

RESOLUTION NO. 2911

BE IT RESOLVED BY THE ALBANY CITY COUNCIL that it does hereby accept the following deed:

Grantor

Southern Pacific Transportation Co.

Purpose

A deed granting the right to construct a waterline undercrossing below Southern Pacific railroad tracks on Jackson Street 175 feet south of 9th Avenue, in Albany, Linn County, Oregon.

DATED this 8th day of November, 1989.

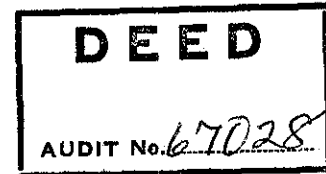
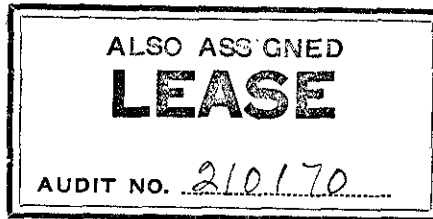


Mayor

ATTEST:



Deputy City Recorder



RELMIS: C-691.06 X (C)

THIS INDENTURE, made this 21st day of September, 1989, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, herein termed "Railroad", and CITY OF ALBANY, a municipal corporation of the State of Oregon, address: P. O. Box 490, Albany, Oregon 97321, herein termed "Grantee";

WITNESSETH:

1. Railroad hereby grants to Grantee, subject to the reservations, covenants and conditions herein contained, the right to construct, reconstruct, maintain and operate an eighteen (18) inch iron water pipeline within a twenty-eight (28) inch steel casing, hereinafter referred to as "structure", in, upon, along, across and beneath property of Albany, in the County of Linn, State of Oregon at Engineer's Station 1310+00, Mile Post 691.06 in the location shown on the print of Railroad's Drawing L-6219-A, sheet No. 1, dated May 26, 1989, attached and made a part hereof.

Said structure shall be installed in accordance with minimum requirements of Form C. S. 1741, also attached and made a part hereof.

As a part consideration for the rights herein granted, Grantee shall pay to Railroad the sum of Four Hundred Thirty-five Dollars (\$435.00).

2. Project markers in form and size satisfactory to Railroad, identifying the facility and its owner, will be installed and constantly maintained by and at the expense of Grantee at Railroad property lines or such locations as Railroad shall approve. Such markers shall be relocated or removed upon request of Railroad without expense to Railroad.

Absence of markers does not constitute a warranty by Railroad of no subsurface installations.

3. There is reserved onto Railroad, its successors and assigns and anyone acting with the permission of Railroad the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation, communication (including fiber optic telecommunication systems) and pipeline facilities and appurtenances in, upon, over, under, across and along said property.

4. This grant is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

5. The rights herein granted to Grantee shall lapse and become void if the construction of said structure upon said property is not commenced within one (1) year from the date first herein written.

6. Grantee shall bear the entire cost and expense of constructing, reconstructing and maintaining said structure upon said property.

Grantee, its agents and employees, subject to the provisions hereof, shall have the privilege of entry on said property for the purpose of constructing, reconstructing, maintaining and making necessary repairs to said structure provided that:

- (a) Grantee shall give Railroad's division superintendent at least five (5) days' written notice prior to commencement of any work on said structure except emergency repairs in which event, Grantee shall notify Railroad's authorized representative by phone; and
- (b) Grantee shall telephone Railroad at 1-800-283-4237 (a 24-hour number) to determine if a telecommunications system is buried anywhere on or about the premises defined or included herein. If it is, Grantee will telephone the owner of the system designated by Railroad, arrange for a cable locator and make arrangements for relocation or other protection for the system prior to beginning any work on the said premises.

Grantee agrees to reimburse Railroad for the cost and expense to Railroad of furnishing any materials or performing any labor in connection with the construction, reconstruction, maintenance and removal of said structure, including, but not limited to, the installation and removal of such falsework and other protection beneath or along Railroad's tracks, and the furnishing of such watchmen, flagmen and inspectors as Railroad deems necessary.

Grantee agrees to reimburse Railroad and/or the owner of the telecommunication system for all expenses which either may incur which expenses would not have been incurred except by the reason of the use of said premises by Grantee, its agents, employees or invitees including relocation costs or any damages incurred by such owner due to the injury to the telecommunication system.

7. In the event Railroad shall at any time so require, Grantee, at Grantee's expense, shall reconstruct, alter, relocate said structure or otherwise improve said structure upon receipt of written notice from Railroad so to do.

