

**AGREEMENT REGARDING ABANDONMENT OF OUTFALL FACILITY AND  
RELEASE OF CLAIMS**

THIS AGREEMENT REGARDING ABANDONMENT OF OUTFALL FACILITY AND RELEASE OF CLAIMS (this "**Agreement**") is entered into as of the Effective Date (as that term is defined below) by and between ZRZ REALTY COMPANY, an Oregon corporation ("**ZRZ**"), and the CITY OF PORTLAND, an Oregon municipal corporation ("**City**"). ZRZ and the City are sometimes referred to in this Agreement individually as a "**Party**" or collectively as the "**Parties**."

**RECITALS**

- A. ZRZ is the record owner of certain real property described on Exhibit A attached to this Agreement (the "**ZRZ Property**").
- B. A stormwater conveyance extends from SW Moody Ave. to the Willamette River across the ZRZ Property ("**Outfall 6**"). For purposes of this Agreement, Outfall 6 refers to the original brick line ("**Brick Line**") that lies within the vacated Woods Street right of way extending riverward from SW Moody Ave. and an extension constructed at a later date between the Brick Line and the Willamette River ("**Extension**").
- C. When the City vacated Woods Street (City Ordinance No. 48712, December 31, 1925) the City reserved the right to continue to maintain any sewer, water main or conduit of any kind within the vacated right of way, but Outfall 6 is the only such improvement existing within the former right of way.
- D. The Extension is in disrepair, does not meet City engineering standards and would require replacement to be brought to conformance with current engineering standards.
- E. ZRZ desires to have the City fully release and remise any right or interest it may have in the vacated SW Woods Street right of way..
- F. Pursuant to the Remedial Action Record of Decision Zidell Waterfront Property ECSI No. 689 dated June 2005 ("**ZRZ ROD**"), ZRZ plans to construct a sediment cap on a portion of the submerged and submersible lands of the Willamette River situated adjacent to the ZRZ Property and may conduct remedial activities in the adjacent upland areas. ZRZ is entering into this Agreement in order to implement the required terms of the ZRZ ROD related to source control measures, and related to required post-construction conditions to preserve and protect the structure of the sediment cap.
- G. ZRZ intends to commence construction of the sediment cap in July of 2011.
- H. Outfall 6 is in the vicinity of ZRZ's upland activities and discharges to the area of the Willamette River that is expected to be capped.

## AGREEMENT

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NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated into the terms of this Agreement, and of the terms, covenants, and conditions set forth in this Agreement and the mutual benefits to be derived therefrom by the Parties, ZRZ and the City hereby agree as follows.

### 1. Release of Claims.

- 1.1 Effective upon the City's Completion (as defined below) of the Redirection Work, ZRZ, Zidell Marine Corporation, and Tube Forgings of America, Inc agree to release the City from any and all claims that each may have against the City with respect to liability for (a) maintenance, operation, or the continued existence of Outfall 6 and (b) any contaminants or other substances which remain within the Brick Line after, or which were or are released from Outfall 6 into the soil of the ZRZ Property before or after, Completion of the Redirection Work and the Brick Line Abandonment Work.
- 1.2 Effective upon ZRZ's Completion (as defined below) of the Brick Line Abandonment Work, the City agrees to release ZRZ, Zidell Marine Corporation, and Tube Forgings of America, Inc. from any and all claims that it may have against any or all of such parties with respect to liability for (a) maintenance, operation, or the continued existence of Outfall 6 and (b) any contaminants or other substances which remain within the Brick Line after, or which were or are released from Outfall 6 into the soil of the ZRZ Property before or after, Completion of the Redirection Work and the Brick Line Abandonment Work.
- 1.3 Notwithstanding the foregoing, neither of the foregoing releases includes any release of claims with respect to, and no release of claims shall be deemed given with respect to, contaminants or other substances released from Outfall 6 into the submerged and/or submersible lands of the Willamette River adjacent to the ZRZ Property or into the sediment of the Willamette River, or which have entered the groundwater under the ZRZ Property or such submerged and/or submersible lands.

### 2. City Obligations

- 2.1 The City, at its sole cost, expense and liability will redirect stormwater discharges, other than ZRZ's, from Outfall 6 in substantial compliance with the Mutually Agreed Schedule described in Section 6 of this Agreement ("**Redirection Work**"). The Redirection Work includes design and construction associated with re-alignment of existing storm sewers within and near SW Moody Ave. including the property owned by GHS LLC (or its successor or assign) that discharge through Outfall 6, design and construction associated with abandonment of the existing diversion manhole within SW Moody Ave., restoration of pavement as required for these tasks, sealing the upstream terminus of the Brick Line, and mitigation costs of offsetting these stormwater flow amounts from the City's parallel interceptor line.
- 2.2 In substantial compliance with the Mutually Agreed Schedule, the City will issue a public works permit ("**Public Works Permit**") to ZRZ to conduct the Brick

Line Abandonment Work as described in Section 3.3. The City agrees that any City fees or charges associated with the issuance of the Public Works Permit shall be shared equally by the Parties.

