

THIS AGREEMENT, Made this 16th day of January, 1922³, by and between OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, hereinafter called the "Railroad Company", party of the first part, THE WESTERN UNION TELEGRAPH COMPANY, a corporation, hereinafter called the "Telegraph Company," party of the second part, and COUNTY OF UMATILLA, a municipal corporation of the State of Oregon, hereinafter called the "County", party of the third part,

W I T N E S S E T H :

WHEREAS, the Railroad Company is the owner and in possession of a certain line of railroad right of way, premises and appurtenances between the City of Pendleton in Umatilla County, Oregon, and the City of Walla Walla, in Walla Walla County, Washington; and

WHEREAS, the County has heretofore established and now maintains two county roads, converging at the section corner common to Sections 17, 18, 19 and 20, Township 4 North, Range 35 East, Willamette Meridian, from which point of intersection one county road extends westerly with the center line thereof approximately coincident with the section line between Sections 18 and 19 across the tracks and right of way of the Railroad Company at grade, at or near Engineer's Station 524+69.3 of said Railroad Company to the easterly limits of the City of

Athens, Oregon, and from said point of intersection the other County road extends northerly with the center line thereof approximately coincident with the section line between said Sections 17 and 18, across the tracks and right of way of the Railroad Company at grade (the center line of the track of the Railroad Company and of the county road at said grade crossing being at a point in the Easterly line of Section 18 distant 321.5 feet northerly from the Southeast corner of said Section 18); and thence continuing Northerly to other points in the County; and

WHEREAS, it is the desire of the County to eliminate said last described grade crossing now existing on the section lines common to said Sections 17 and 18 and to acquire from the Railroad Company upon the terms and conditions hereinafter set forth, an easement over and along the premises hereinafter described, in order to enable the County to connect the said county road located along the southerly line of said Section 18 with said county road located along the easterly line of said Section 18; and

WHEREAS, the construction work necessary to the accomplishment of said proposed change in location of the county road presents elements of substantial danger to the railroad property, including the telegraph, telephone, signal and other wire lines owned and operated by the Railroad Company, and to the telegraph and telephone wires and pole lines owned by the

Telegraph Company; and

WHEREAS, it is the purpose and desire of the parties hereto that said work of construction be so prosecuted as to avoid interference with the trains, motive power or equipment operated by the Railroad Company, or damage or injury to the property in its possession, or to persons, and likewise to avoid interference with the telegraph, telephone, pole, wire or signal lines owned by the Telegraph Company, Railroad Company, or either, and used by such companies respectively.

NOW, THEREFORE, in consideration of the mutual dependent promises set forth in this contract, the parties hereto agree as follows:

I.

1. The Railroad Company does hereby license and permit the County to enter upon and occupy the following described premises situated in the County of Umatilla, State of Oregon, for the sole purpose of constructing and maintaining thereon at the sole cost of the County a county road for pedestrian and vehicular traffic, to-wit:

A strip or parcel of land thirty (30) feet wide, containing 0.6 of an acre, more or less, being all that portion of the right of way of Oregon-Washington Railroad & Navigation Company in the Southeast 1/4 of the Southeast 1/4 of Section 18, Township 4 North, Range 35 East, Willamette Meridian, Umatilla County, Oregon that lies northerly of a line twenty (20) feet northerly from and parallel to the center line of the main track of the railroad of said Oregon-Washington Railroad & Navigation Company and extending from the south side to the east side of said subdivision.

The above described premises being delineated in red color upon the blueprint map attached hereto, marked Exhibit "A" and by this reference made a part hereof.

TO HAVE AND TO HOLD said license, permit and easement for the purposes aforesaid, and not otherwise, but only to the extent which the Railroad Company may lawfully grant same.

II.

2. Nevertheless, the aforesaid license, permit and easement is given and granted subject to and dependent upon the following conditions:

(a) The above specifically described property shall be used solely for the purpose of a county road for pedestrian and vehicular traffic, and when the same or any portion thereof shall be no longer used for that purpose, the right herein granted shall as to the portion or portions no longer so used immediately cease and determine, and thereupon the said property shall revert back to the Railroad Company, its successors and assigns, free of the burden of said license and easement.

(b) The foregoing license and easement does not grant any greater estate than expressly described herein, and the County shall grant no right, easement or franchise thereover nor permit said property to be used for street, interurban or other railroad purposes.

