

ORDINANCE NO. 926

AN ORDINANCE OF THE BOROUGH OF MONROEVILLE AUTHORIZING THE APPROPRIATE OFFICIALS TO ENTER INTO A CONTRACT WITH THE BESSEMER AND LAKE ERIE RAILROAD COMPANY.

BE IT ORDAINED AND ENACTED by the Borough of Monroeville in Council assembled, as follows:

The appropriate officials are hereby authorized to enter into an agreement with the Bessemer and Lake Erie Railroad Company for the purpose of constructing and maintaining sanitary sewer lines under the land and tracks of the Railroad Company south of Lott Road in the Borough of Monroeville, Allegheny County, Pennsylvania. A copy of said contract is attached hereto, made a part hereof and marked Exhibit "A".

ORDAINED AND ENACTED this 24th day of April, 1975.

ATTEST:

BOROUGH OF MONROEVILLE

S/ Marshall W. Bond
Secretary

By S/ George C. Dale
President of Council

(SEAL)

EXAMINED AND APPROVED this 24th day of April, 1975.

S/ R. E. Droske
Mayor

THIS AGREEMENT, made the 24th day of April, 1975, by and between BESSEMER AND LAKE ERIE RAILROAD COMPANY, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and having an office at 600 Grant Street, Pittsburgh, Pennsylvania 15230, hereinafter called the Railroad Company, party of the first part, and

BOROUGH OF MONROEVILLE, a municipal corporation of the County of Allegheny and Commonwealth of Pennsylvania, and having an office in the Municipal Building at 2700 Monroeville Boulevard, Monroeville, Pennsylvania 15146, hereinafter called the Borough, party of the second part,

WITNESSETH, THAT,

WHEREAS, the Borough desires to construct, operate and maintain a portion of a sanitary sewer on and under land of the Railroad Company, to convey sewage, at Gascola, in the Borough of Monroeville, Allegheny County, Pennsylvania; and

WHEREAS, this Agreement is made at the request and for the benefit of the Township.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) paid to the Railroad Company by the Borough, the receipt of which is hereby acknowledged, and the covenants and agreements hereinafter recited, the parties hereto agree as follows:

FIRST: The Railroad Company gives to the Borough a non-exclusive license and privilege to construct, operate and maintain a portion of a sanitary sewer, consisting of 10" asbestos cement pipe and including eight (8) manholes, on and under land of the Railroad Company, at Gascola, in the Borough of Monroeville, Allegheny County, Pennsylvania, as shown colored red upon the Borough's Drawing, being Sheet 3 and 4, entitled "Right of Way Plan for Gascola Trunk Sanitary Sewer", with details as shown upon the Borough's Drawings Nos. 7012 and 7013, hereto attached, marked Exhibits A, B and C, respectively, and made a part of this Agreement. The Borough's right to use land of the Railroad Company shall be a non-exclusive license and privilege of use, such use to be in common with use thereof by the Railroad Company, its licensees, successors and assigns. The said sanitary sewer, manholes and appurtenances are hereinafter referred to as the sewer.

SECOND: The Borough shall pay to the Railroad Company for the non-exclusive license and privilege of constructing and maintaining its sewer upon and under the land of the Railroad Company, as hereinbefore recited, the sum of Five Thousand Five Hundred Dollars (\$5,500.00), payable in three (3) annual installments, that is, One Thousand Eight Hundred Twenty-five Dollars (\$1,825.00), payable upon the execution of this Agreement, One Thousand Eight Hundred Twenty-five Dollars (\$1,825.00) payable on the anniversary date of this Agreement in 1976, and One Thousand Eight Hundred Fifty Dollars (\$1,850.00) payable on the anniversary date of this Agreement in 1977.

THIRD: The Borough shall construct and maintain the sewer on and under land of the Railroad Company, at the location hereinbefore described, and as; shown on Exhibits A, B and C, in a manner satisfactory to the Chief Engineer of the Railroad Company or his duly authorized representative. All material and workmanship required in the construction and maintenance of the sewer, herein provided for, shall be furnished by the Borough and shall conform to sound engineering and accepted industry practices and procedures, it being the intent of the parties to this Agreement that the sole responsibility for the material and workmanship used in the construction and maintenance of the sewer herein provided for, shall at all times be that of the Borough alone and the Borough shall make any and all repairs deemed necessary for the safe operation of said sewer.

