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THIS AGREEMENT made this 17th day of February 1944,

by and between OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon Corporation, and UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter called "Railroad Companies"), parties of the first part; CITY OF PORTLAND, a municipal corporation of the State of Oregon (hereinafter called "City"), party of the second part, and the STATE OF OREGON, acting by and through its State Highway Commission (hereinafter called "State"), party of the third part,

W I T N E S S E T H

RECITALS:

Swan Island Access Road Project)hereinafter comprehensively called "project") includes widening of City's present roadway and viaduct and construction of additional roadway and slopes, and will affect properties owned by the Railroad Companies respectively, as shown by map Exhibit A hereto annexed and hereinafter mentioned. Said project will be constructed for the City by the State with the aid of funds provided by the United States, and the City has applied to the Railroad Companies for easements, which the Railroad Companies are willing to grant to the extent hereinafter described and upon and subject to the terms, provisions and conditions hereinafter contained. Union Pacific Railroad Company executes this contract as owner of certain property and also as lessee of the property of Oregon-Washington Railroad & Navigation Company.

NOW, THEREFORE, it is agreed by and between the parties as follows:

Section 1. (a) So far as they lawfully may do so, the Railroad Companies hereby grant to the City, subject to each and all of the terms, provisions, conditions, covenants, reservations and exceptions contained in this agreement, licenses, permits and easements

to construct, maintain, repair, renew and use the following facilities upon, along and across property of the Railroad Companies in the City of Portland, Multnomah County, Oregon:

First: A lateral extension of the City's present viaduct over the Railroad Companies' tracks and right of way in the location described as follows:

A strip of land containing nine hundredths (0.09) of an acre, more or less, being all that part of the right of way of the Oregon-Washington Railroad & Navigation Company, leased to the Union Pacific Railroad Company, situate in the Fred'k. Proebstel Donation Land Claim in Section Twenty-one (21), Township One (1) North, Range One (1) East of the Willamette Meridian in the City of Portland, Multnomah County, Oregon, described as follows, to-wit:

Beginning at the center of said Section Twenty-one (21);

thence North along the north and south center line of said Section a distance of one hundred ninety-eight (198) feet to a point thereon in the center line of N. Going Street in said City of Portland;

thence North eighty-nine degrees and fifty-three minutes West (N. 89 degrees 53' W.) along said center line of N. Going Street, a distance of three hundred nineteen and four hundredths (319.04) feet to a point on the easterly right of way line of said Oregon-Washington Railroad & Navigation Company;

thence South fourteen degrees and eleven minutes East (S. 14 degrees 11' E.) along said easterly right of way line a distance of twenty-four and fifty-six hundredths (24.86) feet to the southeasterly corner of that certain strip of land heretofore granted by said Oregon-Washington Railroad & Navigation Company to the City of Portland, for use in the construction and maintenance of a viaduct by that certain easement agreement dated November 19, 1930, said corner being the true point of beginning of this description:

thence North eighty-nine degrees and fifty-three minutes West (N. 89 degrees 53' W.) along the southerly line of said strip of land heretofore granted to the City of Portland by said easement agreement dated November 19, 1930, a distance of one hundred thirty-four and sixteen hundredths

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(134.16) feet to a point on the westerly right of way line of said Railroad Company;

thence South fourteen degrees and eleven minutes East (S. 14 degrees 11' E.) along said westerly right of way line a distance of twenty-nine and one tenth (29.1) feet to a point thereon;

thence South eighty-nine degrees and fifty-three minutes East (S. 89 degrees 53' E.) a distance of one hundred thirty four and sixteen hundredths (134.16) feet to a point on said easterly right of way line;

thence North fourteen degrees and eleven minutes West (N. 14 degrees 11' W.) along said easterly right of way line a distance of twenty-nine and one tenth (29.1) feet to the true point of beginning.