(c) The County will assume and pay all taxes and assessments and local improvement charges levied upon the property hereinbefore described, not including taxes or assessments levied against said property as a component part of the

property of the Railroad Company in the State of Oregon as a whole, and will construct and maintain said county road without cost or expense to the Railroad Company and will keep the premises free from combustible materials; will erect no structure thereon except such as may be necessary for highway purposes; will put nothing upon the premises which will obstruct or interfere with the view; will provide such culverts or ditches as may be necessary to care properly for the drainage of said premises and adjoining right of way of the Railroad Company, releasing the Railroad Company from any damage to said county road or other premises described herein which may result from the construction or maintenance of drainage ditches or waterways by the Railroad Company; will not trespass or encroach upon the premises between the parcel specifically above described and the railroad track and roadbed of the Railroad Company with the roadbed of said county road, or any margin, structure, support or slope thereof except during construction of said county road; will keep the ditches of the Railroad Company open and clean from any deposit or debris lodged therein from the operations of contractors, agents or employes of the County during the period of construction of the county road or subsequent repair or maintenance thereof; will keep the right of way of the railroad clean from stone or materials resulting from county road construction operations or subsequent repair or maintenance of the county road; will clean and restore any ballast of the railroad which is disturbed or becomes fouled with dirt or material from

the operation of any contractor, agent or employe in the construction, repair or maintenance of the county road; will adequately maintain the county road in safe and stable condition so that same shall not render unsafe or threaten safe operation of the railroad, its tracks, cars, engines or facilities; will at its own cost and expense repair and restore any injury, damage or destruction of or to the railroad or any of its appurtenances resulting from county road construction, repair or maintenance; will complete the construction of said county road over and upon said premises covered by this agreement within three years from the date hereof, and upon failure to comply with any of the conditions, covenants or obligations herein assumed or undertaken by the County, this license, permit and easement shall be deemed forfeited and revoked, and the Railroad Company shall thereupon be privileged to enter into the exclusive possession of the premises hereinbefore specifically described as of its former estate.

111.

As a material consideration for the granting of the aforesaid license, permit and easement the County agrees that it will, without expense to the Railroad Company, procure an easement for county road purposes over and across additional lands lying northerly of and abutting the property of the Railroad Company hereinbefore described, not less than ten (10) feet in width, to be improved, maintained and used by the County as a part of the county road herein agreed to be constructed, maintained and used on the premises of the Railroad Company.

As a further material consideration to the Railroad Company for the license hereby granted and as an express condition thereto the County will upon completion of the construction of a county road over the premises above described take and cause to be taken such proceedings as may be provided by law (including the procurement of the consent of the Public Service Commission of Oregon, or other official or governmental body lawfully exercising authority in the premises) whereby that portion of the existing county road on the section line common to Sections 17 and 18, said township and range, from the northerly boundary of the County Road common to Sections 17,18,19 and 20 to a line twenty feet distant northerly from, measured at right angles to, and parallel with the center line of the track of the Railroad Company (which said center line intersects the section line common to Sections 17 and 18 at a point 321.5 feet northerly from the southeast corner of said Section 18), shall be vacated and closed. It being understood and agreed that said portion of said county road shall be vacated and closed within a reasonable time after the execution and delivery of this agreement by the exercise of reasonable diligence in the prosecution of the necessary proceedings, and that thereby the existing crossing at grade between said county road and the tracks and right of way of the Railroad Company shall be wholly eliminated and abandoned. Upon completion of the vacation proceedings the County will furnish the Railroad Company with a copy of the record thereof, duly certified to as such by the County Clerk of said County.

IV.

The Railroad Company reserves the right at any time to construct, maintain and operate spur tracks across said county road, but this reservation shall not include the construction of a spur track longitudinally along said county road, and the

Railroad Company also reserves the right to erect and maintain a pole and wire line along the side of said County road within the boundaries of the area burdened by the easement herein granted for the transmission of messages, signals and intelligence; provided, however, that same shall not interfere with the public use of said county road.

V.

It is further agreed that if in the construction of said county road any parcel or portion of the above described property herein given is found unnecessary for the use of said county road, the easement over each unnecessary portion of said premises shall cease and determine.

VI.

