

RAF - VI - 06531/322 - 6/7/73

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Mile Post CF-433.2-A-N

THIS AGREEMENT, made this 13th day of August, 1973

by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein termed "Railroad", and COUNTY OF KLAMATH, a political subdivision of the State of Oregon, herein termed "County";

RECITALS:

County proposes to construct an overpass to replace an existing overpass known as Lakeport Boulevard Overcrossing No. CF-433.20-A, hereinafter referred to as "structure", at or near Wocus, in the County of Klamath, State of Oregon. The location of the work included hereunder is shown on the print of Railroad's Oregon Division Drawing No. A-4397, revised May 9, 1973, attached and made a part hereof.

The parties hereto desire to set forth herein their understandings and agreements with respect to the construction and maintenance of said structure and the changes made necessary in connection therewith.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed as follows:

1. This agreement is made subject and subordinate to all valid orders issued by the Public Utility Commissioner of Oregon affecting the construction and maintenance of said structure.
2. County, at its expense, shall furnish or cause to be furnished all labor, materials, tools and equipment for the construction of said structure, except as herein otherwise provided. Said structure shall be constructed in a manner to accommodate Railroad's tracks and in accordance with plans and specifications which shall be subject to approval of Railroad.
3. County agrees to reimburse Railroad for all cost and expense incurred by Railroad in connection with construction of said structure. The estimated amount of such cost and expense is summarized in Exhibit "A", attached and made a part hereof.
4. All work to be done hereunder by Railroad shall be done by its employees working under Railroad Labor Agreements and shall be done on a force account basis or by contract, the costs thereof to be

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paid to Railroad by County in the manner hereinafter set forth. All expenses incurred by Railroad for which County is obligated to reimburse Railroad hereunder, including all work incidental to such work but not specifically mentioned herein, shall be made on the basis of Federal Highway Administration's regulations.

5. The parties agree that no benefit will accrue to Railroad due to the construction or use of said structure and, therefore, no contribution to this project is due from Railroad since no important grade crossing will be closed at said location.

6. Railroad shall submit all bills to County for payment of work performed by Railroad on the basis of items set forth in Exhibit "A", and shall submit its final bill on the same basis to cover the actual cost of the items of work performed by Railroad. County agrees to pay Railroad the cost of such work within thirty (30) days of receipt of such bills from Railroad. The cost of flagmen, watchmen and representatives to protect Railroad's property and trains due to the operations of County's contractor shall be segregated in Railroad's billing to County from all other costs billed to County under this agreement. County agrees to pay Railroad the cost of flagging and related services to the extent that bills are presented by Railroad within one hundred twenty (120) calendar days after completion of the project.

The cost of the work as shown in Exhibit "A" is an estimate only, and it is understood that County will reimburse Railroad on the basis of actual cost.

7. All work contemplated in this agreement shall be performed in a good and workmanlike manner to the satisfaction of the parties and each portion shall be promptly commenced by the party obligated to do the same and thereafter diligently prosecuted to conclusion in its logical order and sequence.

The books, papers, records and accounts of the parties, so far as they relate to the items of expense for labor and materials or

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are in any way connected with the work herein contemplated, shall at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties.

8. Upon completion of this project, County, at its own expense, shall maintain the bridge structure, piers, abutments, embankment, fill approaches, highway drainage and other highway facilities; and Railroad, at its own expense, shall maintain its roadbed, tracks, railroad drainage and other railroad facilities.

9. In the event any of the work upon the property of Railroad as herein contemplated should be advertised for bids by County, the awarded contract shall include the provisions set forth in Exhibit "B", attached and hereby made a part hereof. Said work shall not be commenced by County's contractor until:

- (a) County has furnished to Railroad's Chief Engineer a copy of the contract executed by the contractor; certified copies of policies of required Bodily Injury and Property Damage insurance; and original policy of required Railroad Protective Liability insurance; and
- (b) Railroad's Chief Engineer has advised County's Highway Engineer by letter that the limits, form and substance of said insurance policy or policies are satisfactory to Railroad.

Said insurance policy or policies shall be kept in full force and effect by County's contractor during the performance of said work upon and adjacent to Railroad's property and thereafter until contractor removes all tools, equipment and materials from Railroad's property and cleans up the same to a presentable condition satisfactory to Railroad.