The property above described is shown and represented by solid yellow tint marked "Propo Temporary Viaduct" on Drawing No. 54057 dated October 23, 1942, hereto annexed, marked "Exhibit A" and by this reference made a part of this agreement.

Second. A public highway upon, along and across the properties of the Railroad Companies in the location described as follows:

An irregular strip of land containing four tenths (0.4) of an acre, more or less, being all that part of the property of said Oregon-Washington Railroad & Navigation Company, leased to the Union Pacific Railroad Company, situate in the James Thompson Donation Land Claim in said Section Twenty-one (21) that lies within lines parallel with and fifteen (15) feet distant measured at right angles and/or radially, on each side of the hereinafter described center line of Swan Island Access Road of the City of Portland as surveyed and located and extending southerly from the north line of said James Thompson Donation Land Claim to the westerly line of N. Greeley Avenue.

All these strips or parcels of land of the Union Pacific Railroad Company, situate in the Fred'k Proebstel Donation Land Claim in Section Twenty-one (21), Township One (1) North, Range One (1) East of the Willamette Meridian in the City of Portland, Multnomah County, Oregon, that lie

within lines parallel with and fifteen (15) feet distant, measured at right angles and/or radially, on each side of said center line of said Swan Island Access Road.

Said center line of Swan Island Access Road hereinabove referred to as surveyed and located over and across said strips or parcels of land and other property being described as follows, to-wit:

Beginning at Access Road Survey Station 8+50 which is a point that is thirty-seven (37) feet distant southerly, measured at right angles to the center line of N. Going Street from a point thereon that is North eighty-nine degrees and fifty-three minutes West (N. 89 degrees 53' W.) a distance of twelve hundred (1200) feet from the north and south center line of said Section twenty-one (21) measured along said center line of N. Going Street;

thence South eighty-nine degrees and fifty-three minutes East (S. 89 degrees 53' E.) a line that is parallel with and thirty-seven (37) feet distant southerly measured at right angles from said center line of N. Going Street a distance of nine hundred fifty-three and one tenth (953.1) feet to Access Road Survey Station 18+03.1;

thence southeasterly and southerly along a curve to the right having a radius of two hundred forty and forty-nine hundredths (240.49) feet a distance of three hundred ninety-one and five tenths (391.5) feet to Access Road Survey Station 21+94.6, the long chord of said curve bearing South forty-two degrees and fifty-four minutes East (S. 42 degrees 54' E.) a distance of three hundred forty-nine and one tenth (349.1) feet;

thence South four degrees and five minutes West (S. 4 degrees 05' W.) a distance of forty-three and four tenths (43.4) feet to Access Road Survey Station 22+38.0;

thence southeasterly along a curve to the left having a radius of five hundred seventy-three and sixty-nine hundredths (573.69) feet a distance of four hundred fifteen and six tenths (415.6) feet to Access Road Survey Station 26+53.6, the long chord of said curve bearing South sixteen degrees, forty-one minutes and forty-five seconds East (S. 16 degrees 41' 45" E.) a distance of four hundred six and fifty-three hundredths (406.53) feet;

thence South thirty-seven degrees twenty-eight minutes and thirty seconds East (S. 37 degrees 28' 30" E.) a distance of one-hundred eight and seven tenths (108.7)

feet to Access Road Survey Station 27+62.3 which is a point thereon that is South fifty-two degrees, thirty-one minutes and thirty seconds West (S. 52 degrees 31' 30" W.) a distance of nineteen (19) feet from the center line of N. Greeley Avenue at a point thereon designated as Survey Station 31+56.42 thereof.

The premises last above described are represented and shown on map Exhibit A by yellow tint (excepting "Proposed Temporary Viaduct" hereinbefore described) in so far as they lie within property owned by Oregon-Washington Railroad & Navigation Company and by red tint in so far as they lie within property of Union Pacific Railroad Company.

Third: Slopes for said public highway upon and within that part of Oregon-Washington Railroad & Navigation Company property tinted green on map Exhibit A, and upon and within that part of Union Pacific Railroad Company property tinted blue on map Exhibit A.

