

A G R E E M E N T

THIS AGREEMENT, made and entered into by and between the STATE OF OREGON, acting by and through its State Highway Commission, hereinafter called "State," the CITY OF PORTLAND, a municipal corporation, acting by and through its City Officials, hereinafter called "City," and the SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation operating as a common carrier by rail in interstate and intrastate commerce, acting by and through its Company Officers, hereinafter called "Railroad";

W I T N E S S E T H:

RECITALS:

WHEREAS, there is an acute traffic problem at the street intersection of S. E. 17th Avenue and Powell Boulevard, and more than 15,000 citizens of the City have signed petitions which have been filed with the City Council requesting that the railroad crossing at such intersection be separated from the grade of the streets; and

WHEREAS, the main line track of Railroad between the San Francisco Bay Area and the Portland Gateway crosses the intersection of S. E. 17th Avenue and Powell Boulevard at grade and the volume of rail traffic and motor vehicular traffic passing over this grade crossing is increasing markedly; and

WHEREAS, the motor vehicular traffic flow over the grade crossing at S. E. 17th Avenue and Powell Boulevard affects train movements throughout the Railroad's Portland Yard (also known as Brooklyn Yard); and

WHEREAS, for the purpose of furthering the development of a highway system adapted in all particulars to the needs of the people of the State of Oregon and for the safe and expeditious flow of traffic, State, City and Railroad plan and propose to construct the S. E. 12th Avenue-S. E. 21st Avenue Section of the Mount Hood Highway, State Primary Highway No. 26, including an undercrossing of Railroad in the vicinity of S. E. 17th Avenue, on S. E. Powell Boulevard. Hereinafter all acts necessary to effectively accomplish this end shall be referred to as "project"; and

WHEREAS, under ORS 366.775 and 373.030, State and City may enter into agreements and do all things necessary for the laying out, acquisition, construction, reconstruction, improvement, repair, and maintenance of highways within the limits of the City; and

WHEREAS, under ORS 373.050, State may, with the official approval of City, close any street, highway or road of City at or near the point of intersection with a highway, or make provision for carrying the street or road over or under the highway, or provide a connection with a highway by means of a utility or service road to a suitable point of connection, and do any and all work on the street, highway, or road as is necessary therefor; and

WHEREAS, no street shall be constructed turning into or intersecting the highway unless the plans and specifications therefor have first been submitted to and approved in writing by State and made matter of official record; and

WHEREAS, under ORS 373.030, State may not change the grade of any street or road within the limits of City over which state highway traffic is routed without the consent of City; and

WHEREAS, City has agreed with Railroad to close and barricade the crossings at grade of Railroad's main line track and S. E. 17th Avenue, S. E. 13th Place and S. E. Brooklyn Street; and

WHEREAS, City has agreed to vacate that portion of S. E. Reedway Street crossing the tracks of Railroad in the vicinity of Railroad's Brooklyn Yard, reserving unto the City an easement for a term of 20 years over and under such vacated street area for construction of a highway overpass or underpass; and

WHEREAS, limited funds are available to each party to this agreement for the correction of the transportation deficiencies and the accomplishment of the foregoing; and recognizing the benefits that will accrue to the citizens of the State of Oregon and the parties hereto, State, City and Railroad propose to enter into this agreement for the purpose of completing said project. To the end that human lives may be saved, property damage minimized, transportation by motor vehicles promoted, and that highway traffic in general be safeguarded and to promote and protect the public welfare, State, City and Railroad hereby pledge complete cooperation, each with the other, in order to accomplish effectively those things set forth and agreed to in this agreement; and

WHEREAS, State, City and Railroad have determined that actual total cost of the project including preliminary engineering expended subsequent to October 16, 1969, shall be shared on the basis of 33 1/3 per cent to be borne by State, 33 1/3 per cent to be borne by City, and 33 1/3 per cent to be borne by Railroad.

Attached hereto, marked Exhibit A, and by this reference made a part hereof, is a sketch map showing the general location and plans for the project.

NOW, THEREFORE, the premises being in general as stated in the foregoing RECITALS, it is agreed by and between the parties hereto as follows:

THINGS TO BE DONE BY STATE:

1. State, by execution of this agreement, approves the RECITALS herein, Exhibit A, the provisions of THINGS TO BE DONE BY CITY and RAILROAD, and all other provisions set forth in this agreement.

2. State shall prepare all plans, incorporating the railroad structure design to be submitted by Railroad, let and award all contracts, and supervise construction of the project.