County and its contractor shall give reasonable notice to Railroad's Division Superintendent before commencing any work in connection with said structure upon or adjacent to Railroad's property, and shall observe Railroad's rules and regulations with respect thereto. All work upon said structure shall be done at such times and in such manner as not to interfere with or endanger the operations of Railroad.

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10. This agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and upon the assigns of County.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their officers thereunto duly authorized and their respective seals hereunto affixed as of the day and year first herein written.

IN DUPLICATE

SOUTHERN PACIFIC
TRANSPORTATION COMPANY

By L. Blake
(Title) First Asst. Mgr. Contract Dept.

Attest: Assistant Secretary

COUNTY OF KLAMATH

By Ray G. Galt
County Judge

By R. A. Fule
County Commissioner

By Bryan Williams
County Commissioner

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EXHIBIT "A"

COST OF WORK TO BE PERFORMED BY RAILROAD

A.	Signal Line Work	\$ 6,400
B.	Communications Work	80
C.	Engineer Inspector and Expenses	2,650
D.	Preliminary Engineering	120
E.	Store Expense	150
F.	Freight	75
G.	Equipment Rental	600
H.	Vacation Allowance	397
I.	Holiday Pay	142
J.	Health and Welfare	312
K.	Railroad Retirement and Unemployment Tax	680
L.	P.D., P.L. and W.C. Insurance	227
M.	Supervision	567
N.	Contingencies	1,240
O.	<u>GROSS AND NET COST TO KLAMATH COUNTY</u>	<u>\$ 13,640</u>

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EXHIBIT "B"

RELATIONS WITH RAILROAD COMPANY

(a) General -- The term "Railroad" shall be understood to mean the
SOUTHERN PACIFIC TRANSPORTATION COMPANY

The term "Political Subdivision" shall be understood to mean
the County of Klamath

It is expected that Railroad will cooperate with the Contractor to the end
that the work may be handled in an efficient manner, but the Contractor shall
have no claim for damages or extra compensation in the event his work is held
up by the work by Railroad forces.

(b) Railroad Requirements -- The Contractor shall cooperate with Railroad
whose work is over or under the tracks, or within the limits of Railroad prop-
erty, in order to expedite the work and to avoid interference with the oper-
ation of railroad equipment.

The Contractor shall comply with the rules and regulations of Railroad
or the instructions of its representatives in relation to the proper manner
of protecting the tracks and property of Railroad and the traffic moving on
such tracks, as well as the wires, signals, and other property of Railroad,
its tenants or licensees, at and in the vicinity of the work during the period
of construction.

The Contractor shall perform his work in such manner and at such times as
shall not endanger or interfere with the safe operation of the tracks and prop-
erty of Railroad and the traffic moving on such tracks, as well as wires, sig-
nals and other property of Railroad, its tenants or licensees, at or in the vi-
cinity of the work.

Except as otherwise provided herein, the Contractor's operations shall not
infringe on the following minimum clearances from any railroad track:

10' - 0" horizontally from center line of track.

23' - 0" vertically above top of rail.

Any infringement on the above clearances due to the Contractor's oper-
ations shall be submitted to the Railroad and to the Engineer, and shall not
be undertaken until approved by the Railroad, and until the Engineer has ob-
tained any necessary authorization from any governmental body or bodies having
jurisdiction thereover. No extra compensation will be allowed in the event the
Contractor's work is delayed pending Railroad approval and governmental authori-
zation.

In the case of impaired vertical clearance above top of rail, Railroad shall
have the option of installing tell-tales or other protective devices Railroad
deems necessary for protection of Railroad trainmen or rail traffic.

12-1-61
Non FA

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EXHIBIT B

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The details of construction affecting the Railroad tracks and property not included in the contract plans shall be submitted to the Railroad for approval before such work is undertaken.

Except in connection with construction of grade separation structures on premises of Railroad, no private crossings at grade over tracks of Railroad for the purpose of hauling earth, rock, paving or other materials will be permitted. If the Contractor, for the purpose of constructing highway-railway grade separation structures, including construction ramps thereto, desires to move his equipment or materials across Railroad's tracks, he shall obtain permission from Railroad; and, should it be required, the Contractor shall execute a private crossing agreement. The crossing installation for the use of the Contractor, together with any protective devices, if required, shall be at the expense of the Contractor. Contractor shall furnish his own employees as flagmen to control movements of vehicles on the private roadway and shall take all measures necessary to prevent the use of such roadway by unauthorized persons and vehicles.

