

## EXHIBIT "A"

THIS INDENTURE, made this \_\_\_\_ day of \_\_\_\_\_, 1951, by and between SOUTHERN PACIFIC COMPANY, a corporation of the State of Delaware, first party, and CITY OF PORTLAND, a municipal corporation of the State of Oregon, second party;

## W I T N E S S E T H:

1. That first party, for and in consideration of the sum of Two Hundred Eighty-eight (288) Dollars, lawful money of The United States of America to it paid by the said second party, receipt of which is hereby acknowledged, does by these presents grant to second party (subject to the reservations, covenants and conditions herein contained) the right to construct, maintain and use a sewer pipe line, hereinafter called "structure", upon, beneath and across all that portion of the land of the Southern Pacific Company in the City of Portland, County of Multnomah, State of Oregon, included within that certain strip of land 20 feet in width lying equally 10 feet on each side of the following described center line:

BEGINNING at a point in the southwesterly line of Southeast Milwaukie Avenue in said City of Portland distant thereon South  $18^{\circ} 31'$  East 40.98 feet from its intersection with the westerly line of Southeast Eleventh Avenue, said point of beginning being distant 26.75 feet southwesterly, measured at right angles, from the center line of Southern Pacific Company's westward main track at Engineers Station 97-60.80; thence North  $51^{\circ} 24' 30''$  West parallel with and distant 6.25 feet northeasterly, measured at right angles, from the southwesterly line of land of the Southern Pacific Company and also parallel with and distant 26.75 feet southwesterly, at right angles, from said center line of westward main track, a distance of 467.51 feet to a point; thence Northwesterly along a curve to the right having a radius of 50 feet (tangent of said curve at last mentioned point is last described course) an arc distance of 35.56 feet to a point; thence North  $10^{\circ} 39' 30''$  West tangent to said curve at last mentioned point, 77.09 feet to a point in the northeasterly line of said land of the Southern Pacific Company.

The side lines of the above described portion of land terminate in said southwesterly line of Southeast Milwaukie Avenue and in said northeasterly line of land of the Southern Pacific Company.

Said portion of land contains an area of 9780 square feet, more or less,

The location of the portion of land herein described is shown tinted yellow on attached print of Portland Div'n. Drawing D-106, rev. 2-6-51.

2. This grant is subject and subordinate to the prior and continuing right and obligation of first party and its successors to use and maintain its entire railroad right of way and property in performance of its public duty as a common carrier and is also subject to the right of first party and its successors to use the herein described land, or any and all parts thereof, for all purposes which are consistent with the enjoyment of the easement for the purposes granted to second party. First party, its successors and assigns, reserves the right to construct tracks, buildings and/or other railroad facilities upon, along and across the above described land without the prior consent of second party; provided, however, first party hereby expressly agrees for itself, its successors and assigns, that prior to such construction of buildings or alterations thereof over the sewer easement hereby granted, plans for such construction or alterations shall be submitted to the City Engineer for his consideration and suggestion.

3. Second party, at its own cost and expense, shall construct and maintain said structure on the above described land. Second party agrees that all work upon or in connection with the said structure shall be done at such times and in such manner so as not to interfere in any way whatsoever with the operations of first party. The plans for the construction of said structure shall be subject to the approval of and satisfactory to first party in advance of any work being performed upon or in connection with the structure by second party and/or its contractor.

In the event first party shall at any time or times require reconstruction, alteration or changes made in the location of said structure, or shall at any time or times construct an additional track or tracks, buildings and other railroad facilities upon said land, second party, at its sole cost and expense, shall reconstruct, alter or make changes in the location of said structure in a manner satisfactory to first party upon receipt of written notice from first party so to do.

4. The rights and privileges hereby granted second party shall lapse and become void if not exercised within one (1) year from the date hereof.

5. This instrument is 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. Second party agrees to reimburse first party for the cost and expense to first party of furnishing any materials or performing any labor in connection with the construction, maintenance and/or removal of said structures, including the installation and removal of any necessary false work beneath first party's tracks and any necessary watchman, flagman and/or inspectors furnished by first party.

7. Should second party, 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 purposes for a continuous period of one year, the right hereby given shall cease to the extent of the use so abandoned or discontinued, and first party shall at once have the right, in addition to but not in qualification of the rights hereinabove reserved, to resume exclusive possession of the said land, or the part thereof the use of which is so discontinued or abandoned.

8. Second party, its agents and employes, shall have the privilege of entry on said premises for the purpose of making necessary repairs to said structure. Second party agrees to keep said premises in a good and safe condition free from waste, so far as affected by second party's operations, to the satisfaction of first party. If second party fails to keep said premises in a good and safe condition free from waste, then first party may perform the necessary work at the expense of second party, which expense second party agrees to pay to first party upon demand.

9. Second party agrees to reimburse first party for any and all assessments which may be levied by order of any authorized, lawful body against the property of first party (and which may have been paid by first party) to defray any part of the cost or expense incurred by second party in connection with the construction and/or maintenance of said structure at the above described location.

10. Second party, so far as it may legally do so, agrees to indemnify and save harmless first party from and against any and all loss, damage, liability, cost and expense which first party may sustain or bear, or to which first party may be put, resulting directly or indirectly in any manner from the construction, maintenance, use and/or removal of said structure and its appurtenances on or beneath the above described premises.