3. State shall prepare the required right-of-way descriptions and deliver said descriptions to City.

4. All statements for costs and expenses of the project, including those of City and Railroad, shall be forwarded to State. The actual total cost of the project shall be shared equally by State, City and Railroad. During the course of the work State shall submit monthly progress statements and billings to City and Railroad itemizing costs incurred by State to date.

5. Upon receipt of progress statements and monthly billings itemizing costs from State, City and Railroad shall each forthwith reimburse State for 33 1/3% of the project costs to that date.

6. State shall locate and construct, or reconstruct, certain intersecting roads, streets, and frontage roads along the highway to provide for a free and convenient flow of traffic. Said roads and streets are approximately as shown colored in orange on the attached Exhibit A, and more particularly described as follows:

a. S. E. 17th Avenue (northerly of S. E. Pershing Street), lying southerly of the highway, including a structure over S. E. Powell Boulevard, and frontage roads along the northerly and southerly sides of the highway providing ingress and egress with S. E. Powell Boulevard.

b. A new connection with S. E. 13th Place, lying northerly of the highway, approximately opposite Engineer's Station "L" 101+09.

c. New connections with the proposed frontage road, lying southerly of the highway, to be provided for S. E. 13th Avenue, S. E. 14th Avenue, S. E. 15th Avenue, and S. E. 16th Avenue.

d. Construct, and/or reconstruct, portions of S. E. 19th Avenue, lying southerly of the highway.

e. New connections with S. E. 20th Avenue, lying northerly and southerly of the highway.

f. A frontage road along the northerly side of the highway providing egress only from S. E. Powell Boulevard, thence northwesterly to a new connection with existing N. E. 17th Avenue near S. E. Tibbetts Street.

g. New connections with the proposed frontage road, lying northerly of the highway, to be provided for S. E. 18th and S. E. 19th Avenues.

h. Reconstruct S. E. Tibbetts Street between S. E. 17th and S. E. 18th Avenues, and between S. E. 19th and 20th Avenues.

7. State shall, upon completion of the project, dispose of all State's right, title, and interest, if any there be, to City, in those portions of roads or streets referred to in paragraph 6 above, and approximately as shown colored in orange on the attached Exhibit A; all jurisdiction, control, and maintenance thereupon shall pass to City to be performed at its sole expense.

8. State shall close the following streets and avenues along the highway or railroad that are not connected thereto and same shall be accomplished by means of a barrier. Said closures are approximately as shown by means of red lines on the attached Exhibit A, and further described as follows:

a. S. E. 14th Avenue at the southerly curb line of relocated S. E. Powell Boulevard.

b. S. E. 15th Avenue at the southerly curb line of relocated S. E. Powell Boulevard.

c. S. E. 16th Avenue at the southerly curb line of relocated S. E. Powell Boulevard.

d. S. E. 17th Avenue at the southwesterly and northeasterly right-of-way boundaries of the railroad.

e. S. E. 18th Avenue at the northerly curb line of relocated S. E. Powell Boulevard.

f. S. E. 19th Avenue at the northerly and southerly curb lines of relocated S. E. Powell Boulevard.

9. State shall, upon completion of the project, perform the maintenance on S. E. Powell Boulevard, and same shall be maintained as a part of the State Highway System, approximately as shown colored in green on the attached Exhibit A.

10. Upon completion of the construction of the Railroad structure, State at its expense shall maintain that part of the Railroad structure below the bridge seats and the pavement.

THINGS TO BE DONE BY CITY:

1. City, by execution of this agreement, approves the RECITALS herein, Exhibit A, THINGS TO BE DONE BY STATE and RAILROAD, and all other provisions set forth in this agreement.

2. City, by execution of this agreement, hereby consents, pursuant to ORS 373.030(2), to any and all changes of grade, if any there be, in connection with the construction of the proposed project.

3. It is understood and agreed between City and State that if City, at its sole cost, constructs new sidewalks not a part of the project, said work shall be done at such a time and in such a manner as not to interfere with the work of the contractor performing the street construction work on said project, and no such sidewalks shall cross the Railroad tracks at grade.

4. City shall not permit any encroachments upon that portion of the project right-of-way remaining under its jurisdiction which will cause more than a temporary obstruction to the free and convenient flow of traffic over said highway.

5. City with the assistance of State shall obtain the necessary right-of-way, by purchase or otherwise, utilizing right-of-way descriptions prepared and delivered by State, and submit progress statements to State itemizing the City's costs incurred by reason of said right-of-way acquisition to date.

6. City shall, upon completion of the project, accept all right, title, and interest in those streets and roads referred to in paragraphs 6 and 7 under THINGS TO BE DONE BY STATE, and all jurisdiction, maintenance, and control thereupon shall pass to City to be performed at its sole expense. Said streets and roads are approximately as shown colored in orange on the attached Exhibit A.

