

## EXHIBIT "X"

## A G R E E M E N T

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 1951, by and between OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, and UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter called "Railroads"), 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:

1. Pursuant to agreement dated January 22, 1930, between the City, Oregon-Washington Railroad & Navigation Company, Portland Terminal Investment Company (predecessor of Union Pacific Railroad Company) and other parties, and agreement dated November 19, 1930, between the City and Oregon-Washington Railroad & Navigation Company, there has been constructed and now exists a concrete viaduct over and across the right of way and tracks of the Railroads in the City of Portland, at the location represented by brown color on map Exhibit A, hereinafter identified.

2. Pursuant to an agreement dated February 17, 1944, and supplement thereto dated May 18, 1944, between the Railroads, the City and the State of Oregon (State Highway Commission), said concrete viaduct was widened laterally by a timber structure, and the Swan Island Access Road connecting therewith was constructed in part upon property of the Railroads, for which purpose easements were granted in and by said agreement dated February 17, 1944.

3. The present volume of vehicular traffic is not such as to require continued maintenance of the lateral extension of said viaduct, and the City wishes to discontinue maintenance of and dismantle and remove said lateral extension, which will necessitate partial relocation of said Swan Island Access Road.

4. The State of Oregon (State Highway Commission) has no further interest in or concern with said viaduct or access road.

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

Section 1. The agreement between the parties dated February 17, 1944, and supplement thereto dated May 18, 1944, hereinbefore referred to and identified by recital, and each and all of the rights and easements granted to the City in and by said agreements shall be and hereby are mutually terminated as of the \_\_\_\_\_ day of \_\_\_\_\_ 1951; but nothing herein shall

release or discharge the City from any debt, duty, obligation or liability under said agreements or otherwise, arising or accruing prior to said termination date.

Section 2. (a) The City without expense to the Railroads shall promptly:

First. Demolish and remove the timber lateral extension of said viaduct (including approaches) from the Railroad's property and adjoining property. Said lateral extension is represented by orange color on map No. 80386 hereto attached, marked "Exhibit A" and by this reference made a part of this agreement.

Second. Alter and (so far as necessary) reconstruct said Swan Island Access Road in the locations (hereinafter described) which are represented by yellow and pink colors on map Exhibit A hereto; together with the appurtenances thereof, including adequate drainage facilities.

(b) All work to be performed by the City under this agreement shall be prosecuted and completed diligently, at such times and in such manner as not to endanger, interfere with, hinder or delay maintenance or operation of the railroads' facilities, nor to injure persons or damage or destroy property for the safety of whom or of which the Railroads may be responsible, or property of the Railroads. All said work shall be performed and accomplished without interruption to or delay of continuous railroads operations and railroad traffic. Before commencement of said work, the City shall give the Superintendent of the Railroads reasonable notice thereof. Upon completion of said work the City shall leave the Railroads' property in a condition satisfactory to the Superintendent of the Railroads.

(c) It is understood and agreed that the tracks of the Railroads at and in the vicinity of the work will be in constant use during the progress of the work, and that movement or stoppage of trains may cause delays to the City and its contractors. The City hereby assumes the risk of any and all such delays and will require its contractors to do likewise; and the City and its contractors shall hold harmless the Railroads against any and all loss and damage resulting from such delays.

Section 3. (a) So far as they lawfully may do so, the Railroads hereby grant the City, subject to the terms, provisions, conditions, covenants, reservations and exceptions herein contained, an easement to construct, maintain, repair, renew and use the following facilities upon, along and across property of the Railroads in the City of Portland, Multnomah County, Oregon:

First: The Swan Island Access Road, relocated and reconstructed as aforesaid, upon, along and across the property of the Railroads in the location described as follows:

An irregular strip of land being all that part of the property of the Oregon-Washington Railroad & Navigation Company, leased to the Union Pacific Railroad Company, situated in the James Thompson Donation Land Claim in Section 21, Township 1 North, Range 1 East of the Willamette Meridian in the City of Portland, Multnomah County, Oregon, that lies within lines that are parallel with and 15 feet distant, measured at right angles and/or radially, on each side of the hereinafter described center line of relocated 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.

Also, all those strips or parcels of land of the Union Pacific Railroad Company situated in the Frd'k Proebstel Donation Land Claim in said Section 21 in the City of Portland, that lie within lines that are parallel with and 15 feet distant, measured at right angles and/or radially, on each side of said hereinafter described center line of relocated Swan Island Access Road.

