescribed with reference to the maintenance, repair and removal of said conduit, as originally constructed, shall apply to said conduit as changed or modified within the contemplation of this section.

17. The license herein granted is for the purpose of the construction of but one conduit only by the licensee and no lateral drains, connections or branches to be laid on said right of way of the Power Company connecting with said conduit unless license to do so first be obtained in writing from the Power Company.

18. In cases where said pipe line crosses underneath the tracks, on the rights of way, the licensee shall notify the engineer - Maintenance of Way of the Power Company, - as to the time of said construction, so that the Power Company may have its representative engineer on the ground.

19. The right reserved by the Power Company to use the surface, or subsurface of the ground shall include the right to permit others to do so.

20. Upon cessation of the use of said conduit or abandonment by the licensee of the property or any part thereof mentioned in this license or upon the failure of the licensee, its successors or assigns, to faithfully and in all respects comply with all the covenants and conditions mentioned in this agreement by it to be kept and performed, then this license and all rights and privileges granted hereunder shall forthwith terminate, and the Power Company, its successors and assigns, are hereby authorized to enter into and upon the said premises and repossess the same or any part thereof, and take up and remove said conduit, if necessary, and restore the property to its original condition, without being deemed guilty of trespass or in any manner liable to the licensee, its successors or assigns for breach of covenant or condition or at law or in equity.

21. The licensee by the acceptance of this instrument, agrees to indemnify and save and keep harmless, said Power Company Company, its officers, agents, employees, successors and assigns, from any and all claims and demands for injuries to or the death of any person or persons in any manner, whether directly or indirectly caused by or resulting from the construction, maintenance, renewal, restoration, or repair of said conduit, or any part thereof, and also to indemnify and save and keep harmless said Power Company from any and all damages to property from like causes.

The execution of this agreement has been delayed and construction of said conduit has proceeded under the verbal agreement of the parties as herein expressed, and it is understood and agreed that the exercise of any rights by the licensee contemplated hereunder, whether already exercised or hereafter to be exercised, shall be governed and controlled by the conditions of this agreement to the same extent and with the same force and effect as though this agreement had been executed prior to the exercise of such rights by the licensee.

This agreement shall be in full force and effect on and after the date of its execution, and shall continue in full force and effect, subject to the terms hereof, and all of the covenants, conditions and agreements herein contained on the part of the licensee, its successors and assigns, to be kept, observed and performed, shall attach to and run with said conduit.

This agreement shall be binding upon and enure to the benefit of both of the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed this _____ day of _____ 192 .

Section 2. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of The City of Portland in this: That the right of way described in the foregoing agreement is necessary for the immediate use in connection with Bull Run Conduit No. 3; therefore, an emergency is hereby declared to exist, and this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council: MAR 4 1975

GEO. L. BAKER
Mayor of The City of Portland

Attest:



Auditor of The City of Portland

2-20-25

Mr. Nann