FOURTH: When and as often as the Railroad Company for any reason shall desire to have the location or depth of the Borough's sewer, constructed and maintained under this Agreement, changed, the Borough shall, at its own cost and expense, within six (6) months after receipt of written notice from the Railroad Company, change said sewer to such a location or depth as shall be designated by the Chief Engineer of the Railroad Company, or his duly authorized representative; and when, in the opinion of the Railroad Company, said sewer is in defective condition, the Borough shall, at its own cost and expense, within ten (10) days after receipt of written notice from the Railroad Company, repair its sewer in a manner satisfactory to the Chief Engineer of the Railroad Company, or his duly authorized representative.

FIFTH: In the event the Borough shall fail to change the location or depth of, to repair its sewer, or to correct any defective condition after receipt of written notice from the Railroad Company, as hereinbefore provided and within the time stipulated, then the Railroad Company may, without further notice to the Borough, make such changes or repairs, or correct such defective conditions, or the Railroad Company may take up and remove said sewer from the Railroad Company's land. The total cost of such work performed by the Railroad Company shall be charged to and be borne by the Borough, said costs to be billed to the Borough by the Railroad Company and to be paid by the Borough on or before the fifteenth day of the month next succeeding that in which each bill is rendered to the Borough.

SIXTH: The Railroad Company, its successors and assigns, shall have the right to make connection or connections to the sewer of the Borough, located on and under land of the Railroad Company, as shown colored red on Exhibit A, provided, however, that the Railroad Company, its successors and assigns, shall give to the Borough ten (10) days' notice, in writing, prior to making such connection or connections for the disposal of sewage from lands in Borough of Monroeville. The connection or connections to the sewer of the Borough shall not be subject to any tap-in fee or to any other such charges, except the rate or charge applicable to the use of said sewer shall be paid to the Borough by the Railroad Company, its successors and assigns.

SEVENTH: The Borough, as a part of the consideration for this Agreement, hereby assumes all risks of accidents or damages of any nature to its property while on the land of the Railroad Company, from any cause whatsoever, and hereby releases the Railroad Company from all liability on account thereof, whether attributable to the fault, failure or negligence of the Railroad Company, its officers or employees, or otherwise, and the Borough does hereby agree to indemnify, protect and save harmless the Railroad Company from any and all claims, demands, awards and actions made, brought or obtained against the Railroad Company for compensation for damages or injuries, including death, sustained by any and all employees of the Borough due to, caused by or growing out of the construction, maintenance, presence, use, repair, change and subsequent removal of the sewer, herein provided for, whether attributable to or arising out of the negligence of the Railroad Company, its officers or employees, or otherwise. The Borough does further agree to indemnify, protect and save harmless the Railroad Company from any and all other claims, demands, awards and actions made, brought or obtained against the Railroad Company for any and all injuries, including death, to persons and damages to property due to, caused by a or growing out of the construction, maintenance presence, use, repair, change and subsequent removal of the sewer of the Borough, herein provided for, whether attributable to or arising out of the negligence of the Railroad Company, its officers or employees, or otherwise. It is the intent of the parties hereto to absolve and protect the Railroad Company from any and all such claims and demands.

Further, if the Railroad Company constructs, operates and maintains any tracks upon the land of the Railroad Company which the Borough is herein given the non-exclusive license and privilege to cross with its sewer, the Borough agrees to protect the property of the Railroad Company (including rolling stock as well as fixed facilities) from damage on account of the construction, presence, maintenance, use, repair, change and subsequent removal of the sewer, and to reimburse the Railroad Company promptly for any loss or damage attributable to the construction, presence, maintenance, use, repair, change and subsequent removal of the sewer. In the event that there is an interruption of traffic on the railroad attributable, in whole or in part, to the construction, presence, maintenance, use, repair, change and subsequent removal of the sewer, the Borough shall reimburse the Railroad Company for all loss resulting therefrom, including, but not limited to, the expense of loss of crew time. The Borough further agrees to, and does hereby waive any defense of contributory negligence or fault of the Railroad Company against any claim by the Railroad Company.

