

3-11-77

ORDINANCE NO. 302

AN ORDINANCE PROVIDING FOR THE INSTALLATION, CONSTRUCTION, EXISTENCE, USE AND MAINTENANCE OF AN UNDERPASS PROJECT AT THE INTERSECTION OF PROPOSED U.S. HIGHWAY 80 WITH THE PROPERTIES AND TRACKS OF THE TEXAS AND PACIFIC RAILWAY COMPANY IN THE CITY OF ABILENE, TEXAS AND AUTHORIZING THE MAYOR OF THE CITY TO EXECUTE AND THE CITY SECRETARY TO AFFIX THE CORPORATE SEAL AND ATTEST THE SAME, A CERTAIN CONTRACT BETWEEN THE CITY, THE STATE OF TEXAS AND THE RAILROAD COMPANY PROVIDING FOR THE INSTALLATION, CONSTRUCTION, EXISTENCE, USE AND MAINTENANCE OF SAID UNDERPASS PROJECT; FOR THE GRANTING OF LICENSE AND PERMISSION BY THE RAILROAD COMPANY FOR SAID PROJECT; FOR THE PAYMENT, BY THE STATE OF TEXAS, OF THE CONSTRUCTION COSTS OF SAID PROJECT; FOR THE ASSUMPTION, BY THE CITY, OF ALL DAMAGES TO ADJOINING, ABUTTING AND OTHER PROPERTY AND BUSINESS AND TO TENANT OR OCCUPANT THEREOF; FOR THE PROTECTION OF THE STATE OF TEXAS AND THE RAILROAD COMPANY AGAINST ALL SUCH DAMAGES AND EXPENSES IN CONNECTION WITH ANY CLAIM OF SUIT THEREFOR; FOR THE MAINTENANCE OF THE UNDERPASS PROJECT; AND DECLARING AN EMERGENCY AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE FROM AND AFTER ITS PASSAGE.

WHEREAS, the public convenience, safety and necessity of the City, and the people of the City require that the grades for the proposed new location of U.S. Highway 80 and the tracks of The Texas and Pacific Railway Company be separated by the construction of an underpass project, since a grade crossing at such street or road over the tracks of said Railroad Company would constitute a danger and serious inconvenience to the public and that the only practical remedy is that of constructing an underpass as herein provided; and

WHEREAS, the City has requested the State of Texas to contribute financial aid in the construction of the underpass project; and

WHEREAS, the City has requested the Railroad Company to grant a license and permission for the construction of said underpass project across its property and under its tracks at such intersection; and

WHEREAS, the State of Texas has made it known to the City that it will assist the City in the construction of said underpass project by furnishing the necessary funds for the actual construction; by preparing plans and specifications; by awarding of construction contracts; by supervising construction; and by assisting in the maintenance of said project, providing the City approves the plans, grades and alignment for said project, and after completion of construction will maintain certain features of said underpass project.

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WHEREAS, the Railroad Company has made it known that it will grant a license and permission for said underpass project to be constructed across its property and under its tracks at the location herein stated; and

WHEREAS, the City, in consideration of the providing of said underpass project, agrees to protect the State of Texas and the Railroad Company from any and all liability and any and all damages to adjoining and abutting property or other property or business or to any tenants occupying such property, caused by the installation, the construction, the existence, the use and the maintenance of said underpass project or the passage and enforcement of this ordinance; and

WHEREAS, the Railroad Company is to maintain and to be responsible for the maintenance of the underpass superstructure and its supporting substructure, tracks, and other railroad facilities located upon the Railroad Company's property and without expense to the City or State.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL:

Section 1. That since the public convenience, safety and necessity of the City and the people of the City require it, an underpass be constructed and provided at the intersection of proposed U. S. Highway 80 with the properties and tracks of the Texas and Pacific Railway Company

in the City.

Section 2. That the State of Texas be and is hereby authorized to construct said underpass project at the approximate location and in the general manner shown on the plan, attached hereto and marked "Exhibit A" and made a part hereof in all respects. Detailed plans, showing location, grades, etc., are to be later prepared covering the construction of the project and when said plans governing the construction of said project have been prepared and approved by the City, they are to be attached hereto, marked "Exhibit B" and made a part of this ordinance in all respects.

Section 3. That nothing in this ordinance shall be construed as to require said Railroad Company or the State of Texas to assume or pay any direct, incidental or consequential damages to adjoining, abutting or other property or business or to any tenants occupying adjoining, abutting or other property caused by, incidental to, or in any way connected with the passage and enforcement of this ordinance or by the installation, the construction, the existence, the use or the maintenance of the project authorized herein or to defend any suit or suits which may be brought against said Railroad Company or the State of Texas by any party or parties for the recovery of any such damages.

