

THIS AGREEMENT made this 5th day of June, 1956, by and between the STATE OF OREGON, acting through its State Highway Commission, hereinafter called the State, UMATILLA COUNTY, hereinafter called the County, and NORTHERN PACIFIC RAILWAY COMPANY, a Wisconsin corporation, hereinafter called the Railway Company,

WITNESSETH:

WHEREAS in the general improvement of its highway system the State wishes to relocate its highway and to construct a new grade crossing near Helix, Oregon, which will intersect the Railway Company's Pendleton Branch Line at grade level at Milepost 22+623, and which will replace an existing grade crossing at Milepost 22+880, all as shown on sketch dated Office of Division Engineer, Spokane, Washington, April 5, 1956, marked Exhibit "A", attached hereto and made a part hereof, in accordance with detailed plans, specifications and special provisions to be approved by the State and the Railway Company, and also by this reference made a part hereof; and

WHEREAS the Public Utilities Commissioner of Oregon has in Cause No. F-2494, by Order No. 34387, made and entered March 7, 1956, granted the application of the State for authority to construct said crossing at grade, and in said order has provided for the division of expense of construction and maintenance thereof; and

WHEREAS the State and the Railway Company agree that the Railway Company will receive no real benefits from the relocation of the highway and construction of the new highway and resulting surface grade crossing; and

WHEREAS the State is willing to undertake the construction of the project with State funds and with such Federal

funds as may be available for this purpose under and pursuant to the Federal Aid Highway Act of 1944 and amendments thereto, and the Railway Company is willing to consent to the execution of the State's project upon the terms and conditions herein stated, and not otherwise;

NOW, THEREFORE, in consideration of the premises and the mutually dependent promises hereinafter contained, the parties agree as follows:

I.

The Railway Company shall grant to _____ County _____, by an appropriate instrument, the right to locate, construct, maintain and use for highway purposes only a railway-highway grade crossing across its tracks and right of way at Milepost 22+623.

II.

The work to be done by the Railway Company at its expense in constructing said crossing shall be as specified in Part I of Exhibit "B", attached hereto and made a part hereof, and the work to be done by the Railway Company at the State's expense shall be as specified in Part II of said exhibit. The Railway Company shall also provide all necessary flagging or other protective services required because of the construction of the new grade crossing,

- (a) Where the flagging or other protective service is required by the Railway Company's operation or reimbursable items;
- (b) Where the flagging or other protective service is made necessary by reason of the Contractor's operation.

III.

The State at its expense shall perform such part of the work of construction of said crossing as is specified on said Exhibit "B", and also shall install two standard advance warning signs.

IV.

In the event an emergency should occur in connection with the work specified herein, the Railway Company shall have the right to do any and all work that may be necessary, in its opinion, to maintain traffic over its tracks, and the State, in its agreement with the Contractor, shall provide that the Railway Company shall be reimbursed for such cost if the emergency should result from any acts of the Contractor, his Sub-Contractors or Agents.

V.

The contract between the State and its Contractor shall require the Contractor to protect the Railway Company, and any other railroad company occupying or using the Railway Company's tracks, against all loss and damages arising from activities of the Contractor, his forces, or any of his Sub-Contractors or Agents; and shall further provide that the Contractor shall furnish to the Railway Company a Railroad Protective Insurance Endorsement attached to its Owner's or Contractor's Protective Liability Insurance Policy, providing for protection to the Railway Company in the manner and form described in the form of endorsement attached hereto, made a part hereof, and marked Exhibit "C". The limits of said policy shall not be less than \$200,000 for all damages arising out of bodily injuries to, or death of one person and, subject to that limit for each person, a total of \$300,000 for all damages arising out of bodily

injuries to, or death of two or more persons in any one accident; and not less than \$100,000 for all damages arising out of injury to, or destruction of property in any one accident and, subject to that limit for any one accident, a total limit of \$200,000 for all damages arising out of injuries to or destruction of property during the policy period. Said insurance endorsement, attached to an exact certified duplicate of the basic policy, shall be executed by a corporation qualified to write the same in the State of Oregon in form and substance satisfactory to the Railway Company, and shall be delivered to the Railway Company prior to the entry upon, or use of its property by the Contractor.

VI.

The State agrees to pay for all work performed by the Railway Company, as set forth in Part II of said Exhibit "B", and the Railway Company shall submit bills in accordance with Policy and Procedure Memorandum No. 30-3 issued by the Bureau of Public Roads, dated August 15, 1955, covering its entire cost for doing its share of the work, and the State will promptly remit payment for such bills.

All work to be performed by the Railway Company at the expense of the State is as shown on the estimate attached hereto, marked Exhibit "B" and by this reference made a part hereof. It is understood, however, that such exhibit is an estimate only and the State will pay the actual cost of the Railway Company's work performed pursuant to this contract.

VII.

Upon completion of the crossing, the Railway Company shall at its own expense maintain its track and roadbed and the reflectorized crossing signs, and the County at its own expense

shall maintain the highway roadbed and surfacing between the rails of said crossing, and also the advance warning signs.

VIII.

Upon completion of said crossing the State shall at its own expense barricade and close to public travel the existing crossing at Milepost 22+880.

