

HIGHWAY CONSTRUCTION AGREEMENT
covering easement for extension
and construction of Bartsch Road,
Railroad Main Line MP 212.48, near
Rieth, Umatilla County, Oregon

THIS AGREEMENT, made and entered into this _____ day
of _____, 1975, by and among the OREGON-WASHINGTON
RAILROAD & NAVIGATION COMPANY, an Oregon corporation, and its
lessee, UNION PACIFIC RAILROAD COMPANY, a Utah corporation
(hereinafter collectively called "Railroad"); UMATILLA COUNTY,
a political subdivision of the State of Oregon, acting by and
through its Board of County Commissioners (hereinafter called
"Second Party"); PORT OF UMATILLA, a quasi-municipal corporation
of the State of Oregon (hereinafter called "Port"); and
PENDLETON GRAIN GROWERS, INC., an Oregon corporation (here-
inafter called "PGG").

RECITALS:

Second Party has undertaken as its "project", the
extension and construction of a highway designated as Bartsch
Road (hereinafter called "highway"), across the right of way
and tracks of the Railroad at the Railroad's main line milepost
212.48 near Rieth, Umatilla County, Oregon. Said highway will
be constructed to serve property owned by the Port and PGG,
and will permit the elimination of a private grade undercrossing
now serving said property. The Port and PGG, in partial
consideration for the removal of said undercrossing, and in
order to induce Second Party to construct the new grade
crossing, have agreed to participate in a portion of the costs
of constructing and protecting the highway.

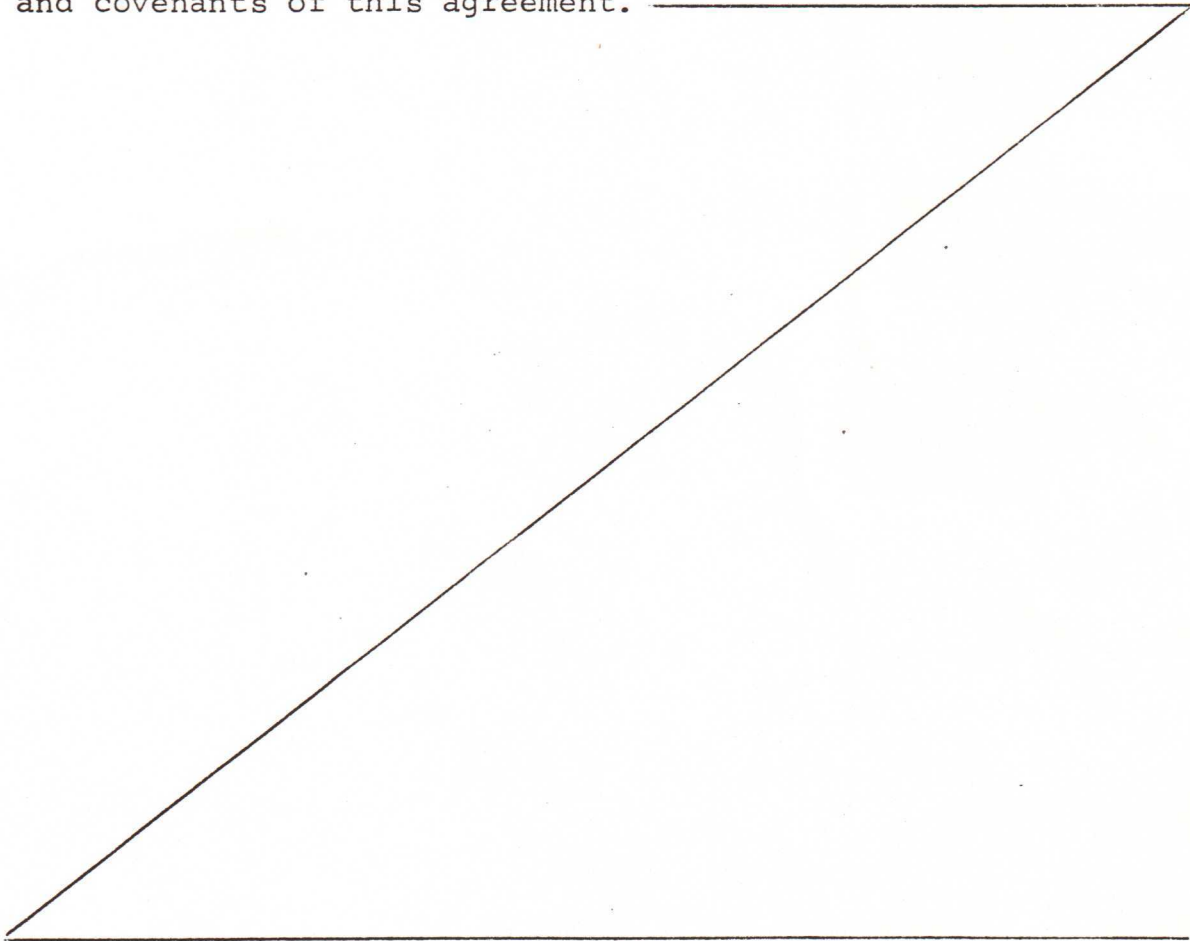
Authority for construction of the highway was granted
by the Public Utility Commissioner of Oregon by Order No. 74-643
dated August 27, 1974 in proceeding docket No. SXF-698. This
agreement is made for the purpose of granting Second Party the
necessary easements for construction and maintenance of the
crossing, to provide for the reimbursement to the Railroad of
work to be performed by the Railroad in connection with the
construction and installation of protective devices at the
crossing, to govern the conduct of the project insofar as it
may affect the Railroad, its operations and facilities, and
for the protection of the Railroad and the public, and related
matters.

