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ORDINANCE No.

An Ordinance authorizing the execution of an agreement between the Oregon and California Railroad Company and its lessee, Southern Pacific Company, and The City of Portland for an easement for the laying of a sewer across the railroad right of way near First and Nevada Streets, repealing Ordinance No. 49336, 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 and California Railroad Company, a corporation, and its lessee, Southern Pacific Company, a corporation, for an easement for the laying of a sewer across the railroad right of way near First and Nevada Streets, Portland, Oregon, which agreement shall be substantially in the following form:

THIS AGREEMENT, made this _____ day of 1926, by and between OREGON AND CALIFORNIA RAILROAD COMPANY, a corporation, first party, and its lessee, SOUTHERN PACIFIC COMPANY, a corporation, second party, hereinafter collectively termed "Licensor", and CITY OF PORTLAND, a municipal corporation of the State of Oregon, third party, hereinafter termed "Licensee".

WITNESSETH: That Licensor, in consideration of the faithful performance by Licensee of all its covenants and agreements herein contained, hereby grants to Licensee the right to construct, reconstruct, maintain and operate a twelve (12) inch sewer pipe line, hereinafter termed "structure", to be constructed beneath the right of way and tracks of the Licensor at a depth specified by Licensor at Southern Portland, County of Multnomah, State of Oregon, in the location shown by red line on the blue print map of Portland Division Drawing L.F. 335, hereto attached and made a part hereof.

This agreement is made upon the following terms and conditions:

1. Licensee hereby acknowledges the title of Licensor in and to the premises shown enclosed within brown lines on said blue print map, and agrees never to assail or resist said title.

2. Licensee and the agents and employees of Licensee shall have the privilege of entry on said premises for the purpose of making necessary repairs to or changes in said structure, and Licensee agrees to at all times keep said premises in a good and safe condition free from waste, all to the satisfaction of Licensor. Licensee 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 Licensor, 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 Licensor. In the event Licensor shall at any time or times require the removal, reconstruction, alteration or changes in the location of said structure, or shall at any time or times construct an additional track or tracks, then Licensee agrees at Licensee's own sole cost and expense, upon receiving written notice from Licensor so to do, to forthwith construct and maintain an additional structure or extend or change said structure or immediately remove, reconstruct, alter or make changes in the location of said structure, as may be requested by Licensor and in a manner satisfactory to Licensor.

3. Licensee shall not assign or transfer this agreement in whole or in part, or permit any other person to use the right or privilege hereby given, without the written consent of Licensor first had and obtained.

4. Licensee agrees to indemnify and save harmless Licensor from and against any and all loss, damage, liability, cost and expense which Licensor may sustain or bear or to which Licensor may be put, resulting directly or indirectly in any manner from the use of said premises and/or the construction, maintenance and use and/or location of said structure and its adjuncts or appurtenances on or beneath the premises of Licensor.

5. 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 Licensor shall be let to contractor by Licensee, such work shall not be begun until such contractor shall have first entered into an agreement with Licensor, satisfactory to Licensor and indemnifying Licensor 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 Licensor, a good and sufficient reliable Surety Company bond in such amount as may be specified by Licensor for the faithful performance of all the terms, covenants, conditions and stipulations contained in said agreement to be entered into with Licensor by said contractor, as here in this paragraph provided; the form of said bond to be satisfactory to Licensor.

6. Licensee 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 Licensee's instance or request.

7. In case Licensor shall bring suit to compel performance of or to recover for breach of, any covenant, agreement or condition herein written, Licensee shall and will pay to Licensor reasonable attorney fees in addition to the amount of judgment and costs.

8. This grant is subject and subordinate to the prior and continuing right and obligation of Licensor and its successors to use and maintain its entire railroad right of way and property in performance of its public duty as a common carrier, and is also subject to the right and power of Licensor and its successors in interest or ownership of the said railroad right of way and property, 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, along 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 Licensor or its successors without liability to Licensee or to anyone else for compensation or damage.

9. In the event Licensee shall at any time discontinue the use of said structure for said purpose for a continuous period of one year, or shall abandon the same or shall fail to keep, observe and perform

any covenant on Licensee's part herein contained, all rights hereby given shall forthwith cease and determine, and Licenser shall at once have the right, in addition to but not in qualification of the rights hereinabove reserved, to resume exclusive possession of the said land. Upon termination of the right herein given, Licensee shall, at Licensee's own cost and expense, 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. Should Licensee in such event fail, neglect or refuse so to remove said structure and restore said premises, such removal and restoration may be performed by Licenser at the expense of Licensee, which expense Licensee agrees to pay to Licenser on demand.

10. 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.

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

Section 2. That Ordinance No. 49336, entitled "An Ordinance authorizing the execution of an agreement between the Oregon and California Railroad Company and its lessee, Southern Pacific Company, and The City of Portland for an easement for the laying of a sewer across the railroad right of way near First and Nevada Streets, and declaring an emergency," passed by the Council April 28, 1926, be and the same is hereby repealed.

Section 3. 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 sewer, 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 MAY 19 1928

GEORGE L. BAKER

Mayor of The City of Portland

Attest:

George L. Baker

5-11-28

Commissioner Barber.

Attorney of the City of Portland.