

THIS AGREEMENT, Made this 30<sup>th</sup> day of September, 1920, by and between OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, hereinafter called the "Railroad Company", party of the first part, and the COUNTY OF UMATILLA, a municipal corporation of the state of Oregon, hereinafter called the "County", and the STATE OF OREGON, acting by the State Highway Commission, hereinafter called the "State", parties of the second part,

WITNESSETH:

WHEREAS the Railroad Company owns and operates a certain line of railroad, depot grounds, rights of way and appurtenances from Pendleton through Umatilla County and to Walla Walla in the State of Washington; and

WHEREAS its right of way from its station of Blakely in said county and for some considerable distance east thereof is closely paralleled by the so-called Oregon-Washington Highway now being constructed by the parties of the second part, and said highway as located encroaches upon the railroad right of way to the extent hereinafter described at a point a short distance east of said station of Blakely; and

WHEREAS, to accommodate said highway, the parties of the second part desire permission to construct the same on the

premises of the Railroad Company to the extent of said encroachment, and the Railroad Company has agreed to permit said construction and the use and maintenance of said proposed highway upon the conditions hereinafter set forth.

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

I.

The Railroad Company does hereby license and permit the County and the State to enter upon and occupy the following described premises situated in Umatilla County, Oregon, for the sole purpose of constructing and maintaining thereon at the sole cost of the parties of the second part a public highway for pedestrian and vehicular travel, to-wit:

A piece or parcel of land containing 0.39 of an acre, more or less, being all that part of the right of way of Oregon-Washington Railroad & Navigation Company situated in the Northeast quarter (N.E.  $\frac{1}{4}$ ) of the Northwest Quarter (N.W.  $\frac{1}{4}$ ) and the Northwest Quarter (N.W.  $\frac{1}{4}$ ) of the Northeast Quarter (N.E.  $\frac{1}{4}$ ) of Section 17, Township 3 North, Range 34 East, Willamette Meridian, Umatilla County, Oregon, more particularly described as follows, to-wit:

Beginning at a point on the northwesterly right of way line of Oregon-Washington Railroad & Navigation Company, distant 50 feet northwesterly from, measured at right angles to the center line of main track of railroad of said Oregon-Washington Railroad & Navigation Company as now constructed and operated over and across said subdivisions; said point also being South

24 degrees 24 minutes West a distance of 877.9 feet from the quarter corner on the north line of said section 17; thence South 22 degrees 02 minutes East a distance of 27 feet to a point 23 feet northwesterly from, measured at right angles to, said center line of main track; thence North 67 degrees 58 minutes East parallel to and 23 feet northwesterly from said center line of main track a distance of 400 feet; thence North 22 degrees 02 minutes West a distance of 12 feet to a point 35 feet northwesterly from, measured at right angles to, said center line of main track; thence northeasterly parallel to and 35 feet northwesterly from said center line of main track a distance of 401.8 feet; thence northwesterly at right angles to said center line of main track a distance of 15 feet to a point on the northwesterly right of way line of Oregon-Washington Railroad & Navigation Company distant 50 feet northwesterly from, measured at right angles to said center line of main track; thence southwesterly along said northwesterly right of way line to the point of beginning.

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 the same, it being understood that no warranties are made with respect to title or liability assumed by the Railroad Company for outstanding claims or rights, if any be asserted.

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

(a) That the above specifically described property shall be used solely for the purpose of a public road or highway, and when the same or any parcel thereof be no longer used

for that purpose, the rights herein granted shall, as to the parcel or parcels no longer so used, immediately cease and determine, and thereupon the said property shall revert back to the Railroad Company, its successors or assigns, free of the burden of said license and easement.

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

(c) That the parties of the second part will assume and pay all taxes and assessments and local improvement charges levied upon the property hereinbefore specifically described, not including taxes or assessments levied against said property as a component part of the railroad property of the Railroad Company in the state as a whole, and will construct and maintain said highway without any cost or expense to the Railroad Company; 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 might obstruct or interfere with the view; will provide such culverts and bridges as may be necessary to properly care for the drainage from said premises and adjoining right of way of the railroad, releasing the Railroad Company from any damage to said highway