NOW, THEREFORE, IT IS AGREED among the parties as
follows:

Section 1. EASEMENT GRANTED.

(a) So far as it lawfully may do so, the Railroad hereby grants to Second Party, subject to each and all of the terms, provisions, conditions, reservations and exceptions contained in this agreement, an easement to construct and thereafter to maintain, repair, renew and use a public highway at common grade, upon, over and across that portion of the Railroad's right of way shown tinted yellow on print No. D-5075 dated November 11, 1974, marked Exhibit "A", attached hereto and by this reference made a part hereof, and more particularly described in Exhibit "B" attached hereto and by this reference made a part hereof.

(b) In consideration for the easement granted as aforesaid, Second Party shall and will do, keep, observe and perform each and all of the terms, provisions, conditions and covenants of this agreement.



(c) The Railroad grants said easement(s) only insofar as it lawfully may do so, and the Railroad makes no covenant or warranty of title, for quiet possession or against encumbrances. Said easement(s) include(s) only the Railroad's property identified in paragraph (a) of this section and no other property; and Second Party, by virtue of this grant, shall not encroach upon, occupy or use any other property of the Railroad, and shall not permit others acting under Second Party's authority to encroach upon, occupy or use any other property of the Railroad. Second Party's use of said property and its maintenance, repair and renewal of the highway facilities thereon, shall be subject at all times to the safety measures set forth in Section 5 of this agreement.

(d) The Railroad grants to Second Party only easement(s) for the purposes aforesaid and no other or greater estate. Second Party shall not use or permit use of said property or any part thereof for any other purpose. Without limiting the foregoing, Second Party shall not use or permit use of said property or any part thereof for railroad purposes, or for gas, oil or gasoline pipelines. Second Party may construct lines on said property for the purpose of conveying electric power or communications incidental to Second Party's use of the property for highway purposes, provided such lines are constructed in accordance with the specifications and requirements of the Railroad and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by Second Party to use or occupy any part of the Railroad's property for any purpose, except as specifically provided for herein, without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent, which, if granted, may be subject to such terms and conditions as the Railroad, in its sole discretion, may deem to be necessary or convenient. If at any time said property of the Railroad, or any part thereof, shall permanently cease to be used for the purposes aforesaid or shall be used for purposes unauthorized hereby, then the easement(s) hereby granted as to such property or parts thereof shall cease and terminate.

(e) If any property or rights other than the easement(s) hereby granted are necessary for the construction, maintenance and use of the highway and its appurtenances, or for the performance of any work contemplated by this agreement, Second Party will acquire all such other property and rights at Second Party's own expense and without expense to the Railroad.

(f) The easement(s) hereby granted are subject to any and all encumbrances and rights (whether public or private), irrespective of whether or not they are recorded, existing at the time of granting said easement(s), and also to any and all extensions and renewals of said existing encumbrances and rights. Second Party shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's said property, unless Second Party, at Second Party's own expense, settles with and obtains release from such nonparties on mutually satisfactory terms.

(g) The easement(s) hereby granted are subject and subordinate to the prior and continuing right and obligation of the Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier and for all lawful railroad purposes. The Railroad reserves the right to use and to grant to other parties the right to use said property for any and all purposes not inconsistent with the easement(s) hereby granted. Said purposes include, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace existing and additional wire lines, pipelines, roads, tracks, facilities and appurtenances, located or to be located either wholly or partly within said property, in such manner, however, as not to damage the highway facilities located on said property; the right to attach signal, communication or power lines and facilities to any highway facilities located upon said property, subject, however, to Second Party's policy on utility installations and approval by Second Party of detailed plans of the proposed attachment; and the right to use, occupy, cross and operate across said property and the highway facilities located thereon, with track equipment and off-track equipment.