Should the Assistant Chief Engineer or the Superintendent of the Third Division of the Railroad Company deem it necessary to the safe operation of the trains, or the wire or pole lines of the Railroad Company during the construction herein provided for, that flagmen or watchmen be stationed at any particular place, or places, the County shall thereupon hire and employ competent flagmen and watchmen at its own cost and expense and maintain them at the place or places designated by said Assistant Chief Engineer, or by said Superintendent. The said Assistant Chief Engineer or Superintendent is to be the sole judge as to the necessity of flagmen and watchmen, the place or places where they are to be stationed, and the number of them necessary to protect the trains, tracks and wire or

pole lines of the Railroad Company during such construction, but failure on the part of said Assistant Chief Engineer or Superintendent to require the employment of watchmen shall not operate to relieve the County from its duty to comply with any of the terms, covenants or conditions of this agreement. Any watchman so employed shall be subject to the approval of said Assistant Chief Engineer or Superintendent, and in case of the failure of the County so to employ flagmen or watchmen, then the Railroad Company may employ and station such flagmen and watchmen and the County agrees to pay the wages and expenses thereof.

Vll.

If the safe operation or maintenance of the railroad of the Railroad Company shall be jeopardized at any time by the work to be performed under this agreement, the Railroad Company shall have the right to require the County to suspend operations on the work, or any part thereof, temporarily until such time as the work may be continued in safety to the operation or maintenance of said railroad. The County will save harmless the Railroad Company from any claims of the County, its agents or contractors, for damages or additional compensation arising under this provision of the agreement.

Vlll.

The County shall at its own cost and expense adequately protect the property of the Railroad Company and its appurtenances and/or property in its custody, from damage, destruction, or interference, and shall so prosecute the work as not to interfere with the railroad or its appurtenances, or any of the Rail-

road Company's trains or facilities, and shall complete the work to a condition whereby the same shall not interfere with or menace the integrity or safe and successful operation of the railroad or its appurtenances, or any of the Railroad Company's trains or facilities.

IX.

The County shall at its own cost and expense adequately protect and maintain the wires, poles and property owned or used by the Telegraph Company as a telegraph and/or telephone line or lines, and shall so prosecute the work as not to interfere with the use of said telegraph or telephone lines or the operation of same, and shall complete the work to a condition whereby the same shall not interfere with or menace the integrity or safe and successful operation of said telegraph or telephone lines.

X.

Whenever during the prosecution of said construction work by the County the Telegraph Company may determine such action to be necessary, the Telegraph Company shall cause its pole, telegraph and telephone lines in the vicinity of the place where said construction work is in progress, to be patrolled from day to day by a telegraph service employe who shall make such minor repairs to such pole, telegraph and telephone lines as may be required in the opinion of the Telegraph Company, because and as a result of the County's operations. The maximum wage and expense to be paid such employe by the Telegraph Company shall be Two Hundred (\$200.00) Dollars per month, and said expense

shall be paid in the first instance by the Telegraph Company and the County will repay to the Telegraph Company promptly upon receiving bill therefor from the Telegraph Company such proportion of the wages and expense of such employe as shall be justly attributable to the cost of patrolling that portion of the Telegraph Company's pole, telegraph and telephone lines at and in the vicinity of the place where said construction work is in progress. The Telegraph Company agrees that it will use every reasonable endeavor to keep the expense of patrolling said pole, telegraph and telephone lines to a minimum consistent with necessary and adequate protection. In the event that the activities of the County render it necessary, in the judgment of the Telegraph Company either permanently or temporarily to move portions of said pole, telegraph and telephone lines for the safety and security thereof, or in the event said line or lines shall have been impaired or interfered with by the operations of the County, then and in either of such circumstances the Telegraph Company shall employ the necessary forces of men and assemble and furnish the necessary materials, either temporarily or permanently, to shift or relocate said lines and to repair or replace said lines of telegraph or telephone, as the case may be, and the County will reimburse the Telegraph Company for the resulting cost and expense.

XI.

The County shall be responsible for any damage or injury or destruction to the railroad or any property of the Railroad

Company, or property in its custody, and for delay of or interference with trains, motive power or equipment, and for injury to or death of persons caused or contributed to by the conduct, operations or work of the County, its servants, agents and employes, and will indemnify and hold harmless the Railroad Company from any claims, damages, costs or expense incurred by the Railroad Company in consequence thereof; and the County shall likewise be responsible to the Telegraph Company for damages to or destruction of the telegraph or telephone lines, pole lines, wire lines or appurtenances, and for interference with the use of same and for damage to or destruction of the property of the Telegraph Company, and for injury to persons or loss of life resulting from or contributed to by the operations of the County, and the County shall indemnify and hold harmless the Telegraph Company from any damage, costs, expense or claims resulting from or contributed to by the operations, conduct or work of the County, its servants, agents and employes.