EIGHTH: The Borough, for itself, its successors and assigns, does hereby waive the right to impose any benefit assessment upon the Railroad Company arising out of the construction of its sewer upon land of the Railroad Company pursuant hereto, the giving of the within described license and privilege being the full and complete consideration for any benefits which may be conferred, and the Borough for itself, its successors and assigns, does further agree to reimburse the Railroad Company, its successors and assigns, for any assessment of benefit which is made by reason of the location of said sewer upon the land of the Railroad Company, and also any other expenses which the Railroad Company may incur by reason of the location of said sewer thereon.

NINTH: The Borough agrees to furnish certificates and/or policies of insurance in the form and amounts required by the Chief Engineer of the Railroad Company before commencing construction, maintenance, relocation, repair or removal of the said sewer, or any part or appurtenance thereof, on land of the Railroad Company.

TENTH: This Agreement shall be submitted to the Pennsylvania Public Utility Commission by the Railroad Company for consideration as required by Section 911 of the Pennsylvania Public Utility Law, and shall become effective only under the conditions prescribed by said Law.

ELEVENTH: It is hereby understood and agreed that neither the purpose nor intent nor the obligation of this Agreement, if and when approved by the Public Utility Commission of the Commonwealth of Pennsylvania, is such as to impair or in any wise affect the exercise by said Commission of any of the powers vested in it by the Public Utility Law.

TWELFTH: It is mutually agreed between the parties hereto that this Agreement shall be and continue in full force and effect until it is terminated in one of the ways hereinafter provided:

- (a) This Agreement can be terminated at any time by mutual agreement of the parties hereto.
- (b) The Railroad Company, at any time, shall have the option of terminating this Agreement should the Borough fail to perform or fulfill any of the agreements, undertakings, covenants, and conditions herein imposed upon the Borough, the Railroad Company to exercise its option by giving of ninety (90) days written notice of such action to the Borough.
- (c) The license and privilege given under this Agreement is for the benefit of the Borough, and when the Borough shall cease to use said land for the purpose of operating its sewer, said license and privilege shall cease and determine ninety (90) days thereafter.

In the event this Agreement is terminated, the Borough shall, at any time prior to the date of termination thereof, remove its sewer from and under the land of the Railroad Company, and restore the land of the Railroad Company to the condition existing prior to the installation of such sewer by the Borough. Should the Borough fail to remove its said sewer and to restore the land of the Railroad Company within the required period, the Railroad Company is authorized to perform the work at the sole cost and expense of the Borough.

THIRTEENTH: This Agreement is made subject to all limitations, restrictions and reservations upon the title of the land of the Railroad Company, which the Borough is herein given the license and privilege to cross with its sewer.

FOURTEENTH: This Agreement contains all the terms and conditions agreed on by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto.

FIFTEENTH: The sewer constructed, operated and maintained under this Agreement shall be used for the sole purpose of conveying sewage. This Agreement, and all rights and obligations conferred or imposed hereby, shall extend to the successors and assigns of the parties hereto, provided that the Borough shall in no event transfer or assign the same to or permit the use thereof by any person or corporation without the written consent of the Railroad Company being first obtained.

This Agreement is made pursuant to a resolution of the Borough Council of the Borough of Monroeville, duly adopted at a regular meeting thereof held on the 24th day of April, 1975, a full quorum being present, authorizing and directing same to be made and done.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate seals to be hereunto affixed, duly attested by their respective proper officers, as of the day and year first herein written.

ATTEST:

BESSEMER AND LAKE ERIE RAILROAD
COMPANY

S/ L. F. Young
Assistant Secretary

S/ By R. D. Lake
Vice President

ATTEST:

BOROUGH OF MONROEVILLE

S/ Marshall W. Bond
Borough Secretary

S/ By R. E. Droske
Mayor