or other premises herein described which may result from the construction or maintenance of drainage ditches or water ways by the Railroad Company; will not trespass or encroach upon the premises between the parcels specifically above described and the railroad track and roadbed of the Railroad Company with said highway roadbed, or any margin, structure, support or slope thereof; will keep the ditches of the railroad open and clean from any deposit or debris lodged therein from the operations of contractors, agents or employes of the parties of the second part, or either of them, during the period of construction of the highway or of subsequent repair or maintenance thereof, will keep the right of way of the railroad clean from stone and materials resulting from highway construction operations or subsequent maintenance or repair; will clean and restore any ballast of the railroad which is disturbed or becomes fouled with dirt or materials from the operations of any contractor, agent or employe in the construction, repair or maintenance of the highway; will adequately maintain the highway in safe and stable condition so that the 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 highway construction, repair or maintenance; will construct on the boundary line between said premises and the remaining

right of way of the Railroad Company a substantial and lawful fence and connect same on either end of said encroachment with the existing fence of the Railroad Company; will so construct the proposed highway where the same is elevated above the level of the railroad track that the slope or face thereof toward the track will increase from base of retaining wall or toe of slope, as the case may be, as follows: In solid rock excavation or in retaining wall construction, three inches to every foot of elevation above the top of the nearest rail of the railroad, and where the construction of the highway is in earth the clearance shall be increased one foot to every foot of elevation above the top of said nearest rail, and where the highway is constructed upon fills said clearance shall be increased eighteen inches to every foot of elevation above the top of nearest rail, except where the slope of said fill is to be retained by a rock wall, in which case the increased clearance shall be as hereinbefore described for retaining wall construction; will complete the construction of said highway ever and upon said premises covered by this agreement within three years from the date hereof and upon failure to comply with any of the foregoing conditions, covenants or obligations assumed or undertaken by the parties of the second part herein or either of them, 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

hereinabove specifically described as of its former estate.

(d) If and when the Railroad Company determines that the area comprising said encroachment or any part thereof is needed by the Railroad Company for railroad purposes, the parties of the second part will, at their own expense, upon sixty (60) days written notice from the Railroad Company remove said highway from said described premises to such extent as may be requested by the Railroad Company.

## II.

It is recognized that the construction of a highway in close proximity to the tracks of the railroad will from the beginning be attended with more or less danger and hazard of accident and damage to persons and property; therefore, as a consideration for this license, permit and easement the parties of the second part jointly and severally agree to hold the Railroad Company harmless from any and all liability, loss or expense resulting from or incident to any claim made against it growing out of anything done or omitted by the second parties or their contractors, agents or employes of them, or either of them.

## III.

The party of the first part reserves the right at any time to construct, maintain and operate spur tracks across said highway, but this reservation shall not include the construction of a spur track longitudinally along said highway.

and the Railroad Company also reserves the right to erect and maintain a pole and wire line along the side of the said highway 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 highway.

IV.

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

V.

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.



*C. E. Gray*  
\_\_\_\_\_  
President.

Attest:

*Thomas H. ...*  
\_\_\_\_\_  
Assistant Secretary.

COUNTY OF UMATILLA,

*Charles H. ...*  
\_\_\_\_\_  
County Judge.

*B. B. Anderson*  
\_\_\_\_\_

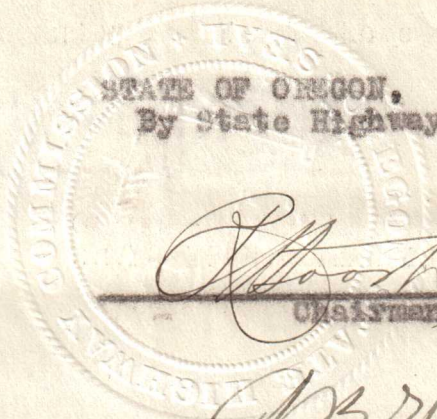
APPROVED

*H. ...*  
\_\_\_\_\_  
General Manager

*G. L. Dunning*  
\_\_\_\_\_  
Commissioner.

APPROVED  
*M. G. ...*  
\_\_\_\_\_  
GENERAL SUPERINTENDENT

Approved by to form  
*Al ...*  
\_\_\_\_\_  
General Attorney



STATE OF OREGON,  
By State Highway Commission,

*[Handwritten signature]*  
\_\_\_\_\_

Chairman.

*[Handwritten signature]*  
\_\_\_\_\_

Commissioners.