

B R I E F

**INCUMENT:** Contract for sale of second hand rail and track materials.

**PARTIES:** Oregon-Washington Railroad & Navigation Company "Railroad" and Winton Lumber Company, a Delaware corporation, "Purchaser."

**DATE:** September 22, 1923.

**RECITAL:** Purchaser operates lumber mill near Rose Lake, Idaho, and desires to purchase track materials in 11½ miles of track from Prichard to Maragon.

**PROVISIONS:**

- (1) Railroad sells Purchaser all track materials in portion of railway line between stations named.
- (2) Price \$20.00 per gross ton for rails, spikes and fastenings and reasonable second hand price on frogs, switches and switch stands.
- (3) Delivery to be made in present condition when initial payment made.
- (4) Third Division Engineer's estimate, as shown in duplicate written invoices, of weights and fair second hand prices to control. Engineer shall estimate what bent or damaged materials shall be included.
- (5) Purchaser agrees to pay Railroad at Portland purchase price one-fifth (\$5443.82) November 1, 1923, and balance in four equal installments on November 1st each year, with 6% interest from November 1, 1923.

- (6) Property to be laid in tracks in Shoshone County, Idaho, and not removed without Railroad's written consent.
- (7) Materials sold considered as personal property to belong to Railroad until completion of contract without any encumbrance by Purchaser.
- (8) If Purchaser defaults Railroad may elect to rescind or enforce contract. In any legal proceedings Purchaser shall pay reasonable attorney's fees.
- (9) Purchaser indemnifies Railroad from all damage claims arising in the removal, restoration or use of materials sold.
- (10) Purchaser indemnifies Railroad against liens, taxes and labor claims.
- (11) Purchaser must commence work within six months or Railroad may cancel.
- (12) Assignments not permitted without written consent of Railroad.
- (13) Payment of purchase price automatically transfers title to property. Time essential.
- (14) Agreement binding on successors.

Signatures

Acknowledgments

THIS AGREEMENT, Made and entered into this 22nd day of September, 1923, by and between OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a corporation of the State of Oregon, hereinafter called the "Railroad", and WINTON LUMBER COMPANY, a corporation of the State of Delaware, with its principal office at Gibbs, Idaho, hereinafter called the "Purchaser,"

W I T N E S S E T H:

WHEREAS, the Railroad heretofore constructed its railway as a part of which was included a line extending from Prichard to Paragon, in Shoshone County, State of Idaho, which said railway line between said stations was heretofore seriously damaged by action of the elements; and

WHEREAS, the Purchaser owns and operates in the vicinity of Rose Lake, Idaho, certain mills for the manufacture of lumber and other timber products and for the more convenient operation of its business desires to purchase in their present condition and location the track materials owned by the Railroad on its said railway line extending between Prichard and Paragon, a distance of approximately eleven and one-half (11½) Miles,

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements of the parties hereto, it is agreed as follows:

1. The Railroad agrees to sell and deliver to the Purchaser subject to the payments and covenants to be made and performed by the Purchaser hereunder, approximately eleven and one-half (11½) track miles of second hand rail, together with the fastenings, angle bars, bolts, nuts, spikes, frogs, switches, switch stands, and other track material used by the Railroad as a part of its railway line between Prichard and Paragon, in Shoshone County, State of Idaho.

Price

2. The purchase price of said property shall be Twenty (\$20.00) Dollars per gross ton for the rail, spikes and fastenings, and a reasonable second hand price on frogs, switches and switch stands to be fixed as herein-after determined, and the Purchaser covenants and agrees to purchase said property from the Railroad and to pay the Railroad therefor the full purchase price as herein determined and in the manner and time hereinafter set forth.

Place of  
Delivery

3. It is understood that an account of washouts and other damage by the action of the elements the property covered by this agreement is partly on the right of way and property of the Railroad and partly on land adjacent thereto, and delivery of all such material shall be made by the

Railroad to the Purchaser where it lays on or in the ground in its present state and condition and such delivery shall be accomplished and evidenced by the payment by the Purchaser to the Railroad of the initial payment on account of the purchase price.

**Weights**

4. By virtue of the fact that some of the rail and fastenings and other track material covered by this contract are in place in track and the remainder is scattered, it is agreed that it is and will be impracticable to weigh or otherwise enumerate the same herein to determine absolutely upon execution of this contract the total purchase price to be paid hereunder by the Purchaser to the Railroad according to the terms of this agreement, and it is therefore agreed that for the purposes of this agreement the amounts and weights of rail, angle bars, bolts, nuts, spikes, frogs, switches, switch stands and fastenings to be recovered by the Purchaser and purchased by the Purchaser hereunder shall be determined after inspection and computation by the Division Engineer of the Third Division of the Railroad, whose findings in the nature of an award shall be final and binding upon the parties hereto.

