

PIPE LINE CROSSING AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 1969, by and between SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY, a corporation of the State of Washington, hereinafter called the "Railway Company," and the CITY OF PORTLAND, a municipal corporation of the State of Oregon, hereinafter called the "Licensee," WITNESSETH:

WHEREAS, the Licensee desires to construct and thereafter to maintain and operate a 21-inch concrete sewer pipe and two 6-inch concrete sewer pipes across Railway Company property in the NW¼ of Section 29, Township 1 North, Range 1 East of Willamette Meridian, in the City of Portland, County of Multnomah, State of Oregon. The centerlines of said sewer lines crossing right of way and under tracks as follows: 21-inch pipe crossing at Railway Company Engineer's Station 193+90; two 6-inch pipes at Railway Company Engineer's Stations 206+58 and 208+35, as indicated in red on map hereto attached and made a part of this agreement.

The parties hereto agree as follows:

1. The Railway Company, for and in consideration of the payments and covenants hereinafter mentioned to be made, kept and performed by said Licensee, does hereby license and permit said Licensee to construct and thereafter, during the term hereof, to maintain and operate the Pipe Lines in the location aforesaid.
2. This agreement shall be effective from and after the day and year first above written, and shall continue in full force and effect until terminated as hereinafter provided.
3. The Licensee shall bear the entire expense incurred in connection with the construction, maintenance, renewal and removal of the Pipe Lines including all expense incurred by the Railway Company in connection therewith for supervision, inspection, or otherwise; and all work performed, and materials used in connection therewith within the limits of the right of way of the Railway Company shall be done under the direction of and be satisfactory to the Chief Engineer of the Railway Company or his authorized representative. Direction, supervision or approval of said work by the Railway Company or its Chief Engineer or his authorized representative shall not operate to relieve the Licensee, in whole or in part, from responsibility for the safe and adequate construction, maintenance and operation of the Pipe Lines in accordance with this agreement.
4. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the usefulness or safety of the track or tracks of the Railway Company, or of any other tracks that hereafter may be constructed within the

limits of said right of way. The Railway Company reserves and shall have the right at any and all times to make such changes in its existing track or tracks and structures, or in the present standards thereof, and to construct, maintain and operate such additional tracks and structures on said right of way in the vicinity of the Pipe Lines, and over and across the same, as from time to time it may elect and the Licensee shall bear the expense of making such modifications or changes in the location of the Pipe Lines as may be required by the Railway Company in connection with such changes in said track or tracks and structures, or in the present standards thereof, and such additional tracks and structures. All the terms, conditions and stipulations herein expressed with reference to the maintenance, repair and renewal of the Pipe Lines in the locations hereinbefore described, shall apply to the Pipe Lines as relocated, changed or modified within the contemplation of this section.

5. The Pipe Lines and all parts thereof within and outside of the limits of the right of way and premises of the Railway Company shall be constructed and at all times maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous, and uninterrupted use of the tracks, property and premises of the Railway Company, both as regards operation, maintenance, repairs and renewals, or new construction by the Railway Company.

6. The Licensee shall indemnify and hold harmless the Railway Company from and against any and all damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which may result from any injury to or the death of any person whomsoever, or from the loss of or damage to property of any kind or nature, including damage to the roadbed, tracks, equipment or other property of the Railway Company, when such injury, death, loss or damage is due to the existence of the Pipe Lines, or to the construction, maintenance, operation, repair or renewal thereof, or to the contents therein or therefrom. The Licensee does hereby release the Railway Company from all liability for damages on account of injury to the Pipe Lines from any cause whatsoever.

7. Should the Pipe Lines be permitted to be in bad order or condition for twenty-four (24) hours, then the Railway Company may effect any necessary repairs at the expense of the Licensee. In the event of termination of this agreement howsoever the Licensee shall be without recourse or redress of any character against the Railway Company by reason thereof, nor shall such termination prejudice or impair any right of action for damages or otherwise that the Railway Company may have against the Licensee.

8. Within fifteen (15) days after the termination of this agreement howsoever, the Licensee shall remove all property of the Licensee herein provided for from that portion of the right of way of the Railway Company not occupied by the said roadbed and track or tracks, and shall restore, to the satisfaction of the Railway Company, the said right of way to as good condition as it was in at the time of the construction of the Pipe Lines and if the Licensee fails so to do, the Railway Company may do such work of removal and restoration at the cost and expense of the Licensee. The Railway Company, may at its option, upon such termination, at the entire cost and expense of the Licensee, remove the portion of the Pipe Lines located underneath said roadbed and track or tracks, and restore said roadbed to as good a condition as it was in at the time of the construction of the Pipe Lines or it may permit the Licensee to do such work of removal and restoration under the supervision of the Railway Company; and in the event of the removal

by the Railway Company of the property of the Licensee and of the restoration of said roadbed and right of way as herein provided, the Railway Company shall in no manner be liable to the Licensee for any damage sustained by the Licensee 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 Railway Company may have against the Licensee.

9. The waiver by the Railway Company of the breach of any condition, covenant or agreement herein contained, to be kept and performed by the Licensee, shall in no way impair the right of the Railway Company to avail itself of any subsequent breach thereof.