(b) Said premises of the Railroad Companies shall be used by the City solely for the purposes of aforesaid and not otherwise, and if at any time the property of the Railroad Companies hereinbefore in this section mentioned or any part thereof shall permanently cease to be used for the purposes aforesaid or shall be used for purposes unauthorized hereby, then the easement hereby granted as to such property or parts thereof shall cease and terminate.

(c) The rights hereby granted shall be and are subject to all outstanding superior rights, whether public or private, and any

and all extensions and renewals thereof. The Railroad Companies reserve the right to use the property hereinbefore mentioned for any and all purposes not inconsistent with the license, permit and easement hereby granted, and particularly reserve the right, subject to said easement, to construct additional track, tracks, or facilities upon, along and across the area mentioned, at any time and from time to time when the Railroad Companies determine so to do.

(d) The City, without expense to the Railroad Companies, shall acquire all such property outside of the property of the Railroad Companies as may be necessary for the said project and appurtenances thereof.

(e) The State shall enjoy the benefit of the foregoing license, permit and easement granted to the City, so far as may be necessary or convenient for the construction of said project upon, along and across the property of the Railroad Companies.

Section 2. The State in substantial conformity with detailed plans and specifications to be prepared by it and submitted to and approved by the Railroad Companies before commencement of the work and in conformity with the Act of Congress known as the Defense Highway Act of 1941, approved November 19, 1941, and regulations issued or to be issued thereunder, shall with reasonable dispatch furnish all material and labor for and perform and complete all grading, excavation, construction and other work, and construct and complete as expeditiously as possible, the aforesaid Swan Island Access Road Project, including extension of said viaduct over and across the right of way and tracks

of the Railroad Companies, above the surface thereof, all in the locations described in Section 1 of this agreement, together with all appurtenances thereof and facilities for drainage thereof.

Said work shall be completed in a substantial and permanent manner and placed in such condition as not to interfere with or endanger the Railroad Companies' properties or operations. Any and all falsework shall be removed from the premises by the State upon completion of the project.

The approval of said plans and specifications by the Railroad Companies shall not operate to relieve the State from any responsibility for the safe, suitable and adequate construction of said Swan Island Access Road Project and appurtenant facilities. The expense of said project shall be borne and paid in accordance with said Defense Highway Act of 1941 and regulations issued or to be issued thereunder. The Railroad Companies shall not be obligated or required to pay or bear any part of the cost of said project. Unless regulations are issued by federal authorities under said Defense Highway Act of 1941, the Railroad Companies shall in any event be reimbursed for all expenditures in connection with said project (including expenditures contemplated by Section 4 hereof) which would be allowed and not prohibited by General Administrative Memorandum No. 39, and supplemented by General Administrative Memorandum No. 100, issued by the Public Roads Administration, and amendments and supplements thereto. In the event that prior to the completion of the work contemplated and covered by this agreement regulations are issued by the federal

authorities under said Defense Highway Act of 1941, which are more liberal to the Railroad Companies in their terms than are General Administrative Memoranda No. 39 and 100, and supplements and amendments, then said regulations under the Defense Highway Act of 1941 shall govern and the Railroad Companies shall have the benefit thereof; otherwise said General Administrative Memoranda No. 39 and 100 and amendments and supplements thereto shall govern.

Section 3. From and after the completion of said project, the City at its own expense and without cost or expense to the Railroad Companies, shall and at all times maintain and keep all of the facilities of said project and appurtenances thereof, and each and every part thereof, in good condition and repair so as not to damage, interfere with or endanger the property or operations of the Railroad Companies.