In advance of any blasting, the Contractor shall notify Railroad in order that proper flagging protection may be provided.

The Contractor shall, upon completion of the work covered by this contract, to be performed by Contractor upon the premises or over or beneath the tracks of Railroad, promptly remove from the premises of Railroad all of Contractor's tools, implements and other materials, whether brought upon said premises by said Contractor or any subcontractor, employee or agent of Contractor or of any subcontractor, and cause said premises to be left in a clean and presentable condition.

(c) Protection of Railroad Facilities -- In connection with work performed at railroad crossings, railroad representatives, conductors, flagmen or watchmen, will be provided by Railroad to protect its facilities, property and movements of its trains, or engines, when in the opinion of Railroad's representative same is necessary due to the Contractor's operations while working on or adjacent to the Railroad's property or its tracks.

The cost of all personnel deemed necessary by Railroad and provided by Railroad for the protection of Railroad facilities and trains during the period of constructing the separation, and the cost of installing protective devices in the case of impaired clearance, as above specified, shall be borne by the Contractor and sums sufficient to cover the claims based upon bills rendered to the political subdivision by Railroad for such costs will be deducted from the progress and final pay estimates due the Contractor.

The rates of pay of Railroad employees customarily called upon to act for the protection of Railroad are the railroad rates in effect at the time of the work for the various classes of labor. Compensation, property damage and public liability insurance, vacation and holiday time, railroad retirement and unemployment taxes, health and welfare, and supervision charges shall be added to the above rates.

Railroad will, upon request, furnish prospective bidders with an estimate of cost of the flagging protection which will be required, but such estimate shall be understood to be approximate only and no guaranty is made that the total cost of such flagging will not be in excess of the estimated amount. The determination of the cost of flagging and protective devices to be used as a basis for the submitting of bids shall be the responsibility of the prospective bidders.

(d) Work by Railroad Company -- Railroad will rearrange its telephone, telegraph and signal lines and appurtenances, and will make all track changes and will perform any other work in connection therewith.

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EXHIBIT B

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The work by Railroad will be done by its own forces and is not a part of the work under this contract.

Additional Work by Railroad Company (if any) --

(e) Agreement -- Before doing any work on Railroad's property, the Contractor shall execute an agreement with Railroad in the form of agreement annexed hereto.

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Non FA

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EXHIBIT 2

12592

THIS AGREEMENT, made this _____ day of _____, 196 __,
by and between

first party,

herein called "Railroad", and
second party, herein called "Contractor";

WITNESSETH:

1. Railroad hereby permits Contractor to enter upon the property of Railroad
2. Contractor warrants that Contractor has entered into a contract with hereinafter called "Third Party", covering the work to be performed in connection with said structure at said location.
3. Contractor shall give Railroad at least five (5) days' notice in advance of any work done upon or adjacent to Railroad's property under said contract. Contractor shall notify Railroad the date said work is completed, and also the date the Contractor's work is accepted by Third Party. Upon completion of the work to be done upon Railroad's property under said contract, Contractor shall promptly remove from Railroad's property all tools, equipment and materials placed thereon by the Contractor and Contractor's agents. Contractor shall restore said property to the same state and condition as when Contractor entered thereon and shall leave said property in a clean and presentable condition.
4. Said work shall be performed in accordance with plans and specifications approved by Railroad and in such manner and at such times as shall not endanger or interfere with the safe operation of the tracks and other facilities at said location. No materials, tools or equipment shall be stored within ten (10) feet of the center line of any track. The regulations of Railroad and the instructions of its representatives shall be complied with relating to the proper manner of protecting the tracks, pipe lines, wire lines, signals and all other property at said location, the traffic moving on such tracks and the removal of tools, equipment and materials.
5. Contractor hereby releases and agrees to indemnify Railroad from and against all cost, expense, claims and liability for injuries to or deaths of persons, (including, but not limited to, passengers and employees of Railroad) and damage to or loss of property (including, but not limited to, property owned, leased, occupied or used by, or in the care, custody or control of, Railroad, or the employees of Railroad) howsoever the same may be caused, regardless of any negligence or alleged negligence by the agents or employees of

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Railroad, resulting from, arising out of, or in any way connected with the prosecution of the work under said contract upon or adjacent to Railroad's property at said location. For purposes of this Section 5, the term "Railroad" shall include any other railroad company using Railroad's property at said location with Railroad's consent and any affiliate, subsidiary or lessor of Railroad.