11. Upon termination of the rights and privileges hereby granted, second party, at its own cost and expense, agrees to remove said structure from said premises of first party and restore said premises as nearly as practicable to the same state and condition in which they existed prior to the construction of said structure. Should second party in such event fail, neglect or refuse to so remove said structure and restore said premises, such removal and restoration may

be performed by first party at the expense of second party, which expense second party agrees to pay to first party upon demand.

12. In the event any work upon or in connection with said structure or its appurtenances, to be done upon or adjacent to the tracks and property of first party, should be let to a contractor by second party, such work shall not be begun until such contractor shall have first entered into an agreement with first party, satisfactory to first party and indemnifying first party from and against all claims, demands, costs, loss, damage and liability, growing out of the performance of work to be done by such contractor, and such contractor shall furnish, at the option of and without expense to first party, a good and sufficient reliable surety company bond, in such amount as may be specified by and in a form satisfactory to first party, for the faithful performance of all the terms, covenants, conditions and stipulations contained in said agreement to be entered into with first party by said contractor as here in this paragraph provided, and a certified copy of a policy of Public Liability and Property Damage Insurance, within such limits as may be specified by, and in a form satisfactory to, first party, covering the contractual liability assumed by contractor in said agreement to be entered into with first party by said contractor.

IN WITNESS WHEREOF, said parties have caused these presents to be executed in duplicate the day and year first herein written.

SOUTHERN PACIFIC COMPANY

By \_\_\_\_\_  
Vice-President

Attest \_\_\_\_\_  
Assistant Secretary

Description correct

C.J. Astrue  
For Chief Engineer

CITY OF PORTLAND

By \_\_\_\_\_  
Mayor

Approved as to corporate owner

Attest \_\_\_\_\_  
Auditor

J.B. Braden  
Valuation Officer

By \_\_\_\_\_  
Commissioner of Public works

Form Approved

R. J. Lothrop  
Attorney

Approved as to form:

\_\_\_\_\_  
City Attorney

## ORDINANCE No. 94330

An Ordinance authorizing execution of an agreement with the Southern Pacific Company granting a sewer easement to the City across certain railroad property located near S.E. Division Place between S.E. 9th Avenue and S.E. 11th Avenue, all in the City of Portland, Oregon, authorizing the drawing and delivery of a warrant and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. The Council finds that the City of Portland needs and requires a sewer easement permitting it to construct, maintain and use a sewer pipe line upon, beneath and across the surface of certain property owned by Southern Pacific Company located in the City of Portland near S.E. Division Place between S.E. 9th Avenue and S.E. 11th Avenue, as more particularly described in the form of agreement incorporated by reference hereinbelow as Exhibit "A"; that said company is willing to grant such easement upon payment by the City to said company of the consideration of \$288.00 as provided in said form of agreement and subject to the terms, provisions and conditions set forth in said proposed agreement; that the terms of said proposed agreement are reasonable and it is to the advantage of the City that said agreement should be executed so as to avoid the expense and delay of condemnation proceedings; now, therefore, the Mayor, City Auditor and Commissioner of Public Works be and they hereby are directed to execute on behalf of the City of Portland an agreement with the Southern Pacific Company substantially in accordance with the form of agreement attached hereto, marked Exhibit "A" and by this reference hereby made a part of this ordinance.

Section 2. The City Auditor and the Commissioner of Public Works hereby are authorized upon the delivery of an agreement granting a sewer easement to the City substantially in accordance with Exhibit "A", duly executed and approved as to form as provided in Section 1 hereof, to draw and deliver a warrant payable to Southern Pacific Company in the amount of \$288.00 to be charged to the Sewage Disposal Fund (6350).

Section 3. The City Auditor hereby is directed to have said sewer easement when duly executed and approved as provided in Section 1 hereof, placed on record, and a copy of this ordinance forwarded to the County Assessor

## ORDINANCE No. 94330

Section 4. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: That there should be no undue delay in the acquisition of property rights or easements necessary to the construction of adequate sewage facilities; therefore an emergency hereby is declared to exist and this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, JUN 6 1951

*Lowrey McCullough Lee*  
Mayor of the City of Portland

*Will Gibson.*  
Attest:

Auditor of the City of Portland

**ORDINANCE No. 94330**

**Title**

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THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Bean	/	
Bennett	/	
Bowes	/	
Peterson	/	
Lee	/	

FOUR-FIFTHS CALENDAR	
Bean	
Bennett	
Bowes	
Peterson	
Lee	

<b>INTRODUCED BY</b>
Commissioner Bowes

<b>DRAWN BY</b>
HFA HFA:gm
Date 5/31/51

<b>NOTED BY THE COMMISSIONER</b>
Affairs
Finance
Safety
Utilities
Works WM A BOWES v

City Attorney MCR
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<b>NOTED FOR CITY AUDITOR</b>
JHL

<b>APPROVED</b>
Date
By Chief Civil Engineer
Date
By City Engineer

Filed JUN 8 1951

*Will Gibson.*  
Auditor of the CITY OF PORTLAND

By ROBERT L. McCOY  
Deputy