- 2.3 The City will provide notice of its design and construction schedule for the Redirection Work to ZRZ and attend coordination meetings, provide engineering design data and provide other pertinent collection system information as reasonably requested by ZRZ or otherwise required pursuant to this Agreement.
- 2.4 The City is responsible for all costs associated with removal, renovation decommissioning, or any other costs whatsoever related to the Redirection Work, specifically including without limitation any costs associated with work required by state or federal environmental laws. -The City and ZRZ will share the costs associated with the Brick Line Abandonment Work in accordance with Section 4 of this Agreement.
- 2.5 The City will grant ZRZ a temporary license for entry in the City right of way for SW Moody Ave. for purposes of accessing the upstream terminus of the Brick Line in SW Moody Ave. ZRZ agrees to coordinate with the City in order to minimize interference with the City's use and operation of the right of way, including by limiting ZRZ's, and its representatives', employees', agents', and contractors' (or any other person acting by, through, or for ZRZ) ingress and egress to, from, and upon, the City right of way to the areas designated by the City for such purposes.
- 2.6 The City hereby gives consent, to the extent necessary, to ZRZ's entry and encroachment within the vacated right of way of former Woods Street for purposes of ZRZ's construction of a vegetated stormwater infiltration basin in order to reroute and infiltrate stormwater currently discharging to Zidell Outfall 2 and City Outfall 6 in accordance with the following. ZRZ proposes to retrofit existing catch basins and install new storm lines to convey stormwater into the infiltration basin. The top of the basin is currently planned to extend approximately 140 feet in length and 72 feet in width, while the bottom dimensions are planned to be approximately 120 feet by 50 feet. The area of the basin that is within the easement is approximately 3,958 square feet. To allow for gravity-piped flow into the basin, the basin depth was set at 3 feet at the shallow (northern) end and 4 feet at the deep (southwest corner) end. Infiltration basin growing medium and vegetation will be according to the 2008 edition of the City's Stormwater Management Manual. ZRZ assumes all risks damages and costs associated with the infiltration basin located in the vacated right of way of former Woods Street including but not limited to additional inflow to Outfall 6, infiltration to groundwater and damages or alternations that increase the costs of the Redirection Work, Brick Line Abandonment or removal of the Extension as described in this Agreement. If ZRZ commences the work on the infiltration basin before the effective date of the City's release pursuant to Section 1.1 above, then ZRZ will agree to indemnify, defend, and hold the City harmless from and against all claims for injury or damage to persons or property arising from ZRZ's

acts or omissions arising from its entry and encroachment within the vacated right of way of former Woods Street pursuant to this Section 2.6. Provided, however, upon the effective date of release of the City pursuant to Section 1.1, ZRZ's indemnification, defense and hold harmless covenant set forth above in this Section 2.6 will also be released effective as of the effective date of release of the City pursuant to Section 1.1.

- 2.7 Within 60 days after Completion of the Brick Line Abandonment Work (defined below), the City shall release its reserved rights with respect to the ZRZ property in the vacated Woods Street (City Ordinance No. 48712, December 31, 1925) by executing and delivering to ZRZ the release of rights attached as Exhibit B. The City authorizes ZRZ to record the release in the Official Records of Multnomah County, Oregon.
- 2.8 "Completion" or its derivatives (e.g. complete, completed) of Redirection Work shall mean full diversion of all existing storm sewer connections within or near SW Moody Avenue so that they do not discharge to the Brick Line.

### 3 ZRZ Obligations

- 3.1. ZRZ, at its sole cost, expense and liability, will redirect its stormwater discharges away from Outfall 6 and discontinue use of Outfall 6 in substantial compliance with the Mutually Agreed Schedule.
- 3.2 ZRZ at its sole cost, expense and liability will complete the abandonment of the Extension in substantial compliance with the Mutually Agreed Schedule ("**Extension Abandonment Work**"). This work includes all actions necessary for compliance with applicable law, including, specifically, applicable environmental cleanup requirements.
- 3.3. Subject to Section 5 of this Agreement concerning unanticipated conditions affecting the abandonment of the Brick Line, ZRZ will abandon the Brick Line in conformance with the Public Works Permit ("**Brick Line Abandonment Work**"). The City Engineer shall establish such standards for the work as are appropriate in the public interest and as to the suitability of the materials used and technical requirements for construction of public improvements pursuant to Portland City Code. The Public Works Permit will require conformance with applicable City Engineering standards. The requirements of the Public Works Permit will be based on the assumption that the Brick Line is in a suitable condition to be abandoned in place as contemplated by this Agreement. The Parties agree that the abandonment process may consist of one or more of the following general activities, as needed, to perform the abandonment work according to this Agreement and the standards referenced in this Section:
  - 3.3.1 Installation of a permanent outfall plug installed at the downstream terminus of the Brick Line;