6. Should Railroad bring suit to compel performance of or to recover for breach of any covenant or condition contained herein, Contractor shall pay to Railroad reasonable attorney fees in addition to the amount of judgment and costs.

7. Prior to the performance of any work upon or adjacent to Railroad's property under said contract, Contractor shall furnish Railroad, at Contractor's expense, a certified copy of a Public Liability and Property Damage Liability insurance policy issued in the name of the Contractor covering the contractual liability assumed by Contractor under Section 5 hereof. The form, substance and limits of said insurance policy shall be subject to the approval of Railroad and shall be in compliance with the provisions contained in the insert marked "Exhibit A", hereto attached and made a part hereof.

Contractor shall keep said insurance in full force and effect until all work to be performed upon or adjacent to Railroad's property under said contract is completed to the satisfaction of and accepted by Third Party and thereafter until Contractor has fulfilled the provisions of this agreement with respect to the removal of tools, equipment and materials from Railroad's property.

8. The permission herein given shall not be assigned by Contractor without the prior written consent of Railroad, except in the case of subcontractors who shall be deemed agents of Contractor subject to the terms of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

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EXHIBIT "A"
OF CONTRACTOR'S AGREEMENT

The coverage afforded hereunder shall include the liability assumed by the named insured under the following indemnification provision contained in an agreement in writing between the named insured and covering work to be performed upon or adjacent to property at

"Contractor hereby releases and agrees to indemnify Railroad from and against all cost, expense, claims and liability for injuries to or deaths of persons (including, but not limited to, passengers and employees of Railroad), and damage to or loss of property (including, but not limited to, property owned, leased, occupied or used by, or in the care, custody or control of, Railroad, or the employees of Railroad) howsoever the same may be caused, regardless of any negligence or alleged negligence by the agents or employees of Railroad, resulting from, arising out of, or in any way connected with the prosecution of the work under said contract upon or adjacent to Railroad's property at said location. For purposes of this Section 5, the term 'Railroad' shall include any other railroad company using Railroad's property at said location with Railroad's consent and any affiliate, subsidiary or lessor of Railroad."

The limits of liability afforded under this policy as above endorsed shall not be less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injury to or death of one person, and, subject to that limit for each person, a total limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or deaths of two or more persons in any one accident or occurrence, and for a 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 accident or occurrence, and, subject to that limit per accident or occurrence, an aggregate limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of injury to or destruction of property during the policy period.

No cancellation of this policy or modification of the coverage afforded under this endorsement shall be effective until ten (10) days' notice thereof has been given to Southern Pacific Transportation Company,
One Market Street,
San Francisco, California 94105, Attention: Chief Engineer.

6-12-67

EXHIBIT B

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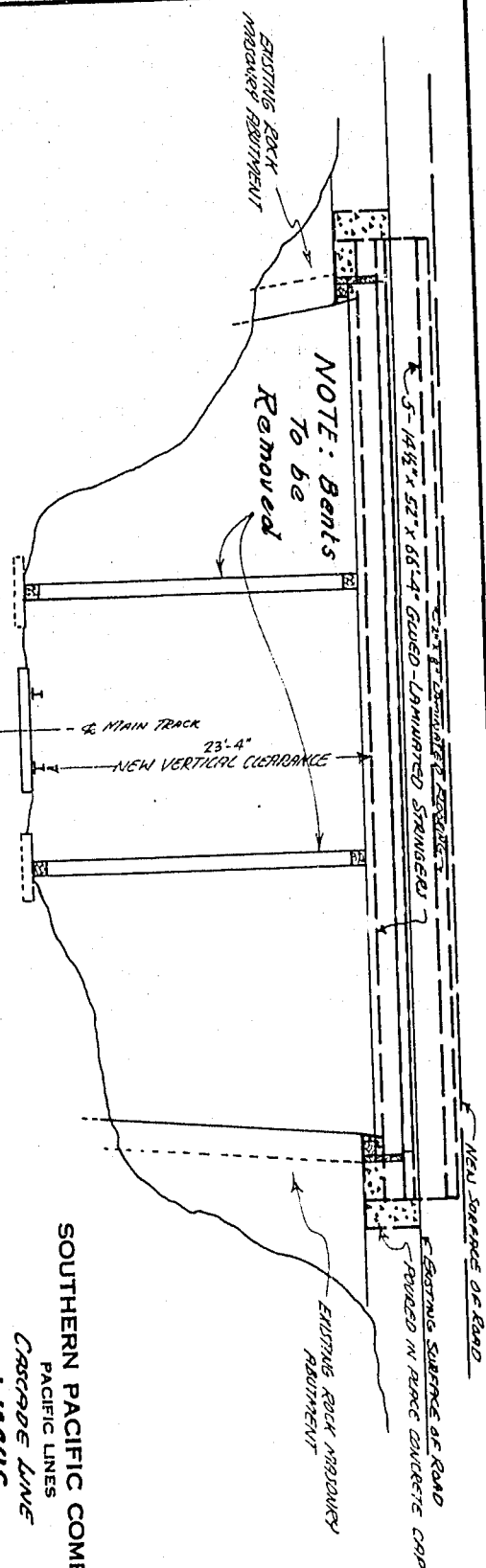
LEGEND

