

Exhibit "A"

THIS AGREEMENT made and entered into this day of _____, 1948 by and between OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, and its lessee UNION PACIFIC RAILROAD COMPANY, a Utah corporation, (hereinafter collectively called "Railroad Companies"), parties of the first part and the CITY OF PORTLAND, a municipal corporation of the State of Oregon (hereinafter called "City"), party of the second part,

W I T N E S S E T H:

RECITALS:

The City desires to construct, maintain, repair and use N. E. 27th Avenue as a public street or highway upon, along and across the property of the Railroad Companies in Portland, Oregon in the location hereinafter described and has requested the Railroad Companies to grant an easement therefor. The Railroad Companies are willing to grant and donate such easement upon and subject to the terms, provisions and conditions hereinafter stated:

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, donate, convey and confirm to the City, subject to each and all of the terms, provisions, conditions, covenants, exceptions and reservations hereinafter contained, license, permit and easement to construct, maintain, repair, renew and use a public street (hereinafter called "Street"), upon, along and across the surface of the Railroad Companies' property in the City of Portland, County of Multnomah, State of Oregon, in the location described as follows:

A strip or parcel of land 60 feet wide situate in the William H. Payne Donation Land Claim No. 65, in Section 13, Township 1 North, Range 1 East of the Willamette Meridian, in Multnomah County, Oregon, and being all that part of the right of way of the Oregon-Washington Railroad & Navigation Company, leased to the Union Pacific Railroad Company, described as follows:

Beginning at the point of intersection of the east line of N.E. 27th Avenue, 60 feet wide, of the City of Portland, Multnomah County, Oregon, with the northerly right of way line of said Oregon-Washington Railroad & Navigation Company, leased to the Union Pacific Railroad Company, said northerly right of way line being parallel with and 40 feet distant northerly, measured at right angles, from the center line of the main track of said Railroad Company as now constructed and operated; said point of intersection also being the southwest corner of Block 101 of Irvington Park, an addition to the City of Portland; thence southerly along the east line of said N.E. 27th Avenue, produced southerly, which is a straight line that forms an angle of $74^{\circ}29'$ from east to south with said center line of main track, a distance of 83.03 feet to a point in the southerly right of way line of said Railroad Company that is 40 feet distant southerly, measured at right angles from said center line of main track; thence westerly along said southerly right of way line, which is a straight line that is parallel with and 40 feet distant southerly, measured at right angles, from said center line of main track, a distance of 62.27 feet to a point in the west line of said N.E. 27th Avenue, produced southerly; thence northerly along said west line of N.E. 27th Avenue, produced southerly, a distance of 83.03 feet to a point in said northerly right of way line of said Railroad Company, which point is also the southeast corner of Block 100 of said Irvington Park; thence easterly along said northerly right of way line a distance of 62.27 feet to the point of beginning.

The premises hereinbefore described are shown and represented by yellow color on map dated January 19, 1948, hereto attached, marked "Exhibit A" and by this reference made a part of this agreement.

(b) The above-described premises shall be used by the City solely for the purposes aforesaid and not otherwise, and if at any time the property of the Railroad Companies hereinbefore in this section described, or any part thereof, shall permanently cease to be used for said purposes or shall be used for purposes unauthorized hereby, then the license, permit and easement herein granted shall as to such property or part thereof forthwith cease and terminate. Non-user for said purposes for a continuous period of one year shall be and constitute conclusive evidence of abandonment by the City. The Railroad Companies by this instrument neither grant nor

intend to grant any greater estate or right than that hereinbefore expressly described, to-wit, a license, permit and easement for the purposes aforesaid.

(c) The rights hereby granted are subject to any and all outstanding superior rights, whether public or private, and any and all extensions and renewals thereof.