- 3.3.2 Installation of intermediate air vents/grout ports at 50 foot centers along the Brick Line to facilitate abandonment;
  - 3.3.3 Dewatering of the Brick Line including water containment and treatment if necessary;
  - 3.3.4 If necessary to prevent collapse or subsidence, backfill of the Brick Line sufficient to prevent collapse or subsidence of the line; and
  - 3.3.5 Erosion and sediment control.
- 3.4 ZRZ will grant the City a temporary license for entry upon the ZRZ Property for purposes of performing the Redirection Work. The City agrees to coordinate with ZRZ in order to minimize interference with ZRZ's use and operation of the ZRZ Property, including by limiting the City's, and its representatives', employees', agents', and contractors' (or any other person acting by, through, or for the City) ingress and egress to, from, and upon, the ZRZ Property to the areas designated by ZRZ for such purposes.
- 3.5 ZRZ is responsible for all costs associated with removal, renovation decommissioning, or any other costs whatsoever related to the Extension, specifically including costs associated with work required by state or federal environmental laws. The City and ZRZ will share the costs associated with the Brick Line Abandonment Work in accordance with Section 4 of this Agreement.
- 3.6 "Completion" and its derivatives (e.g. complete, completed) of the Brick Line Abandonment Work shall mean the date of final inspection and acceptance of the Brick Line Abandonment Work as substantially complete pursuant to the Public Works Permit by the City Engineer, which shall not be unreasonably withheld, conditioned, or delayed.
4. Shared Costs for Brick Line Abandonment Work
- 4.1 ZRZ shall obtain a bid for the Brick Line Abandonment Work from a third party contractor: The bid shall include all costs necessary for the contractor to comply with the requirements of the Public Works Permit for the Brick Line Abandonment Work. Upon agreement by ZRZ and the City that the bid is reasonable, ZRZ may enter into a contract for the performance of the Brick Line Abandonment Work in accordance with and in an amount not greater than such bid and thereafter direct the contractor to proceed with the work and each of the Parties will pay 50% of the cost for performing the work pursuant to the contract and this Agreement. The City agrees to evidence its agreement that the bid is reasonable in writing, and that such agreement shall not be unreasonably withheld, conditioned, or delayed.
- 4.2 If the contractor is required to perform additional, necessary and unanticipated work not described in the bid or the contract to complete the Brick Line Abandonment, and the additional cost exceeds the contract amount by no more

than 50%, the Parties shall each pay 50% of the cost of performing such additional, necessary and unanticipated work, provided that the City receives adequate documentation showing the nature of the additional work and the additional cost incurred.

- 4.3 If the additional, necessary and unanticipated work to be performed by the contractor will cause the contract to be exceeded by more than 50%, ZRZ shall notify the City in advance of the performance of the work in sufficient time to permit the City to assess whether there are more cost effective methods to accomplish this same work. If, in the reasonable discretion of Parties, there are feasible, more cost-effective methods available to accomplish the same work, the City and ZRZ will cooperate in good faith to reach a mutually satisfactory agreement for implementation of such methods. If, however, in the reasonable discretion of the Parties, there are no feasible, more cost effective methods available to accomplish the same work, then the City will promptly notify ZRZ in writing that the contractor can proceed with the additional work and will pay 50% of the cost of the additional contract amount approved by the City.
- 4.4 The City will pay to ZRZ the City's share of costs of the Brick Line Abandonment Work following Completion of such work and no later than 60 days following the receipt by the City of a written statement, invoice, or invoices, from ZRZ setting forth the amount of such costs, together with reasonable supporting documentation.
5. Unanticipated Condition of the Brick Line. The Parties anticipate that the Brick Line is in a suitable condition to be abandoned in place. If either Party encounters conditions that suggest that the Brick Line is not in a condition whereby it can be reliably abandoned in the manner described in the Public Works Permit for the Brick Line Abandonment, the Party will immediately notify the other Party and the Parties will work in good faith towards a mutually agreed determination of how to address the changed conditions in accordance with the provisions of this Agreement.
6. Mutually Agreed Schedule. The City and ZRZ agree to act in good faith to develop a mutually agreed schedule for issuance of the Public Works Permit to ZRZ, Redirection Work, Extension Abandonment Work and Brick Line Abandonment Work that meets at least the following time constraints:
  - 6.1 Redirection Work will be Completed by the City before March 31, 2011.
  - 6.3 Brick Line and Extension Abandonment Work will be completed in coordination with ZRZ's remediation-work on the ZRZ Property and within the submerged and submersible lands of the Willamette River.

The City and ZRZ shall each designate and maintain a primary contact for purposes of this Agreement. The name and contact information for the initial contacts are as follows:

For ZRZ:

Paul Fishman  
3627 SE Madison St.  
Portland, OR 97214  
(503) 789-5107

For the City:

Bill Ryan  
Engineering Administration  
City of Portland, Bureau of Environmental Services  
1120 SW 5th Ave Room 1100,  
Portland OR, 97204  
(503) 823-7203

Either Party may change its designated primary contact by giving notice to the other in accordance with this Agreement, providing the name and contact information of the new primary contact.

