

ORDINANCE No. 1088

A BILL FOR AN ORDINANCE Concerning an agreement between the Southern Pacific Company, a corporation, and the Oregon and California Railroad Company, a corporation, and the City of Albany, Oregon, a municipal corporation, granting unto the city of Albany, Oregon, a right of way for the construction of the Montgomery and Twelfth Street Sewer, and declaring an emergency.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. That the Mayor and Recorder of the City of Albany, be and they are hereby authorized and directed to enter into an agreement with the Southern Pacific Company, a corporation, and the Oregon and California Railroad Company, a corporation, which said agreement shall be in words and figures substantially as follows, to-wit:

"This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ 1923, by and between Souther Pacific Company, a corporation OREGON AND CALIFORNIA RAILROAD COMPANY, a corporation, collectively called first party, hereinafter termed "Licensor" and the CITY OF ALBANY, a municipal corporation of the State of Oregon, second 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 unto Licensee, and its corporate successors, the right to construct, maintain reconstruct and operate one eighteen (<sup>21</sup>18) and one thirty (<sup>36</sup>30) inch pipe line crossings beneath the real estate, tracks, buildings and other appurtenances now or hereafter existing under control of the Licensor in the City of Albany, County of Linn, State of Oregon, the center line of said sewers being shown in location indicated by red inked lines on blue print map hereto situated and made a part hereof.

Licensee and the agents and employes of Licensee shall have the privilege of entry on said premises for the purpose of constructing, reconstructing, maintaining, repairing and inspecting said sewers, and Licensee agrees to at all times keep said premises in a good and level condition to the satisfaction of Licensor.

The License hereby granted is accepted by the Licensee for itself and its corporate successors subject to the conditions following to-wit:

1. Licensee hereby acknowledges the title of Licensor in and to the premises described in this agreement and agrees never to assail or ~~resist said title.~~

2. The Licensee shall at no expense to the Licensor, reconstruct and relocate when necessary, maintain and repair said sewers in

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a good, workmanlike and rapid manner, of first class material and at such depth as the Licensor shall specify below the surfacr of said real estate, tracks, buildings and other appurtenances now or hereafter existing of the Licensor so as not to create any obstruction to the use of said real estate, and said appurtenances for railroad purposes.

3. Should the Licensor at any time require the reconstruction, alteration or changes in the location of said sewers in order that said sewers may not interfere with the use Licensor may hereafter wish to make of said premises, Licensee shall, at Licensee's own sole cost and expense, immediately reconstruct, alter or make changes in the location of said sewers upon receiving written notice from Licensor.

4. Licensee agrees that upon completion of the construction, reconstruction, maintenance, repair or inspection of said sewers, so much as possible of the earth removed from the trenches therefor shall at its expense, be thrown back into the said trenches and be thoroughly packed, so that the earth will not sink or cave in and whatever remains, together with tools, implements and other materials shall be removed from said premises by said Licensee.

5. That said License to enter upon said lend or any portion thereof, shall not give, nor be deemed or construed to give, the Licensee the right to do or perform any work whatsoever at any time upon or in connection with said sewer that will render unsafe the use by the Licensor of its said real estate, tracks, buildings or other appurtenances now or hereafter existing, or weaken or injure the same for the operation of its trains, care or locomotives, or for its other purposes; and the Licensee agrees to, and does hereby indemnify and save harmless Licensor from and against any and all loss, damage, expense, claims and demands of whatsoever, character, including injuries to agents or employes of Licensor Licensee or to third persons, damage to property belonging to or in the custody or possession of Licensor, Licensee or third persons whether upon the property, or right of way of Licensor or elsewhere, caused directly or indirectly by the construction, repair, operation, maintenance, replacement or removal of said sewers, their adjuncts or appurtenances.

6. Befors performing any work of reconstruction, maintenances, repair or inspection of said sewers upon the premises of the Licensor, the Licensee shall and hereby agrees to notify the Licensor in writing sufficiently in advance of the time when such work is to be performed, so that the Licensor shall have a representative present when such work is prosecuted.

7. Licensee agrees that all work upon or in connection with said sewers shall be done at such times and in such manner as not to interfere in any way whatsoever withthe operations of the Licensor, or its successors, and that the location of said sewers and all work in connection therewith shall

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be done and made under the supervision and to the satisfaction of the Licensor, or its successors.

8. In the event Licensee shall discontinue the use of said sewers, or shall for the period of one year continuously fail to use the same, or shall abandon said sewers, or fail to keep, observe and perform any covenant on its part herein contained, all rights hereby granted shall forthwith cease and determine, and Licensee shall thereupon remove said sewers and restore said premises as nearly as possible to the same state and condition they were in prior to construction of said sewers. Should the Licensee fail, neglect or refuse to so remove said sewers and so restore said premises to their present condition, such removal and restoration may be performed by the Licensor at the expense of the Licensee, which expense, plus ten per cent for supervision and use of tools, the Licensee agrees to pay to the Licensor on demand.