7. City shall initiate the required procedures to close or vacate the streets described in paragraph 8 under THINGS TO BE DONE BY STATE, and the at-grade railroad crossings of S. E. Brooklyn Street, S. E. 13th Place and S. E. 17th Avenue, and City shall vacate that portion of S. E. Reedway Street crossing the tracks of Railroad in the vicinity of Railroad's Brooklyn Yard, reserving unto City an easement for a term of 20 years over and under such vacated area for construction of a highway overpass or underpass.

8. City shall prohibit parking, except for emergencies, on both sides of the highway within the limits of the project.

9. Upon completion of the project City shall provide energy for and maintain traffic lights and street lights. City will also maintain adequate drainage facilities.

THINGS TO BE DONE BY RAILROAD:

1. Railroad, by execution of this agreement, approves the RECITALS herein, Exhibit A, THINGS TO BE DONE BY STATE and CITY, and all other provisions set forth in this agreement.

2. Railroad shall prepare the design for the structure to carry Railroad's facilities over and across S. E. Powell Boulevard, and said design shall be submitted to State for incorporation in the plans for the project.

3. Railroad shall, as soon as reasonably practicable after execution of this agreement, grant to State and/or City, as the case may be, the necessary easements for underpass construction below and across the Railroad's right-of-way. Said easements shall be granted without monetary consideration and on Railroad's usual terms and conditions.

4. Railroad shall, during the course of the work, submit monthly progress statements to State itemizing project construction costs incurred by Railroad to date.

5. Railroad shall, upon completion of the project, maintain that part of the Railroad structure above the bridge seats, including the underpass deck, tracks, Railroad drainage and all Railroad facilities. Said structure is approximately as shown colored in purple on the attached Exhibit A.

GENERAL PROVISIONS:

1. The parties hereto mutually agree and understand that the intent and purpose of this agreement is such that State, City and Railroad shall each contribute at least, but not in excess of, 33 1/3 per cent of the actual total cost of the project. Time being of the essence in such agreements, it behooves the parties to cooperate fully, each with the other, especially in the matter of submission of progress statements of costs and the prompt disbursement of funds due, to the end that any obligations of debt may be settled with dispatch for the mutual benefit and satisfaction of all the parties hereto.

2. The parties further agree and understand that said actual total costs shared on the 33 1/3 per cent basis shall not be for any services or work undertaken or accomplished prior to October 16, 1969.

3. The parties shall, prior to award of any contracts, be furnished plans for their review and comments and the opportunity to approve or disapprove the plans for the project.

4. The City agrees to allow the State to construct a storm sewer and discharge project drainage water into City's storm drain facilities, and upon completion of project, City agrees to maintain said facilities at their sole expense. The State shall not, in the future, expand or connect additional highway drainage facilities to said City system without prior approval of City.

5. The cost of the project shall include the construction of the grade separation, structures, approaches, walls, street work, storm drains, street and traffic signs, the acquisition of property and settlement of property damage, vehicular detours, installation of crossing protection for such detours, track changes, Railroad Shoofly, all necessary engineering, and all other appurtenant work and costs necessary to complete the project.

6. Any real property acquired in excess of the project requirements will be promptly sold, if possible, with proceeds to be credited to the project. Upon the sale of such real property the proceeds shall be shared equally by the City, State and Railroad.

7. State and Railroad, as soon as reasonably practicable, shall enter into the usual type of construction agreement which will provide the obligations and duties of State and Railroad with respect to the construction to be undertaken by State upon and adjacent to Railroad's property.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed in triplicate by their respective

officials and have caused their respective seals to be affixed hereto as of the day and year hereinafter written.

This agreement was approved by the Oregon State Highway Commission on March 17, 1970, at which time the Secretary for the Commission was authorized and directed to sign said agreement for and on behalf of the Commission. Said authority is set forth in Volume 54, Page _____, Minute Book of the Oregon State Highway Commission.