(h) Second Party will assume, bear and pay all taxes and assessments of whatsoever kind or nature (whether general, local or special) levied or assessed upon or against said property, excepting taxes levied upon and against said property as a component part of the Railroad's operating property as a whole.

Section 2. CONSTRUCTION OF HIGHWAY.

(a) Second Party, at its own expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the project contemplated by this agreement, and each and every part thereof, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained. All construction work by Second Party shall be performed in accordance with the terms and conditions imposed by said public authority in granting its approval, and in accordance with this agreement.

(b) Except as may be otherwise provided in Section 3 of this agreement, Second Party, at its own expense and without expense to the Railroad, will furnish all labor, material and equipment necessary for, and shall and will construct and complete said highway and all appurtenances thereof. As used in this agreement, "appurtenances" shall include, without limitation, the paving for the highway throughout the grade crossing(s) constructed pursuant hereto, including the paving between the rails of the Railroad's tracks, all embankment slopes between the highway and the Railroad's tracks, all necessary and proper drainage facilities, all necessary and proper advance warning signs, and all necessary and proper guardrails or barriers between the highway and the Railroad's tracks and facilities, which guardrails or barriers shall be of suitable design and adequate to confine highway traffic, and to protect the Railroad's property and facilities and any highway-rail protective devices. Upon completion of the work, Second Party shall remove from the Railroad's property all temporary structures and falsework, and will leave said property in a condition satisfactory to the Railroad.

(c) The Railroad will receive no ascertainable benefit from the construction of the project, and, except as may be specifically provided herein, shall not be required to pay or contribute any part of the cost thereof.

(d) All construction work of Second Party upon the Railroad's property (including, but not limited to, construction of the highway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Chief Engineer of the Railroad or his authorized representative and in accordance with detailed plans and specifications prepared by and at the expense of Second Party, and approved in writing by the Railroad's Chief Engineer. Said plans and specifications, and the work performed thereunder, shall be in accordance with the typical sections and notes pertaining to construction as set forth in Exhibit "A" attached hereto.

(e) All construction work of Second Party shall be performed diligently and completed within a reasonable time, and in any event within three years from the effective date of this agreement, or within such further period of time as may be specified in writing by the Railroad's General Manager. No part of said work shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of Second Party and its contractors. Second Party, for itself and its contractors, hereby assumes the risk of any and all such delays and agrees that no claims for damage shall be made against the Railroad because thereof.

(d) If at any time Second Party's engineers and the Chief Engineer of the Railroad or their respective representatives shall be of the opinion that any work of Second Party is being or is about to be done or prosecuted without due regard and precaution for safety and security, Second Party shall cause such work to be suspended until suitable, adequate and proper protective measures are adopted and provided.

(e) Second Party shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad in connection with or as a result of the project or any work contemplated by this agreement; and any such material and debris shall be promptly removed from the Railroad's property by Second Party at its own expense or by the Railroad at the expense of Second Party, and any damage caused thereby shall be promptly restored and repaired by Second Party at its own expense, or by the Railroad at the expense of Second Party. Second Party shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during the course of Second Party's operations of removing snow from its highway.

(f) Second Party shall not discharge any explosives on or in the vicinity of the Railroad's property (i) if, in the sole discretion of the Railroad's Chief Engineer, such discharge would be dangerous or would interfere with the Railroad's property or facilities; and (ii) unless adequate notice thereof is given to the Railroad. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons on the Railroad's property, or cause damage to or interference with the facilities or operations on the Railroad's property. Unless the Railroad's Chief Engineer shall agree to a shorter notice with respect to a particular proposed discharge of explosives, "adequate notice" shall be deemed to require not less than forty-eight (48) hours' notice, exclusive of weekends and holidays. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in its sole discretion, may deem to be necessary, desirable or appropriate. In addition to any conditions, restrictions or limitations as may be specifically imposed:

(1) Any explosives loaded in holes or placed or otherwise readied for discharge on a day shall be discharged on the same day during daylight hours, and at such times and in such manner as will not endanger the Railroad's employees or property or interfere with the Railroad's operations.

(2) Second Party, at its own expense, shall take all measures and precautions and construct all temporary shelters necessary to guard and protect the Railroad's employees, property, facilities and operations against danger of damage, destruction or interference arising out of or connected with any blasting or any transportation, handling, storage, security or use of explosives on or in the vicinity of the Railroad's tracks, property or operations.

