

Exhibit A

AGREEMENT

This Agreement entered into this 10th day of July, 1984, by and between the CITY OF PEORIA, an Illinois Municipal Corporation, hereinafter referred to as "CITY", and the PEORIA AND PEKIN UNION RAILWAY COMPANY, an Illinois Corporation, hereinafter referred to as the "P&PU".

W I T N E S S E T H:

WHEREAS, the CITY has purchased the segment of track (8.9 miles plus industrial tracks) formerly known as the Kellar Branch line of the now bankrupt Chicago, Rock Island and Pacific Railroad, as shown on the map attached hereto as Exhibit "A" and legal description attached hereto as Exhibit "B" both incorporated herein; and,

WHEREAS, the CITY is not a railroad operator; and,

WHEREAS, industries now located on and adjacent to the Keller Branch track desire railroad service; and,

WHEREAS, the P&PU desires to provide railroad services to industries located on said track; and,

WHEREAS, the CITY is willing to enter into an agreement to grant trackage rights to the P&PU upon, and subject to, the terms and conditions herein set forth;

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND THE MUTUAL AND DEPENDENT COVENANTS HEREINAFTER SET FORTH, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS.

Whenever used in this Agreement, the following words shall have the following meanings:

- (a) "Right-of-Way" shall mean all that property owned by the CITY as described in Exhibit "B";
- (b) "Roadbed" shall mean all that property and appurtenances located within ten (10) feet of the center line of the track;

2. PUBLIC AUTHORITY APPROVAL.

The parties, or either as may be appropriate, shall make application to the Interstate Commerce Commission and any other public body for any necessary authority to carry out the transaction hereinafter described and the agreements herein are contingent upon the procurement of such public authority.

3. GRANT OF TRACKAGE RIGHTS.

- (a) The CITY hereby grants unto the P&PU the right to

operate its engines, cars and trains over said Kellar Branch, side tracks, and industry tracks.

(b) The P&PU shall have the right under the foregoing grant to serve all existing industries now located on or adjacent to said track and industries and any industries which may in the future be located adjacent to or connected to the track.

4. OWNERSHIP, OPERATION AND MAINTENANCE.

(a) Ownership of said track shall remain in the CITY. However, the CITY may transfer ownership of the track located within the corporate limits of the Village of Peoria Heights to said Village subject to the Village agreeing to abide by all terms and conditions of this Agreement for the track transferred to it.

(b) The P&PU agrees for the term of this Agreement to serve the industries on an "as needed" basis up to three (3) times per week.

(c) The mode of operation over said track shall be under the sole control of the P&PU.

(d) The CITY shall assume the responsibility for maintenance of highway and street crossings (excluding rails, ties and signal devices), and financial responsibility for maintenance of the right-of-way (including weed and brush control) except for the roadbed and track as set forth in Paragraph 4(e) below. The CITY also assumes responsibility for structural maintenance of the bridges over War Memorial Drive at Harvard Street.

(e) The CITY shall be responsible, at its discretion, for performance of weed and brush control not on the roadbed which does not affect rail operations or safety. Unexpected and abnormal maintenance after January 1, 1986 which is over and beyond expected problems which would be rectified by normal preventive maintenance, and which is caused by unforeseen casualty other than railroad accidents, shall be repaired by the P&PU at the cost of the City not to exceed \$10,000 in any calendar year. Prior to repairing any such damage, the P&PU shall consult with the CITY as to its plan to remedy the situation and the cost thereof.

(f) The P&PU shall assume the responsibility for all maintenance of tracks, crossing protection, and roadbed including weed, brush, snow and ice control thereon, and normal yearly drainage control maintenance.

(g) The movement of engines, cars and trains of the P&PU on said tracks shall be performed pursuant to federal, state and local government laws and regulations.

(h) Any and all cars handled by the P&PU over said tracks will remain in the account of the P&PU.

5. STANDARD OF CARE, INDEMNIFICATION AND HOLD HARMLESS.

(a) In maintaining the right-of-ways outlined above, the CITY shall be bound only to the standard of care as set forth in Section 3-102 of Chapter 85 of the Illinois Revised Statutes (1983). Anything herein to the contrary notwithstanding, the P&PU shall not, by reason of any defect or by reason of the failure of the CITY to repair such defect, have or make against the CITY its agents,

employees or assigns, any claim or demand for any loss, damage, destruction, injury or death whatsoever, arising from such defect, neglect or failure; and the P&PU expressly releases the CITY, its agents, employees and assigns, from any and all claims or demands on account of such loss, damage, destruction, injury or death suffered or incurred directly by the P&PU arising out of such defect, neglect or failure.

(b) Anything herein to the contrary notwithstanding, the P&PU agrees to and does hereby assume the entire risk and responsibility for its trains, engines and cars and contents thereof and for its officers, agents and employees at all times while on or about said tracks. The P&PU hereby agrees to indemnify and save the CITY, its agents, employees and assigns harmless from any and all claims, demands, lawsuits and liability by reason of loss of or damage to P&PU trains, engines and cars and cars in custody of the P&PU, and the contents thereof, and for injury to or death of P&PU officers, agents and employees arising or growing out of the presence of any such property, or of any such persons, on or about said tracks or out of the P&PU's use of said tracks or operations of its trains, cars or engines thereof, from any cause whatsoever regardless of the negligence of the CITY, its agents, employees or assigns.