10. The Licensee shall not assign this agreement or any of the rights hereunder without the written consent of the Railway Company.

11. This agreement shall be binding upon and inure to the benefit of the Railway Company, its successors and assigns, the Licensee and the heirs, executors, administrators, successors and assigns of the Licensee. The protective and indemnifying provisions hereof shall also inure to the benefit of any other Railway Company or companies or other persons or corporations lawfully using or occupying the tracks or right of way of the Railway Company.

12. The portion or portions of the Pipe Lines located or to be located underneath said track or tracks shall consist of a 21-inch and two 6-inch concrete sewer pipe lines, as indicated on attached map. The two 6-inch concrete sewer pipe lines shall be placed by boring operations, and the 21-inch concrete sewer pipeline shall be placed by tunneling operations, all to be at a depth of not less than 3 feet below the base of the rails of said track or tracks. Prior to the commencement of any work in connection with such portion or portions of the Pipe Lines (whether of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal), the Licensee shall submit to the Railway Company plans setting out the method and manner of handling the work and shall not proceed with the work until such plans shall have been approved by the Chief Engineer of the Railway Company and then only under the supervision of said Chief Engineer or his representative. The Railway Company shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time such work is being done, and, in the event the Railway Company provides support, the Licensee shall pay to the Railway Company, within fifteen days after bills shall have been rendered therefor, all expense incurred by the Railway Company in connection therewith, which said expense shall include all assignable costs plus ten per cent (10%) to cover elements of expense not capable of exact ascertainment.

13. The Railway Company may terminate this agreement upon 30 days written notice, deposited in a United States Post Office and addressed to Licensee at City Hall, Portland, Oregon, if the sewer pipes herein permitted are not constructed within one year from the date hereof, or if said sewer pipes cease to be used by the Licensee for a period of two years. Licensee may terminate this agreement by giving 30 days notice in writing to the Railway Company at its office in Portland, Oregon.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

~~CITY OF PORTLAND~~

SPOKANE, PORTLAND AND SEATTLE RAILWAY CO.

By _____
Mayor

By _____
Vice President & General Manager

Attest _____
Commissioner of Public Works

ORDINANCE No. 129401

An Ordinance authorizing execution of a pipeline crossing agreement between the City and Spokane, Portland and Seattle Railway Co. for construction and maintenance of a concrete sewer pipeline, under Railway property in northwest Portland, and declaring an emergency.

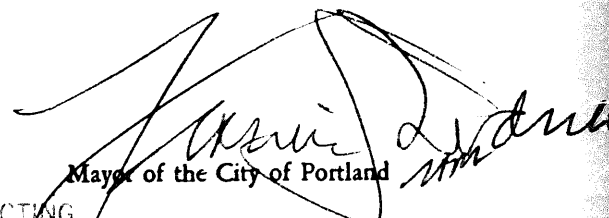
The City of Portland ordains:

Section 1. The Council finds that Spokane, Portland and Seattle Railway Co. own property in the northwest one-quarter of Section 29, T1N, R1E, W.M. in the City of Portland; that the City desires to construct and maintain a 21-inch pipe crossing at Railway Company Engineer's Station 193 plus 90, two 6-inch pipes at Railway Company Engineer's Stations 206 plus 58 and 208 plus 35, and the Railway Company has agreed to said construction and maintenance under certain conditions, and the Mayor and Commissioner of Public Works should be authorized to enter into an agreement with Spokane, Portland & Seattle Railway Co. for this construction and maintenance; now, therefore, the Mayor and Commissioner of Public Works, hereby are authorized to enter into an agreement on behalf of the City with Spokane, Portland and Seattle Railway Co., for construction and maintenance of pipelines over and across Railway property, said agreement to be substantially in accordance with the form of agreement attached to this ordinance, original only, and by this reference made a part hereof.

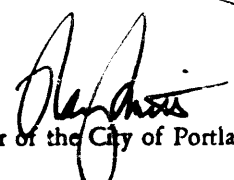
Section 2. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: In order that the necessary consent of the Railway may be given without delay; all in the public interest; therefore, an emergency hereby is declared to exist and this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, JUL 23 1969

Commissioner Bowes
RLH:gm
7-16-69


Mayor of the City of Portland
ACTING

Attest:


Auditor of the City of Portland

Calendar No. 30017

ORDINANCE No. 129401

Title

An Ordinance authorizing execution of a pipeline crossing agreement between the City and Spokane, Portland and Seattle Railway Co. for construction and maintenance of a concrete sewer pipeline, under Railway property in northwest Portland, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Bowes	/	
Earl	/	
Grayson	/	
Ivancie	/	
Schrunk		

FOUR-FIFTHS CALENDAR	
Bowes	
Earl	
Grayson	
Ivancie	
Schrunk	

INTRODUCED BY
Commissioner Bowes

DRAWN BY
RLH:gm
Date 7-16-69

NOTED BY THE COMMISSIONER

Affairs

Finance and Administration

Safety

Utilities

Works *RLH*

City Attorney *[Signature]*

NOTED FOR CITY AUDITOR

[Signature]
RLH

APPROVED

Date

By
City Engineer

Date

By

JUL 17 1969

Filed.....

RAY SMITH
Auditor of the CITY OF PORTLAND
By *George Yeckow*
Deputy