(3) Second Party shall require at all times that explosives be transported, handled, stored or otherwise secured and used in a manner satisfactory to the Railroad and in accordance with local, state and Federal laws, rules and regulations, including, without limitation, United States Department of Labor, Bureau of Labor Standards, Safety and Health Regulations for Construction, 29 CFR Part 1518, Subpart U—"Blasting and the Use of Explosives"; and Occupational Safety and Health Administration Occupational Safety and Health Standards, 29 CFR Part 1910, Subpart H—"Hazardous Materials".

(g) Second Party shall not place any combustible material upon or about the premises of the Railroad, nor erect any structure thereon (except as herein otherwise provided), nor cause or permit the view along the tracks of the Railroad to be obstructed, nor obstruct or interfere with the drainage ditches, drainage facilities or water facilities of the Railroad.

(h) If Second Party shall excavate from existing slopes adjacent to the tracks of the Railroad or create new slopes in the performance of any work contemplated hereby, Second Party shall so excavate from existing slopes and construct new slopes that the pitch of same shall not be excessive, nor create undue hazards of slides or falling rock, nor impair or endanger the clearance between said existing or new slopes and the tracks of the Railroad.

(i) Second Party, at its own expense, shall provide and maintain suitable facilities for draining the highway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. Second Party, at its own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culverts and drainage facilities), so that said waters may not because of any facilities or work of Second Party be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others.

(j) Before commencing any construction or other substantial work contemplated by this agreement, Second Party shall notify the Superintendent of the Railroad of the time when such work shall commence. Said notice shall be given not less than forty-eight (48) hours, exclusive of weekends and holidays, prior to the time work is to commence. Second Party shall cooperate with the Railroad in every reasonable way for the adequate protection of the Railroad's facilities and operations during progress of the work.

(k) Second Party shall not do or cause to be done in the performance of any work contemplated hereby, anything which will or may disturb the stability of any area so as to adversely affect the tracks or facilities of the Railroad.

(l) Second Party, at its own expense, shall and will install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by it in connection with construction, maintenance or other work of any kind contemplated by this agreement. Said shoring and cribbing shall be constructed and maintained with such materials and in such manner as to withstand all stresses likely to be encountered, including, but not by way of limitation, any stresses resulting from vibration caused by the Railroad's operations at or in the vicinity of such work; and such shoring and cribbing shall be installed and maintained in a manner satisfactory to the Chief Engineer of the Railroad or his authorized representative.

(m) The responsibility of Second Party for safe conduct and adequate policing and supervision of the project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the worksite of the Railroad's representatives, or by compliance by Second Party with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the project, Second Party will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

Section 6. INSURANCE.

(a) Before work is commenced on the project, and thereafter before commencement by any contractor for Second Party of any maintenance work on the highway within any easement area described herein or shown on the exhibits attached hereto, Second Party, without expense to the Railroad, shall furnish and deliver to the Railroad, or shall require each of its contractors to furnish and deliver to the Railroad, a public liability and property damage insurance policy or policies in favor of the Railroad; and Second Party, without expense to the Railroad, at all times during progress of and until final completion of the project, and until completion of such maintenance work, shall keep and maintain, or cause its contractors to keep and maintain, such policy or policies in full force and effect. The Railroad, upon request of Second Party, may purchase any such policy for which Second Party is responsible pursuant hereto, and Second Party shall reimburse the Railroad for the full amount of the cost of such policy.

(b) Said public liability insurance shall provide for a maximum limit of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total maximum limit of ONE MILLION DOLLARS (\$1,000,000) for all damages arising out of bodily injuries to or death of more than one person in any one occurrence. Said property damage insurance shall provide for a maximum limit of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for all damages arising out of injury to or destruction of property in any one occurrence, and subject to that limit, a total (or aggregate) maximum limit of ONE MILLION DOLLARS (\$1,000,000) for all damages arising out of injury to or destruction of property during the period of work.

(c) The terms "person" or "persons" as herein used shall include employees of the Railroad, as well as other persons, and the term "property" as herein used shall include, as well as other property, property owned by and property in the care, custody or control of the Railroad.

(d) Each such insurance policy shall be issued by a reliable insurer satisfactory to the Railroad and authorized to do business in the state in which the work is to be performed, and each such policy shall be in form and substance satisfactory to the Railroad. The original and one true and complete copy of said policy or policies shall be delivered to and remain in the possession of the Railroad.