7. Compliance with Laws. ZRZ and the City will each perform or will cause the work performed under the Agreement to be performed in full compliance with any and all applicable federal, state, and local laws, orders, rules, ordinances, and regulations. Except as provided in this Agreement with respect to the Public Works Permit in Section 3.3 and the shared costs of the Brick Line Abandonment Work in Section 4, each Party will be responsible, at no cost to the other, for obtaining all permits required by any governmental authority for the lawful performance of the work described in this Agreement. Each Party will also perform or cause the work to be performed in a good and workmanlike manner and shall be responsible for the repair of any damage to the other's property caused in connection with the work and upon completion of the work will restore the other's property to at least as good of a condition that existed immediately prior to commencement of the work.
8. General Provisions.
  - 8.1 No Agency or Partnership. Nothing in this Agreement shall be construed to create any association, agency, joint venture, trust, or partnership covenant, obligation or liability on or between the Parties.
  - 8.2 Construction, Modification, Waiver. This Agreement shall be construed according to the laws of the State of Oregon, without reference to its conflicts of laws provisions. The Parties have been represented by their respective legal counsel in connection with negotiation of this Agreement, and accordingly waive the rule of construction that this Agreement shall be construed against its drafter.

This Agreement may be modified only in writing signed by both Parties. No waiver of any provision of this Agreement shall be effective against a Party unless expressed in a writing signed by the Party against whom the waiver is sought to be enforced. Section headings used in this Agreement are for convenience of reference only and are not to be included or relied upon in the interpretation or construction of the provisions of this Agreement.

- 8.3 Entire Agreement. This is the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior written or oral agreements or understandings.
- 8.4 Successors and Assigns. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns.
- 8.5 Time of the Essence. Time is of the essence in the performance of the Parties' respective obligations set forth in this Agreement.
- 8.6 Effective Date. For all purposes of this Agreement, the term "Effective Date" shall mean the date ZRZ and the City have mutually executed and delivered this Agreement.
- 8.7 Counterparts. This Agreement may be signed and delivered in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The execution and delivery of facsimile or e-mail copies of this signed Agreement shall be as effective as delivery of an original signature.
- 8.8 Authority. Each Party represents and warrants to the other that it has all legal right and authority required for the execution, delivery, and performance of this Agreement, including that any and all required corporate, with respect to ZRZ, and municipal, with respect to the City, requirements for such authority have been satisfied and all necessary approvals have been obtained.
- 8.9 Notices. Any notice, communication, request, demand or statement to be given or made to either Party under his Agreement shall be in writing and may be sufficiently given if messenger delivered or faxed to such Party at the following addresses:

If to ZRZ:

Attention: Jay Zidell  
3121 SW Moody Avenue  
Portland, OR 97239  
Fax: (503) 228-6750

If to the City:

Attention: Linda Meng and Nanci Klinger



Office of the City Attorney  
City Hall Suite 430  
1221 SW 4<sup>th</sup> Avenue  
Portland, OR 97204  
(503) 823-4047  
Fax (503) 823-3089

Provided that either Party may change its address by notice given to the other in accordance with this Section, in which event this Section shall be deemed to have been amended accordingly. Any such notice, communications, request, demand or statement shall be deemed to have been given, made or received by the addressee on the date of delivery or fax.

- 8.10 No Admission. Each Party agrees that by entering into this Agreement it does not admit any liability or fault for matters described or referenced in this Agreement. Each Party agrees that nothing in this Agreement shall have precedential value as and shall neither constitute nor be interpreted or used as evidence of any admission of liability, law, or fact; waiver of any right or defense; or relative apportionment of liability.

*[Signatures of the Parties begin on the following page.]*

IN WITNESS OF THE FOREGOING, ZRZ and the City have executed this Agreement as set forth below.

**ZRZ:**

ZRZ REALTY COMPANY, an Oregon corporation

By: \_\_\_\_\_  
Date: \_\_\_\_\_

ZIDELL MARINE CORPORATION, an Oregon corporation

By: \_\_\_\_\_  
Date: \_\_\_\_\_

TUBE FORGINGS OF AMERICA, INC., an Oregon corporation

By: \_\_\_\_\_  
Date: \_\_\_\_\_

**City:**

CITY OF PORTLAND, an Oregon municipal corporation

By: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to Form:

**Exhibits:**

**Exhibit A – Description of ZRZ Property**

**Exhibit B – Release of City Reserved Rights in the Former Woods Street Right of Way**

After Recording Return to :

With a copy to:  
Linda Birth  
Right of Way Acquisitions  
Portland Bureau of Transportation  
1120 SW 5<sup>th</sup> Avenue  
Portland, OR 97204

### QUITCLAIM DEED AND RELEASE

KNOW ALL PERSONS BY THESE PRESENTS, that the City of Portland, a municipal corporation, duly organized and existing under the laws of the State of Oregon, ("Grantor"), in consideration of the sum of one dollar and other good and valuable consideration, does hereby remise, release and quitclaim unto, ZRZ Realty Company, an Oregon corporation, ("Grantee"), and unto Grantee's successors and assigns, all of Grantor's right, title and interest in and to that certain easement interest described in City of Portland Ordinance 48712, dated January 20, 1926 attached as Exhibit A and which lies within Grantee's property described on Exhibit B attached hereto, with the facilities, tenements, hereditaments, and appurtenances thereunto belonging or appertaining, specifically including but not limited to the storm sewer identified in City records as Outfall 6 (historically referred to as the Thomas Creek sewer), City of Portland, County of Multnomah, State of Oregon, more particularly described as follows:

That part of Woods Street in the City of Portland, Oregon, beginning at the point of intersection of the southerly line of Woods Street with the easterly line of Moody Street; thence south 88 degrees 32 minutes 06 seconds east along said southerly line of Woods Street, a distance of 55.83 feet to the true point of beginning of this description; thence continuing south 88 degrees 32 minutes 06 seconds east along said southerly line of Woods Street, a distance of 1028.02 feet to the harbor line of the Willamette River; thence north 5 degrees 50 minutes 52 seconds west along said harbor line a distance of 30.26 feet; thence north 20 degrees 56 minutes 48 seconds west along said harbor line a distance of 32.45 feet to a point on the northerly line of Woods Street; thence north 88 degrees 32 minutes 6 seconds west along said northerly line of Woods Street a distance of 562.06 feet; thence south 83 degrees 51 minutes 54 seconds west a distance of 453.72 feet to the true point of beginning.

The easement is generally depicted on Exhibit C attached hereto and by this reference made a part hereof.

THE INTENT OF THIS INSTRUMENT is to release all interest the City of Portland has in and to that certain sewer easement as described above.

PROVIDED HOWEVER that as a condition of releasing Grantor's easement, Grantor accepts ownership of any abandoned facilities in the easement area that is being released. In

addition, pursuant to that certain Agreement Regarding Abandonment of Outfall Facility and Release Of Claims dated as of \_\_\_\_\_, 2010, by and between Grantor and Grantee ("Outfall Abandonment Agreement") Grantor and Grantee wish to set forth the following mutual releases, which are set forth in the Outfall Abandonment Agreement, for the purpose of putting their respective successors and assigns and other third parties on notice of such releases, which releases are incorporated herein by reference and shall bind and inure to the benefit of Grantor's and Grantee's successors and assigns. Capitalized terms used in the following releases have the meanings given to them in the Outfall Abandonment Agreement. References to "this Agreement" in the following releases refer to the Outfall Abandonment Agreement.

Outfall Abandonment Agreement Releases:

Effective upon the City's Completion of the Redirection Work, ZRZ, Zidell Marine Corporation, and Tube Forgings of America, Inc agree to release the City from any and all claims that each may have against the City with respect to liability for (a) maintenance, operation, or the continued existence of Outfall 6 and (b) any contaminants or other substances which remain within the Brick Line after, or which were or are released from Outfall 6 into the soil of the ZRZ Property before or after, Completion of the Redirection Work and the Brick Line Abandonment Work.

Effective upon ZRZ's Completion of the Brick Line Abandonment Work, the City agrees to release ZRZ, Zidell Marine Corporation, and Tube Forgings of America, Inc. from any and all claims that it may have against any or all of such parties with respect to liability for (a) maintenance, operation, or the continued existence of Outfall 6 and (b) any contaminants or other substances which remain within the Brick Line after, or which were or are released from Outfall 6 into the soil of the ZRZ Property before or after, Completion of the Redirection Work and the Brick Line Abandonment Work.

Notwithstanding the foregoing, neither of the foregoing releases includes any release of claims with respect to, and no release of claims shall be deemed given with respect to, contaminants or other substances released from Outfall 6 into the submerged and/or submersible lands of the Willamette River adjacent to the ZRZ Property or into the sediment of the Willamette River, or which have entered the groundwater under the ZRZ Property or such submerged and/or submersible lands.

TO HAVE AND TO HOLD, the same unto the said Grantee's successors and assigns forever.

IN WITNESS WHEREOF, the Grantor above named has caused this instrument to be executed by its Director of the Bureau of Environmental Services, or his designee, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

CITY OF PORTLAND, GRANTOR

By: \_\_\_\_\_  
Bureau of Environmental Services Director  
or Designee

STATE OF OREGON

County of Multnomah

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, personally appeared \_\_\_\_\_, who being duly sworn, did say that he is the Director, Bureau of Environmental Services, or his designee, of the City of Portland, a municipal corporation, and that said instrument was signed on behalf of said corporation by authority of its City Council and acknowledged said instrument to be its voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon

My Commission expires \_\_\_\_\_

Approved as to form:

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

**Acknowledged and Agreed:**

By:

\_\_\_\_\_  
ZRZ Realty Company (Grantee)

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 2010, by \_\_\_\_\_ as \_\_\_\_\_ for ZRZ Realty Company, a corporation of the State of Oregon.

\_\_\_\_\_  
Notary Public for Oregon

My Commission expires \_\_\_\_\_

48712  
Ordinance No.....

An Ordinance vacating a certain portion of Woods Street.

