

Ordinance No 1176 and Agreement.

City of South Omaha Neb

and U.P. R.R. Co. & Union Stock Yards Co. (Limited)

Ordinance No. 1176.

Auditors No 379.

U.P. R.R. Co

Agreement

Audit No 2873

filed with No 2845

R.D. May 10 1904.

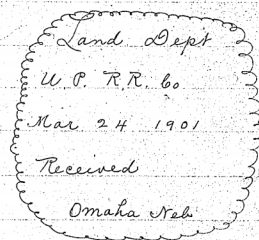
An ordinance providing for the execution signing and delivery of a contract between the city of South Omaha Nebraska and Union Pacific Rail Road Company, and Union Stock yards company of Omaha (Limited) relating to viaducts and providing for the construction of a viaduct the Eastern terminus of which will be located at and within O Street West of 26th Street in South Omaha, and providing for the control thereof and providing for the vacation of portions of certain streets West of 26th Street in South Omaha and providing for the control thereof, and providing for the vacation of certain streets alleys and avenues and granting to the Union Pacific Railroad Company the right to lay down additional tracks across F Street and authorizing and directing the Mayor to execute sign and deliver and the City Clerk to attest the same, and to attach the corporate seal of the City of South Omaha thereto.

Be it ordained by the Mayor and Council of the City of South Omaha.

Section 1.

That the Mayor is hereby and herein empowered, authorized and directed to execute sign and deliver in triplicate and the City Clerk to attest for and on behalf of the City of South Omaha and under its corporate seal the following agreement between the City of South Omaha of the one part and the Union Pacific Railroad Company and Union Stock yards company of Omaha (Limited) of the other part to wit,

Articles of agreement, executed in triplicate made and concluded this day of May 10, 1904, by and between the City of South Omaha hereinafter referred to as the City, party of the first part, and the Union Pacific Railroad Company hereinafter referred to as the Railroad Company and Union Stock yards company of Omaha (Limited) hereinafter referred to as the Stock yards company parties of the second part.



Witnesseth

Whereas the Railroad Company and the Stock yards Company

own and operate a great number of main side and switch railroad tracks within and passing through the populace portion of South Omaha, and whereas a large amount of travel passes over said track at and in the vicinity of O Street by persons doing business with the said Stock yards company, and

Whereas the streets in South Omaha in the neighborhood of said tracks end at the right of way of said Railroad company on the east side thereof, and

Whereas the safety of the Public requires protection for persons and vehicles travelling over and across said railroad tracks of said railroad company and said Stock yards company, and

Whereas, the danger to life and limb of persons crossing over said railroad tracks is constant, by reason of the trains that are continuously passing back and forth over said railroad tracks, and

Whereas the facilities afforded by the viaducts on A Street and on L Street do not afford sufficient or convenient ways to the public for crossing said tracks, and

Whereas, the travel over railroad avenue in said city as the grades are now, and as they must remain and as the railroad tracks are and as they must remain, is diverted under the viaduct on A Street instead of on the roadway on said viaduct, thus continuing a crossing of said tracks from Railroad Avenue to 27<sup>th</sup> Street as a surface crossing instead of using the roadway on the viaduct at A Street for which the same was constructed and intended, and

Whereas for the use and convenience of the Swift & Company plant South of the A Street viaduct, it is necessary to construct two approaches to that viaduct for ingress and egress to and from said plant, and

Whereas the opening of a Street at any point between A Street viaduct and L Street viaduct and the condemnation of a right of way therefor over said railroad tracks for any such street would be attended with a great amount of cost and expense to said city which at this time the city is unable to assume, and

Whereas it is necessary that all surface crossings from the South side of F Street to the North side of U Street shall be abandoned, and

Whereas, It is necessary to take such action as will result in diverting all travel across said railroad tracks to the roadways of said A Street and L Street viaducts to the proposed new viaduct, and to close the surface crossings over said railroad tracks, and to provide from a point opposite the Western terminus of O Street and within said Street West of 26<sup>th</sup> Street a viaduct over the said railroad tracks, and

Whereas, in order to completely and fully accomplish the said objects above expressed, to provide for the public safety and to secure free of cost to said

city a right of way for and the construction and maintenance of said viaduct, it will be necessary to vacate certain parts of Streets in said City of South Omaha, described as follows.

(a) All that part of Commercial Street lying between the north line of F. Street and the South line of B. Street in South Omaha Nebraska.