(e) Each such policy or policies shall conform substantially with the Public Liability and Property Damage Policy provided in United States Bureau of Public Roads Memorandum No. 20-12 dated June 30, 1967, as amended. Each such policy or policies shall cover all work to be performed and all operations to be conducted under this agreement. The monetary limits of insurance furnished in connection with the future reconstruction or maintenance work on the highway within the easement area(s) described herein or shown on the exhibit(s) attached hereto, shall conform to the limits prescribed by the Railroad in connection with new public projects at the time the work of maintenance or reconstruction is performed.

(f) In addition to the above insurance, and before work is commenced on the project, Second Party, without expense to the Railroad, shall furnish and deliver to the Railroad, or shall require its contractor to furnish and deliver to the Railroad, a certificate certifying as to the contractor's regular property damage insurance with respect to said contractor's own operations and, in addition, with respect to operations performed for said contractor by subcontractors under this agreement, with limits of not less than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) arising out of injury to or destruction of property in any one occurrence, and subject to that limit per occurrence, a total, or aggregate, limit of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for all damages arising out of injury to or destruction of property during the policy period. Each such certificate shall apply to all policies covering work to be performed and all operations to be conducted under this agreement, and shall be kept in full force and effect until completion of the project. Such certificate shall also contain a provision that the policy shall not be cancelled or changed without giving thirty (30) days' prior written notice to the Railroad.

Section 7. INJURY AND DAMAGE. If Second Party or its contractors, subcontractors, officers, agents or employees, or others acting under its or their authority, in the performance of any work contemplated by this agreement or by the failure to do or perform anything for which it is responsible under the provisions of this agreement, shall injure, damage or destroy any property of the Railroad or of any other corporation, person or firm lawfully occupying or using the property of the Railroad, such damage shall be restored by Second Party at its own expense or by the Railroad at the expense of Second Party.

Section 8. DEFAULT. If Second Party shall fail, refuse or neglect to do, keep, observe and perform each and all of the terms, provisions, conditions and covenants of this agreement, the Railroad, in addition to any other rights and remedies it may have, may perform any work which in the judgment of the Railroad is necessary to place said highway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and Second Party will reimburse the Railroad for the expense thereof.

Section 9. EFFECTIVE DATE. This agreement shall become effective as of the date first herein written, or as of the date on which work on the said project was commenced, whichever is earlier.

Section 10. OTHER RAILROADS. All protective and indemnifying provisions of this agreement shall inure to the benefit of the Railroad and any other railroad company or companies at any time lawfully using the Railroad's property or facilities.

Section 11. SUCCESSORS AND ASSIGNS. This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. ~~_____~~

IN WITNESS WHEREOF the parties hereto have executed this agreement, in quadruplicate, as of the day and year first hereabove written.

OREGON-WASHINGTON RAILROAD
& NAVIGATION COMPANY
UNION PACIFIC RAILROAD COMPANY

ATTEST:

D. Sperry
Assistant Secretary

By *A. J. Harper*
Vice President

UMATILLA COUNTY, OREGON
by and through its
Board of County Commissioners

By *F. K. Sturtevant*
Chairman

ATTEST:

By *Barbara Lynch*
Commissioner

Jesse M. Bell
County Clerk

By *Raymond Bowers*
Commissioner

ATTEST:

PORT OF UMATILLA

Lawrence M. O'Rourke
Secretary

By *Jess Foster*
President

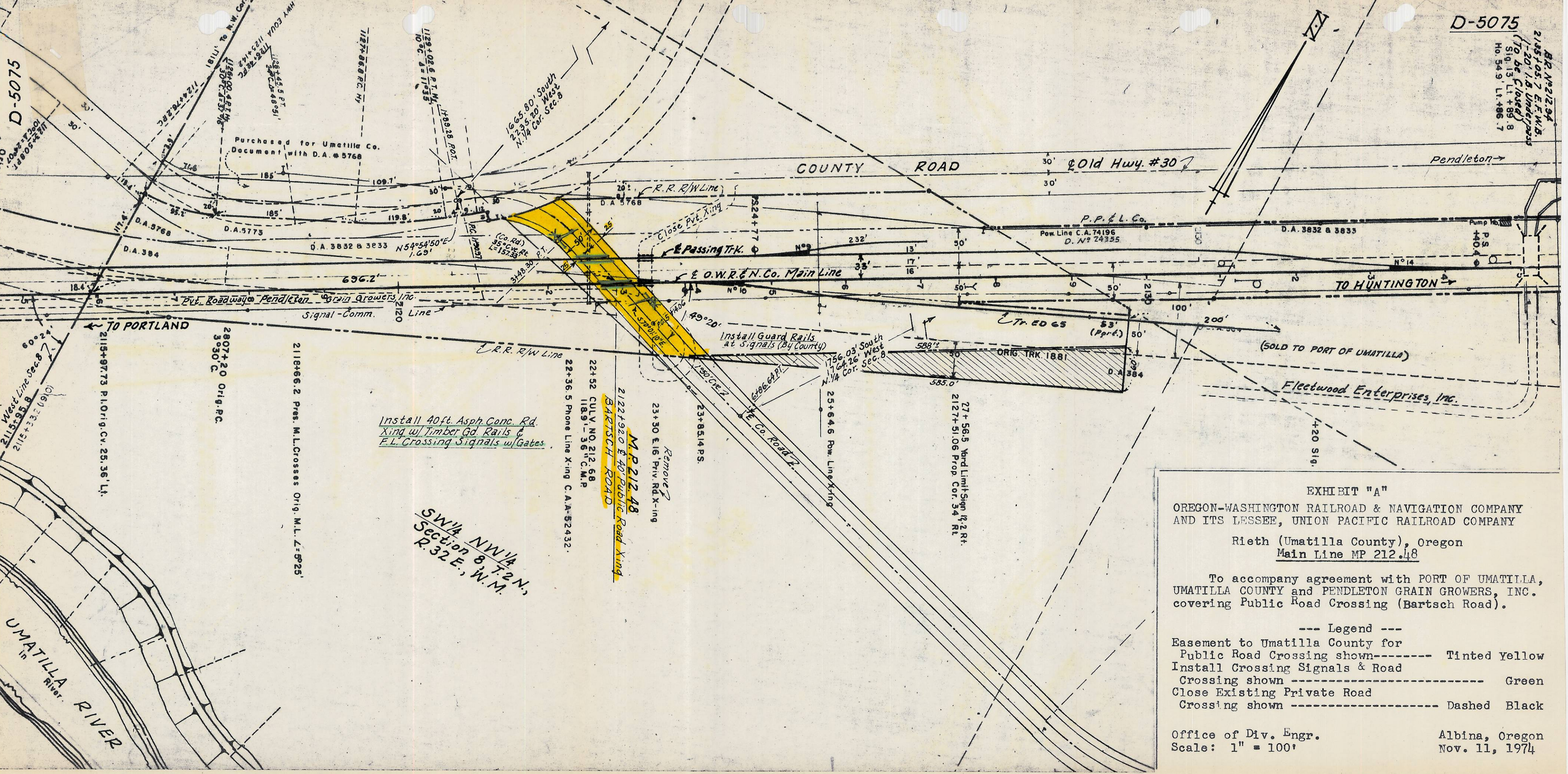
ATTEST:

PENDLETON GRAIN GROWERS, INC.

Ronald C. Cook
Secretary

By *Robert Harper*
President

BR. No. 212.94
21957.05.7 E.F.W.B.
1-20' 1/8 Underpass
(To be Closed)
St. 13 Lt. + 89.8
Ho. 54.9 Lt. + 86.7



Install 40ft. Asph. Conc. Rd.
Xing w/ Timber Gd. Rails &
F.L. Crossing Signals w/ Gates.

SW 1/4 NW 1/4
Section 8 T. 2 N.,
R. 32 E., W. M.

MP 212.48
2122+92.0 E. 40' Public Road Xing
BARTSCH ROAD
22+52 CULV. NO. 212.68
118.9' - 36" C.M.P.
22+36.5 Phone Line Xing C.A. 52432.
23+30 E. 16' Priv. Rd. X-ing
Remove
23+85.14 P.S.
25+64.6 Row. Line Xing
27+56.5 Yard Limit Sign R. 2 Rt.
2127+51.06 Prop. Cor. 34 Rt.

EXHIBIT "A"
 OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY
 AND ITS LESSEE, UNION PACIFIC RAILROAD COMPANY

Rieth (Umatilla County), Oregon
 Main Line MP 212.48

To accompany agreement with PORT OF UMATILLA,
 UMATILLA COUNTY and PENDLETON GRAIN GROWERS, INC.
 covering Public Road Crossing (Bartsch Road).

--- Legend ---
 Easement to Umatilla County for
 Public Road Crossing shown ----- Tinted Yellow
 Install Crossing Signals & Road
 Crossing shown ----- Green
 Close Existing Private Road
 Crossing shown ----- Dashed Black

O. W. R. & N. CO.

U.P.R.R. CO. - LESSEE

RIETH, OREGON

Description of right of way upon which
an easement is proposed to be granted to
Umatilla County, Oregon, for Bartsch Road.

