

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 09-122

**Vacation of a Portion of a Public Easement Acquired for the Widening of Right of Way;
the Construction and Operation of a Westside Broadway Bridge Approach**

The Multnomah County Board of Commissioners Finds:

- a. In 1927 Multnomah County acquired an easement in Northwest Portland from the owner of abutting real property identified as Block U of Couch's Addition. The purpose of the easement was for the widening of the existing public right of way for NW Broadway, and for the construction, operation and maintenance of the Broadway Bridge Approach at the intersection of NW Broadway with NW Hoyt. The easement was recorded on July 28, 1927 at Book 1112 and Page 336 in the County's Deed Records. A copy of the 1927 easement is attached identified as Exhibit A.
- b. The 1927 easement granted and conveyed to the County a bifurcated interest in Block U. The first aspect of this easement interest was a 200 foot long, 12.5 foot deep section of Block U on its western edge but with a wider triangle portion at the southern end, which County staff identifies as the "flag pole" interest. This flagpole section of the easement directly abuts Broadway Street. The second aspect of the easement interest provided the right to access the remainder of Block U (that portion of Block U not identified as part of the flagpole) for the purpose of extending, constructing and maintaining footings or foundations associated with the Bridge. This second aspect essentially encumbered the remainder of Block U and County staff has identified this easement as the "blanket easement".
- c. The County constructed the Westside Broadway Bridge Approach Structure (Approach Structure) in the 1920's and it fully occupies the whole of the flagpole but for the triangle section alluded to above. Further the records of the construction show the Approach Structure's subsurface foundational supports extend into the blanket easement in varying lengths of approximately 3-5 feet. The County has used over the years since 1927 the triangle portion of the easement and has used the blanket easement area to observe and conduct maintenance of the Approach Structure.
- d. Currently, the Portland Development Commission (PDC) and the Housing Authority of Portland (HAP), propose to develop Block U as a Resource Access Center (RAC) for the homeless to provide quick access to available services and transitional housing. PDC and HAP would like to begin construction of the RAC as soon as possible. Pursuant to ORS Chapter 368, PDC has submitted a petition to the County to vacate portions of the easement as discussed above, which encumber Block U.

- e. It is our understanding that the construction of the RAC cannot begin until the triangle portion of the flagpole and the blanket easement are vacated.
- f. The Multnomah County Bridge Section of the Department of Community Services (Bridge Section) has reviewed the plans and specifications for the construction of the RAC. The RAC project will include improvements to the Approach Structure, including sidewalk widening and the construction of a new western wall of the RAC building foundation which will provide for support of the new sidewalk; and for all intents and purpose will serve as the eastern wall of the Approach Structure. Because the new wall serves in dual capacity it being identified as the "shared wall".
- g. Multnomah County Bridge Section and Transportation Division staff members have participated in the planning, design and review of the RAC facility with respect to the proposed alteration to the Approach Structure; i.e. the shared wall as noted above at the eastern edge of the flagpole easement. The County's Department of Community Services supports the project; provided certain accommodations are met as further discussed herein.
- h. The Transportation Division recommends that the County approve the vacation of the right-of-way interests as more particularly described in Exhibit B to this resolution, reserving to the County certain rights as more particularly described in the terms and conditions provided in Exhibit B at Page 2.
- i. As allowed under ORS 368.351, the above referenced petition contains the acknowledged signatures of 100% of any private property proposed to be vacated and acknowledged signatures of the owners of 100% of property abutting any public property proposed to be vacated, and, indicates the owners' approval of the proposed vacation.
- j. In addition, the appropriate County Road Official has filed a written report pursuant to ORS 368.351(1) that contains an assessment that the proposed vacation of public property is in the public interest. (See Agenda Placement Request.) Pursuant to ORS 368.351, the County may make a determination about this vacation without additional notice and publication required under ORS 368.346.
- k. As required under MCC 27.054, the County has received a total of \$200.00, for a Feasibility Study, from the petitioner. The total administrative cost for this vacation, which includes research, review, analysis and document preparation, is \$30,000.00. The balance owed by the petitioner at the date of this hearing is \$29,800.00.
- l. Under ORS 368.361(3) this proposed vacation to be effective is subject to the requirement that the City of Portland by resolution or order concur in the findings of the County Board in the proceedings herein.