8. Grantee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request of Railroad.

Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the premises covered hereunder as a result of Grantee's use, presence, operations or exercise of the rights granted hereunder, Grantee shall, at its expense, be obligated to clean all property affected thereby, whether owned or controlled by Railroad, or any third person, to the satisfaction of Railroad (insofar as the property owned or controlled by Railroad is concerned) and any governmental body having jurisdiction in the matter. Railroad may, at its option, clean Railroad's premises; if Railroad elects to do so, Grantee shall pay Railroad the cost of such cleanup promptly upon the receipt of a bill therefor.

Grantee agrees to investigate, release, indemnify and defend Railroad from and against all liability, cost and expense (including, without limitation, any fines, penalties, judgments, litigation costs and attorney fees) incurred by Railroad as a result of Grantee's breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during the time this indenture is in effect or thereafter, unless such liability, cost or expense is proximately caused solely and exclusively by the active negligence of Railroad, its officers, agents or employees.

9. As part consideration, Grantee agrees to pay Railroad an amount equal to any and all assessments which may be levied by order of any authorized lawful body against the property of Railroad (and which may have been paid by Railroad) to defray any part of the cost or expense incurred in connection with the construction of said structure upon said property commenced within one (1) year from the date first herein written.

10. Grantee agrees to keep said property and said structure in good and safe condition, free from waste, so far as affected by Grantee's operations, to the satisfaction of Railroad. If Grantee fails to keep said property and said structure in a good and safe condition, free from waste, then Railroad may perform the necessary work at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand.

11. No work on Railroad's premises shall be commenced by any contractor for Grantee until such contractor has entered into Railroad's standard Contractor's Right of Entry agreement covering such work.

12. Grantee agrees to and shall indemnify and hold harmless Railroad, its officers, agents, and employees from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind (including reasonable attorneys fees, court costs, and other expenses related thereto) for injury to or death of a person or for loss of or damage to any property, arising out of or in connection with any work done, action taken or permitted by Grantee, its subcontractors, agents or employees under this indenture. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, BOTH GRANTEE AND RAILROAD, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH INDEMNIFIES RAILROAD FOR ITS OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS ACTIVE OR PASSIVE, OR IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE; PROVIDED THAT SAID INDEMNITY SHALL NOT PROTECT RAILROAD FROM LIABILITY FOR DEATH, INJURY OR DAMAGE ARISING SOLELY OUT OF THE CRIMINAL ACTIONS OF RAILROAD, ITS OFFICERS, AGENTS AND EMPLOYEES.

The word "Railroad" as used in this section shall be construed to include, in addition to Railroad, the successors, assigns and affiliated companies of Railroad and any other railroad company that may be lawfully operating upon and over the tracks crossing or adjacent to said structure, and the officers and employees thereof.

13. Should Grantee, its successors or assigns, at any time abandon the use of said property, or any part thereof, or fail at any time to use the same for the purpose contemplated herein for a continuous period of one (1) year, the right hereby given shall cease to the extent of the use so abandoned or discontinued, and Railroad shall at once have the right, in addition to, but not in qualification of the rights hereinabove reserved, to resume exclusive possession of said property or the part thereof the use of which is so discontinued or abandoned.

Upon termination of the rights and privileges hereby granted, Grantee, at its own cost and expense, agrees to remove said structure from said property and restore said property as nearly as practicable to the same state and condition in which it existed prior to the construction of said structure. Should Grantee in such event fail, neglect or refuse to remove said structure and restore said property, such removal and restoration may be performed by Railroad, at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand, or Railroad may, at its option, assume ownership of said structure.

14. The parties intend that the promises and obligations of this indenture shall constitute covenants running with the land so as to bind and benefit their respective successors and assigns.

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

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By *J. Earle*
(Title) Manager
Contracts and Joint Facilities

Attest: *A. L. Adomell*
Secretary

CITY OF ALBANY

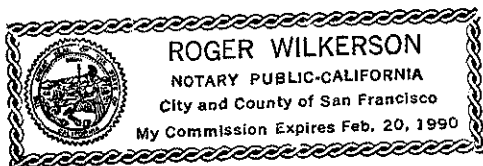
By *Jean Phibourg*
Mayor

By *Speenley*
Clerk

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STATE OF CALIFORNIA)
) ss.
City and County of San Francisco)

