

49337

ORDINANCE NO. 49337

An Ordinance authorizing the execution of an agreement between the Oregon-Washington Railroad & Navigation Company, a corporation, and The City of Portland for an easement across the right of way of the Oregon-Washington Railroad & Navigation Company for the St. Johns and James Street sewer, 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, on behalf of the City of Portland, to enter into an agreement with the Oregon-Washington Railroad & Navigation Company, a corporation, for an easement across the right of way of the Oregon-Washington Railroad & Navigation Company for the St. Johns and James Street sewer, which agreement shall be substantially in the following form:

THIS AGREEMENT, made and entered into this day of 1926, by and between Oregon-Washington Railroad & Navigation Company, a corporation of the State of Oregon, hereinafter called "Railroad Company", party of the first part, and the City of Portland, County of Multnomah, State of Oregon, hereinafter called "Licensee", party of the second part.

WITNESSETH: Whereas, the Licensee desires to construct and thereafter maintain and operate a thirty (30) inch by thirty (30) inch trunk sewer pipe line (hereafter called "Pipe Line") extending under ground across the right of way and underneath the roadbed and main track of the Railroad Company in the City of Portland, County of Multnomah, State of Oregon, the center line of which crosses under said track and right of way at Engineer's Station 360 plus 26 in the Northwest quarter (NW 1/4) of Section one (1), Township One (1) North, Range one (1) West, Willamette Meridian, said pipe line crossing bearing North 6 degrees 32' East and being shown by a yellow line upon blueprint map marked "A.C.R. 55922, Case 2" attached hereto and made a part hereof.

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

1 - RAILROAD COMPANY GRANTS RIGHT TO LICENSEE: The Railroad Company does hereby grant unto the Licensee the right to construct and thereafter, during the term hereof, maintain and operate the said pipe line in the location hereinbefore described, which grant is made expressly subject to the observance and performance by the Licensee of all and singular the conditions, covenants and agreements hereinafter contained to be by the Licensee kept, observed and performed, it being hereby stipulated that a waiver by the Railroad Company of any breach of any such conditions, covenants and agreements shall in no way impair the right of the Railroad 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 the City of Portland further agrees to pay to the Railroad Company on the day any assessment (with which to pay the cost of constructing said pipe line) becomes due, the sum of One Hundred Three & no/100 (\$103.00) Dollars, but this license shall not be deemed to estop the Railroad Company from objecting to or protesting against any assessment sought to be levied against its property, if any, by reason of the construction of said sewer or any lateral thereto.

3. - SIZE AND KIND OF PIPE: The said pipe line where it crosses underneath the said roadbed and track or tracks, shall be constructed of concrete, permanent in character, and with the dimensions of thirty (30) inches in height by thirty (30) inches in width and thickness suitable to the Assistant Chief Engineer of the Railroad Company, and shall be constructed and maintained at such an elevation that the top thereof shall be not less than ten (10) feet below the base of the rails of said track or tracks.

4 - LICENSEE TO BEAR ENTIRE EXPENSE: The Licensee 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 Railroad Company in connection therewith for supervision, inspection or otherwise.

5 - WORK, PLANS AND SPECIFICATIONS TO BE APPROVED BY RAILROAD COMPANY: All work upon the said pipe line

within the limits of the right of way of the Railroad Company shall be done according to plans and specifications approved by the Railroad Company and the Railroad Company reserves the right, when in its opinion necessary to insure safe and efficient operation of its line of railroad, to make suggestions and/or objections as to the manner of doing said work and the Licensee agrees to conform to said suggestions and/or objections, but it is understood and agreed that the Railroad Company will not be held responsible for the workmanship incident to such construction. If the Railroad Company at any time during the installation or removal of said pipe line shall request the services of flagmen and/or watchmen to insure safe train operation, the Licensee shall promptly and at its own expense furnish such flagmen and/or watchmen whose qualifications shall be satisfactory to the Railroad Company. Plans and specifications for said pipe line will be prepared by the Engineer of Licensee and submitted to the Railroad Company for approval, and when so approved, will be submitted to the City Council of the Licensee for final approval and adoption. When said plans and specifications shall have been approved by said Railroad Company and said City Engineer of Licensee, no changes shall be made therein, provided, however, that if such City Council shall object to any part of such plans or specifications, any revised plans or specifications shall first be submitted to and approved by the Railroad Company before resubmission to said City Council.