The Multnomah County Board of Commissioners Resolves:

1. To support the proposed Resource Access Center to deliver services for the chronically homeless and to provide quick access to available services and transitional housing.
2. Subject to the petitioner's payment of all funds due as provided under MCC 27.054, the portion of the public easement as more particularly described in the attached Exhibit B at Page 1, is vacated, excepting the easement rights that any existing utility may have in the vacated property under ORS Chapter 368.
3. Subject to the petitioner's payment of all funds due as provided under MCC 27.054, the portion of the public easement interest as more particularly described in the attached Exhibit B at Page 2, is vacated; subject to the terms and conditions provided therein.
4. Pursuant to MCC 27.054, the total cost for this vacation proceeding incurred by the County is \$30,000.00 and PDC is directed to pay the remaining amount of \$29,800.00 to the County.
5. The Land Use and Transportation Program of the Department of Community Services will record and file this Resolution in accordance with ORS 368.356(3), only upon receipt of the total amount due under MCC 27.054.
6. Upon the recording and filing of this Resolution, the County Surveyor will mark the plat, if applicable, as provided under ORS 368.356(2)(d) and ORS 271.230; and title in the underlying property shall vest as provided under ORS 368.366.

ADOPTED this 1st day of October, 2009.

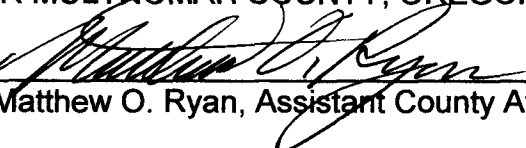


BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Matthew O. Ryan, Assistant County Attorney

SUBMITTED BY:

Cecilia M. Johnson, Director, Dept. of Community Services

EXHIBIT A

Done in the presence of

L L Scott

T M Harlbart

(Seal)

J A MacLeod

Sheriff of Multnomah County, Oregon

STATE OF OREGON)

COUNTY OF MULTNOMAH) SS

On this, the 27th day of July, 1927 before me, a Notary Public, within and for said County, personally came the within named T M Harlbart, Sheriff of the said County of Multnomah, State of Oregon, known to me to be the identical party described in and who, as such sheriff, executed the within instrument and acknowledged to me that he executed the same

IN WITNESS WHEREOF I have hereunto set my hand and Notarial seal the day and Year in this certificate first above written

(NOTARIAL SEAL)

Charles Riehton

My commission expires December 25th, 1928

Notary Public for Oregon

Rec for record Jul 28, 1927 at 9:47 A M

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G B #56408

PORTLAND TERMINAL INVESTMENT CO ET AL WITH COUNTY OF MULTNOMAH

THIS AGREEMENT Made and entered into this 19th day of July, 1927 by and between Portland Terminal Investment Company, a corporation of the State of Oregon, with its principal office at the City of Portland, therein, hereinafter called the "Company" and the County of Multnomah, State of Oregon, acting by and through its Board of County Commissioners, hereinafter called the "County"

WITNESSETH:

WHEREAS, public necessity required that the West approach to the bridge across the Willamette River in the City of Portland, known as the "Broadway Bridge" be widened and extended between the North line of Hoyt Street and the South line of Johnson Street in Couch's Addition to said City and in order to widen and extend said approach and maintain the same when so widened, it will be necessary for the County to use and occupy additional land on either side of Broadway (formerly Seventh) Street, between Hoyt Street and Johnson Street; and

WHEREAS, the Company is the owner of Lots Two (2) Three (3) Six (6) and Seven (7) of Block "B" of said Couch's Addition of which Lots Two (2) and Three (3) are improved with a one story brick building, at present used as a garage, on the East Side of Broadway Street and North of Hoyt Street, and is willing to grant an easement to the County for the purpose of extending said bridge approach, over and upon a portion of said Lots upon the terms and conditions hereinafter set forth;

NOW THEREFORE, Portland Terminal Investment Company, in consideration of the premises and the sum of THIRTY-THREE THOUSAND EIGHT HUNDRED FIFTY and No/100 (\$33,850.00) DOLLARS to it paid by the County, the receipt of which is hereby acknowledged, does hereby grant, and convey unto the County of Multnomah, State of Oregon, a perpetual easement for the purpose of widening, extending, constructing and perpetually maintaining and operating, the West approach to said Broadway Bridge, upon and over the following described real estate,

1117
situated in the City of Portland County of Multnomah, State of Oregon:

A piece or parcel of land containing three thousand one hundred sixty six and one tenth (3166.1) square feet and being all that part of Block "U" Couch's Addition to the City of Portland, Multnomah County, Oregon, more particularly described as follows:

Beginning at a point which is the southwest corner of said Block "U" thence north along the west line of said Block "U" which line is also parallel to and thirty one (31) feet east of the center line of Broadway Bridge Approach a distance of two hundred (200) feet to the Northwest corner of said Block "U"; thence east along the north line of said Block "U" a distance of twelve and five tenths (12.5) feet; thence south, parallel to and twelve and five tenths (12.5) feet east of said west line of Block "U" a distance of one hundred sixty three and five tenths (163.5) feet to a point thirty six and five tenths (36.5) feet north of the south line of said Block "U"; thence southeasterly in a straight line a distance of fifty one and sixty two hundredths (51.62) feet to a point in the south line of said Block "U" forty nine (49) feet east of the west line of said Block "U" thence west on said south line of Block "U" a distance of forty nine (49) feet to the point of beginning

Description approved

Gustav Luidinthal Const Eng

By Hans H Rode Res July 27, 1927

Description approved

A B Meare Date 7/7/27

Together with the right and privilege to extend the underground concrete footings or foundations of any pier or structure of said bridge approach beyond the limits of the lands heretobove described, and over and upon the adjoining lands of the Company and to perpetually maintain the same when so extended

TO HAVE AND TO HOLD the said easement unto the County of Multnomah State of Oregon, and to its successors and assigns forever so long as the same shall be used for bridge, highway or street purposes, and when no longer used for said purposes the easement hereby granted shall cease and determine and the lands covered thereby shall revert to and become the property of the Grantor herein, its successors and assigns, as of its former estate

Nevertheless the said easement is hereby granted expressly subject to the following terms and conditions;

(a) The County shall assume and pay all taxes and assessments hereinafter levied by any authority, either Municipal County or State, on the lands heretobove described and included in said easement

(b) The Company has heretofore agreed and covenanted to and with the City of Portland to dedicate for street purposes and for the widening of Hoyt Street, the South Ten (10) feet of said Lot Two (2) and other lands, and this easement is granted and accepted subject to such future dedication by the Company to the City of Portland at the time agreed upon

(c) It is understood and agreed by and between the parties hereto that in the widening and reconstruction of the West approach to said Broadway Bridge, the flare on either side of the extreme South end of said approach shall correspond in elevation to the grade of Hoyt Street as established by the City of Portland on either side of Broadway Street

(d) The Company will at its own cost and expense, and within a reasonable

time after due notice from the County that it desires to undertake the work of widening said bridge approach clear the ground covered by this easement and remodel the one story brick building on said Lots Two (2) and Three (3) so as to permit the use and occupancy of this easement by the County, its agents, engineers and employees

UNION DEPOT GARAGE COMPANY, a corporation of the state of Oregon, and occupying lands included in the above easement as the Lessee of the Company, hereby joins in the execution of this agreement in order to show its consent thereto and terms and conditions thereof

All of the terms and conditions of this agreement shall inure to and be binding upon the representative successors and assigns of the parties hereto

IN WITNESS WHEREOF the parties have caused these presents to be signed and executed each on its behalf by its proper officers thereunto duly authorized this 18th day of July, 1927

ATTEST

F J Boeg Secretary
(CORPORATE SEAL)

PORTLAND TERMINAL INVESTMENT COMPANY
By Geo W McMath President

ATTEST:

Lillie B McGirr Secretary
(CORPORATE SEAL)

UNION DEPOT GARAGE COMPANY
By G H McGirr President

Approved as to form
Stanley Myers

District Attorney

MULTNOMAH COUNTY

ATTEST

Joe W Beveridge County Clerk
(SEAL OF COUNTY COMMISSIONERS OF
MULTNOMAH COUNTY, OREGON)

STATE OF OREGON
By Annette M Smith County Commissioner
By Ray S Morse County Commissioner
By Grant Phagley County Commissioner

STATE OF OREGON)
COUNTY OF MULTNOMAH) SS

On this 18th day of July 1927 before me appeared Geo W McMath, to me personally known, who being duly sworn, did say that he is the President of Portland Terminal Investment Company, the corporation that executed the within and foregoing instrument and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of a resolution of its Board of Directors; and said Geo W McMath, acknowledged said instrument to be the free act and deed of said corporation

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal this the day and year in this, my certificate written

(NOTARIAL SEAL)

T B Collins

My commission expires August 17th, 1928

Notary Public for Oregon

STATE OF OREGON)