(d) The Railroad Companies reserve the right to use the property hereinbefore described for any and all purposes not inconsistent with the license, permit and easement hereby granted, including but not limited to the right to maintain, repair, renew, use, operate, change and alter any and all existing tracks and facilities upon, across or within the property hereinbefore described and to construct, maintain, repair, renew, use, operate, change and alter such additional track, tracks and facilities upon, across or within said property as the Railroad Companies may from time to time deem necessary or desirable. The City shall not do or permit to be done anything which will or may interfere with the exercise by the Railroad Companies of the rights aforesaid. It is expressly understood and agreed that the rights hereby granted to the City shall be and are subject and subordinate to the paramount use of the above described property by the Railroad Companies for railroad purposes and purposes incidental thereto.

(e) The City shall never suffer or permit the property of the Railroad Companies hereinabove in this section described or any part thereof to be used by any person, persons, company or companies other than the Railroad Companies for railroad purposes or for any purposes incidental thereto and shall not grant any right, franchise or privilege therefor without the written consent of the Railroad Companies thereto.

(f) The City shall and will assume, bear and pay all taxes and assessments of whatsoever kind or nature, whether general, local or special, hereafter during the term of this agreement levied or assessed upon or against the property hereinbefore in this section described, excepting taxes levied upon and against the same as a component part of the Railroad Companies' property in the State of Oregon as a whole.

Section 2. The City at its own expense shall construct and thereafter maintain, repair and renew said Street in good condition and repair and in such manner

as not to interfere with use by the Railroad Companies of their property, except that the Railroad Companies at their own expense will plank or pave the Street between the rails of their present tracks and for one foot outside of each rail and maintain the same.

Section 3. The City shall and will assume, bear and pay the expense of any and all temporary or permanent changes or relocations of the facilities of the Railroad Companies which may in the judgment of the Railroad Companies be desirable to accommodate the Street mentioned in Section 1 hereof.

Section 4. It is understood and recognized that safety and continuity of railroad operations are of the utmost importance and in order that same may be adequately safeguarded, protected and assured and in order that accidents may be prevented and avoided, it is agreed:

(1) The City at its own expense shall construct and thereafter keep, maintain, repair and renew said street in a good and workmanlike manner and in a safe and stable condition so as not to endanger or interfere with the property or operations of the Railroad Companies.

(2) Neither the City nor its 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 the Railroad Companies' line of railroad or appurtenant facilities.

(3) The City at its own expense shall adequately police and supervise all work of construction, maintenance, repair and renewal and other work in connection with said Street and shall regulate and conduct the same in such manner that the prosecution thereof shall not endanger, interfere with, hinder or delay the operations of the Railroad Companies and shall not inflict injury to persons or damage to property upon or about the Railroad Companies' premises.

(4) If at any time the Resident Engineer or Superintendent of the Railroad Companies shall be of the opinion that any work of construction, maintenance, repair, renewal or other work in connection with said Street is being or about to be prosecuted without due regard and precaution for the safety and security of the

Railroad Companies, the City shall upon receiving notice from the Railroad Companies to that effect, cause such work to be suspended until suitable and adequate protective measures are adopted and provided.

(5) The City shall not permit debris incidental to the construction, maintenance, repair or renewal of said Street to foul the drainage ditches or ballast or roadbed of the Railroad Companies and if any such debris shall be cast thereon the City shall immediately remove the same at its own expense.

(6) The City at its own expense shall provide suitable facilities for draining said Street and shall not suffer or permit drainage water from same to flow upon or collect upon other property of the Railroad Companies.

(7) The City shall place no combustible material upon or about the premises of the Railroad Companies nor erect any structures thereon nor cause or permit the view along the tracks of the Railroad Companies to be obstructed nor obstruct or interfere with the drainage ditches of the Railroad Companies.

Section 5. If the City or its contractors, sub-contractors, agents, servants or employes, shall in the performance of any work of construction, maintenance, repair or renewal or other work upon or about or in connection with said Street, injure, damage or destroy any property of the Railroad Companies or of any railroad or terminal companies from time to time lawfully operating upon tracks of the Railroad Companies or of any other corporation, person or firm lawfully occupying the premises of the Railroad Companies, the City shall restore and/or replace such damage at its own cost and expense.

