

EXHIBIT "A"

A G R E E M E N T

THIS AGREEMENT, made and entered into this day of _____, 1966, by and between PROPCO, INC., an Oregon Corporation, hereinafter referred to as First Party, and the CITY OF PORTLAND, a municipal corporation of the State of Oregon, by and through its Mayor and Commissioner of Public Works, hereinafter referred to as City.

W I T N E S S E T H:

LEGAL DESCRIPTION

WHEREAS, First Party is the owner of that portion of the following described property in Sections 13 and 14, T. 1S., R. 1E., W. M., lying westerly of a line drawn 150 feet westerly of and parallel with the westerly line of S. E. 26th Avenue, in the City of Portland, County of Multnomah, and State of Oregon:

Beginning at the Northwest corner of a certain 30 acre tract purchased by Hampton Kelly by deed dated June 20, 1857, recorded in Book "A" page 452 deeds; this stone monument is 23.75 chains North of the South line of the Edward Long Donation Land Claim and 4.12 chains East of the line between Sections 13 and 14, Township 1 South, Range 1 East of the Willamette Meridian, said point of beginning being at the intersection of the South line of Southeast Mitchell Street and the West line of Southeast 26th Avenue; thence South 0° 05' 30" West along the West line of Southeast 26th Avenue 230.57 feet; thence South 89° 55' 10" West 423.01 feet to the intersection with the East line of the right-of-way of Oregon and California Railroad Co. spur line; thence North 0° 23' 40" West 230.57 feet along said right-of-way line to the intersection with the South line of Southeast Mitchell Street extended; thence North 89° 55' 10" East along the South line of Southeast Mitchell Street and an extension thereof 424.97 feet to the point of beginning, and

WHEREAS, the City of Portland by Ordinance No. 38918 passed March 2, 1921, accepted an easement for a sewer along the westerly 4.0 feet of the above-described property, and

WHEREAS, subsequent to said grant of easement, the City constructed and now maintains a sewer near the westerly line of said property, and

WHEREAS, the First Party now has applied to the City for a permit to construct a building on said property and to construct a railroad spur track over the City's sewer and easement; and

WHEREAS, such encroachments are acceptable under the circumstances to the City Engineer, provided that certain conditions are met by First Party.

Now, therefore, in consideration of the granting of permission by the City to First Party to construct a railroad spur track over and above that certain sewer pipeline located along the westerly line of the hereinabove described property and over and above the City's easement accepted by Ordinance No. 38918, First Party agrees to be bound by the following covenants and agreements:

1. First Party agrees to reimburse the City for any repairs, alterations, or maintenance of said sewer pipeline required to be made by the City by reason of any damage caused directly or indirectly to said sewer line by the construction, use, maintenance, or existence of said railroad spur track or appurtenances thereto as depicted upon plan on file in the City of Portland Bureau of Buildings, dated January 5, 1966, and entitled "Building for Smith's Home Furnishings, Inc." or any other present or future structures of First Party.

2. First Party hereby assumes all risk for damage to said spur track and appurtenances thereto or any personal or real property located in, on, or adjacent to said spur track, and to assume any and all financial losses resulting from interruption of business, caused directly or indirectly from the failure of the sewer pipeline or the settlement of the surface or subsurface within said City easement and sewer area.

3. First Party agrees to save and hold harmless the City, its officers, agents and employees against any loss, damage, or liability which the latter party or any of them may incur by reason of any hydraulic failure or structural failure of said sewer or sewer line including claims of third parties.

4. First Party agrees that the City has the right to maintain, repair, reconstruct, renew, or replace said sewer or

sewer system where it traverses the property in question provided that in exercising said rights the City acts in a reasonable and prudent manner. First Party agrees to reimburse City for any additional costs incurred by City in the maintenance, repair, reconstruction, renewal or replacement of said sewer or sewer system and other costs connected therewith resulting from or caused by the existence of said above described encroachments.

5. In the event First Party makes a bona fide sale of the property and structures hereinbefore mentioned, First Party, for itself and its heirs, executors, administrators, grantees and assigns, agrees to remain liable to the City under the covenants, agreements and conditions incurred herein, unless the purchaser in said sale shall in writing expressly assume all of said covenants, agreements and conditions not previously discharged by First Party.

6. It is understood and agreed by the First Party that the covenants and agreements hereinbefore mentioned are made in adjustment of the mutual relationship arising out of the existing interests of the respective parties in the land above described, and are intended to be and hereby are construed to be covenants running with the land above described, and as such are to be binding upon the First Party, its heirs, administrators, executors, grantees, and assigns.