(c) The P&PU hereby agrees to indemnify and save the CITY, its agents, employees and assigns harmless from and against loss of or damage to property, and injury to or death of persons whomsoever, arising or growing out of any act or omission of the officers, agents or employees of the P&PU in its use of or operation on or over said tracks.

(d) The P&PU agrees to name the CITY (and if partial ownership is transferred to the Village of Peoria Heights, the Village also) as additional insured(s) on all liability policies covering the P&PU's operation of said track.

(e) The P&PU agrees to indemnify and hold the City harmless for any claims arising out of Section 7.D. and Section 9 of the "Rehabilitation Assistance Grant Agreement between the State of Illinois, the City of Peoria and the Peoria and Pekin Union Railroad", including costs and attorney fees.

6. CHARGE FOR TRACKAGE RIGHTS.

(a) For the use of said tracks by the P&PU pursuant to the provisions hereof, the P&PU shall pay to the CITY the sum of One Dollar (\$1.00) per annum. The P&PU shall make this payment to the CITY within fifteen (15) days after the effective date of this agreement. Subsequent annual payments will be made within fifteen (15) days after the anniversary date of this agreement.

(b) It is understood and agreed that the amount set forth in paragraph 6(a), above, does not include any cost or expense which the CITY, its agents, employees or assigns may incur on account of loss of or damage to property or injury to or death of persons, arising out of or in connection with the operation of any engines, trains, cars or equipment of the P&PU upon said tracks.

(c) The P&PU agrees for a period of thirteen (13) years from the effective date of this agreement, not to impose a per car surcharge against shippers and receivers located on or adjacent to said track, including team tracks, for any and all cars handled over said tracks pursuant to this agreement.

7. REPORTS AND RECORDS.

(a) The P&PU agrees to submit a report to the CITY on a calendar month basis, listing the car number and initials,

the shipper or receiver thereof, and the date of shipment, receipt, of all revenue cars shipped or received by industries located on or adjacent to said tracks, including team tracks. Such reports shall be submitted to the Department of Finance of the City by the tenth (10th) day of the month following the month in which the car was handled.

(b) All records of the P&PU pertaining to the movement of cars over and upon any part of the said tracks shall be open and available to the inspection of any duly authorized representative of the CITY at any and all times during normal business hours for the purpose of checking and verifying statements furnished by the P&PU in accordance with the provisions hereof.

8. DEFAULT.

The rights herein granted to the P&PU are expressly conditioned upon the performance by the P&PU of all and singular the covenants and agreements herein set forth to be performed by the P&PU. In the event the P&PU shall default in the performance of any of its obligations hereunder, and such default shall continue for a period of sixty (60) days after the receipt of written notice thereof by certified mail, return receipt requested, from the CITY, the CITY shall have the right at any time thereafter to terminate this agreement forthwith.

9. TERM OF AGREEMENT.

(a) This agreement shall remain in full force and effect for a minimum period of twenty (20) years unless and until terminated for cause as set forth above or by mutual consent.

(b) The P&PU shall, however, have the right to renegotiate the maintenance clause of this agreement after thirteen (13) years from the date hereof by serving written notice upon the CITY (and the Village of Peoria Heights if a portion of said tracks is transferred to the Village) of its desire to renegotiate said portion of the agreement.

10. RESERVED RIGHT OF ABANDONMENT.

This agreement shall in no way be construed as requiring or obligating the CITY to continue its ownership, maintenance, improvement or operation of said tracks, or the appurtenances thereto, nor in any way limit the CITY from disposing of, encumbering, or abandoning all or any part thereof, at any time it may see fit; provided, however, that in case the CITY shall desire to abandon all or any part thereof, it shall give the P&PU written notice at least ninety (90) days prior to such abandonment, and the P&PU shall have the right during such time to purchase any or all of the part to be abandoned, if and only if, the CITY does not plan to devote such part to another governmental use. Should the P&PU desire to purchase the right-of-way upon abandonment, the purchase price shall be equal to the salvage value of the material in said tracks, structures and appurtenances plus the fair market value of the right-of-way thereof.

11. NOTICE.

All notices required pursuant to this agreement to the City shall be addressed to the City Manager, City of Peoria, 419 Fulton, Room 207, Peoria, IL 61602. All notices to the P&PU shall be addressed to C.E. Hellums, Peoria & Pekin Union Railway, 101 Wesley Road, Creve Coeur, IL, 61611.

12. ASSIGNMENT.

The P&PU shall not transfer, assign or convey the rights granted hereunder without the written consent of the CITY, and only upon the condition that the assignee shall abide

by all terms, conditions and agreements hereof.

IN WITNESS WHEREOF, the parties have executed this agreement,
the year and date first above written.

CITY OF PEORIA

By *[Signature]*
City Manager

ATTEST:

Mary L. Hughes
City Clerk

PEORIA AND PEKIN UNION RAILWAY COMPANY,

By *[Signature]*
President

ATTEST:

Paul D. Feherstein
Secretary

APPROVED

LEGAL DEPT.

By *[Signature]*