XII.

The County recognizes that the construction, maintenance and repair of said county road authorized under this agreement to be performed upon the premises hereinbefore described is in close proximity to the tracks of the Railroad Company, and will always be attended with danger, and in consideration of the Railroad Company granting to the County permission to prosecute such work upon the said premises, the County does hereby undertake and agree to indemnify and save harmless the Railroad Company ^{and/or Telegraph Company} from any and all loss, damage or expense

JMS
W.L.D.
R.L.B.
P.T.V.

suffered, sustained or asserted by any person, firm or corporation whomsoever, for injury or death of any person, or for loss or damage to property, arising or in anyway growing out of or claimed to have been sustained by reason of any of the following causes:

(a) Acts of the County and/or its officers, agents or contractors, in constructing, maintaining, repairing or reconstructing said county road upon the aforesaid premises, or for the failure or omission of the County so to do.

(b) Acts of the Railroad Company, its officers, agents, servants and employes, whether negligent or otherwise, causing or contributing to loss, damage, or injury sustained by or resulting from the frightening of horses or other animals of the County, its officers, agents, servants, employes, contractors or subcontractors, while upon the said premises, or passing to and from said premises, by the operation of locomotives or cars, or the escape of steam, fire, coal or sparks, or the emission of any noise therefrom.

(c) Acts of the Railroad Company and/or the Telegraph Company, their/its officers, agents, servants and employes, whether negligent or otherwise, causing or contributing to the injury or death of, or to the damage or loss of the property of or in the custody of, the County its officers, agents, servants, employes, contractors, or sub-contractors, upon or near the tracks of the Railroad Company, or any other person (except the officers, agents, servants or employes of the Railroad Company and/or Telegraph Company) upon or near the tracks of the Railroad

Company, at the request of or with the knowledge or consent of the County, its officers, agents, employes, contractors or sub-contractors.

XIII.

Whenever the Railroad Company and/or the Telegraph Company shall incur any cost or expense by reason of the payment of wages to persons engaged in the patrolling, protection, repairing or changing of its or their property for which expense the County agrees to reimburse the Railroad and/or Telegraph Company under the provisions of this agreement, there shall be added to the amount of such cost or expense ten percent (10%) thereof to cover superintendence and elements of expense not capable of exact ascertainment and the sum thereof shall be paid by the County to the Railroad Company and/or Telegraph Company, as the case may be.

XIV.

If and when the Railroad Company shall determine that the area over which an easement is hereinbefore given is required by the Railroad Company for railroad purposes the County will, at its own expense, upon twelve (12) months' written notice from the Railroad Company remove said county road from said area to such extent as may be requested by the Railroad Company, and will take such proceedings as may be provided by law whereby that portion of said county road upon the premises burdened by this easement, or so much thereof as the Railroad Company may require, shall be vacated.

XV.

The provisions of this agreement shall inure to the benefit of and be binding upon the parties hereto, their successors, assigns and lessees.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officers thereunto duly authorized, the day and year first above written.



OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY,

By C. E. Gray
President.

Attest: Thomas Rice
Secretary.

THE WESTERN UNION TELEGRAPH COMPANY,

By J. M. V. Adams
First Vice-President.

Attest: A. Burleigh
Assistant Secretary.

COUNTY OF UMATILLA,

By D. M. Schanney
County Judge

G. L. Dunning
Commissioner.

R. E. Dean
Commissioner.

ATTEST:

R. J. Brown
County Clerk



C-D- No. 34.

T. 4. N. R. 35. E.
Umatilla Co. Oregon.
S. E. 1/4 - S. E. 1/4.
Sec. 18.

MP 18.39

Equation.

$\frac{533 + 13.0 \text{ P.O.T.}}{533 + 24.3 \text{ E.C.}}$

M.P. 10.7

537 + 96.

2° C.
Δ 17° 06'

524 + 69.3

Relocation
of Co. Road
30 ft on O.W. - R. & N. Co. Road.

65° 06'

Crassing To
be abandoned.

FIFTH

ST.

ATHENA.

Exhibit "A"

O. W. R. & N. Co.
Third Div.

Office Div. Eng. Walla Walla
Scale 400' = 1" 5-1-1922.
A-G.