Said center line of relocated Swan Island Access Road hereinbefore referred to over and across said strips or parcels of land and other property being described as follows:

Beginning at a point in the center line of N. Going Street in the City of Portland that is N.  $89^{\circ} 53'$  W. a distance of 241.6 feet from the north and south center line of said Section 21, measured along said center line of N. Going Street;

thence S.  $71^{\circ} 40'$  E. a distance of 55.21 feet;

thence southeasterly along a curve to the right having a radius of 200 feet and which is tangent to the last described course, a distance of 85.4 feet to a point of compound curve, the long chord of said curve bearing S.  $59^{\circ} 26'$  E. a distance of 84.76 feet;

thence southeasterly along a curve to the right having a radius of 340 feet a distance of 147.27 feet to a point of compound curve, the long chord of said curve bearing S.  $34^{\circ} 47' 30''$  E. a distance of 146.12 feet;

thence southerly along a curve to the right having a radius of 300 feet a distance of 138.58 feet, the long chord of said curve bearing S. 9° 09' E. a distance of 137.35 feet;

thence S. 4° 05' W. a distance of 20 feet;

thence southeasterly along a curve to the left having a radius of 572.96 feet a distance of 415.58 feet, the long chord of said curve bearing S. 16° 41' 45" E. a distance of 406.53 feet;

thence S. 37° 28' 30" E. a distance of 108.7 feet to a point which bears S. 52° 31' 30" W. a distance of 19 feet from the center line of N. Greeley Avenue at a point thereon designated as survey Station 31+56.42.

That part of the property above described owned by Oregon-Washington Railroad & Navigation Company is represented on map Exhibit A by yellow color, and that part owned by Union Pacific Railroad Company by pink color.

Second. Slopes for said access road upon and within that part of the property of Oregon-Washington Railroad & Navigation Company colored green on map Exhibit A and upon and within that part of Union Pacific Railroad Company's property colored blue on map Exhibit A.

(b) Said premises of the Railroads shall be used by the City solely for the purposes aforesaid and not otherwise, and if at any time the property of the Railroads 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 Railroads reserve the right to use the property hereinbefore mentioned for any and all purposes not inconsistent with the easement hereby granted, and particularly reserve the right, subject to said easement, to construct tracks and facilities upon, along and across the area mentioned, at any time and from time to time when the Railroads determine so to do.

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

(e) The City shall and will assume, bear and pay all taxes and assessments of every kind hereafter during the term of this agreement levied or assessed upon or against the property described or otherwise identified in this Section 3, except taxes and assessments levied thereon as a component part of the Railroads' operating property in the State of Oregon as a whole.

Section 4. When said access road has been altered, reconstructed and relocated as aforesaid, the City shall thereafter, without expense to the Railroads, keep and maintain said road and all appurtenances (including drainage facilities) thereof in good condition and repair so as not to damage, endanger or interfere with the property, facilities or operations of the Railroads.

Section 5. (a) In connection with the work to be performed by the City as provided in this agreement, the Railroads shall have the right to employ and station at the site of said work such watchmen, flagmen and inspectors as may in the judgment of the Railroads be necessary, and to make such changes or alterations, either temporary or permanent, in railroad facilities as may in the judgment of the Railroads be necessary because of said work of the City. The City shall promptly reimburse the Railroads for all expense of any kind incurred by the Railroads because of or in connection with said work of the City, including, but not limited to, expense of providing watchmen, flagmen and inspectors as aforesaid. Payment therefor shall be made by the City promptly upon receipt of bills from the Railroads therefor, which bills shall include reasonable amounts for overhead expense, payroll taxes and similar charges.

(b) The presence of railroad personnel at or near the site of the work, or suggestions or recommendations made by such personnel, shall not relieve the City from responsibility for safe and adequate performance and completion of the work under taken by it. The City shall give due consideration to all suggestions and recommendations made by representatives of the Railroads.

Section 6. If the Railroads 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 removal or relocation of the access road or slopes described in Section 3 hereof, the City shall make such removal or relocation without expense to the Railroads; provided that if in the judgment of the Railroads and the City it is practicable 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 Railroads. Said access road and slopes

shall not be widened except by mutual agreement between the Railroads and the City, and if the Railroads 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 Railroads, for the protection of the Railroads' property, and the City shall at all times preserve a clearance of not less than twenty-five (25) feet between the toe of the roadway slopes and the center line of the nearest railroad track.

