

5737

50116

ORDINANCE No. 50116

An Ordinance authorizing the execution of two certain easement or license agreements providing for the construction of the Fiske Street sewer across the right of way of the O. W. R. & N. Co., and declaring an emergency.

The City of Portland Does Ordain as Follows:

Section 1. The Mayor and Commissioner of Public Works are hereby authorized on behalf of the City of Portland to execute in duplicate two certain easement or license agreements for the right on the part of the City to construct and maintain the Fiske Street sewer across the O. W. R. & N. Co., right of way, and land applying to the following property:

Beginning at a point on the west line of the John Windle D. L. C., distant 962.30 feet north, measured along said west line, from the northerly line of Columbia Boulevard; thence northeasterly in a straight line, forming an angle of $29^{\circ}01'$ to the right with said west line of John Windle D.L.C., a distance of 203 feet, more or less, to Columbia Slough; and being shown by a yellow line upon blueprint map marked "A.C.E. 50959, Case 9" attached to agreement and a part thereof, and the other agreement applying to the following property:

Beginning at a point on the southerly line of the Oregon-Washington Railroad & Navigation Company right of way, which line is also the northerly line of Columbia Boulevard; thence North $57^{\circ}00'$ East 48 feet, more or less, to an intersection with the center line of main track of railroad of Oregon-Washington Railroad & Navigation Company at a point known as Railroad Engineers Station "H" 478 plus 55.2; thence continuing North $57^{\circ}00'$ East 116 feet, more or less, to a point on the northerly line of the Oregon-Washington Railroad & Navigation Company right of way. Said sewer line forming an angle of $52^{\circ}20'$ to the left from said center line of main track at said Railroad Engineers Station "H" 478 plus 55.2 and being shown by a red line upon blueprint map marked "A.C.E. 50958, Case 9" attached to agreement and a part thereof;

each of said easements providing for the construction and maintenance of a sewer pipe line 48 inches in diameter and the first of said easements containing conditions as follows:

"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 One and 5/100 (\$101.50) 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 lands of the Railroad Company, shall be constructed of concrete, permanent in character and with the dimensions of forty-eight (48) inches in height by forty-eight (48) inches in width.

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.

5. **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 re-

construct 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.

6. 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.

7. REMOVAL OF PROPERTY OF LICENSEE: Within fifteen (15) days after the termination of this agreement, howsoever, the Licensee shall remove all property of the Licensee herein provided for from the lands of the Railroad Company as hereinabove described 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.

8. 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 endorsed thereon.

9. 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 connections 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.

10. **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.

11. **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."

The second of said easements contains the same conditions except the consideration is to be \$62.00 instead of \$101.50, and additional provisions as follows:

Section 3 provides that the top of the sewer shall be not less than ten feet below the base of the rails of the railroad tracks on the Railroad Company's property.

Section 4 provides that the Licensee shall also bear any expense which may be incurred by the Railroad Company in connection with the construction, maintenance, repair, removal, supervision, inspection or otherwise.

A further section is inserted providing that the work, plans and specifications for the sewer shall meet the approval of the Railroad Company and the Company reserves the right to make suggestions or objections to the manner of doing the work and the Licensee agrees to conform to said suggestions and/or objections, but the Railroad Company is not held responsible for the workmanship incident to said construction, also that the Licensee shall pay any expense of flagmen or watchmen of the Railroad Company during construction of the sewer; that the plans and specifications will be submitted to the engineer of the Railroad Company.

A further paragraph is inserted to the effect that the usefulness and safety of the railroad tracks shall not be impaired, and the Railroad Company reserves the right to make such changes in its existing tracks and also to construct such additional tracks as it may elect and the licensee shall bear the expense of so modifying the pipe line as may be required by the Railroad Company.

It is further provided that the Railroad Company upon the termination of the License may remove the portion of the pipe line underneath the tracks and restore the roadbed to its former condition, or fill the pipe line with dirt in lieu of removal.

It is further provided as follows:

"This agreement is made and entered into in lieu of a former agreement made and entered into between the parties hereto on the 18th day of May, 1922, which granted the Licensee an easement for a similar trunk sewer pipe line, known as "Fiske Street Sewer", on a different location from that hereinabove described and said agreement of the 18th day of May, 1922, is hereby cancelled and of no further effect.

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 provision for the construction of said sewer at the earliest practicable date is necessary in order to provide for the public health of the very considerable portion of the City of Portland, 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.

AUG 11 1926 **GEORGE L. DWYER**

Mayor of The City of Portland

Attest:

Chas. R. Frank

Auditor of The City of Portland.

8-3-26

Commissioner Barbur

**PREPARED-APPROVED
CITY ATTORNEY**