(b) All that part of C. D. E. G. H. and I. Streets respectively, which lie West of the West line of Commercial Street and extending to the east line of the right-of-way of the Union Pacific Railroad Company.

(c) All of Railroad Avenue extending from the South line of F. Street to the South line of Lot 3. in Block 57, in South Omaha extended Westerly across railroad Avenue to the right-of-way of the Union Pacific Railroad Company.

(d) All of Railroad Avenue from the South line of lot 2 in Block 82 South Omaha Nebraska produced Westerly to the east line of the right of way of Union Pacific Railroad Company extended Southeasterly to the West line of Section 10, Township 14, North of range 13 East of the Sixth Principal Meridian where railroad Avenue crosses said section line. Provided that the vacation of Railroad Avenue where the same crosses Q Street shall not in any wise impair the right of the City to control the full width of the surface approach and roadway of the Q Street viaduct across said railroad Avenue.

(e) All of Railroad Avenue from the West line of Section 10 above mentioned to the West line of 24<sup>th</sup> Street produced, where the same is intersected by Railroad Avenue.

(f) Also P Street between the West line of 26<sup>th</sup> Street and Railroad Avenue.

(g) Also S. Street between 25<sup>th</sup> Street and Railroad Avenue.

(h) Also the alley extending through Block 1-1/2 in Brown Park. Addition from the southerly end of said alley to the South line of lots 3 and 19 in said block produced.

Whereas the Railroad Company and the Stock Yards Company have offered in consideration of the vacation of said Streets alleys and avenues, to build construct and maintain a viaduct the easterly terminus of which shall be located at a point opposite the Western terminus of Q Street and within said Street West of 26<sup>th</sup> Street opposite to the right-of-way of said railroad company and the Western terminus of which shall be located upon the ground of the Stock yards company at some convenient point West of the railroad tracks of the said Stock yards company as now located plans and specifications for which said viaduct shall be made and approved by the engineers of the parties hereto.

Now therefore for and in consideration of a mutual agreement and



covenants hereinafter recited to be kept and performed by the parties hereto the said parties agree as follows.

Article 1

Section 1. The City agree to vacate those parts of Railroad Avenue and also the said parts of the streets and alleys hereinbefore described and to take all necessary steps therefore by the passage of appropriate Ordinances and otherwise.

Section 2. The City agree to take all necessary steps by the passage of appropriate ordinances and to use all other appropriate means and measures to close to the public or other travel all surface crossings over the railroad tracks of the said Railroad Company and said Stock Yards Company between the South Side of F Street and the North side of U Street and to cause all other travel across said Railroad tracks, between the South side of F. Street and the north side of U Street to be directed so as to pass over, upon and along the roadway of said Q Street and said L. Street Viaducts and upon the roadway of said proposed viaduct hereinbefore mentioned and hereinafter provided for and to pass proper ordinances making it the duty of the police force of said City and to use the police power of said City to prevent entry, & travel or trespass upon, along, over and across the said railroad tracks of said Railroad Company and said Stock Yards Company and the right of way upon which the same are located and to close and forever keep closed any existing roadway or roadways across any of said railroad tracks between the south line of F Street and the north line of U Street at grade or otherwise except by the said L Street and Q Street Viaducts and said proposed viaduct, the said City further agree that it will not, except with the consent of the said Railroad Company or the Stock Yards Company, open or cause to be opened after the execution of this contract and the construction of said viaduct as herein provided for, any other street or roadway at surface or any subway viaduct or crossing over the said railroad tracks between the South line of F. Street and the north line of U. Street.

Section 3. The City is to pass ordinances to protect said viaduct and its approaches and connections and to prevent and punish all interference or trespass or damage to the same, and to take such steps by ordinance or otherwise to prevent any unlawful use or occupancy of the said viaduct or any occupancy not authorized by or under this contract, and to prevent any nuisance being caused or maintained thereon, and to fully and completely protect the said viaduct in the use for which the same was designed and also to

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permit the use of sufficient portion of D. Street, railroad avenue or 26<sup>th</sup> Street for an approach to said viaduct.

Section 4. The city is to pass appropriate ordinances and undertakes that it will in all lawful manner use the police power of the city and its police force to protect the fence or other barrier hereinafter provided to be built by the railroad company and to prevent and punish trespasses upon the same, and to protect the Railroad company in the use and enjoyment of said fence or other barrier for the purpose for which the same shall be erected.