Section 4. The following work shall be performed at the expense of the State by the Railroad Companies and/or the Western Union Telegraph Company (hereinafter called "Telegraph Company") and with respect thereto the Railroad Companies and/or said Telegraph Company, as the case may be, shall be entitled to protect themselves at the expense of the State with appropriate insurance coverage, in accordance with Works Program General Memorandum No. 32, dated January 27, 1937;

- (1) Make such rearrangements of telephone and telegraph wire as may be required.
- (2) Provide such flagmen, watchmen and inspection service as is necessary to safeguard railroad operations during construction.

- (3) Such other work as shall be required by the Railroad Companies in the ordinary and customary performance of construction of the project.

The State shall and will reimburse the Railroad Companies and/or the Telegraph Company for the expenses in this section mentioned, promptly upon receiving bill or bills therefor.

Changes, alterations and removals, either temporary or permanent, of the tracks, structures, telephone, telegraph, signal or other wires, poles, fences and other facilities and appurtenances of the Railroad Companies or the Telegraph Company, necessitated or required in the judgment of either or both the Railroad Companies and said Telegraph Company, by the prosecution of the State's work or work incidental thereto and not otherwise provided for in this agreement, may and shall be made by the Railroad Companies or the Telegraph Company, respectively, at the expense of the State.

Section 5. All work of the State and the City contemplated and provided for in this agreement shall be performed and accomplished without interruption to or delay of operations of the Railroad Companies and without interruption to or delay of continuous railroad traffic.

Section 6. If the Railroad Companies at any time construct or desire to construct additional tracks or other facilities or appurtenances or improvements of any kind or nature whatsoever, on any of the property involved, thereby necessitating the removal or relocation of the public road or slopes described in Section 1 hereof, the City shall make such removal or relocation without expense to the Railroad Companies; provided that if in the judgment

of the Railroad Companies and the City it is practical to accomplish the desired result by means of retaining walls, the City at its own expense shall construct and maintain such walls to the satisfaction of the Railroad Companies. Said roadway and slopes shall not be widened except by mutual agreement between the Railroad Companies and the City, and if the Railroad Companies consent to such widening, they shall have the right to require the City at the expense of the City, to construct and maintain retaining wall or walls satisfactory to the Railroad Companies, for the protection of the Railroad Companies' property. The State, in the construction, and the City in the maintenance of the project, shall at all times preserve a clearance of not less than twenty-five (25) feet between the toe of roadway slopes and the center line of the nearest railroad track.

Section 7. The Railroad Companies reserve and at all times shall have the right to protect their tracks, properties and facilities from and against slides of earth, rock or other material from said roadway or slopes, or resulting from the presence of said roadway or slopes of the project in the location hereinbefore described, and to remove such earth, rock or other material therefrom at the expense of the City. In such event the City at its own expense will take all action necessary to protect and preserve its roadway and slopes from further slides, and shall not hold the Railroad Companies responsible therefor.

Section 8. It is understood and recognized that safety and continuity of railroad and telegraph operations are of the utmost importance, and in order that same may be adequately safe-

guarded, protected and insured, and in order that accidents may be prevented and avoided, it is agreed with respect to said project:

(1) Neither the State nor the City nor its or their contractors or subcontractors shall do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay the maintenance or operation of tracks or facilities of the Railroad Companies.

(2) The State or the City, as the case may be, each at its own expense shall adequately police and supervise all work to be performed by it hereunder, shall regulate the conduct of same in such manner that the prosecution thereof will not endanger, interfere with, hinder or delay the operations of the Railroad Companies and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad Companies may be responsible or to property of the Railroad Companies.

(3) If at any time the Railroad Companies and the Chief Engineer of the Oregon State Highway Commission or (in case of work performed by the City) the City Engineer or his authorized representative shall be of the opinion that any work contemplated by this agreement is being or is about to be done or prosecuted without due regard and precaution for safety and security, the State or the City, as the case may be, shall cause such work to be suspended until suitable, adequate and proper protective measures are adopted and provided.

(4) Neither the State nor the City in performing the work to be done by them respectively shall suffer or permit debris to foul the drainage ditches or ballast or road bed of the Railroad Companies, and, if such debris is cast thereon, the State or the City, whichever is responsible therefor, shall immediately

remove same at its own expense.