WHEREAS, on the 15th day of October 1925, the Oregon-Washington Railroad and Navigation Company duly filed with the Auditor of the City of Portland, Oregon, its application and petition to the Council of said city praying for the vacation of a portion of Woods Street in the City of Portland, Oregon, and re-establishing said Woods Street in a different location and proposing to dedicate certain property for such new location; and

WHEREAS, said petition sets forth the purpose for which the vacated portion of said Woods Street is to be used and the reason for such vacation, and the particular circumstances of the case, and sets forth and gives a definite description of the property and part of Woods Street proposed and sought to be vacated; and

WHEREAS, the consent of the owner in fee simple of the property fronting upon and immediately adjoining both sides of that part of Woods Street sought to be vacated, said frontage being computed and determined as required by law, has been obtained in writing, and said writing being on file with the Auditor of said City, and by this reference incorporated herein, and said writing so executed by said owner having been acknowledged by it before an officer authorized to take acknowledgments, and attached to said petition for such vacation and filed with said petition with the Auditor of said City; and

WHEREAS, notice of the pendency of said petition containing a description of the part of Woods Street sought to be vacated, and of the fact that said petitioner would present said petition to the Council of said City for the vacation of said part of Woods Street at 10 o'clock A. M. Wednesday the 18th day of November 1925, was published for four successive and consecutive weeks in the Daily Journal of Commerce, the Official Newspaper of said City of Portland, commencing on the 16th day of October 1925, and that during said period of publication for four consecutive weeks said paper was regularly published and circulated in general circulation in Multnomah County, Oregon, and proof of said publication having been made and filed with the Auditor of said City on the 13th day of November 1925; and

WHEREAS, said petition praying for the vacation of said part of Woods Street was so presented to said Council of said City in regular session at 10 o'clock A. M., Wednesday, November 18, 1925, the Mayor of said City presiding, and all members of



said Council being then and there present, and no objection to or remonstrance against said petition, or the allowance thereof, or the passage of any ordinance in compliance therewith was then or theretofore made, nor has any such objection or remonstrance since been made; and

WHEREAS, the said Council so in session as aforesaid did adjourn and postpone the hearing upon said petition and fix 10 o'clock A. M. December 2, 1925, at the Council Chamber in the City Hall, in Portland, Oregon, as the time and place for the hearing and consideration of said petition, and did refer said petition to the Commissioner of Public Works of said City for his report thereon to be heard and considered in connection with said petition; and

WHEREAS, said Commissioner of Public Works of said City filed his report on said petition favorable to the allowance thereof, and on said last named date and place said petition and report were called up, heard and considered and the several matters hereinbefore set forth were found and determined by said Council in accordance with the foregoing recitals, and no objection to or remonstrance against said petition being presented or made; and

WHEREAS, on said December 2, 1925, the Council granted said petition and referred the same to the City Engineer for the purpose of securing the consent and approval of the Port of Portland and of the Commission of Public Docks, and said City Engineer did obtain such consent and reported the same to the Council by his report filed with the City Auditor, December 26, 1925, and thereupon the Council referred said matter to the City Attorney for the purpose of preparing this ordinance, and said City Attorney did prepare this ordinance, and reported the same to the Council, and said report and this ordinance were, both, on the official printed Calendar of the Council, for January 6, 1926; now, therefore,

The City of Portland does ordain as follows:

Section 1. The Council of the City of Portland hereby finds that new ground of equal or greater area than that to be vacated hereby, will be dedicated by the owner thereof in accordance with its undertaking in the petition, and without additional cost to the City of Portland, for the replatting of a portion of Woods Street in said new location described in the petition, and that by such relocated Woods Street equal way and access to the same terminus will be afforded, and said Council further finds that the public interest will not be prejudiced by the vacation of said part of Woods Street as applied for, or by the replatting of a part of said Woods

Street in a new location, and also that the consent of the owner of the requisite number of front feet has also been obtained, as has also the consent and approval in writing of the proposed vacation from the City Planning Commission of Portland, the Port of Portland, Oregon, and the Commission of Public Docks of the City of Portland, Oregon, said approvals being on file with the Auditor of said City of Portland; and said Council further finds that the vacation of that part of Woods Street as applied for and replatting thereof will be to the advantage of the public and will result in improved terminal facilities in said city.

Section 2. That all that part of Woods Street in the City of Portland, Oregon, beginning at the point of intersection of the southerly line of Woods Street with the easterly line of Moody Street; thence south 88 degrees 32 minutes 06 seconds east along said southerly line of Woods Street, a distance of 55.83 feet to the true point of beginning of this description; thence continuing south 88 degrees 32 minutes 06 seconds east along said southerly line of Woods Street, a distance of 1028.02 feet to the harbor line of the Willamette River; thence north 5 degrees 50 minutes 52 seconds west along said harbor line a distance of 30.26 feet; thence north 20 degrees 56 minutes 48 seconds west along said harbor line a distance of 32.45 feet to a point on the northerly line of Woods Street; thence north 88 degrees 32 minutes 6 seconds west along said northerly line of Woods Street a distance of 562.06 feet; thence south 83 degrees 51 minutes 54 seconds west a distance of 453.72 feet to the true point of beginning, be and the same is hereby vacated.