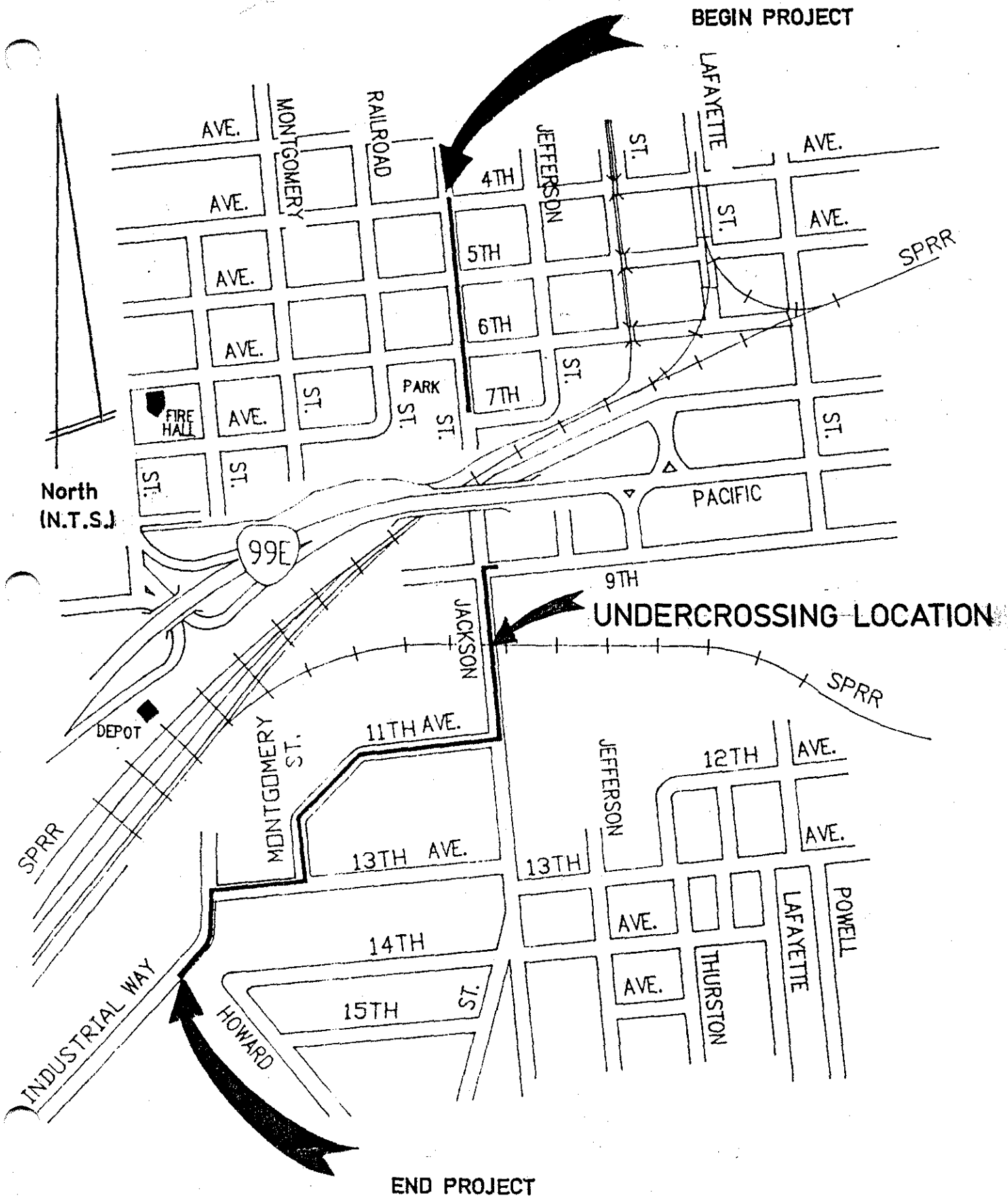
On this 28th day of September in the year One Thousand Nine Hundred and Eighty Nine, before me, Roger Wilkerson, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared, Mr. T. J. Earle, known to me (or proved to me on the basis of satisfactory evidence) to be the MANAGER CONTRACTS AND JOINT FACILITIES, of the Corporation described in and that executed within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named and he acknowledged to me that such corporation executed the same.



Corporation

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year in this certificate first above written.
Roger Wilkerson
Notary Public in and for the City and County of San Francisco, State of California.

RAILROAD WATERLINE PROJECT AREA



Resolution No. 2911

Recorded Document Recorder File No. 0585