(5) The State at its own expense will provide and the City at its own expense will maintain suitable facilities for draining said project, and shall not suffer or permit drainage waters therefrom to flow or collect upon property of the Railroad Companies.

(6) Neither the State nor the City shall place any explosive or combustible material upon, along or about the premises of the Railroad Companies, or erect any structure thereon except said viaduct extension and temporary falsework therefor, or cause or permit the view along the tracks of the Railroad Companies to be obstructed, or obstruct or interfere with the drainage ditches of the Railroad Companies.

(7) To the extent the State shall find it necessary to excavate from existing slopes adjacent to the tracks of the Railroad Companies or to create new slopes for the accommodation of said project, the State shall so excavate from existing slopes and construct new slopes that the pitch of same shall not be excessive, nor create undue hazards of slides or falling rock, nor impair or endanger the clearance between said existing or new slopes and the tracks of the Railroad Companies.

(8) Before commencing any work to be done by them respectively hereunder upon or about said project, the State or the City, as the case may be, or those acting under their authority, shall give reasonable notice of the time when such work shall commence to the Resident Engineer or the Superintendent of the Railroad Companies and shall cooperate with said representatives of the Railroad Companies in every reasonable way for the adequate

protection of railroad facilities and operations during the progress of said work.

(9) The benefits of this section shall inure to The Western Union Telegraph Company as fully and to the same extent as if it were named herein and made a party hereto.

Section 9. In the event the State performs all or any part of the work to be performed by it under this agreement through a contractor or contractors, the State shall require such contractor or contractors, before beginning work, to furnish for and in behalf of the Railroad Companies and the Telegraph Company suitable and satisfactory Protective Public Liability Insurance and Protective Property Damage Liability Insurance conforming to the requirements of Works Program General Memorandum No. 32, signed by the Chief of the Bureau of Public Roads and dated January 27, 1937, said Protective Liability Insurance providing for a limit of not less than One Hundred Thousand Dollars (\$100,000.00) for all damages arising out of bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of Two Hundred Thousand Dollars (\$200,000.000) for all damages arising out of bodily injuries to or death of more than one person in any one accident, and said Protective Property Damage Liability Insurance shall provide for a limit of not less than Twenty-five Thousand Dollars (\$25,000) for all damages arising out of injury to or destruction of property in any one accident, and, subject to that limit, a total (or aggregate) limit of Fifty Thousand Dollars (\$50,000.00) for

all damages arising out of injury to or destruction of property during the period of the work. Said policy or policies shall be delivered to and remain in the possession of the Railroad Companies. The term "persons" as herein used shall include passengers of the Railroad Companies and employees of the Railroad Companies and/or the Telegraph Company as well as other persons, and the term "property" as herein used shall include property in the custody of the Railroad Companies and property of the Railroad Companies and/or the Telegraph Company as well as other property.

Section 10. In the event that an inspector is assigned to said work by the Railroad Companies, all suggestions and recommendations made by such inspector for the protection and safety of the property and operations of the Railroad Companies shall be given due consideration by the State or by the City, as the case may be, but the presence of said inspector shall not in any manner or to any extent relieve the State or the City from responsibility for the safe conduct of said work and adequate policing and supervision thereof.

Section 11. All expenses incurred by the Railroad Companies or the Telegraph Company in connection with said project, which by the terms of the contract shall be collectible from the State, shall be the amounts actually expended or incurred by the Railroad Companies or the Telegraph Company in connection with labor, materials, supplies, tools, or equipment used, furnished or expended in performance of work to be done in fulfillment of their obligations hereunder.

