

Handwritten notes and signatures at the top of the page, including a signature that appears to be "J. H. [unclear]" and some illegible text.

277138

CONTRACT

S. D. No. 19543

Amort No. _____

Between

**UNION PACIFIC RAILROAD COMPANY
UNION PACIFIC RAILROAD COMPANY**

and

FRANK E. BENTON

THIS AGREEMENT, made and entered into this **6th** day of **November** 19 **64**, by and between - - - - - **OREGON**
SHORT LINE

RAILROAD COMPANY, a corporation of the State of Utah, and its Lessee, **UNION PACIFIC RAILROAD COMPANY**, a corporation of the State of Utah, (hereinafter collectively called "Railroad Company"), parties of the first part, and

FLOYD E. BENTON, an individual of Bountiful, Utah,

(hereinafter called "Licensee"), party of the second part, WITNESSETH:

WHEREAS, the Licensee owns land on both sides of and contiguous to the right of way of the Railroad Company in the vicinity of MP 27.44, near Woods Cross, Utah, in Davis County; and

WHEREAS, the Licensee, in order to provide convenient access between said portions of property on opposite sides of the right of way, desires the right to construct, or have constructed and thereafter to maintain and use a private roadway (hereinafter called "roadway"), across the right of way and track of the Railroad Company along a line intersecting the center line of the main track of the Railroad Company at right angles thereto at Engineer's Station 1446 + 85, which is 3040.3 feet north-easterly, measured along said center line, from its intersection with the south line of Section 24, Township 2 North, Range 1 West, Salt Lake Meridian, substantially in the location shown in yellow on the attached print, dated July 3, 1964, marked Exhibit "A", and hereby made a part hereof.

WHEREAS, the Railroad Company is willing that such a roadway be provided in the location aforesaid, for the use of the Licensee, subject to the stipulations, conditions and agreements hereinafter contained:

IT IS, THEREFORE, AGREED by and between the parties hereto as follows, to wit:

1. RAILROAD COMPANY GRANTS RIGHT TO LICENSEE:

The Railroad Company hereby grants unto the Licensee the right to construct, or have constructed, and thereafter during the term hereof, to maintain and use said roadway in the location hereinbefore described, which grant is made expressly subject to the observance and performance by the Licensee of all and singular the conditions, covenants and agreements hereinafter contained to be by the Licensee kept, observed and performed; it being hereby stipulated that a waiver by the Railroad Company of any

breach of any such conditions, covenants and agreements shall in no way impair the right of the Railroad Company to avail itself of any subsequent breach thereof.

2. RAILROAD COMPANY TO CONSTRUCT CROSSING (EXCEPT GRADING):

The Railroad Company shall, at the sole cost and expense of the Licensee, furnish all material and perform all work (except the grading which is to be done by the Licensee as hereinafter provided) necessary for the complete construction of a suitable roadway in the location hereinabove described. Said construction shall include the erection of a gate in the right of way fence on **each** side of said track opposite the said crossing. **Said gates are to be moved from an existing crossing some distance southwesterly from the crossing covered by this agreement, as shown in dashed black and white on Exhibit "A".**

3. LICENSEE TO BEAR COST OF CONSTRUCTION AND SUBSEQUENT MAINTENANCE:

The Licensee shall pay to the Railroad Company the entire cost and expense incurred by the Railroad Company for all material and labor used in connection with the construction of said roadway as provided in the preceding section hereof, and shall pay to the Railroad Company any and all expense subsequently incurred by the Railroad Company in connection with the maintenance, repair, renewal and removal of said roadway; and all payments which are to be made by the Licensee to the Railroad Company as herein provided shall be made within thirty (30) days after the rendition of properly certified bills therefor by the Railroad Company.

4. LICENSEE TO DEPOSIT COST OF CONSTRUCTION:

Before any work is done by the Railroad Company in connection with constructing said roadway in the location aforesaid, the Licensee shall deposit with the Railroad Company a sum of money equal to the total estimated cost and expense to be incurred by the Railroad Company in connection with the construction (except grading) of said roadway. After the completion of the construction of said roadway the Railroad Company shall present to the Licensee an itemized bill showing the actual amount of all expenditures made by it in connection with such construction, and in the event the actual amount of such expenditures is in excess of the amount deposited by the Licensee as hereinbefore provided, the Licensee shall pay to the Railroad Company an additional amount to fully reimburse the Railroad Company for all of such expenditures, or in the event the actual amount of such expenditures is less than the amount deposited by the Licensee as hereinbefore provided, the Railroad Company shall refund to the Licensee the difference thereof.