IX.

In case said grade crossing shall at any time cease to be used by the public as a highway, or shall, by operation of law or otherwise, become vacated or abandoned, the rights and benefits to the State under this agreement shall immediately cease, and if the Railway Company so elects, the State shall remove said crossing at its own cost and expense.

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

APPROVED:

[Signature]
Deputy State Highway Engineer

APPROVED AS TO FORM:

[Signature]
Chief Counsel

[Signature]
Assistant Counsel

ATTEST:

[Signature]
Secretary

STATE OF OREGON, by and through its State Highway Commission

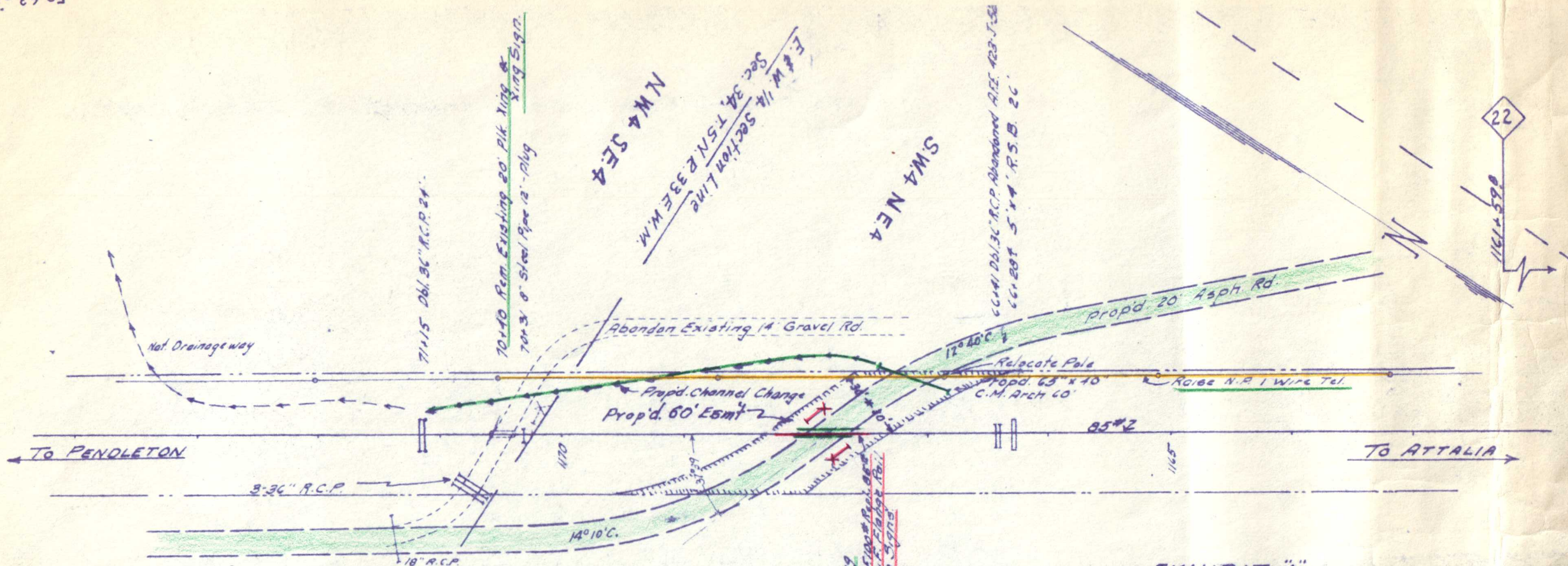
By [Signature] Chairman.
By [Signature] Commissioner.
By [Signature] Commissioner.

UMATILLA COUNTY

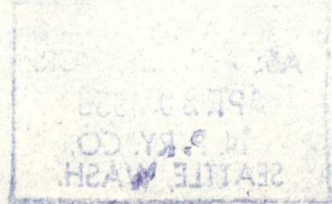
By [Signature] County Judge.
By [Signature] Co. Commissioner.
By [Signature] Co. Commissioner.

NORTHERN PACIFIC RAILWAY COMPANY

By [Signature]
Vice President



Data: from project, sheet 5- S-304-1
 County Road. F.A.S. 467
 P.S.C. Order # 34387 3/7/56
 New X-ing. # 6-B-22.1
 old. " # 6-B-22.2



M.P. 22+623
 Hwy 9.76+2938 = Ry. 11.67+825 Prop'd. Asphalt Xing
 State to Plug Asphalt Xing
 Prop'd. Hwy 9.76+2938 to Plug Asphalt Xing
 2-Reflectorized Xing Signs

EXHIBIT A
 N.P.R.R.

IDAHO DIV. 11TH SUBDIV.
 HELIX (N.A.)
 PROPOSED HIGHWAY CROSSING AT M.P. 22+623.
 SCALE: 1"=100'
 OFFICE OF DIV. ENGR. SPOKANE, WN. APR. 5, 1956.

Prop'd. Work By State Shown Dashed Green.
 Work By N.P.R.R. Shown Red.
 Relocations Shown Yellow.
 Removals Shown Dotted.