Reimbursement to be paid by the State to the Railroad Companies or the Telegraph Company for work done or items furnished by the Railroad Companies or the Telegraph Company shall cover only, and shall be limited to, such items as are authorized and are not excluded as cooperative items by the Defense Highway Act of 1941, and regulations issued or to be issued thereunder, or by General Administrative Memoranda No. 39 and 100 and amendments and supplements thereto, which ever are more liberal to the Railroad Companies or the Telegraph Company.

Section 12. At the close of each month during the progress of construction, the Railroad Companies and Telegraph Company may render to the State a statement of all expenditures incurred by the Railroad Companies and/or the Telegraph Company in connection with the project which are collectible from the State under the terms of this agreement; and, within thirty (30) days thereafter, the State agrees to pay to the Railroad Companies and Telegraph Company ninety per cent (90%) thereof. At the completion of the project and upon receipt of final billing from the Railroad Companies and the Telegraph Companies showing all expenditures incurred by the Railroad Companies and Telegraph Company in connection with the project which are collectible from the State under the terms of this agreement, the State agrees to submit same to the proper federal authority for audit as to collectibility under the aforesaid law and regulations, and to make full and complete payment to the Rail-

road Companies and Telegraph Company in accordance with the findings of such audit.

Section 13. Should the State or the City fail, refuse, or neglect to do, keep, observe and perform each and all of the terms, provisions and conditions of this agreement, the Railroad Companies may at their option terminate the same and all rights hereby granted, by giving to the State and City written notice of their intention so to do on any date in such notice stated, not less, however, than ninety (90) days after the date on which such notice is given.

Section 14. This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first herein stated.

OREGON-WASHINGTON RAILROAD &
NAVIGATION COMPANY
UNION PACIFIC RAILROAD COMPANY

By _____
Vice-President

Attest:

Assistant Secretary

STATE OF OREGON
STATE HIGHWAY COMMISSION OF OREGON

Recommended for Approval

By _____
Chairman

Asst. State Highway Engineer

Commissioner

Attest:

Commissioner

Secretary

CITY OF PORTLAND

By _____
Mayor

(FOR MAP SEE ORIGINAL ORDINANCE)

ORDINANCE NO. 79683

An Ordinance authorizing execution on behalf of the City of an agreement with O. W. R. & N. Company, Union Pacific Railroad Company and State of Oregon providing for road or street access to Swan Island, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. It appearing to the Council that in order to provide road or street access to Swan Island it became necessary to negotiate for a right to cross the property of the Oregon-Washington Railroad & Navigation Company and Union Pacific Railroad Company; that this road or street access is provided in co-operation with the State of Oregon, acting through its Highway Commission; that a form of agreement has been prepared for said matter, a copy of which is hereto attached, marked Exhibit "A", and that said agreement should be executed; now, therefore, the Mayor and the Commissioner of Public Works are hereby authorized on behalf of the City of Portland to execute said agreement in triplicate.

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: That no unnecessary delay should prevent a prompt execution of said agreement; 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 9 1944

R. E. Riley
Mayor of the City of Portland

Attest:

John B. Bowes
Auditor pro tem of the City
of Portland

L.E.L.
Commissioner Bowes

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R. S. C.

Ordinance No. 79683

An Ordinance authorizing execution on behalf of the City of an agreement with O.W.R. & N. Company, Union Pacific Railroad Company and State of Oregon providing for road or street access to Swan Island, and declaring an emergency.

W.A.B.

Thursday

APPROVED

MAR 3 1944

By L. G. Apperson
Chief of Bureau of Construction
Reg. Prof. Engr. 219

APPROVED

MAR 3 1944

By Ben S. Morrow
City Engineer
Reg. Prof. Engr. No. 1152

THE FOLLOWING IS THE
OFFICIAL VOTE ON THE
FOREGOING ORDINANCE

	YEAS	NAYS
DOWES	/	
COOPER	/	
LEE	/	
PETERSON	/	
RILEY	/	

Filed MAR 9 1944

John Brockmeier
Auditor pro tem
of the CITY OF PORTLAND

By ELBERT G. ROFF
Deputy