--- DASHED SHOWS NEW STRUCTURE
--- SHOWS S.P. PROPERTY LINE
Red. Work to be done by SPTC

ELEVATION

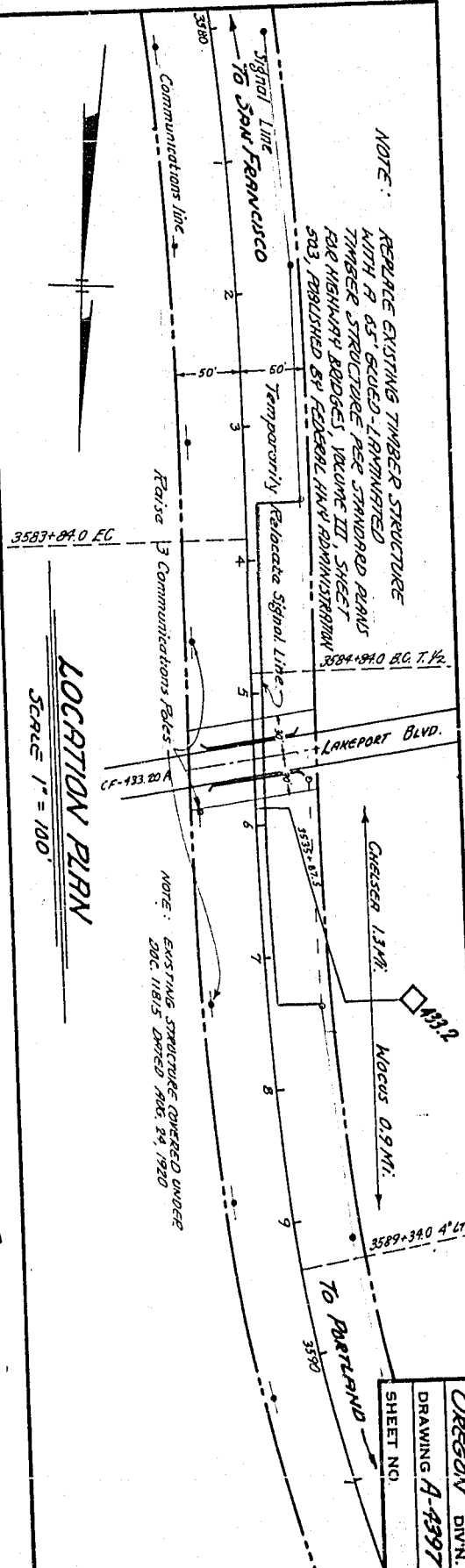
Scale 1" = 1'-0"

SOUTHERN PACIFIC COMPANY
PACIFIC LINES
CASCADIA LINE
WACUS
REPLACE STRUCTURE C-43320A
COUNTY OF KLAMATH
SCALE AS SHOWN 8" MARCH 5, 1972
DRAFTER



LOCATION PLAN

Scale 1" = 100'



OREGON DIV.
DRAWING A-4397
SHEET NO.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record at request of Klamath County

this 17 day of Sept A. D., 19 73 at 4 :29 o'clock P. M., and duly recorded in
Vol. M-73 of Miscellaneous 12584 on Page

No fee

WM. D. MILNE, County Clerk

By Hazel Brazil deputy