

Ordinance No. 11111

An Ordinance authorizing the execution of an agreement between the Northern Pacific Terminal Company and the City of Portland for a sewer easement for construction of the 30th Street, Industrial Avenue and 29th Street Sewer System, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. That the Mayor and the Auditor are hereby authorized for and on behalf of the City of Portland to enter into an agreement with the Northern Pacific Terminal Company for a sewer easement for the 30th Street, Industrial Avenue and 29th Street Sewer System, which agreement shall be substantially in the following form:

THIS AGREEMENT, Made and entered into this 1931, by and between The Northern Pacific Terminal Company of Oregon, an Oregon corporation, hereinafter called the "Terminal Company", First Party, and The City of Portland, Multnomah County, Oregon, a municipal corporation, hereinafter called the "City", Second Party, WITNESSETH:

WHEREAS, the City desires to construct and thereafter maintain and operate a reinforced concrete sewer pipe line, hereinafter called the "Pipe Line", sixty-six (66) inches in inside diameter extending underground across the property of the Terminal Company in the City of Portland, Multnomah County, Oregon, the center line of which said Pipe Line is described as follows, to-wit:

Beginning at the intersection of the Southerly line of Yeon Avenue and the Easterly line of 29th Street; thence North 27 degrees 43 minutes 20 seconds East a distance of 793.64 feet to a point; thence South 81 degrees 13 minutes 30 seconds East a distance of 23.26 feet to the place of beginning of the center line across the property of the Terminal Company; thence North 27 degrees 43 minutes 20 seconds East a distance of 302.40 feet to the Northeasterly line of the property of the Terminal Company, all in Section 20, Township 1 North, Range 1 East of the Willamette Meridian,

said location being shown by a red line on the attached blue print, which said blue print is marked Exhibit "A" for identification and made a part hereof.

11111

IT IS THEREFORE AGREED by and between the parties hereto as follows, to-wit:

1. TERMINAL COMPANY GRANTS RIGHT TO CITY.

The Terminal Company does hereby grant unto the City the right to construct and thereafter during the term hereof maintain and operate across the property of the said Terminal Company, the said Pipe Line in the location hereinbefore described, which grant is made expressly subject to the observance and performance by the City of all and singular the conditions, covenants and agreements hereinafter contained to be by the City kept, observed and performed, it being hereby stipulated that a waiver by the Terminal Company of any breach of any such conditions, covenants and agreements shall in no way impair the right of the Terminal Company to avail itself of any subsequent breach thereof.

2. CONSIDERATION. The consideration of this license is the mutual covenants and agreements of the parties and said City further agrees to pay to the Terminal Company the sum of One (\$1.00) Dollar per lineal foot of said sewer over and across the property of said Terminal Company, the same being agreed to be a distance of 302.40 feet, making an aggregate sum to be paid by the City to the Terminal Company of Three Hundred Two and 40/100 (\$302.40) Dollars, which said sum shall be credited on any assessment against the Terminal Company on account of the construction of said sewer, it being further agreed that no part of the property of the Terminal Company within ten (10) feet of either side of said Pipe Line shall be assessed for benefits of said sewer. It is understood and agreed also that this license shall not be deemed to estop the Terminal Company from objecting to or protesting against any assessments sought to be levied against its property, if any, by reason of the construction of said Pipe Line or any lateral thereto.

3. SIZE AND KIND OF PIPE. The said Pipe Line where it crosses the property of the Terminal Company shall be constructed of reinforced concrete with suitable and sufficient foundation, permanent in character and with internal dimensions of sixty-six (66) inches in diameter and of thickness suitable to the representative of the Terminal Company, and shall be constructed and maintained at such elevation that the top thereof will not be higher than twenty-four (24) feet above City Datum.

4. CITY TO BEAR ENTIRE EXPENSE. The City shall bear the entire cost and expense in connection with the construction, maintenance, repair or renewal of said Pipe Line, including any and all expense which may be incurred by the Terminal Company in connection therewith for supervision, inspection, protection of its tracks and structures, or any other expense incurred on account of the construction or maintenance of said Pipe Line, provided that this shall not be construed as a release

of the Terminal Company from any assessment on account of its property within the district assessed for the cost thereof, and that said assessment shall be made in the manner provided in the City Charter of the City of Portland. All work upon said Pipe Line within the limits of the property of the Terminal Company shall be done according to the plans and specifications approved by the Terminal Company. It is understood and agreed that the Terminal Company will not be held responsible for any workmanship incident to such construction.

Plans and specifications for said Pipe Line will be prepared by the Engineer of the City and submitted to the Terminal Company for approval and when so approved, will be submitted to the City Council of the City for final approval and adoption. When said plans and specification shall have been approved by said Terminal Company and said City Council of the City, no changes shall be made therein, provided that if said City Council shall object to any part of said plans or specifications, any revised plans or specifications shall first be submitted to and approved by the Terminal Company before final adoption thereof.

5. PERMIT SUBJECT TO NEEDS OF TERMINAL COMPANY.

Notwithstanding the aforesaid grant, nothing shall be done or suffered to be done by the City at any time that shall in any manner impair the usefulness or safety of any building or buildings, structures, wharves, docks, slips, roadbed, track or tracks which are now or which may hereafter be constructed upon said property, and the Terminal Company reserves and shall have the right at any and all times to make such changes in said buildings, structures, roadbed, track or tracks or in the present standard thereof, or to construct, maintain and operate such additional buildings, structures, wharves, docks, slips, roadbed, track or tracks where said Pipe Line is to be constructed, or across the same, as from time to time it may elect.

