

55849

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Ordinance No. 55849

An Ordinance authorizing a settlement with John D. Williams and wife concerning certain damage claims in connection with the Interstate Avenue embankment, authorizing certain warrants to be drawn, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. It appearing to the Council that a settlement may be made with John D. Williams and wife, concerning their claim for damages arising out of and connected with the slides of earth from the Interstate Avenue sloping embankment, such damages being located at and upon Lot 37 of Block 16 in Cook's Addition, in the City of Portland, Oregon, and that such settlement is to the best interests of the city, now, therefore, the Mayor and Commissioner of Public Works are hereby authorized to enter into an agreement for such settlement according to the form a copy of which is hereto attached, marked Exhibit "A" and made a part hereof.

Section 2. The Mayor and Auditor are hereby authorized and directed to draw a warrant in favor of Mr. and Mrs. John D. Williams in the sum of \$1000.00 and deliver such warrant to said John D. Williams and wife upon the execution and delivery of said agreement, a copy of which is hereto attached and marked Exhibit "A", and receiving a receipt for said amount. Said warrant shall be drawn against the special bridge fund and charged to the appropriation heretofore made for the Interstate Avenue fill.

Section 3. It appearing to the Council that F. S. Scritsmier has given to the City of Portland an option to purchase Lots 18 and 19 of Block 4 of Cook's Second Addition in the City of Portland, Oregon, for the price of \$1500.00, which price is found to be reasonable and that the acquisition of said property is necessary for the making of said settlement with said John D. Williams and wife; now, therefore, the City Attorney is hereby directed to notify said F. S. Scritsmier that the city exercises its option to purchase said property at said price. Said City Attorney is hereby authorized to procure a certificate of title insurance in said amount of \$1500.00 in favor of John D. Williams and wife, the cost of which certificate shall be paid by requisition against the special bridge fund and charged to the appropriation heretofore made for the Interstate Avenue fill, and the Mayor and Auditor are hereby authorized to draw a warrant in favor of said F. S. Scritsmier in said sum of \$1500.00 and deliver such warrant

to him upon receiving from him a good and sufficient general warranty deed, approved as to form by the City Attorney, conveying said property to said John D. Williams and wife, and a report from the City Attorney to the effect that he has examined a report from the Title and Trust Company showing that said property is vested in said F. S. Scritsmier and wife in fee simple at the time of such report.

Section 4. It appearing to the Council that damages have heretofore been fixed for the slope easement upon said lot 37 for the Interstate Avenue fill and improvement which damages are in the amount of \$450.00 as fixed by judgment of the Circuit Court in case No. M 2938 (City of Portland v. John Malecki, et al); now, therefore, upon execution and delivery of said settlement with said John D. Williams and wife, the City Auditor is hereby authorized and directed to draw a warrant in favor of the City Treasurer for said amount of \$450.00, which warrant shall be drawn against the special fund heretofore provided for the acquisition of slope easements for the improvement of Interstate Avenue. The City Treasurer shall cash said warrant and the amount shall be placed to the credit of the appropriation heretofore made for the Interstate Avenue fill.

Section 5. It appearing to the Council that Attorney Isham Smith has a claim against said amount of \$450.00 for services rendered to said John D. Williams and wife, in connection with the trial of said case No. M 2938, which claim amounts to \$75.00 and is to be paid by the city as provided for in said agreement with said Williams and wife, now, therefore, the Mayor and Auditor are hereby authorized and directed to draw a warrant in said sum of \$75.00 in favor of said Isham Smith in payment of said claim. Said warrant shall be drawn against the special bridge fund and charged to the appropriation heretofore made for the Interstate Avenue fill. The Auditor shall deliver said warrant to said Isham Smith upon his receipt in full of said claim.

Section 6. 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 prompt action is required in order to make the settlement herein provided for, and obviate litigation and danger of further expense; 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 **JAN 18 1929**

Mayor of the City of Portland

1-18-29

Attest:

Auditor of the City of Portland

PREPARED-APPROVED  
CITY ATTORNEY

THIS AGREEMENT, Made and entered into this \_\_\_\_\_ day of January 1929, by and between The City of Portland, a municipal corporation under the laws of Oregon, herein designated as said city, and John D. Williams and Mrs. John D. Williams, herein designated as said owners.

WITNESSETH: That, Whereas, said owners are in possession under a contract for the purchase of certain property designated as number 27 Morris Street, Portland, Oregon, being that part of Lot 37 in Block 16 of Cook's Addition, Multnomah County, Oregon, not heretofore appropriated for street widening and slope easements; and

WHEREAS, said city in improving Interstate Avenue placed a sloping embankment upon certain area where said city had obtained a right of way for such sloping embankment upon the easterly portion of said lot; and

WHEREAS, certain slides have occurred which have caused certain claims for damages to be made by said owners against said city;

NOW, THEREFORE, it is hereby mutually agreed that all matters between said city and said owners with respect to such slides and damages resulting therefrom and the slope easement upon said property shall be and are hereby compromised and settled as follows:

Said city on its part hereby assumes and agrees within ten days after the execution of this agreement to pay to said owners \$1090.00, which covers and includes such amount as they may have to pay for attorney's fees in connection with the settlement of their damage claims resulting from said sloping embankment.

Said city shall within sixty days hereafter acquire a good merchantable title, free and clear of liens and incumbrances to Lots 18 and 19 of Block 4 in Cook's Second Addition, in the City of Portland, Multnomah County, Oregon, as shown by the duly recorded plat thereof, together with an abstract of title or certificate of title insurance, the deed of conveyance to be made to said owners and within said time said city shall cause the building now upon said Lot 37 in Block 16 of Cook's Addition, to be removed and placed upon said Lot 18 of Block 4, in accordance with the specifications, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, and said city shall also within a like period of sixty days and before the re-

moving of said house, obtain a release of said owners from the estate of Joseph Flywacki, deceased, of all liability of said owners upon a certain contract which said owners now hold for the purchase of said Lot 37, and to the end that said city may protect said owners from any liability under said contract the rights of said owners under said contract are hereby assigned to said city.

Said owners hereby assign and transfer to said city all of their right to the damages heretofore ascertained and fixed for said slope easement upon said lot 37, said damages being in the amount of \$450.00 and said city shall pay to Attorney Isham Smith the sum of \$75.00 which is his claim as attorney in connection with the ascertainment and fixing of said damages for slope easement.

Said owners in consideration of the premises, hereby release and discharge said city from all damages and claims caused by, resulting from or in any way incident to said sloping embankment and slides therefrom upon said lot 37 and the house located thereon.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate, the day and year first above stated, said city acting pursuant to Ordinance No. \_\_\_\_\_

Witnesses as to said city:  
\_\_\_\_\_  
\_\_\_\_\_

THE CITY OF PORTLAND  
By \_\_\_\_\_  
Mayor.  
By \_\_\_\_\_  
Commissioner of Public Works.

Witnesses as to said owners:  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to form:

City Attorney.