10-28-1931

Agreement: Public Market Co. and City

Public Market Company of Portland

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THIS AGREEMENT, made and entered into the 28th day of October, 1931, by and between PUBLIC MARKET COMPANY OF PORTLAND, a corporation organized and existing under the laws of the State of Oregon (hereinafter sometimes referred to as the "Company"), and THE CITY OF PORTLAND, a municipal corporation of Multnomah County, State of Oregon, by its Mayor and Auditor (hereinafter sometimes referred to as the "City").

WITNESSETH

1. The Company agrees that within fifteen (15) days after the City shall have procured the approving opinion of legal counsel of the authority of the City to issue and sell the public market utility certificates authorized by Ordinance No. 61192, it will resume active construction of a public market building upon the real property in the City of Portland hereinafter more particularly described, according to plans and specifications hereto attached, marked Exhibit "A" and hereby made a part of this agreement, and that it will complete the construction of such building according to said plans and specifications on or before July 15, 1932. The Company agrees that in the performance of the work the City, through its Building Inspector and/or City Engineer, shall have the right to inspect the progress construction of the building from time to time for the purpose of ascertaining and reporting to the City whether or not said building is being constructed in accordance with the plans and specifications herein referred to. If at any time in the opinion of the said city officials the building is not being so constructed, it is agreed that they shall report such fact to the Company and to the City, and thereupon it shall be the duty of the Company to comply with the plans and specifications in the particulars designated by the said City officials. A failure upon the part of the company to resume or complete said building within the times specified herein shall nullify this agreement, unless it develops that for reasons beyond the control of the Company, or by acts of God, or delays caused by litigation it cannot or should not be required to so resume or complete the building within said time, then and in that event and upon application therefor, the City shall give the Company such extension of time as the Council of the City may deem reasonable, under the circumstances and facts, in which to complete said building.

2. The Company agrees that it will acquire and install in said public market building within ten (10) days after said building is completed, the equipment, materials and supplies more particularly described in Exhibit "B", which is hereto attached.
and hereby made a part of this agreement. In addition to the principal sum to be paid the Company, as hereinafter fixed, the City shall pay the Company the actual cost price of said equipment, materials and supplies estimated at this time to be approximately $46,418.00, plus ten per cent of the actual cost price to cover the services of the Company in making said purchases. Such purchases of materials, equipment and supplies shall be subject to the approval of the Council in all respects, including the prices therefor.

3. The Company agrees that upon the completion of said public market building and the purchase and installation therein of the equipment, materials and supplies described in said Exhibit "B", and as first approved by the Council, it will convey to the City, by warranty deed (and by bill of sale with relation to movable fixtures and personal property) good and marketable title to the following described property, to wit:

The vacated portion of Yamhill street, in the City of Portland, County of Multnomah, State of Oregon, which is particularly described as follows:

All that portion of Yamhill street which lies between a line commencing at a point on the south line of said Yamhill street 40 feet easterly from the northwest corner of Block 75, in said City of Portland, running thence northerly and parallel with the easterly line of Front street, in said city, to a point in the north line of said Yamhill street, which point is 40 feet easterly from the southwesterly corner of Block 76 of said city and a line commencing at a point in the south line of said Yamhill street which is 25 feet westerly from the present westerly harbor line of the Willamette River, running thence northerly parallel with and 25 feet distant from said harbor line to a point in the north line of said Yamhill street, which is distant 25 feet westerly from said harbor line;

and the vacated portion of Taylor street, in the City of Portland, County of Multnomah and State of Oregon, which is particularly described as follows:

All that portion of Taylor street which lies between a line commencing at a point on the south line of said Taylor street 40 feet easterly from the northwesterly corner of Block 74, in said City of Portland,
running thence northerly and parallel with the east line of Front street in said city, to a point in the north line of said Taylor street, which point is 40 feet easterly from the southwesterly corner of Block 75 of said City of Portland, and a line commencing at a point in the south line of said Taylor street which is 25 feet westerly from the present westerly harbor line of the Willamette River, running thence northerly, parallel with and 25 feet distant from said harbor line, to a point in the north line of said Taylor street which is 25 feet distant from said harbor line.

Also all of Block 74, all of Block 75 and lots 3 and 4 in Block 76, in the City of Portland, County of Multnomah, State of Oregon, except the southerly 4 feet of said Block 74 extending from a point 40 feet east of the easterly line of Front street and extending parallel with the north line of Salmon street to a point 25 feet easterly from the harbor line, and excepting also the easterly 40 feet of said Block 74 and said Block 75 and said Lots 3 and 4 of Block 76, and subject also to an easement vested in the City for the use of a strip of land 25 feet in width along the easterly side of said blocks and lots parallel with the harbor line of the Willamette River,