A strip of land 50.0 feet wide, being all that part of the right of way of the Oregon-Washington Railroad & Navigation Company in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 8, Township 2 North, Range 32 East of the Willamette Meridian in Umatilla County, Oregon, lying between lines parallel with and 25.0 feet, measured at right angles and/or radially, on each side of the following described center line:

Beginning at County Engineer's Station 1+89.28 P.C. which is a point in the center line of an existing county road that is 1665.80 feet south and 2235.20 feet west of the north quarter corner of said Section 8;

thence N. 54° 54' 50" E. a distance of 1.69 feet;

thence easterly along a tangent curve concave southerly having a radius of 163.70 feet, an arc distance of 157.33 feet;

thence S.70° 01' 10" E. a distance of 165.76 feet along a straight line drawn tangent to the end of the last described curve and which intersects the center line of the main track of said Railroad Company at an angle of 49° 20' from northeast to southeast at Railroad Survey Station 2122+92.0 which is a point in said center line of main track that is 696.2 feet northeasterly measured along said center line of main track from the west line of said Section 8;

thence southeasterly along a tangent curve concave northeasterly having a radius of 3125.23 feet, an arc distance of 172.58 feet to County Engineer's Station 6+86.64 P.T., which is a point beyond the southeasterly right of way line of said Railroad Company that is 1756.03 feet south and 1764.26 feet west from the north quarter corner of said Section 8.

As shown tinted yellow on print dated November 11, 1974, marked Exhibit "A", attached hereto and made a part hereof.

Office of Chief Engineer
Omaha, Nebraska December 20, 1974

EXHIBIT "C"

WORK TO BE DONE BY UNION PACIFIC RAILROAD COMPANY AT EXPENSE OF UMATILLA COUNTY, PORT OF UMATILLA AND PENDLETON GRAIN GROWERS, INC. IN CONNECTION WITH ESTABLISHMENT OF COUNTY ROAD CROSSING (BARTSCH ROAD), AND ESTIMATES OF COSTS THEREOF.

<u>Description</u>	<u>Labor</u>	<u>Material</u>	<u>Total</u>
<u>PART I - Highway Crossing Protection</u>			
(at expense of Railroad Co., Port of Umatilla & Pendleton Grain Growers, Inc.)			
<u>Engineering</u>			
Field Engineering	\$ 710		
Signal Engineering (Contract)	<u>710</u>	\$ 1,640	
		\$ 1,640	
<u>Highway Crossing Protection</u>			
Install Automatic Crossing Protection	\$15,510	\$48,020	
Equipment Rental		1,200	
	<u>\$15,510</u>	<u>\$49,220</u>	
	<u>\$16,220</u>	<u>\$50,860</u>	
Less Railroad Co. Portion	<u>\$ 7,500</u>	<u>\$ 7,500</u>	\$15,000
Less Port of Umatilla Lump-sum Payment	<u>\$ 3,750</u>	<u>\$ 3,750</u>	\$ 7,500
Pendleton Grain Growers, Inc. (Balance)	<u>\$ 4,970</u>	<u>\$39,610</u>	\$44,580
<u>PART II - Public Road Crossing</u>			
(100% expense Umatilla County)			
Install 40 ft. Asph. Conc. Public Road Crossing & Remove Existing Private Crossing	<u>\$ 530</u>	<u>\$ 530</u>	\$ 1,060
<u>Total Railroad Company Portion</u>	<u>\$ 7,500</u>	<u>\$ 7,500</u>	<u>\$15,000</u>
<u>Total Port of Umatilla</u>	<u>\$ 3,750</u>	<u>\$ 3,750</u>	<u>\$ 7,500</u>
<u>Total Pendleton Grain Growers, Inc.</u>	<u>\$ 4,790</u>	<u>\$39,610</u>	<u>\$44,580</u>
<u>Total Umatilla County</u>	<u>\$ 530</u>	<u>\$ 530</u>	<u>\$ 1,060</u>
 GRAND TOTAL	 <u>\$16,750</u>	 <u>\$51,390</u>	 <u>\$68,140</u>

Section 3. WORK TO BE DONE BY RAILROAD.

(a) The Railroad may make any and all changes, alterations or relocations, whether temporary or permanent, which in its judgment may be or become necessary or expedient because of the project. Such work shall include, without limitation, the work detailed in Exhibits "A" and "C" attached hereto and by this reference made a part hereof, for which the Railroad shall furnish all necessary labor, material and equipment.