Section 7. The Railroads 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 access road or slopes or resulting from the presence of said road or slopes in the location hereinbefore described, or from inadequate drainage thereof, and to remove such earth, rock or other material therefrom at the expense of the City, which will pay bills therefor promptly upon presentation. The City at its own expense will take all action necessary to protect and preserve said access road and slopes from further slides and shall not hold the Railroads responsible therefor.

Section 8. 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 insured, and in order that accidents may be prevented and avoided, it is agreed with respect to said project:

(1) 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 tracks or facilities of the Railroads.

(2) The City 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 Railroads and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroads may be responsible or to property of the Railroads.

(3) If at any time the railroads and 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 City shall cause such work to be suspended until suitable, adequate and proper protective measures are adopted and provided.

(4) The City in performing the work to be done by it shall not suffer or permit debris to foul the drainage ditches or ballast or roadbed of the railroads, and if such debris is cast thereon, the City shall immediately remove same, at its own expense.

(5) The City at its own expense will provide and maintain suitable facilities for draining said access road and slopes thereof, and shall not suffer or permit drainage waters therefrom to flow or collect upon property of the Railroads.

(6) The City shall not place any explosive or combustible material upon, along or about the premises of the Railroads, or erect any structure thereon, or cause or permit the view along the tracks of the Railroads to be obstructed, or obstruct or interfere with the drainage ditches of the Railroads.

(7) To the extent the City shall find it necessary to excavate from existing slopes adjacent to the tracks of the Railroads or to create new slopes for the accommodation of said project, the City 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 Railroads.

(8) The City shall cooperate with the District Engineer and Superintendent of the Railroads and their representatives in every reasonable way for the adequate protection of railroad facilities and operations during the progress of the City's work.

(9) The benefits of this section shall inure to the benefit of the Railroads, their successors and assigns, and any and all other persons, firms and corporations at any time lawfully occupying or using their properties or facilities.

Section 9. So far as it lawfully may do so, the City shall protect, indemnify and save and hold harmless the Railroads and any other person, firm or corporation at any time lawfully occupying or using their property or facilities (hereinafter in this section collectively called "indemnitees"), and each of them, from and against any and all loss, cost, damage, expense and liability because of injury to or death of persons whomsoever (including officers, agents and employes of the indemnitees) or damage to or loss or destruction of property whatsoever (including property belonging to or in the custody, care or control of indemnitees), directly or indirectly caused by or in any manner resulting from any act or omission of the City, its contractors, subcontractors, agents or employes in or about the performance of all or any part of the work to be performed by the City hereunder, or from any failure of the City to observe, perform and comply with the terms, provisions and conditions of this agreement.

Section 10. If all or any of the work to be performed by the City under this agreement is performed by or through a contractor or contractors, the City shall require each such contractor, before beginning work, to furnish and deliver to the Railroads, without expense to the Railroads, public liability and property damage insurance in favor of the Railroads and any others concerned, with limit of not less than One Hundred Thousand Dollars (\$100,000.00) for damages arising out of bodily injuries to or death of one person and Two Hundred Thousand Dollars (\$200,000.00) for all damages arising out of bodily injuries to or death of more than one person in one accident; and with limit of not less than One Hundred Thousand Dollars (\$100,000.00) for all damages arising out of injury to or destruction of property in any one accident and not less than Two Hundred Thousand Dollars (\$200,000.00) for all damages arising out of injury to or destruction of property during the policy period. Each such policy shall be duly issued by a reliable insurance company authorized to do business in Oregon and satisfactory to the Railroads; shall be in form, substance and effect satisfactory to the Railroads and shall be delivered to and remain in the possession of the Railroads. The terms "person" and "persons" as herein used includes passengers and employes of the Railroads, as well as other persons, and the term "property" as herein used includes property belonging to or in the custody or control of the Railroads, as well as other property.

Section 11. If the City shall fail, refuse or neglect to do, keep, observe and perform any or all of the terms, provisions and conditions of this agreement, the Railroads may, without prejudice to other remedies, terminate this agreement and all rights hereby granted to the City, by giving the City written notice of intention so to do, effective on any date in such notice stated, not less, however, than ninety (90) days after the date on which such notice is given. Such termination shall not release or discharge the City from any duties, liabilities or obligations attaching or accruing prior to said termination, under this agreement or otherwise.