5. LICENSEE TO DO GRADING:

The Licensee shall do all the necessary grading in connection with the construction of said roadway in said location, which grading shall be done in a proper manner, under the supervision of the Railroad Company and at the sole cost and expense of the Licensee.

6. LICENSE SUBJECT TO SUPERIOR RIGHTS:

The license herein granted is subject to all outstanding superior rights (including those in favor of telegraph and telephone companies, lessees of said right of way, and others), and the right of renewals and extensions of the same, and is made without covenant of title or for quiet enjoyment.

7. MODIFICATION, RELOCATION OR REMOVAL OF ROADWAY:

This license or permit is made subject to the needs and requirements of the Railroad Company in the operation of its railroad and in the improvement and use of its property and the Licensee, at the sole cost and expense of the Licensee, shall move all or any portion of the roadway entirely off the right of way of the Railroad Company, or to such a new location thereon as may be designated by the Railroad Company, whenever, in the furtherance of such needs and requirements, the Railroad Company shall find such action necessary or desirable; PROVIDED, however, the Licensee shall not be required under the terms hereof, to move entirely off of said right of way any portion of the roadway constituting a crossing of the entire right of way of the Railroad Company. Any relocation of said roadway as herein provided shall be done by or under the supervision of and to the satisfaction of the Railroad Company.

All the terms, conditions and stipulations herein expressed with reference to said roadway in the location hereinbefore described shall apply to said roadway when moved to a new location under the terms of this section.

8. ROADWAY NOT TO BE USED BY PUBLIC:

The Licensee shall not permit said roadway to be used by the public, or by any person or persons except the Licensee and the family, tenants, and employes of the Licensee, it being expressly stipulated that said roadway is a private one and not intended for public use.

9. LICENSEE TO KEEP GATES CLOSED:

The Licensee shall at all times keep gates closed except when opened to permit the use of said roadway in accordance with the terms of this agreement.

10. LICENSEE LIABLE FOR INJURY TO LIVE STOCK:

The Licensee shall indemnify and hold harmless the Railroad Company from and against any and all injury, damage, loss, costs and expenses of whatsoever nature which the Licensee, the Railroad Company, and/or any person or persons may suffer or sustain by reason of the entry of live stock, whether belonging to the Licensee or others, upon the right of way of the Railroad Company through said gates, or either of them, and from any and all judgments which any person or persons may recover from the Railroad Company by reason of any such injury, damage or loss.

11. LIABILITY:

The Licensee shall further indemnify and hold harmless the Railroad Company from and against any and all damages, claims, demands, actions, causes of action, costs and expenses of whatsoever nature which may result from any injury to or the death of any person whomsoever, or from loss of or damage to property of any kind or nature, including damage to the roadbed, tracks, equipment or other property of the Railroad Company, when such injury, death, loss or damage is due in any way to the existence of said roadway, or to the construction, maintenance, repair, renewal, removal or use thereof, PROVIDED, however, that the Licensee shall not be held liable under the provisions of this section, for any injury, death, loss or damage which is directly due to the performance of any of the work contemplated hereunder when such work is performed by the Railroad Company.

12. TERMINATION:

If the Licensee shall fail, neglect or refuse to keep, observe and perform any or all of the conditions, covenants, and agreements herein contained on the part of the Licensee to be kept, observed and performed, the Railroad Company may at its option terminate this agreement by giving to the Licensee thirty (30) days' notice in writing of its intention so to do, and at the expiration of said notice this agreement shall become null and void and of no further force and effect between the parties hereto.

In the event of the termination of this agreement as herein provided, the Licensee shall be without recourse or redress of any character against the Railroad Company by reason thereof, and such termination shall in no manner prejudice or impair any right of action for damages or otherwise that the Railroad Company may have against the Licensee.