6 - PERMIT SUBJECT TO NEEDS OF RAILROAD COMPANY: Notwithstanding the aforesaid grant, nothing shall be done or suffered to be done by the Licensee at any time that shall in any manner impair the usefulness or safety of such track, or of any other track or tracks that may hereafter be constructed within the limits of said right of way, and the Railroad Company reserves and shall have the right at any and all times to make such changes in said existing track or tracks, or in the present standard thereof, and to construct, maintain and operate such additional tracks where said pipe line is to be constructed and across the same, as from time to time it may elect, and the Licensee shall bear the expense of moving, removing or making such modifications in said pipe line as may be required by the Railroad Company in connection with such change in said track or tracks, or in the present standard thereof and such additional tracks. The obligation of the Licensee in this

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

7 - LIABILITY: If the Licensee shall fail to properly construct or efficiently maintain said pipe line, and by reason of such failure the property of the Railroad Company, or property in its custody, is damaged or injured, or the Railroad Company's employees, or any other person or persons, shall suffer injury or death, then the Licensee shall indemnify the Railroad Company from all loss, cost, damage, expense, claims, actions or demands arising therefrom.

The Licensee takes the property and privileges herein involved in the condition it finds same and will use it at its own risk and expense for the purposes herein specified and for no other purpose.

The Railroad 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 Licensee agrees to repay to the Railroad Company the cost thereof. Provided however, that this right shall not be exercised by the Railroad Company except in case of emergency unless and until the Railroad Company shall have given to the Licensee or its Engineer five (5) days written notice of such defect in construction or maintenance and the Licensee shall have failed or neglected during said period of five (5) days to make the necessary repairs or reconstruct said pipe line, but no failure on the part of the Railroad Company to exercise this right to make any such repairs shall constitute a waiver of the prior provisions of this paragraph. The Licensee shall have the right to enter upon the property of the Railroad Company hereinbefore described for the purpose of constructing, repairing, reconstructing, inspecting or maintaining said pipe line but except in case of emergency, the Railroad Company shall be notified by the Licensee in writing before any work is done upon the said pipe line.

8 - 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 (1) year, shall constitute an abandonment thereof by the Licensee and of the grant herein made, and in case of such an abandonment or of the breach by the

Licensee of any of the conditions, agreements and covenants herein contained, the Railroad Company shall have the right to terminate this agreement at any time by giving thirty (30) days notice in writing to the Licensee of its intention to terminate the same, and at the expiration of said thirty (30) days notice the license herein granted shall terminate and be at an end and the Licensee shall be without recourse or redress of any character against the Railroad Company thereof.

9 - REMOVAL OF PROPERTY OF LICENSEE: Within fifteen (15) days after the termination of this agreement however, the Licensee shall remove all property of the Licensee herein provided for from that portion of the right of way of the Railroad Company not occupied by the said roadbed and track or tracks and shall restore the same to its original condition to the satisfaction of the Railroad Company, and if the Licensee fails so to do the Railroad Company may do such work of removal and restoration at the cost and expense of the Licensee. The Railroad Company may, at its option upon such termination, at the entire cost and expense of the Licensee, remove that portion of said pipe line located underneath said roadbed and track or tracks and restore said roadbed to its original condition, or it may permit the Licensee to do such work of removal and restoration under the supervision of the Railroad Company, and in the event of the removal by the Railroad Company of the property of the Licensee as herein provided, and of the restoration of said roadbed and right of way to their former condition, the Railroad Company shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages or otherwise that the Railroad Company may have against the Licensee. It is understood and agreed that the Licensee 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 Railroad Company.

10 - AGREEMENT NOT TO BE ASSIGNED: The Licensee shall not assign this agreement, or any of the rights hereunder without the written consent of the Railroad Company entered thereon.

11 - CONSTRUCTION OF MANHOLES: The Licensee agrees not to construct any manhole or other opening along the route of said pipe line within the boundaries

of the property of the Railroad Company without the written permission of the Railroad Company first had and obtained, but if and when the Railroad Company shall by written request upon the City Engineer of the City of Portland, or other officer exercising similar authority, request the construction and installation of a manhole or manholes and/or service connection in the Railroad Company's property for drainage or other purposes, the Licensee will provide such manhole or manholes and/or service connection for the Railroad Company's uses, same to be of such design and type as to be suitable for the uses and needs of the Railroad Company, and shall be located at such place or places on the property as the Railroad Company shall designate, it being understood and agreed that the expense of installation of such manhole or manholes and/or service connection shall be included in the cost of construction of said pipe line and pro rated over the entire Improvement District. The request of the Railroad Company for the installation of such manhole or manholes and/or service connection shall be filed with the City Engineer before the plans for the construction of said pipe line are approved by the Council of said Licensee.

12 - EFFECTIVE DATE: This agreement shall be effective from and after the _____ day of _____ 1926, and shall continue in full force and effect until terminated as provided and all of the covenants, agreements and conditions herein contained on the part of the Licensee 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 Railroad Company, its successors and assigns and the Licensee, its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the day and year first herein written.

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 city desires to start work immediately on the construction of said cover, 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 APR 23 1926

GEO. L. BAKER

Mayor of The City of Portland

Attest:

G. L. Baker

Attest of The City of Portland

4-23-1926

Commissioner Harbor

PREPARED AND APPROVED
CITY ATTORNEY