

A BILL FOR AN ORDINANCE AUTHORIZING)
THE MAYOR AND RECORDER TO EXECUTE A)
CONTRACT ON BEHALF OF AND BETWEEN THE)
CITY OF LEBANON AND THE SOUTHERN PAC-)
IFIC COMPANY RELATING TO THE GRANT OF)
AN EASEMENT TO THE CITY BY THE SOUTHERN)
PACIFIC COMPANY.)

ORDINANCE BILL NO. 3

ORDINANCE NO. 876

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

That the Mayor and the Recorder are authorized and directed to execute on behalf of the City of Lebanon, a contract between the City of Lebanon and the Southern Pacific Company, a corporation of the State of Delaware, wherein the said Southern Pacific Company grants to the City of Lebanon an easement of right away across its property on West Rose Street, and in consideration therefore the City of Lebanon agrees to reimburse the railroad company for assessments levied against a portion of their property located on West Rose Street, a copy of which said contract is hereunto annexed and by reference made a part of this ordinance.

This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ^{ordinance} ~~act~~ shall take effect immediately upon its passage and approval by the mayor.

Passed by the Council and approved by the Mayor this 19th day of January, 1954.

Elmer Fitzgerald
Mayor

ATTEST:

Ilda Jones
City Recorder

THIS INDENTURE, made this day of , 19 , by and between

SOUTHERN PACIFIC COMPANY, a corporation of the State of Delaware, herein termed "Railroad", and CITY OF LEBANON, a municipal corporation of the State of Oregon,

herein termed "Grantee".

WITNESSETH:

1. That Railroad hereby grants to Grantee (subject to the reservations, covenants and conditions herein contained) the right to construct, reconstruct, maintain and use a street or highway, hereinafter termed "highway", upon and across the following described real property:

A piece or parcel of land situate, lying and being in the City of Lebanon, County of Linn, State of Oregon, more particularly described as follows:

COMMENCING at the northwest corner of Block 18, Ralston's Third Addition to the City of Lebanon as shown on the duly recorded plat thereof; thence Westerly along the westerly prolongation of the southerly line of Rose Street in said City of Lebanon, 60 feet to a point in the easterly line of the land (60 feet wide) of the Southern Pacific Company and the actual point of beginning of parcel of land to be described; thence continuing westerly along said westerly prolongation of the southerly line of Rose Street, 60 feet to a point in the westerly line of said land of the Southern Pacific Company; thence Northerly along said westerly line of said land, 60 feet to a point in the westerly prolongation of the northerly line of Rose Street; thence easterly along said westerly prolongation of the northerly line of Rose Street, 60 feet to a point in said easterly line of said land; thence Southerly along said easterly line of said land, 60 feet to the point of beginning and containing an area of 3,600 square feet, more or less.

The location of the above described parcel of land is shown outlined in yellow on attached print of Railroad's Portland Division Drawing P-13729-A, Revised October 1, 1953.

Railroad, at its expence, shall repave the existing 22-foot wide highway crossing at said location and shall prepare to receive paving the track area through the widened portions of said highway between lines two (2) feet outside the outside rails of its tracks located thereon.

Grantee, at its expence, shall place all additional paving at said location.

After the widening of said highway has been completed, Railroad shall thereafter maintain the track area of said crossing between lines two (2) feet outside the outside rails of its tracks located thereon. The remainder of said highway shall be maintained by and at the expence of Grantee.

EXCEPT AS HEREIN OTHERWISE PROVIDED,

2. Grantee shall bear the entire cost of constructing and reconstructing said highway upon the land described herein. The crossing of said highway over any tracks of Railroad shall be constructed and maintained at the grade of said tracks now or hereinafter existing.

3. This grant is made upon the express condition that the rights and privileges herein given Grantee shall lapse and become void if the construction of said highway upon the land herein described is not commenced within one (1) year from date first herein written.

4. This grant is subject and subordinate to the prior and continuing right and obligation of Railroad, its successors and assigns, to use and maintain the entire parcel of land above described as a railroad right of way in performance of its public duty as a common carrier, and for that purpose, Railroad, its successors and assigns, expressly reserve the right to construct, reconstruct, maintain and operate existing and any additional railroad tracts, facilities and appurtenances thereto, upon, along and across the land described herein herein in such manner as may be consistent with the enjoyment of the easement for highway purposes herein granted to Grantee.
5. This grant is also subject to all valid and existing contracts, leases, liens, encumbrances or claims of title 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.
6. This indenture shall not be construed as conveying or otherwise vesting in Grantee the right or power to authorize the location or installation, or to issue permits, licenses or franchises for the location or installation, of any structures, fixtures or other facilities of any telegraph, telephone or electric power lines or of any ditches, pipes, drains, sewer or underground structures, under, along and over the land herein described.
7. Grantee shall obtain any necessary authority and permission required to construct, maintain and use said highway upon the land described herein from the governmental body or bodies having jurisdiction thereover.
8. Grantee agrees to reimburse Railroad for any and all assessments which may be levied by order of any authorized, lawful body against the property of Railroad (and which may have been paid by Railroad) to defray any part of the cost or expense incurred by grantee in connection with the construction, reconstruction, widening, rewidening and for maintainance of said highway upon the property hereinabove described.
9. Should Grantee, its successors or assigns, at any time abandon the use of the said land, or any part thereof, or fail at any time to use the same for said purpose for a continuous period of one (1) year, the right hereby given shall cease to the extent of the use so abandoned or discontinued, and Railroad, its successors or assigns, shall at once have the right, in addition to but not in qualification of the rights hereinabove reserved, to assume exclusive possession of the said land, or the part thereof the use of which is so discontinued or abandoned. Upon termination of the rights hereby granted, Grantee agrees to remove said highway, including the paving, from said premises of Railroad, to restore said premises as nearly as practicable to the same state and condition in which they existed prior to the construction of said highway, and to bear the expense thereof. Should Grantee in such event fail, neglect or refuse to remove said highway and restore said premises, such removal and restoration may be performed by Railroad at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand.
10. This indenture shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate by their respective officers thereunto duly authorized, as of the day and year first above written.

CITY OF LEBANON

By Elmer Fitzgerald
Mayor

Attest: Ilda Unger
City Recorder
Lebanon, Oregon

SOUTHERN PACIFIC COMPANY

By _____
Vice President

Attest: _____
Assistant Secretary