APPROVED:

Floyd Query
Floyd Query, Secretary

[Signature]
Assistant State Highway Engineer

Highway Engineer Coordinator

APPROVED AS TO FORM
[Signature]
[Illegible Title]

APPROVED:

CITY OF PORTLAND, by and through its City Officials

City Traffic Engineer

By _____
Mayor

City Engineer

By _____
Commissioner of Public Works

By _____
Commissioner of Public Affairs

APPROVED AS TO FORM:

Dated: _____

City Attorney

APPROVED AS TO FORM:

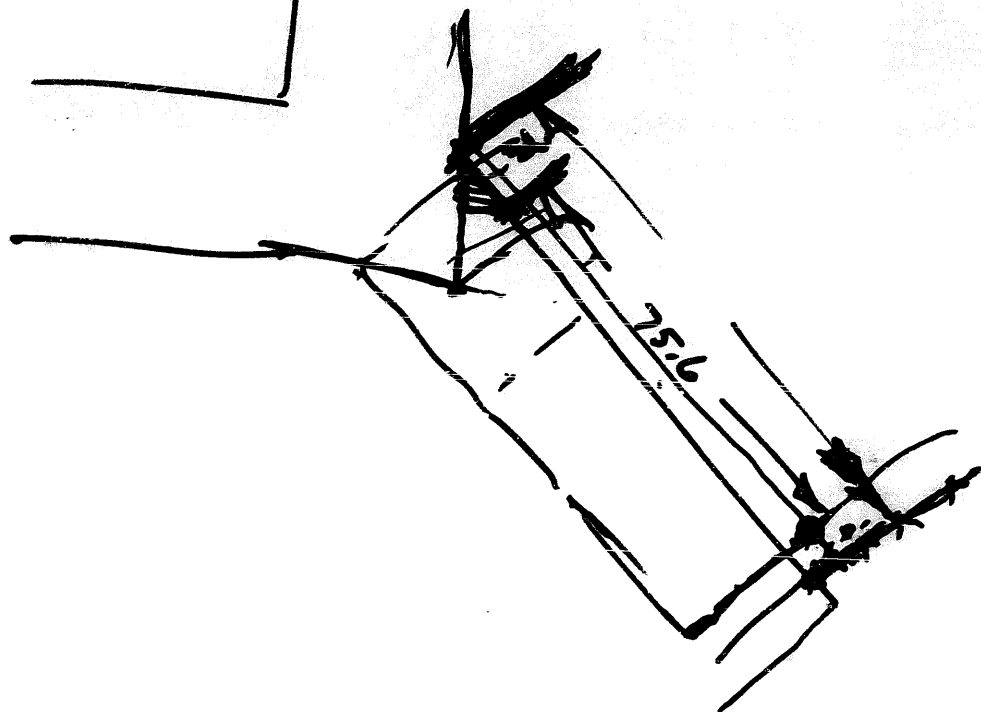
SOUTHERN PACIFIC TRANSPORTATION COMPANY,
by and through its Company Officers

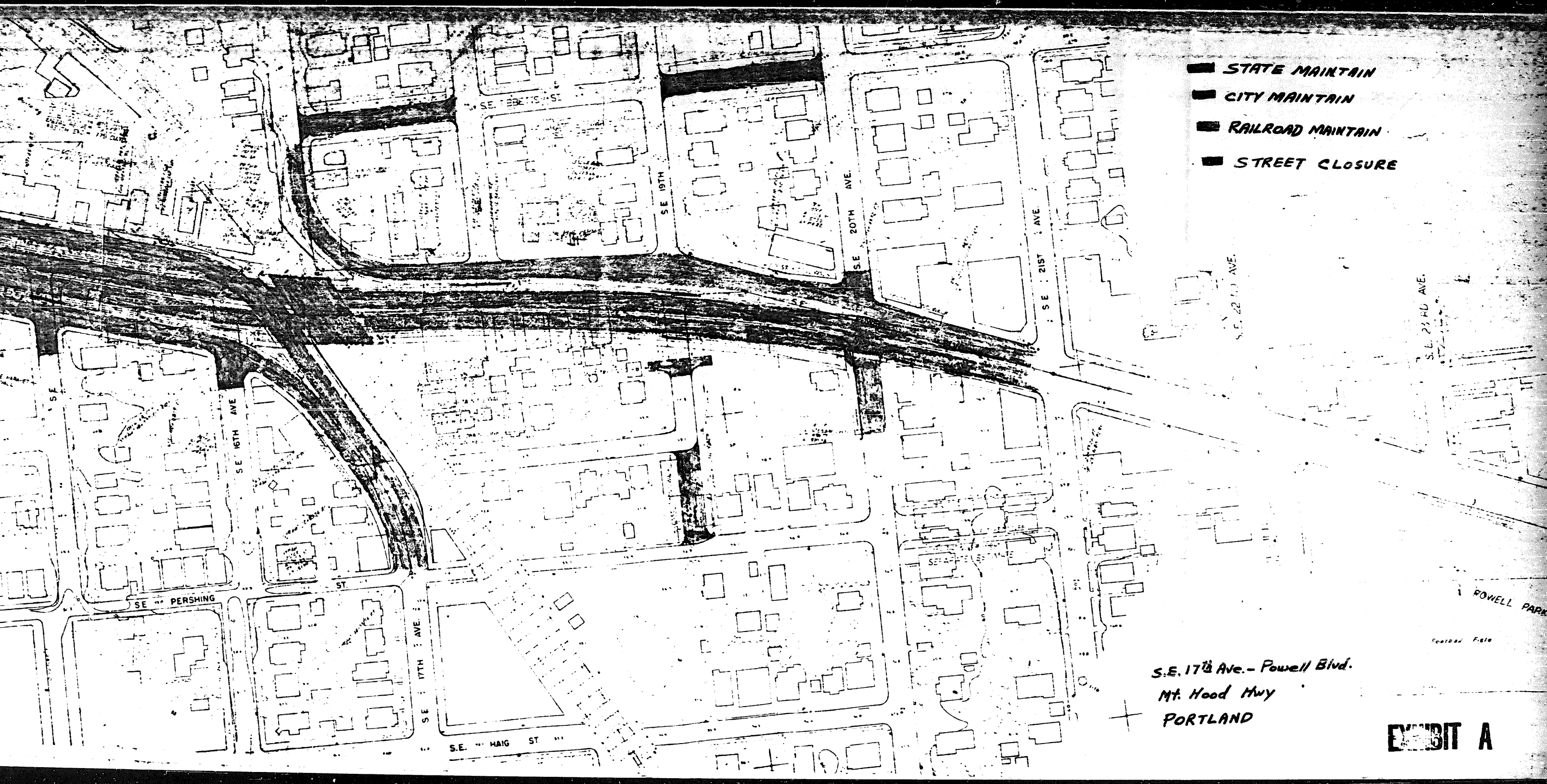
Glenn H. Young
General Attorney Oregon
Lines