Section 3. That all that portion of Woods Street hereinbefore vacated be, and the same is hereby relocated on, over and across the following described real property: A piece or parcel of land containing 47,219 square feet, more or less, situated in Section 10, Township 1 South, Range 1 East, Willamette Meridian, Multnomah County, Oregon, being more particularly described as follows, to wit: Beginning at the point of intersection of the northerly line of Woods Street in the City of Portland, with the east line of Moody Street, lying south of Woods Street, produced north; thence South 88° 32' 06" East, along said northerly line of Woods Street, a distance of 36.80 feet to the true point of beginning of this description; thence continuing south 88° 32' 06" East along said northerly line of Woods Street a distance of 468.77 feet; thence North 83° 51' 54" East, parallel with and 31 feet southeasterly from the center line of proposed Ross Island Bridge, a distance of 537.46 feet to a point on



the harbor line of the Willamette River; thence north  $20^{\circ} 56' 48''$  west along said harbor line a distance of 64.13 feet; thence south  $83^{\circ} 51' 54''$  west, parallel with and 31 feet northwesterly from said center line of proposed Ross Island Bridge, a distance of 985.75 feet to the true point of beginning.

Also all that part of Lot 8, Block 100, Caruthers Addition to the City of Portland, Multnomah County, Oregon, as laid out by the South Portland Real Estate Association, according to the recorded plat thereof on file and of record in the office of the clerk in and for said County of Multnomah, more particularly described as follows, to wit: Beginning at the northwest corner of said Lot 8; thence North  $88^{\circ} 32' 06''$  East, along the north line of said lot a distance of 55.83 feet; thence south  $83^{\circ} 51' 54''$  West, parallel to and 31 feet southeasterly from the center line of proposed Ross Island Bridge, a distance of 56.32 feet to a point on the westerly line of said Lot 8; thence northerly along said westerly line of Lot 8 to the point of beginning and containing 208 square feet.

Section 4. That the owner of the real property described in Section 3 hereof shall promptly execute and deliver to the City of Portland a proper instrument in writing dedicating to the public as and for a public street and highway, to be and become a part of said relocated Woods Street, the real property described in Section 3 hereof.

Section 5. The performance of Section 4 hereof is hereby declared to be an express condition subsequent to the operation of Sections 2 and 3 hereof, and if said Section 4 be not fully observed and complied with within two months from the date of the passage of this ordinance, or within such further time as the City of Portland may hereafter fix by ordinance, this ordinance shall be null and void. The delivery to the Auditor of the City of Portland of an instrument in writing, approved by the City Attorney, shall be conclusive evidence of the performance of the requirements of Section 4 hereof. Until such condition subsequent shall have been complied with no part of Woods Street hereby vacated in Section 2 hereof shall be closed to public travel, but upon such compliance that part of Woods Street hereby vacated by Section 2 hereof may be so closed, and thereafter all that portion of Woods Street hereby relocated in Section 3 hereof shall be, and be used as, a part of Woods Street.

Section 6. That all that portion of Woods Street hereby vacated in Section 2 hereof is hereby made a matter of record, but it is hereby expressly provided that the petitioner shall, within ten days after the taking effect of this ordinance, pay into the city treasury the cost of obtaining the necessary changes on the public records so as to indicate as required by law such vacation; and it is hereby provided that the City Auditor shall file with the County Clerk of Multnomah County a certified copy of this ordinance, and shall obtain from the County Surveyor a proper entry on the plat records as provided by law.

Nothing contained herein shall cause or require the removal or abandonment of any sewer, water main, conduit of any kind, wires, poles or any other thing used or intended to be used for any public service and the right is hereby reserved to maintain, continue, repair, reconstruct, renew, replace, rebuild and/or enlarge any and all such things.

Passed by the Council JAN 20 1926

Approved:

GEO. L. BAKER

Mayor of the City of Portland.

Attest:



Auditor of the City of Portland.

12-31-25  
Order of  
Council.