Section 5. The city will upon completion of construction of said viaduct as herein provided for, and in a proper legal way, pass, adopt and approve all necessary ordinances and resolutions to carry into effect the agreement in this contract contained.

Section 6. The city agrees to grant to the Union Pacific Railroad Company, by ordinance the right and privilege of laying additional tracks across F. Street.

#### Article II.

Section 1. The Railroad company and the Stock yards company agree to accept the vacation of said parts of Railroad Avenue and also the said parts of the streets and alleys hereinbefore described, and in consideration thereof and of the agreements in this contract contained to build construct and maintain a viaduct over and across said railroad tracks at the point hereinbefore mentioned in this contract and approaches thereto according to the plans and specifications here before provided to be made, also to cause said viaduct and approaches to be kept in good repair. For the purpose of maintaining and operating said viaduct and approaches under the terms and conditions of this contract, the Railroad company and the Stock yards company respectively grant the use of so much of the land required therefor embraced in the right of way of the railroad company and upon the premises of the Stock yards company, extending from the easterly margin of the right of way of the railroad company to the Western terminus of said viaduct, and approaches as the same shall be located upon said Stock yards company's ground.

Section 2. The Railroad company agrees to construct and keep and maintain in repair a substantial fence or other barrier along the east line of its property from the north side of L. Street to the South side of A Street, and as far north of L. Street except across F. Street and as far South of A Street except the county road crossing

and across Annex Street), as may be deemed necessary by it. Provided however that said Railroad Company shall construct a gate in said fence at some convenient point close under or near to the A Street viaduct sufficient to afford access to Swift & Company's packing plant and shall provide a lock and key therefor and shall furnish the fire Department of the City of South Omaha with keys for said lock said keys to be used only in the event of its being necessary for the approach of the fire apparatus of the City of South Omaha to approach the packing plant of Swift and Company in event of a fire therein.

Section 3. The Railroad Company and the Stock Yards Company agree to construct maintain and keep in repair two approaches to the A Street viaduct for the accommodation of travel to and from the packing plant of Swift & Company, also an approach to the viaduct herein provided for for the accommodation of travel to and from the packing plant of Hammond & Company as now located the plans and specifications for all of said approaches shall provide sufficient strength for the use of the same for persons and vehicles and shall be made and approved by the engineers of the parties hereto.

#### Article III.

Section 1. The parties hereto mutually covenant and agree that performance of this contract shall be commenced within thirty days after the passage of the necessary ordinances vacating the said parts of said Avenue Streets and alleys herein provided for.

Section 2. The Railroad Company and Stock Yards Company shall as soon as material necessary for construction can be procured, due regard being made to the condition of the weather commence the work required to construct the said viaduct, and shall continuously prosecute the same to the final completion thereof with due diligence it being understood that delays caused by weather conditions inability to procure material, the act of God, strikes labor troubles or other unavoidable cause shall not be deemed a breach of the terms of this contract.

Section 3. It is mutually agreed that the City will not itself nor will it at any time grant or give to any person or corporation the right to operate street cars or other cars or to lay down street railway tracks or other railway tracks, on along or upon said viaduct or approaches.

#### Article IV.

Section 1. It is further mutually agreed by and between the parties hereto that said Railroad Company and said Stock Yards Company shall save and keep the City harmless from the payment of any fees or

damage which it may sustain by reason of any suits for damages brought against it by any person or persons whomsoever claiming damages to have been sustained by any such person or persons by reason of the vacation of said Streets, parts of Streets or alleys hereinbefore described, but upon condition that upon the commencement of any such suit or suits the City of South Omaha shall within a reasonable time after the service of summons therein and before the return day thereof inform said railroad company and said Stock yards company thereof, and furnish to each of them a copy of said summons with a notice that said Railroad company and said Stock yards company or either of them may and requiring them to defend any and every such suit without cost to said City.

And it is agreed that in such case only shall said Railroad company and said Stock yards company be bound and required to pay the amount of any judgment and costs rendered against said City in such suit or suits.

Section 2. Nothing in this contract shall be construed to change modify or alter any existing liability or obligation of said Railroad company or of said Stock yards company or either of them to renew maintain and keep in repair the said L. Street and Q Street viaduct or either of them.

Section 3. It is mutually agreed by and between the parties hereto that the said City may and hereby does receive the right to renew maintain and repair the sewer heretofore constructed by said City in along and upon said Railroad Avenue, such work of renewal maintenance and repairs to be done in such manner as to least interfere with the operation and business of said Railroad company and said Stock yards company or either of them.