Section 6. So far as it lawfully may do so, the City shall protect, indemnify and save and hold harmless the Railroad Companies and any railroad or terminal companies from time to time lawfully operating upon the tracks of the Railroad Companies, and each of them, from and against any and all loss, cost, damage, expense and liability by reason of injury to or death of persons whomsoever (including officers, agents, servants, employes and passengers of the Railroad Companies or such other railroad or terminal companies as well as other persons) and/or damage to or destruction of property

whatsoever (including property of or in the custody of the Railroad Companies or such other railroad or terminal companies as well as other property), directly or indirectly caused by or in any manner resulting from any act or omission of the City or of its contractors, subcontractors, agents, servants or employees in the construction or maintenance, repair, renewal or use of said Street.

Section 7. If the City shall fail, refuse or neglect faithfully to do, keep, observe and perform each and all of the terms, provisions, conditions and covenants of this agreement, the Railroad Companies may, upon giving to the City ninety (90) days' written notice of their intention so to do, terminate the license, permit and easement hereinbefore granted and all rights of the City in, to, under and by virtue of the same and may have any other remedy available in the premises. Upon the termination of this agreement the City at its own expense shall and will promptly restore the Railroad Companies' property to the condition in which it was before construction of the Street.

Section 8. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; but the City shall not assign this agreement or any interest herein or right hereunder without the written consent of the Railroad Companies first had and obtained.

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

OREGON-WASHINGTON RAILROAD &
NAVIGATION COMPANY
UNION PACIFIC RAILROAD COMPANY

Attest:

By _____
President

Assistant Secretary

CITY OF PORTLAND

Attest:

By _____
Mayor

City Auditor

ORDINANCE No. 87211

An Ordinance authorizing the execution of an agreement with the Oregon-Washington Railroad & Navigation Company and the Union Pacific Railroad Company in which an easement for the extension of N.E. 27th Avenue over the railroad right of way on N.E. 27th Avenue shall be granted to the City, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. The Council finds that the Oregon-Washington Railroad & Navigation Company and its lessee, the Union Pacific Railroad Company, own and control a railroad right of way adjacent to N.E. Lombard Street at N.E. 27th Avenue, and maintain tracks thereon; that said Railroad Companies have offered to the City an easement over said right of way for street purposes, so that N.E. 27th Avenue may be extended and traffic may proceed on N.E. 27th Avenue across N.E. Lombard Street; that the public convenience will be served thereby and that said easement should be accepted; now, therefore, the Mayor and Auditor be and they hereby are authorized to execute on behalf of the City an agreement relating to said easement substantially in the form of agreement attached hereto, marked Exhibit "A" and hereby made a part of this ordinance, and to deliver said agreement to said Railroad Companies.

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 undue delay should prevent the prompt acceptance of such easement to facilitate traffic; 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, MAY 20 1948

Earl Lacey
Mayor of the City of Portland

Attest:

Will Gibson

Auditor of the City of Portland

Calendar No. 2345

ORDINANCE No. 87211

Title

An Ordinance authorizing the execution of an agreement with the Oregon-Washington Railroad & Navigation Company and the Union Pacific Railroad Company in which an easement for the extension of N.E. 27th Avenue over the railroad right of way on N.E. 27th Avenue shall be granted to the City, and declaring an emergency.

Thursday

INTRODUCED BY
Commissioner Bowes

DRAWN BY
MCR-eh
Date April 28, 1948

NOTED BY THE COMMISSIONER	
Affairs	
Finance	
Safety	
Utilities	
Works	Bowes

City Attorney MCR

NOTED FOR CITY AUDITOR
FSI

APPROVED
Date 4-30-48
By L. G. Apperson
Chief Civil Engineer
Date 4-30-48
By Ben S. Morrow
City Engineer

THE COMMISSIONERS VOTED
AS FOLLOWS:

	Yeas	Nays
Bowes	/	
Cooper	/	
Lee	/	
Peterson	/	
Riley	/	

FOUR-FIFTHS CALENDAR

Bowes	
Cooper	
Lee	
Peterson	
Riley	

MAY 25 1948

Filed

File Gibson.
Auditor of the CITY OF PORTLAND

ELBERT G. ROFF

By
Deputy