13. EFFECTIVE DATE:

This agreement shall take effect upon the day and date first herein written, and shall continue in full force and effect until terminated as provided, it being understood,

however, that should the Licensee enter upon, or perform any work upon the right of way prior to said effective date, the terms of this agreement shall apply thereto. All of the covenants, conditions and agreements herein expressed on the part of the Licensee to be kept, observed and performed, shall attach to and run with the said land of the Licensee.

14. LICENSEE TO KEEP FLANGEWAYS CLEAN:

The Licensee shall keep the flangeways at said crossing clean and free from dirt, gravel or other debris which might interfere with the safe operation of trains, engines or cars thereover by the Railroad Company.

15. SUCCESSORS AND ASSIGNS:

This agreement shall be binding upon and inure to the benefit of the Railroad Company and its successors and assigns, the Licensee, and the successors in interest of the Licensee.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate on the day and year first above written.

Witness:

OREGON SHORT LINE RAILROAD COMPANY

R. W. Vandercreek

By

Vice President

Witness:

UNION PACIFIC RAILROAD COMPANY,

R. W. Vandercreek

By

Chief Executive Officer,
Transportation Division

Witness:

Floyd E. Benton
Floyd E. Benton Licensee

SS

County of Douglas

On the 7th day of December, 19 64,
 before me, a Notary Public in and for said County, personally
 appeared E. H. BAILEY to me personally known to be
~~Chief Executive Officer of Union Pacific~~ President of UNION PACIFIC
~~RAILROAD COMPANY~~ and OREGON SHORT LINE RAILROAD COMPANY

who being duly sworn did say that the seals affixed to the
 foregoing instrument are the corporate seals of said corpora-
 tions, and that said instrument was signed, sealed and exe-
 cuted in behalf of said corporations by authority duly con-
 ferred by their By-Laws, and acknowledged to me said instru-
 ment to be the free act and deed of said corporations.

IN WITNESS WHEREOF, I have hereunto set my hand and
 affixed my official seal the day and year first in this, my
 certificate, written.

My Commission Expires:

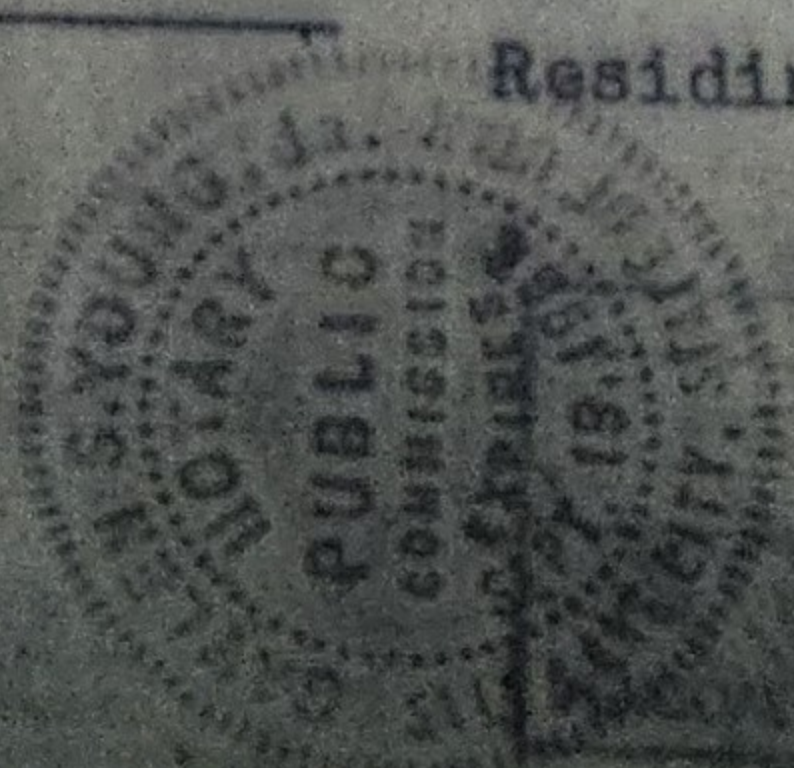
July 28, 1969Notary PublicResiding at Omaha, NebraskaSTATE OF UtahCounty of Salt Lake

SS

I, Gaylen S. Young, JR., a Notary Public,
 do hereby certify that FLOYD E. BENTON, personally
 known to me to be the same person whose name is subscribed to
 the foregoing instrument, appeared before me this day in per-
 son and acknowledged to me that he signed, sealed and de-
 livered said instrument, as his free and voluntary act for
 the uses and purposes therein set forth.