Provided that Railroad company and Stock yards company or either of them may at their election change the location of said sewer within Railroad Avenue and in such case may relay or reconstruct the same upon said premises at its or their own cost and expense under the direction of said City and after any such re-location and reconstruction, the City of South Omaha shall thereafter maintain repair and further renew the same in such manner as to least interfere with the operation and business of said Railroad company and Stock yards company. and provided further that Railroad company and Stock yards company and each of them will so construct and maintain their railroad tracks over such sewer as to avoid breaking or injuring the same.

In Witness Whereof the said City of South Omaha has caused these



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presents to be executed in triplicate by its mayor and attested by its clerk with its corporate seal affixed, and said Union Pacific Railroad Company has caused these presents to be executed in triplicate by its President and attested by its Secretary with its corporate seal affixed, and the Union Stock yards Company of Omaha (Limited) has caused these presents to be executed in triplicate by its President and attested by its Secretary with its corporate seal affixed.

In presence of

The City of South Omaha.

By Mayor.

Attest

City Clerk.

In presence of

Union Pacific Railroad Company

By President

Attest

Secretary.

Union Stock yards Company of Omaha (Limited)

By President

In presence of

Attest

Secretary.

Section 2. That the foregoing agreement and the terms thereof as herein and hereby described and set forth are hereby accepted adopted and approved and when said agreement has been signed executed and delivered by the Mayor in the name of the City, under its corporate seal and attested by the clerk, and executed by the Railroad Company and the Stock yards Company the same shall be, and the same is hereby declared to be the contract of the City under due corporate action of the City.

Section 3. This Ordinance shall take effect and be in force from and after its passage, approval and publication.

Introduced by W. H. Queenan.

Passed Nov 17<sup>th</sup> 1903.

D. S. Shrigley.

City Clerk

Approved Nov 17 1903.

Frank Kautsky.

Mayor

State of Nebraska } ss.  
County of Douglas

I D. S. Shrigley City Clerk of the City of South Omaha Nebraska do hereby certify that the attached and foregoing is a true and correct copy of Ordinance No. 1176 of the Ordinances of the City of South Omaha passed by the City Council November 17<sup>th</sup> 1903. and approved November 17<sup>th</sup> 1903.

In Witness Whereof I hereunto affix my name and the corporate seal of said City this 24<sup>th</sup> day of March 1904.



THE STATE OF NEBRASKA, }  
DOUGLAS COUNTY. }  
Entered on Numerical Index and filed for Record  
in the Register of Deeds Office of said County, the  
26<sup>th</sup> day of January 1905  
at 8:33 o'clock P.M.

S. C. Shrigley  
City Clerk.

COMPARED

Harry P. Dezell  
Register of Deeds.

Affidavit

M. C. Steele

&

State of Nebraska } ss.  
County of Douglas }

Whom it may concern

M. C. Steele being first duly sworn deposes and says that he resided in Beatrice from 1884 to 1896 and was well acquainted with Isabel B. Boyce and Letitia C. Boyce his wife.

And further affiant says that both Isabel B. Boyce, and his wife Letitia C. Boyce are now dead to the best of his knowledge and belief.

And further affiant sayeth not.

M. C. Steele.

Sworn to before me this 24<sup>th</sup> day of Jan 1905.



THE STATE OF NEBRASKA, }  
DOUGLAS COUNTY. }  
Entered on Numerical Index and filed for Record  
in the Register of Deeds Office of said County, the  
25<sup>th</sup> day of January 1905  
at 12:25 o'clock P.M.

Oliver S. Erwin  
Notary Public

COMPARED

Harry P. Dezell  
Register of Deeds.

Agreement

1 Elizabeth Duprene  
and  
J. L. Brandeis Sons

This memorandum of agreement made this 24<sup>th</sup> day of January 1905 by and between Elizabeth Duprene and J. L. Brandeis and sons. Witnesseth that Whereas said parties entered into a written lease

dated January 30<sup>th</sup> 1904, under which J. L. Brandeis and Sons leased from Elizabeth Duprene the East forty four (44) feet of Lot three (3) in Block one hundred Seventeen (117) in the City of Omaha Douglas County Nebraska for a term of forty nine (49) years from February 1<sup>st</sup> 1904 and

Whereas said lease contained among others the following provisions.

"It is further agreed by and between the parties hereto that the party of the second part may at any time during the term of this lease remove the present buildings and improvements on said premises, provided it shall thereupon proceed to erect on the