IN WITNESS WHEREOF, PROPCO, INC., pursuant to a resolution of its Board of Directors duly and legally adopted, has caused these presents to be signed by its _____ President and Secretary, and its corporate seal to be hereunto affixed this the _____ day and year first above written, the City of Portland, acting by and through its Mayor and Commissioner of Public Works, by authority of Ordinance No. _____.

President

Secretary
FIRST PARTY

CITY OF PORTLAND

By _____ Mayor
By _____ Commissioner of Public Works

STATE OF OREGON)
) ss:
County of Multnomah)

BE IT REMEMBERED, That on this _____ day of _____, 1966, before me, the undersigned, a notary public in and for said county and state personally appeared TERRY D. SCHUNK and WM. A. BOWES, to me personally known, who being first duly and severally sworn, did say that he, the said TERRY D. SCHUNK is the Mayor of the City of Portland, and he, the said WM. A. BOWES is the Commissioner of Public Works of the City of Portland, the municipal corporation which executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said City and the said TERRY D. SCHUNK and WM. A. BOWES acknowledged said instrument to be the free act and deed of said City of Portland.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first in this my certificate written.

Notary Public for Oregon

My Commission Expires _____

ORDINANCE No. 122120

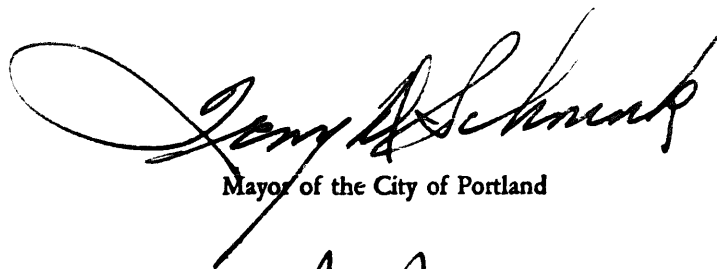
An Ordinance authorizing an agreement between the City of Portland and Propco, Inc., to allow construction of a railroad spur track over an existing City sewer easement, and sewer pipeline, under terms and conditions, and declaring an emergency.

The City of Portland ordains:

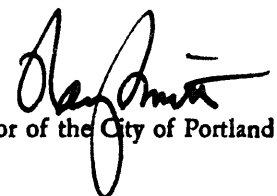
Section 1. The Council finds that by Ordinance No. 38918, the City accepted a sewer easement covering a strip of land 4 feet in width and lying easterly of and adjacent to the east line of the right-of-way of the P. & O.C. Railway Company, in Section 14, T. 1S., R. 1E., W. M., that subsequent to said grant of easement, the City constructed and now maintains a sewer near said easterly right-of-way line, that Propco, Inc., is purchasing the property through which said sewer easement passes, and said Propco, Inc., has now applied to the City for a permit to construct a railroad spur track over said easement and sewer, that said construction is acceptable to the City Engineer provided certain conditions are met by Propco, Inc.; now, therefore, the Mayor and Commissioner of Public Works hereby are authorized and directed to execute an agreement on behalf of the City with Propco, Inc., allowing construction of a railroad spur track over the City's easement and sewer hereinabove mentioned; said agreement shall be substantially in accordance with the form of agreement attached hereto, marked "Exhibit A" and by this reference made a part of this Ordinance.

Section 2. Inasmuch as this Ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: In order that the agreement authorized in Section 1 of this Ordinance may be entered into without delay, and that Propco, Inc., who is the purchaser of the affected property may obtain necessary permits for building construction, therefore, an emergency is hereby declared to exist and this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, MAR 17 1966


Mayor of the City of Portland

Attest:


Auditor of the City of Portland

Calendar No. **1021**

ORDINANCE NO. 122100

Title

An Ordinance authorizing an agreement between the City of Portland and Propco, Inc., to allow construction of a railroad spur track over an existing City sewer easement and sewer pipeline, under certain terms and conditions, and declaring an emergency.

INTRODUCED BY
Commissioner Wm. A. Boves

DRAWN BY
CS:rb
Date 3-16-66

NOTED BY THE COMMISSIONER

Affairs
Finance
Safety *FDS-MVC*
Utilities
Works *WRA*

City Attorney

NOTED FOR CITY AUDITOR
R. C. H.
Mc

APPROVED
Date *3/17/66*
By *[Signature]*
Date N. R. DRULARD, P. E.
By

THE COMMISSIONERS VOTED AS FOLLOWS:

	Yeas	Nays
Beinn	1	
Boves	1	
Earl	1	
Grayson	1	
Schrunk	1	

FOUR-FIFTHS CALENDAR

Beinn	<i>[Signature]</i>
Boves	<i>WRA</i>
Earl	<i>WRA RCH</i>
Grayson	
Schrunk	<i>FDS-MVC</i>

filed MAR 16 1966

RAY SMITH

Auditor of the CITY OF PORTLAND

By *[Signature]*
Deputy