Given under my hand and seal this 20th day of
July, 19 64.

My Commission Expires:

9/13/66Notary PublicResiding at Salt Lake City, Utah

Bate
For Chief Engineer

Approved as to execution

RECEIVED
JUL 10 1916
SALT LAKE CITY

APPROVED <i>[Signature]</i> General Manager	APPROVED AS TO: FORM <i>[Signature]</i> Genl. Solicitor EXECUTION <i>[Signature]</i> Genl. Solicitor
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509

APPROVED:

[Signature]
Vice President - Operation

APPROVED
[Signature]
SUPT. UTAH DIV.

1449.072 POWER

1447.09 + 0.01
1447.010 U.D.S.
1447.010 U.D.S.

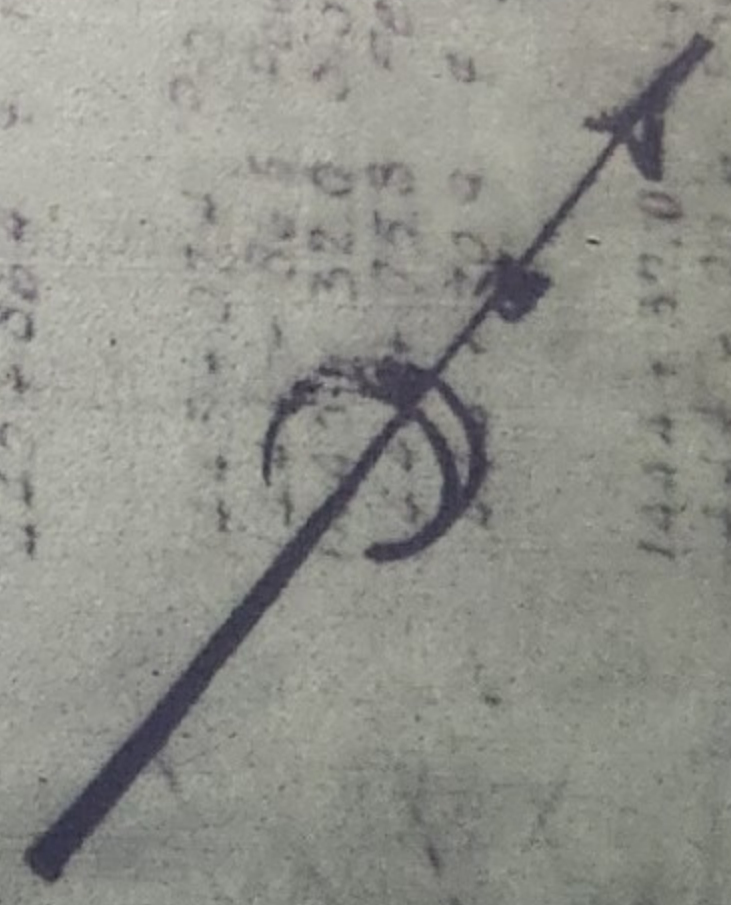
1446.951 POWER

1445.36 51970

1445.864 4 770

1445.274 20
1445.320 30
1445.358 40
1445.390 50

1444.370 1



1445.274
1445.320
1445.358
1445.390

LGL

LTR



EXHIBIT "A"

Oregon Short Line Railroad Company
 Union Pacific Railroad Co. (Lessee)
 M. P. 27.44 near Woods Cross, Ut.

To accompany agreement with Floyd
 E. Benton covering private flange
 plank crossing.

Scale: 1" = 100'

Office of Division Engineer
 Salt Lake City, Utah.

7-3-64

L-E-G-E-N-D

Crossing shown.....Yellow
 Gates to be relocated
 shown dashed.....Black & White
 Relocated gates shown.....Orange
 RR R/W shown outlined.....Red

LGL

LTR