(b) Second Party, the Port and PGG shall reimburse the Railroad for the entire actual cost and expense of performing all work referred to in paragraph (a) of this section in accordance with the schedule and division of estimated costs set forth in Exhibit "C". Reimbursement for the use of railroad owned and operated equipment will be in accordance with the Union Pacific Railroad Company's Billing and Contracts' Bulletin in effect on the date of use of such equipment. Rental rates for any item of equipment necessary to the job and not included in said Billing and Contracts' Bulletin will be established on an individual basis and agreed to by the parties. The Railroad will submit to Second Party bills for flagging and other protective services and devices currently during progress of the work contemplated by this agreement. The Railroad will submit complete billing for flagging and other protective services within one hundred and twenty (120) days after completion of the project, provided Second Party advises the Railroad of the commencement of the 120-day period by giving the Railroad written notification of completion of the project.

Section 4. MAINTENANCE.

if rd. grade changes
(a) Except as hereinafter provided, Second Party, at its own expense, and without expense to the Railroad, shall and will keep and maintain the highway and all appurtenances thereof (including the paving in the track area and advance warning signs) in good condition and repair so as not to jeopardize, damage or interfere with the Railroad's property, facilities or operations, and to protect the motoring public. Without limiting the generality of the foregoing, if at any time the Railroad shall elect or be required by competent public authority to raise or lower the grade of all or any part of the Railroad's property upon which said crossing is constructed, Second Party shall at once alter and change that portion of said crossing and the approaches to be constructed and maintained by it so as to conform to the change of grade required by the Railroad, and the provisions hereof shall thereafter apply to such crossing as so changed.

(b) The Railroad, at its own expense, and without expense to Second Party, shall maintain its tracks and all appurtenances thereof (including, without limitation, the electric automatic flashing lights and gates to be constructed at the crossing pursuant hereto) in good condition and repair so as not to jeopardize or damage Second Party's property, facilities or operations.

(c) In the event one or more of the grade crossing signals installed pursuant hereto are partially or wholly destroyed by vehicular traffic and its or their replacement value or cost of repair cannot be recovered from the person or persons responsible for such destruction or from state, Federal or other public funds as may be available at the time of such repair or replacement, or in the event one or more than one, or all of the signals installed pursuant to this agreement cannot, through age, be maintained, or, by virtue of obsolescence, require replacement, the cost of repair or the cost of installation of a new signals or signals shall be negotiated between the Railroad and Second Party on the basis of the original installation with such state, Federal or other public funds which may be available at the time, and with not more than twenty-five percent (25%) of such cost to be paid by the Railroad. If for any reason said signals shall no longer be required at the said grade crossing, the Railroad may remove said signals and dispose of the materials and equipment, subject, however, to any required approval of the properly constituted authority. Upon request of Second Party, the Railroad shall relocate the signals to another crossing of Second Party's highway system with the Railroad's right of way and tracks. The location and division of cost of any relocation of said materials shall be agreed upon between the Railroad and Second Party prior to removal, failing in which, it shall be determined by the Public Utility Commissioner of Oregon or successor public authority. In the event that either railroad or highway improvements shall necessitate a rearrangement or relocation of the signals at said crossing, the party whose improvement causes such changes will bear the entire cost thereof without expense to the other party.

(d) If said signals and their appurtenances are permanently removed and are not reinstalled at some other location mutually agreeable to the parties or designated by competent public authority, the Railroad shall and will pay Second Party one-half of the then fair salvage value of said signals, less the cost of recovery, and the Railroad thereafter shall own said signals and appurtenances, without restriction on its right to use thereof.

Section 5. SAFETY MEASURES. All work of Second Party contemplated by this agreement, including any work of maintenance of the highway facilities or appurtenances constructed on the easement(s) granted pursuant hereto, shall be performed and accomplished without interruption to or delay of operations of the Railroad or of others lawfully occupying or using their property or facilities, and without interruption to or delay of continuous railroad traffic. It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of Second Party that:

(a) All references in this section to Second Party and its work shall include, besides Second Party, its contractors, subcontractors, officers, agents and employees, and others acting under its or their authority; and all references in this section to work of Second Party shall include such work, not only within the Railroad's property, but also in the vicinity thereof, but outside of the Railroad's property.

(b) Second Party shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities or any communication or signal lines, installations or appurtenances of any thereof. Second Party shall shelter and protect the Railroad's said property as required by the Railroad.

(c) Second Party, at its own expense, shall adequately police and supervise all work to be performed by it; shall regulate the conduct thereof in such manner that the prosecution thereof will not endanger, interfere with, hinder or delay operations of the Railroad or of others lawfully using or occupying the Railroad's property or facilities; and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad or such others may be responsible, or to property of the Railroad or such others.