COUNTY OF MULTNOMAH) SS

On this 19 day of July 1927 before me appeared A M Smith, G Phogley and C S Morse, to me personally known, who being duly sworn, did say that they are the duly elected and qualified County Commissioners of Multnomah County, Oregon, the party that executed the within and foregoing instrument, that the seal affixed to said instrument is the official seal of said County and that they signed and sealed the said instrument in behalf of said County of Multnomah, and said A M Smith, G Phogley and C S Morse acknowledged said instrument to be the free act and deed of said County

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal this the day and year in this my certificate written

(NOTARIAL SEAL)

Bertha A. Gaul

My commission expires May 4- 1929

Notary Public for Oregon

Ret for record Jul 29, 1927 at 11:20 A M

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EXHIBIT B

LEGAL DESCRIPTION
FOR THE VACATION OF A PORTION OF
A MULTNOMAH COUNTY BRIDGE EASEMENT
MAY 4, 2009

A portion of Block U, Couch's Addition to Portland, as described in the document recorded July 28, 1927 in Book 1112, Page 336, Multnomah County Records, located in the Northwest quarter of Section 34, Township 1 North, Range 1 East, Willamette Meridian, City of Portland, Oregon, more particularly described as follows:

Commencing at the southwest corner of said Block U; thence South $89^{\circ}55'56''$ East 12.50 feet along the south line of said Block U to the point of beginning of this description; thence North $00^{\circ}03'23''$ East 36.50 feet parallel with and 12.50 feet east of the west line of said Block U; thence South $44^{\circ}56'10''$ East 51.62 feet to the south line of said Block U; thence North $89^{\circ}55'56''$ West 36.50 feet along the south line of said Block U to the point of beginning.

Containing 666 square feet, more or less.

The basis of bearings for this description is the northeast line of NW Sixth Avenue as shown on Survey Number 59421, Multnomah County Survey Records and being North $38^{\circ}28'41''$ West.

End of Description.

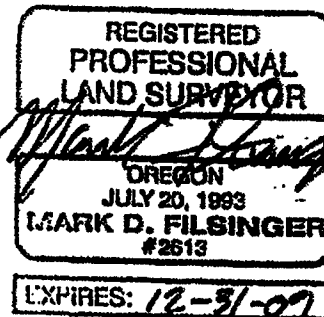


EXHIBIT B

A. Vacation: In addition to the property described at Exhibit B, Page 1; and subject to the County's rights as more particularly described in the Terms and Conditions provided herein at Section B, that certain interest in Block U as set forth at Page 337 of the July 1927 Easement (See Exhibit A) and, being more particularly described as follows:

Together with the right and privilege to extend the underground concrete footings and foundations of any pier or structure of said bridge approach beyond the limits of the lands hereinabove described, and ever and upon the adjoining lands of the Company and to perpetually maintain the same when as extended

is vacated.

B. Terms and Conditions:

1. **Emergency Access.** County retains the right to enter Block U of Couch Addition in the event of emergency to address conditions of the "shared wall", which is that certain load bearing and retaining wall directly abutting the western edge of Block U, as discussed in this Resolution, provided that the County shall only act under this Emergency Access authority if the Property Owner or the Occupant of Block U is, in the reasonable determination of the County Engineer, not acting in a timely and responsible manner to address the conditions of the shared wall in the emergency. For purposes of this Resolution an "emergency" shall mean: any natural disaster including but not limited to flood, fire, earthquake or similar calamity; but shall also mean if the property owner or occupant of Block U abandons the property or if the shared wall is subject to later discovered defects that in the opinion of the County Engineer warrant immediate entry to preserve the Bridge Approach Structure. In the event the County needs to exercise emergency access as provided herein the County reserves the right to enter Block U and to perform any work necessary to preserve the Bridge Approach Structure and to the extent the County incurs costs the property owner of Block U shall be subject to billing by the County for reimbursement of said costs and to the filing and recording of a lien against the property. For the purposes of this emergency access right "the County" shall mean authorized employees, agents and contractors of the County.
2. **Cost of the Shared Wall.** All costs and responsibility for construction, inspection, maintenance, repair and reconstruction of the Shared Wall shall be borne by the property owner of Block U and all work done thereon shall be of good materials and workmanship.
3. **Original Terms and Conditions:** The Original Terms and Conditions found at Pages 337-338 of the July 1927 Easement, (See Exhibit A); are amended as follows: The County is released and completely discharged from all past, present or future tax or assessment obligations under Term and Conditions Section "(a)".
4. **Run with Land.** These Terms and Conditions imposed herein shall run with the land.