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Ordinance No. \_\_\_\_\_

An Ordinance providing for the execution of an agreement between the Southern Pacific Company and the City of Portland for an easement for the construction, maintenance and operation of a sewer pipe and appurtenances, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. That the Mayor and Auditor be and they are hereby authorized for and on behalf of the City of Portland, to enter into an agreement with the Southern Pacific Company, a corporation, for the granting of an easement for the construction, maintenance and operation of a sewer pipe and appurtenances, said agreement to be in substantially the following form:

THIS AGREEMENT, made this 15th day of June, 1931, by and between SOUTHERN PACIFIC COMPANY, a corporation, first party, herein called "Grantor", and CITY OF PORTLAND, a municipal corporation of the State of Oregon, second party, herein called "Grantee",

WITNESSETH, THAT:

Grantor, in consideration of the faithful performance by Grantee of all the covenants and agreements herein contained, hereby grants to said Grantee an easement for the construction, maintenance and operation of one (1) thirty inch (30") sewer pipe and appurtenances, hereinafter termed "structure", along and beneath the property of Grantor in the City of Portland, County of Multnomah, State of Oregon. The center line of said structure is described as follows, to wit:

BEGINNING at the intersection of the north line of Harold Avenue extended westerly, with the easterly line of the right of way of the Southern Pacific Company as described in deed, Edward Long and wife to Oregon Central Railroad Company, dated April 21, 1868, filed for record November 10, 1868 and recorded in Book "H" of Deeds, page 735, Records of said County of Multnomah; thence southerly parallel with and distant 8.5 feet westerly measured at right angles from the center line of the spar track leading to the Beaver Wood Products Company, a distance of 25 feet to a point in the existing trunk sewer in said Harold Avenue, said point being 27 feet easterly measured at right angles from the center line of main track of Southern Pacific Company at Survey Station 123 26, as shown by red line on the blueprint map of Portland Division Drawing LH-750, hereto attached and made a part hereof.

This grant of easement is made, executed and delivered by Grantor to the Grantee upon the following express terms and conditions, to all of which the Grantee assents:

1. Grantee hereby acknowledges the title of Grantor in and to the above described property, and agrees never to assail or resist said title.
2. Grantee agrees to indemnify and save harmless Grantor from and against any and all loss, damage, liability, cost and expense which Grantor may sustain or bear, or to which Grantor may be put, resulting directly or indirectly in any manner from the use of said premises and/or the construction, maintenance, use and/or location of said structure and its appurtenances on or beneath the premises hereinbefore specified.
3. Grantee and the agents and employes of Grantee shall have the privilege of entry on the said premises for the purpose of making necessary repairs to or changes in said structure, and the Grantee agrees to at all times keep said premises in a good and safe condition so far as affected by Grantee's operations, all to the satisfaction of Grantor.
4. Grantee agrees that all work upon, or in connection with said structure, shall be done at such times and in such manner as not to interfere in any way whatsoever with the operations of Grantor, and that the location of said structure and all work in connection therewith shall be done and made under the supervision and to the satisfaction of Grantor.
5. This grant of easement is subject and subordinate to the prior and continuing right and obligation of Grantor and its successors to use and maintain its entire railroad right of way in performance of its public duty as a common carrier, and is also subject to the right and power of Grantor and its successors in interest or ownership of the said railroad right of way to construct, maintain, use and operate on the present or other grade, existing or additional railroad tracks and appurtenances thereto, including water and fuel pipe lines and conduits, and telegraph, telephone, signal, power and other electric lines, and other railroad facilities and structures of any kind, upon or across any or all parts of said land above described, all or any of which may be freely done at any time or times by Grantor, or its successors, without liability to Grantee or to anyone else for compensation or damage.
6. This instrument is subject to all valid and existing contracts, leases, liens or encumbrances which may affect the said property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

7. In the event Grantee shall at any time abandon the use of said structure, or any part thereof, or fail at any time to use the same for a continuous period of one (1) year or shall fail to observe, and perform any covenant on Grantee's part her-in contained, all rights hereby given shall forthwith cease and terminate and Grantee shall thereupon remove said structure and restore said premises as nearly as possible to the same state and condition they were in, prior to the construction of said structure, failing in which Grantor may perform such work at cost of Grantee, which cost Grantee agrees to pay to Grantor on demand.

8. Grantee will fully pay for all materials joined or affixed to said premises and pay in full all persons that perform labor upon said premises, and will not permit or suffer any mechanics' liens or materialmen's liens of any kind or nature to be enforced against said premises for any work done or materials furnished thereon at Grantee's instance or request.

9. In case Grantor shall bring suit to compel performance of, or to recover for breach of, any covenant, agreement or condition herein written, and shall be successful in such litigation, Grantee shall and will pay to Grantor reasonable attorney fees in addition to the amount of judgment and costs.

10. In the event any work upon or in connection with said structure or its appurtenances to be done upon, beneath or adjacent to the tracks and property of Grantor should be let to Contractor by Grantee, such work shall not be begun until such Contractor shall have first entered into an agreement with Grantor, satisfactory to Grantor and indemnifying Grantor from and against all claims, demands, cost, loss, damage and liability, growing out of the performance of the work to be done by such Contractor, and such Contractor shall furnish, at no expense to Grantor, a good and sufficient reliable Surety Company bond in such amount as may be specified by Grantor for the faithful performance of all the terms, covenants, conditions and stipulations contained in said agreement to be entered into with Grantor by said Contractor, as here in this paragraph provided; the form of said bond to be satisfactory to Grantor.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first above written.

Section 5. 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 execution of said agreement without delay is needed in order that the work of constructing said sewer pipe and appurtenances may go forward without unnecessary delay; 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

DEC 9 1931

GEO. L. BAKER

Mayor of the City of Portland.



Attest:

11-5-31  
Geo. Barber.

Auditor of the City of Portland.

PREPARED—APPROVED  
CITY ATTORNEY