9. Any false work, underpinning or bracing which in the judgment of the Licensor shall be necessary to support and carry its tracks, buildings and other appurtenances or any thereof, to afford the free, safe and unobstructed use thereof, during the construction, reconstruction, maintenance, repair or inspection of said sewers by the Licensee, shall be installed, erected and removed by the Licensor at the sole cost and expense of the Licensee, which expense, plus ten per cent for supervision and use of tools, the Licensee agrees to pay to the Licensor on demand. Should the Licensor deem it necessary to engage a watchman or flagman to protect its engines, trains and/or cars during any reconstruction, maintenance, repair or inspection of said sewers, then and in the ~~that~~ event Licensee agrees to fully reimburse Licensor promptly for all cost and expense of such flagman or watchman.

10. If at any time or times any work of any kind or character is to be performed or done by a Contractor for Licensee, Licensor reserves the right to require any such Contractor to first enter into a written agreement with Licensor indemnifying Licensor against all claims, demands, loss, damages and liabilities, costs and expense growing out of the performances of the work to be done by the Contractor, guaranteeing not to do any work in a method or manner which will render unsafe the real estate, tracks, buildings and other appurtenances of the Licensor now or hereafter existing, or weaken or injure the same for the operation of trains, engines or cars of the Licensor; agreeing to employ watchmen and flagmen satisfactory to the Licensor, and to station the same at point or points which the Licensor may designate, or, in the event the same are employed by the Licensor, to reimburse Licensor for the cost and expense thereof, and to remove all tools, implements and material from the property of Licensor, and restore said property to its previous condition as nearly as possible, and to deliver to the

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Licenser and Employer's Liability Insurance Policy in a company satisfactory to the Licenser, such policy to cover each and every employe of the Contractor and to be in a sum not less than \$5,000.00 for the indemnity for liability as to each individual employe falling within said policy, and not to be limited to a sum of less than \$10,000.00 for the aggregate liability thereunder; and Licenser shall have the right to require any such Contractor to give a satisfactory Surety company indemnity bond in favor of Licenser, in such amount as Licenser shall specify, before permitting any such contractor to perform or do any of said work on property of the Licenser.

11. 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' 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.

12. In case Licenser 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 Licenser reasonable attorney fees in addition to the amount of judgments and costs.

13. Licensee shall not assign, sublet or transfer this agreement in whole or in part, without the written consent of Licenser first had and obtained.

14. Except as herein otherwise provided, the terms and conditions of this agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, The parties hereto have caused this agreement to be executed in triplicate the day and year first hereinabove written.

SOUTHERN PACIFIC COMPANY

By \_\_\_\_\_  
General Manager

Description Correct:

\_\_\_\_\_  
Division Engineer

Attest: \_\_\_\_\_  
Assistant Secretary

Recommended:

\_\_\_\_\_  
Asst. General Manager.

CITY OF ALBANY  
By \_\_\_\_\_

Attest: \_\_\_\_\_

Form Correct:

\_\_\_\_\_  
Contract Attorney

OREGON AND CALIFORNIA RAILROAD  
COMPANY

By \_\_\_\_\_

Attest: \_\_\_\_\_

Form Approved: \_\_\_\_\_

\_\_\_\_\_  
V. P. & Chief Counsel.

Section 2. WHEREAS, It is necessary for the public health, peace and safety of the people of the City of Albany that the foregoing described

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sewer improvement work be immediately prosecuted, and therefore, it is necessary that this agreement be entered into at once, an emergency exists and one is hereby declared to exist and this ordinance shall go into full force and effect immediately upon its passage by the Council and approval by the Mayor.

Passed by the Council, September 26th, 1923  
Approved by the Mayor, September 29th, 1923.

P. A. Young  
Mayor

Attest: D. H. Bodine,  
Recorder of the City of Albany, Oregon.

STATE OF OREGON, )  
                              ) ss  
County of Linn, )

I, D. H. Bodine, Recorder of the City of Albany, in Linn County, and State of Oregon, do hereby certify that the foregoing and annexed copy of Ordinance No. 1099 has been by me carefully compared with the original Ordinance Bill No. 1197 now on file in my office and that it is a true and correct copy of all and the whole of said Ordinance Bill No. 1197 passed by the Council September 26th, 1923, and approved by the Mayor, September 29th, 1923.

WITNESS, my hand and official signature and the seal of the City of Albany, this 31 day of December, 1924.

*D. H. Bodine*

Recorder of the City of Albany.