PREPARED-APPROVED  
CITY ATTORNEY

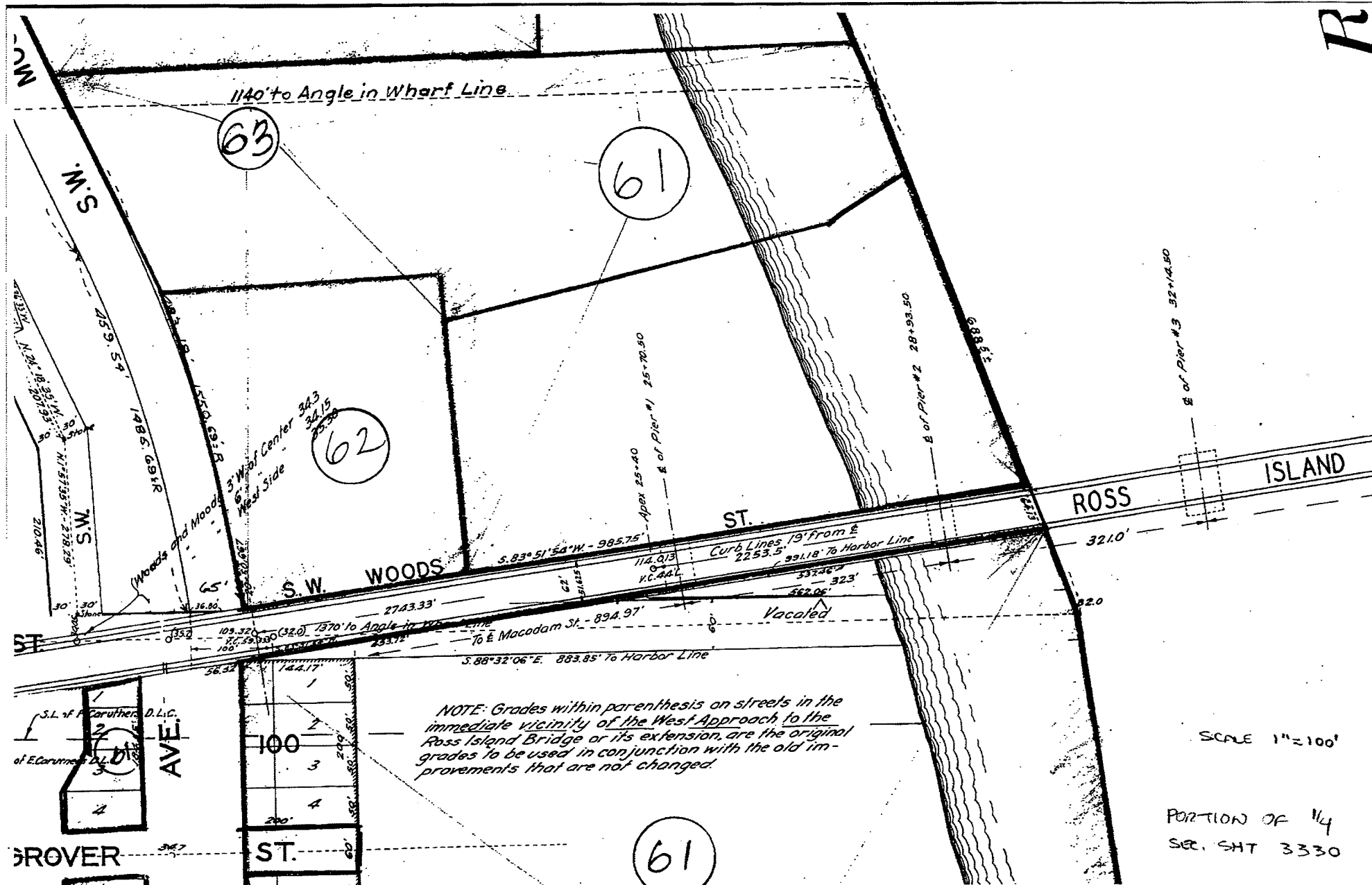


Exhibit B**PARCEL I:**

A parcel of land situated in and being all those parts of Blocks 100 and 120, CARUTHERS ADDITION OF THE CITY OF PORTLAND, as laid out by the South Portland Real Estate Association according to the official plat thereof, the Finice Caruthers Donation Land Claim, the Elizabeth Thomas also known as Elizabeth Caruthers Donation Land Claim, vacated portions of Woods Street, Grover Street, and Moody Avenue, in Section 10, Township 1 South, Range 1 East, of the Willamette Meridian, in the City of Portland, County of Multnomah, State of Oregon, described as follows:

Beginning at a point on the Easterly extension of the South line of SW Gibbs Street that is South 88°32' East, 60 feet from the Northeast corner of Block 121 of said Caruthers Addition; thence South 88°32' East along the extension of said South line of SW Gibbs Street to the line of ordinary high water, defined as 17.2 feet National Geodetic Vertical Datum (NGVD), of the left bank of the Willamette River as it exists today or may move in the future due to the natural acts of accretion or erosion; thence Northerly along said line of ordinary high water 80 feet, more or less, to the South line of an existing dredge cut; thence North 6°33'32" West, approximately 80 feet across the entrance of said dredge cut to the said ordinary high water line of the left bank of the Willamette River; thence continuing Northerly along said line of ordinary high water to the South right-of-way line of the Ross Island Bridge; thence South 83°52' West along said Ross Island Bridge right-of-way, to a point that is 60 feet distance Easterly, measured at right angles, from the Northerly extension of the West line of said Block 100; thence South 1°28' West parallel to said West line of Block 100, 200.50 feet; thence South 7°26'50" West, 217.45 feet to a point of curve; thence along the arc of a 24.35 foot radius curve to the left having a central angle of 38°16'21", 16.27 feet (chord bears South 11°41'20" East, 15.96 feet); thence South 30°49'31" East, 24.85 feet; thence South 37°15'26" East, 9.18 feet to a point of the South line of Block 120 of said Caruthers Addition that is 60 feet Easterly of the Southwest corner of said block; thence South 88°32' East along the South line of said Block 120 and the Easterly extension of said South line a distance of 200 feet; thence South 1°28' West, a distance of 60.0 feet to the point of beginning.

EXCEPTING THEREFROM all minerals and all mineral rights in said property, which said rights were retained by Union Pacific Land Resources Corporation in Deed recorded August 18, 1977, Book 1201, Page 286.



Exhibit C