Section 12. Union Pacific Railroad Company executes this agreement as owner of the real property represented by brown outlines on map Exhibit A and as lessee of property owned by Oregon-Washington Railroad & Navigation Company represented by red outlines on map Exhibit A. Nothing contained in this agreement shall affect the agreements dated January 22, 1930, and November 19, 1930 (hereinbefore identified by recital), concerning construction and maintenance of the concrete viaduct in the location represented by brown color on map Exhibit A and related matters.

Section 13. 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 rights hereunder without the written consent of the Railroads first obtained.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first herein written, execution thereof by the City having been duly authorized by Ordinance No. \_\_\_\_\_ passed by the City Council on the \_\_\_\_ day of \_\_\_\_\_ 1951.

OREGON-WASHINGTON RAILROAD &  
NAVIGATION COMPANY,  
UNION PACIFIC RAILROAD COMPANY

Attest:

By \_\_\_\_\_  
President of both companies

\_\_\_\_\_  
Assistant Secretary of  
both companies

CITY OF PORTLAND

Attest:

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

\_\_\_\_\_  
City Auditor

By \_\_\_\_\_  
Commissioner of Public Works



## ORDINANCE No. 94618

An Ordinance authorizing the execution of an agreement with the Oregon - Washington Railroad & Navigation Company and Union Pacific Railroad Company granting an easement for the relocation of Swan Island access road, terminating 1944 agreements relating to said road, and declaring an emergency.

The City of Portland does ordain as follows:

Section 1. The Council finds that the City of Portland, the State of Oregon, through its State Highway Commission, and the Oregon-Washington Railroad & Navigation Company and Union Pacific Railroad Company entered into an agreement dated February 17, 1944 supplemented by an agreement dated May 18, 1944, whereby said railroads granted a certain easement across railroad property for the Swan Island access road and for the lateral widening by timber structures of a concrete viaduct connected therewith; that due to present conditions of vehicular traffic in this area, the City now wishes to discontinue the maintenance of said lateral extension of said viaduct and to relocate partially said Swan Island access road; that the State of Oregon has no further interest or concern with said viaduct or said access road; that said railroad companies are willing to enter into an agreement with the City granting the easement through railroad property necessary for such a partial relocation of said access road providing for the termination of said prior agreements and the dismantling and removing of said viaduct extension, in accordance with Exhibit "X" incorporated by reference herein below; that said proposed agreement is to the advantage of the City and in the public interest and provision should now be made for its execution on behalf of the City; now, therefore, the Mayor, City Auditor and Commissioner of Public Works be and they hereby are authorized to execute on behalf of the City of Portland an agreement with the Oregon-Washington Railroad & Navigation Company and the Union Pacific Railroad Company, approved as to form by the City Attorney, substantially in accordance with the form attached hereto marked Exhibit "X" and hereby made a part of this ordinance as if it were fully set out herein, the map, Exhibit "A", which is incorporated in said Exhibit "X" by reference contained therein, being attached only to the originals of said agreement Exhibit "X" as prepared for execution.

## ORDINANCE No. 94618

Section 2. The City Auditor hereby is directed to have said agreement placed on record when duly executed and approved as provided above, and to send a certified copy of this ordinance to the County Assessor of Multnomah County.

Section 3. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: In order that there may be no unnecessary delay in the acquisition of necessary easements for public roads and streets; therefore, an emergency hereby is declared to exist and this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, JUL 18 1951

*Dorothy McGullough Lee*  
Mayor of the City of Portland  
*Will Gibson.*

Attest:

Auditor of the City of Portland

Calendar No. 3654

ORDINANCE No. 94618

Title

An Ordinance authorizing the execution of an agreement with the Oregon-Washington Railroad & Navigation Company and Union Pacific Railroad Company granting an easement for the relocation of Swan Island access road, terminating 1944 agreements relating to said road, and declaring an emergency.

THE COMMISSIONERS VOTED AS FOLLOWS:

	Yeas	Nays
Bean	/	
Bennett	/	
Bowes	/	
Peterson	/	
Lee	/	

FOUR-FIFTHS CALENDAR

Bean	
Bennett	
Bowes	
Peterson	
Lee	

INTRODUCED BY

Commissioner Bowes

DRAWN BY

HFA HFA:gm

Date 7/10/51

NOTED BY THE COMMISSIONER

Affairs

Finance

Safety

Utilities

Works WAB

City Attorney AGB

NOTED FOR CITY AUDITOR

RSI

JHL

APPROVED

Date

By

Chief Civil Engineer

Date

By

City Engineer

Filed..... JUL 19 1951

*Will Gibson.*  
Auditor of the CITY OF PORTLAND

By..... Deputy