6. LIABILITY. If the City shall fail to properly construct or efficiently maintain said Pipe Line and by reason of such failure the property of the Terminal Company or property in its custody, is damaged or injured or the Terminal Company's employees or employees of the City, or any other person or persons, shall suffer injury or death, then the City shall indemnify and save harmless the Terminal Company from all loss, cost, damage, expense, claims, actions or demands arising therefrom. The City does likewise indemnify and agree to save harmless the Terminal Company for any damage to property or injury or death of any employee of the Terminal Company or of the City or of any other person, caused by or during the course of construction of said Pipe Line. The Terminal Company shall also have the right in the event said Pipe Line is not properly constructed or maintained,

to make the necessary repairs to same and the City agrees to repay to the Terminal Company the cost thereof, but no failure on the part of the Terminal Company to exercise this right to make any such repairs shall constitute a waiver of the prior provisions of this paragraph. The City shall have the right to enter upon the property of the Terminal Company hereinbefore described for the purpose of constructing, repairing, reconstructing, inspecting or maintaining said Pipe Line, but, except in case of emergency the Terminal Company shall be notified by the City in writing before any work is done upon the said Pipe Line. The said City does likewise agree to take all reasonable precautions to protect the tracks, buildings or other structures upon the property of said Terminal Company so that the same may be used at all times during the course of construction or while said Pipe Line is maintained over the property of said Terminal Company.

7. DISUSE OF PIPE LINE. Disuse of said Pipe Line for the purpose for which it was originally constructed continuing at any time for a period of one year, shall constitute an abandonment thereof by the City and of the grant herein made, and in case of such an abandonment or of the breach by the City of any of the conditions, agreements and covenants herein contained, the Terminal Company shall have the right to terminate this agreement at any time by giving thirty (30) days notice in writing to the City of its intention to terminate the same, and at the expiration of said thirty day notice the license herein granted shall terminate and be at an end and the City shall be without recourse or redress of any character against the Terminal Company therefor.

8. REMOVAL OF PROPERTY OF CITY. Within fifteen (15) days after the termination of this agreement howsoever, the City shall remove all property of the City herein provided for from that portion of the property of the Terminal Company not occupied by buildings, structures, roadbed, track or tracks and shall restore the same to its original condition to the satisfaction of the Terminal Company, and if the City fails so to do, the Terminal Company may do such work of removal and restoration at the cost and expense of the City. The Terminal Company may, at its option, upon such termination, at the entire cost and expense of the City, remove that portion of said Pipe Line underneath its buildings, structures, roadbed, track or tracks, and restore said property to its original condition, or it may permit the City to do such work of removal and restoration under the supervision of the Terminal Company, and in the event of the removal by the Terminal Company of the property of the City as herein provided and of the restoration of said property to its former condition, the Terminal Company shall in no manner be liable to the City for any damage sustained by the City for or on account thereof and such removal and restoration shall in no manner

prejudice or impair any right of action for damages or otherwise that the Terminal Company may have against the City. It is understood and agreed that the City may, at its option, fill said Pipe Line with sand, gravel or dirt in lieu of such removal, said work of filling to be subject to the approval of the Terminal Company. It is also understood and agreed that in the event of such removal or filling the provisions for indemnity herein provided in Paragraph 6 shall apply during the process and operation of such removal or filling.

9. RIGHT TO FILL. The Terminal Company hereby expressly reserves the right to fill, at its sole cost and expense, all or any portion of its property to a suitable elevation for railroad, industrial or other development, and it is further understood and agreed that in the construction or removal or filling of said Pipe Line as hereinabove provided by the City over and across the property of the Terminal Company, there is a possibility of the City, its agents, employees and/or contractors interfering with the work of the Terminal Company, it is therefore stipulated that the occupancy of the property by the City shall be secondary to its occupancy and use by the Terminal Company, and it is further understood and agreed that the City, its agents, employees and/or contractors, will whenever requested so to do by the Terminal Company, discontinue the work of constructing said pipe line during such time and the City hereby releases the Terminal Company from any loss, cost, damage or expense incurred by the said City in connection with or occasioned by any filling or work or operation on said property by the Terminal Company.

10. CONSTRUCTION OF MANHOLES. The City agrees not to construct any manholes or other openings along the route of said Pipe Line within the boundaries of the property of the Terminal Company without the written permission of the Terminal Company first had and obtained. It is the understanding of the parties that said sewer is to be used exclusively for the carrying of the waters of Balch Creek, but should said Pipe Line be ever used as a sanitary sewer, then the Terminal Company shall have the right to connect therewith in the same manner as other users of said sewer and on the same terms.

11. AGREEMENT NOT TO BE ASSIGNED. The City shall not assign this agreement or any of the rights hereunder without the consent in writing of the Terminal Company endorsed thereon.

12. EFFECTIVE DATE. This agreement shall be effective from and after its execution and shall continue in full force and effect until terminated as herein provided and all of the covenants, agreements and conditions herein contained on the

part of the City to be kept, observed and performed shall attach to and run with said Pipe Line.

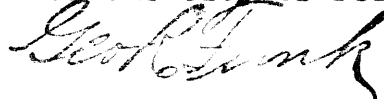
13. SUCCESSORS AND ASSIGNS. This agreement shall be binding upon and inure to the benefit of the Terminal Company, its successors and assigns, and to the City, its successors and assigns.

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: It is necessary to secure this easement in order that the said improvement may go forward; 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 SEP 21 1921

GEO. L. BAKER

Mayor of the City of Portland



Attest:

Auditor of the City of Portland