together with the building and improvements thereon and all equipment, materials and supplies therein, and furnish an abstract of title to said property. In lieu of an abstract of title the City reserves the right to require, at its expense, title insurance, and the Company agrees that upon demand it will deliver to the City, at the City's expense, but not exceeding the actual cost therefor, a title insurance policy covering said land and building to be issued by a company to be approved by the City, but said title to said property shall be subject to the unmatured Intercepting Sewer and Drainage System assessments, which the City assumes and agrees to pay out of the revenues from said public market utility, and to that certain party wall agreement between J. T. Hunsaker and Samuel Brown, dated November 3, 1873, recorded December 20, 1873, in Miscellaneous Book 2, Page 575, as modified by party wall agreement between Anna L. Lee and Joshua Roberts Mead, Stella B. Mead and William W. Mead, trustees of the estate of Stephen Mead, deceased, and W. P. Fuller Company, dated March 6, 1928, and recorded March 23, 1928, in Book of Deeds 1142, at Page 4. It shall also be permissible for said title to be subject to taxes and assessments due and payable after November 5, 1931. The Company agrees that it will pay all legal taxes, assessments and interest which become due and are payable after November 5, 1931, up to the time that it delivers title to the City, and the City agrees that it will reimburse said Company from funds derived from the sale of Public Market Utility Certificates for all sums which said Company shall pay for such taxes, assessments and interest, with interest at six per cent from the date of said payment or payments. It shall also be permissible for said title, with respect to the vacated portions of Taylor and Yarmill streets, to be subject to the right reserved to the City by the ordinance vacating said portions of said streets to repeal said vacations.
4. The Ordinance by which the above described vacated portions of Taylor and Yamhill streets were vacated specifically reserves to the City the right to repeal said vacation ordinance in the event the petitioner for said vacations, its successors or assigns, should fail to commence the construction of a market building upon the property vacated and adjoining property within three months from the effective date of said ordinance and complete the building within a reasonable time thereafter, and the City hereby agrees that said construction was duly and properly commenced within the time limits specified in said ordinance and that since said date no unreasonable delay has occurred in connection with the completion of said market building, and hereby expressly waives and relinquishes the right to repeal the vacation of said portions of said streets, and the Council of the City agrees not to exercise or attempt to exercise such right of repeal.

5. The Company shall pave and gravel the driveways on the east and north sides of the said building, in accordance with the plans and specifications of the City Engineer heretofore prepared.

6. Upon the completion by the Company of its obligations under this agreement, and at the time of the tender by the Company to the City of proper conveyances of said property and assignments of its leases, contracts and insurance policies affecting said premises, the City shall accept said conveyances and said assignments and shall pay to the Company the sum of $1,244,790.66; and as of the date of said conveyances and assignments and of the making of said payment by the City to the Company, there shall be an accounting between the City and the Company, and the Company shall pay to the City all prepayments of rent and pro rata shares of premiums and deposits based upon the unexpired portion of existing leases and all prepayments of other moneys under existing contracts which shall represent unearned income of the Company, and the City shall pay to the Company all prepaid expenses which the Company has at that time advanced under the terms of its existing contracts. In addition to the principal sum of $1,244,790.66 hereinabove mentioned, and at the time provided for the payment of said sum, the City shall also reimburse the Company in the full amount of the cash advanced and/or liability incurred by the Company in the purchase of the equipment, materials and supplies described in Exhibit "B", and shall pay to the Company, in addition thereto, ten percent (10%) of the purchase price of said equipment, materials and supplies to cover the services of the Company in making said purchases. Such purchases of materials, equipment and supplies shall be subject to the approval of the Council in all respects, including the price paid therefor. All payments due from the
City to the Company hereunder, if unpaid to the Company when due, shall thereafter bear interest at the rate of six per cent (6%) per annum, payable quarter-annually.

7. The City shall have the right during the life of this contract, and at any time prior to the conveyance to the City by the Company of the property herein described, to require any alterations, additions or changes to be made in the plans and/or specifications of the market building and in the equipment, materials and supplies to be furnished, but such right shall be exercised only by instructions, in writing, delivered by the City to the Company, and at the time of the conveyances herein provided to be made by the Company to the City of the property herein described, the City shall pay to the Company, or the Company shall pay to the City, the cost plus fifteen per cent (15%) of all such alterations, additions or changes.

8. From the date of the execution and delivery of this agreement until completion of its other obligations herein set forth, the Company agrees that it will perform leasing service for the procuring of tenants for said public market building, the identity of such tenants and the terms and conditions of their tenancy to be subject to the approval of the City, through its Council, and agrees that before the City acquires said public market building it shall be so occupied as to be a going public market utility. At the time of the transfer of the property hereinbefore described the City shall pay to the Company for said leasing service, in addition to the other payments provided for in this contract, ten per cent (10%) of the gross revenue derived from rental, plus bonuses and premiums, if any, figured on an annual basis, regardless of whether or not the same be reserved on an annual basis, which are reserved to the City under the leases and/or rental arrangements so procured by the Company, if any. Such percentage shall not be applicable, however, to space, if any, reserved by the City for municipal operation of any concession or privilege, and with respect to revenues thus derived the City shall pay to the Company at the end of thirty (30) days after completion of this contract, the City's first month's revenue derived thereunder. Neither shall said percentage be applicable to farmers' space, but with respect to revenues derived from farmers' space the City shall pay to the Company five per cent of the estimated first year's revenues, such estimate to be based on the revenues during the first month after the completion of the market.

IN WITNESS WHEREOF, said PUBLIC MARKET COMPANY OF
PORTLAND has caused these presents to be executed in its corporate name, by its President or Vice-President, and Secretary or Assistant-Secretary, thereunto duly authorized, and its corporate seal to be hereunto affixed, and the said CITY OF PORTLAND has caused these presents to be executed by its Mayor, attested by its Auditor, pursuant to authority duly given under the terms of Ordinance No. 61566 of the City of Portland, enacted on the 10th day of October, 1931, and effective on the 10th day of October, 1931, and Resolution No. 20291, adopted October 28, 1931.

PUBLIC MARKET COMPANY OF PORTLAND

By (Sgd) C. Lee Wilson
President

Attest:
(Sgd) Elsie M. Silver
Asst. Secretary

CITY OF PORTLAND

By (Sgd) Geo. L. Baker
Mayor

Attest:
(Sgd) Geo. R. Funk
Auditor

Approved as to form:
(Sgd) Frank S. Grant
City Attorney