Section 4. For and in consideration of the mutual covenants herein contained, the City does hereby agree that all damages and claims for damages to adjoining, abutting or other property, if any there be, arising out of, incident to, or in any way connected with the installation, the construction, the use, the existence, or the maintenance of said project shall be adjusted and paid solely by the City and the City shall and does hereby agree to hold harmless said Railroad Company and the State of Texas against any and all claims, demands and causes

of action for recovery of any and all such damages arising out of the installation, the construction, the use, the existence, and/or the maintenance of said project, and agrees to assume the defense of any and all suits brought for the recovery of all such alleged damages, and shall intervene and make itself a party therein in its own name, if it is not already made a party thereto, for the purpose, and shall if requested in writing by the Railroad Company or the State of Texas so to do, wholly relieve said Railroad Company and the State of Texas from defending the same, and hereby agrees to hold said Railroad Company, the State of Texas and each of them, harmless as to court costs, attorney's fees and all expenses in connection with such suits, and hereby assumes and agrees to pay all judgments recovered against said Railroad Company or the State of Texas by reason of the construction, the installation, the use, the existence, or the maintenance of said project.

Section 5. That the State will maintain the streets, sidewalks, drainage under the street and drainage system for the underpass project. The City will maintain all street lights, traffic lights and signal devices and sweep, flush and otherwise keep said project in a clean and sanitary manner, and nothing contained herein shall ever be construed to place upon the Railroad Company or the State of Texas any manner of liability for injury to, or death of persons, or for damage to, or loss of property arising from or in any manner connected with the maintenance or use of the street, sidewalks, light system or drainage under the street and drainage system for the underpass project located either on or off of the Railroad Company's right-of-way and the City will save the Railroad Company and the State of Texas harmless from any damages arising from said maintenance or the use of said project. The Railroad Company will maintain and be responsible for the maintenance of the grade separation superstructure and its substructure, tracks and other railroad facilities located upon the Railroad Company's right-of-way.

Section 6. That the City will pay to the State promptly the cost of making repairs to the subgrade or surfacing made necessary by reason of the installation, repair, removal, or adjustment or any such publicly or privately owned utilities or services, which may occur after the completion of the said underpass project.

Section 7. That the City will refrain from passing an ordinance fixing a speed limit on said underpass project of under twenty (20) miles per hour nor will it allow the erection of signs, semaphores or signals that will give preference to local routes which intersect with the said project, nor that will slow up, hinder or delay traffic on said underpass project.

Section 8. That the Mayor be and is hereby authorized to execute for and on behalf of the City an agreement and contract with the State of Texas and the said Railroad Company in accordance with and for the purpose of carrying out the terms and provisions of this ordinance, in the form attached hereto and marked "Exhibit C". The City Secretary is hereby directed to attest the agreement and contract and to affix the proper seal of the City thereto.

Section 9. That the State be and is hereby authorized, as agent of the City, to construct said underpass project at the location, to the grade and in the manner as shown on "Exhibit A" and to be shown on "Exhibit B".

Section 10. That the Mayor of the City, having requested in writing that this ordinance take effect forthwith and there being in fact an emergency and imperative public necessity that the work herein provided for be begun and carried out promptly and with expedition, and that the contract aforesaid shall be immediately made, executed and delivered to the end that such work therein provided for may be begun and carried out promptly and with expedition. The reading of this ordinance on ^{two}~~three~~ several days is hereby dispensed with and the same shall be in full force and effect from and after its passage.

Passed on first reading this 11th day of March, A.D. 1949.
Passed on Second and final reading this 11th day of March, A.D. 1949.

ATTEST:



Mayor



City Secretary



Corporation Counsel

Approved as to form before passage:

Corporation Counsel

STATE OF TEXAS }

COUNTY OF Taylor }

I, Lila Fern Martin, the duly appointed, qualified and acting City Secretary of the City of Abilene, Texas, hereby certify that the foregoing pages constitute a true and correct copy of an ordinance duly passed by the ^{Board of Commissioners}~~City Council~~ at a meeting held on 11th March, A. D., 1949, at 9: o'clock, A. M.

To certify which, witness my hand and official seal of the City of Abilene, Texas, this the 11th day of March, 1949, at Abilene, Texas.

City Secretary of the City of Abilene, Texas