By [Signature]
Vice-President

Dated: March 31, 1970

ATTEST
[Signature]
Assistant Secretary





- STATE MAINTAIN
- CITY MAINTAIN
- RAILROAD MAINTAIN
- STREET CLOSURE

S.E. 17th Ave. - Powell Blvd.
Mt. Hood Hwy
PORTLAND

EXHIBIT A



S.E. MILWAUKIE AVE.

S.E. KELLY ST

SE FRANKLIN ST

SE PERSHING ST

SE 16TH AVE

SE 17TH AVE

ORDINANCE No. 132422

An Ordinance authorizing the City to enter into an agreement with the State of Oregon, acting by and through its State Highway Commission, and with Southern Pacific Transportation Company for separation of railroad crossing at SE 17th and Powell from grade of streets, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds that it is desirable and in the public interest that the railroad crossing at SE 17th and Powell be separated from grade of streets to alleviate an acute traffic problem; that ordinances have already been passed vacating certain streets in the area for such purpose and the City should now enter into an agreement with the State of Oregon, acting by and through its State Highway Commission, and with Southern Pacific Transportation Company for such grade separation; now, therefore, the Mayor, the Commissioner of Public Works and the Commissioner of Public Affairs hereby are authorized to execute on behalf of the City an agreement with the State of Oregon, acting by and through its State Highway Commission, and with Southern Pacific Transportation Company for grade separation at SE 17th and Powell, said agreement to be substantially in accordance with Exhibit 1 attached to the original only of this ordinance.

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: In order to alleviate an acute traffic problem; 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, MAR 25 1971

Commissioner Anderson
MCR:jw 3/24/71


Mayor of the City of Portland

Attest:


Auditor of the City of Portland

Calendar No. 1109

ORDINANCE No. 132422

Title

An Ordinance authorizing the City to enter into an agreement with the State of Oregon, acting by and through its State Highway Commission, and with Southern Pacific Transportation Company for separation of railroad crossing at SE 17th and Powell from grade of streets, and declaring an emergency.

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THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
Agardson	1	
Goldschmidt	1	
Ivancie	1	
McCready	1	
Schrunk	1	

FOUR-FIFTHS CALENDAR	
Anderson	<i>McLure</i>
Goldschmidt	<i>McCready</i>
Ivancie	
McCready	<i>C.N. CLB</i>
Schrunk	<i>W. Syme</i>

INTRODUCED BY
Commissioner Anderson

DRAWN BY
MCR:jw

Date March 24, 1971

NOTED BY THE COMMISSIONER

Affairs

Finance and
Administration

Safety

Utilities

Works

City Attorney *McLure*

NOTED BY THE CITY AUDITOR

McLure

APPROVED

Date

By

City Engineer

Date

By

GEORGE YERKOVICH

Auditor of the CITY OF PORTLAND

James L. Powell

Deputy