To such amounts and weights of rail, angle bars, bolts, nuts, spikes and fastenings as thus determined by said Division Engineer of the Third Division of the Railroad, as evidenced by written invoices in duplicate by him made and certified to be correct, (one of each of which said invoices shall be delivered to each of the parties hereto and when so delivered shall be by said parties attached to and become a part of this agreement), there shall be applied said unit price of Twenty (\$20.00) Dollars per gross ton of said property, and to the frogs, switches and switch stands so determined by said Division Engineer and similarly evidenced by invoices to become a part of this agreement, there shall be applied a fair second hand price, fixed for the parties hereto by said Division Engineer, and the sum of the amounts thus ascertained and awarded by said Division Engineer shall be and become the total purchase price for said property which the Purchaser shall pay as herein provided.

It is understood by the Purchaser that the Railroad has agreed to the foregoing unit price per gross ton and has executed this agreement on the representation by the Purchaser that the Purchaser will at its sole risk and expense promptly and diligently prosecute the work of removal and rehabilitation of the property covered by this agreement, including the work of straightening and otherwise restoring to usefulness materials that are bent or damaged, and it is

therefore agreed that any such bent or damaged materials which in the judgment of said Division Engineer of the Railroad can by said Purchaser reasonably be removed or salvaged shall be included in the property sold by the Railroad and purchased by the Purchaser, it being the intention of the parties hereto that as much of said property as can reasonably be removed or restored shall be taken hereunder with the minimum waste and loss, and the Purchaser agrees to observe and comply with the decision of said Division Engineer of the Railroad with respect thereto.

**Terms  
of  
Sale**

5. The Purchaser hereby promises and agrees to pay the Railroad at its office at Portland, Oregon, in cash said purchase price as follows:

One-fifth of the total purchase price on or before the 1st day of November, 1923, or if said total purchase price be not at that time definitely fixed and determined, the sum of Five thousand four hundred forty-three and 82/100 (\$5443.82) Dollars; and the balance of the total purchase price in four equal annual installments, the first of which shall be made on or before the 1st day of November, 1924, and the remainder of which shall be made on or before the 1st day of November of each and every year thereafter until said total purchase price shall have been fully paid by the Purchaser, and each of which said deferred payments shall be with interest thereon computed at the rate of six per cent per annum from the 1st day of November, 1923, until paid.

Property  
to re-  
main in  
Shoshone  
County

6. The Purchaser agrees that it will promptly cause said rail and other property covered by this agreement to be placed in a track or tracks in Shoshone County, Idaho, as additions to or extensions of its existing tracks, and that thereafter said personal property, or any part thereof, shall not be removed from said Shoshone County, Idaho, without the written permission of the Railroad, nor will the Purchaser after said rail and other personal property has been laid by it in said tracks remove the same, or any part thereof, from said tracks until the payments called for by this contract are made, unless the Purchaser shall have first secured the written permission and consent of the Railroad so to remove the same.

Title in  
Railroad

7. It is further understood and agreed that the legal title to said property, and of each and every part, and the whole thereof, shall be and is in the Railroad until the full amount of the purchase price, together with the interest thereon shall have been wholly paid, and in the event of the Railroad repossessing itself of said property the Purchaser promises and agrees to pay to the Railroad in addition to any sum or sums otherwise paid the reasonable expenditures of the Railroad occasioned in repossessing itself of said property.

As between the parties hereto said rail, fastenings and other personal property hereby purchased shall be considered personal property at all times whether it has been laid in a track or not.

No conveyance, mortgage or lien shall be made, authorized or permitted by the Purchaser of or against the

property covered hereby or any part thereof without first securing the written consent of the Railroad thereto.

**Default**

8. In the event of the failure by the Purchaser to make payment of any of the installments of the purchase price promptly when due, together with the accrued interest thereon, or to comply with any of the terms or conditions of this agreement, the Railroad at its election may declare the whole of said purchase price immediately due and reclaim possession of said rail and fastenings or rescind this contract, treating the same as at an end, in which event all payments of every kind and character made on the purchase price of said property shall be deemed and held to be forfeited to and become the property of the Railroad as liquidated damages for the non-performance of this contract upon the part of the Purchaser; or the Railroad may have its right of action for the unpaid purchase price or may retain said property as repossessed by it as additional security for the payment of the balance of the purchase price, in which event the reclamation of said property shall not be deemed a waiver of the undertaking and promise of the Purchaser to pay the balance of said purchase price, with accrued interest thereon; and in the event of any suit or action being brought for the recovery of the balance of said purchase price or any part thereof, or any accrued interest thereon, or any legal proceedings of any kind or character being taken for the collection thereof, or the enforcement of any rights granted to the Railroad hereby, the Purchaser

agrees to pay such additional sum as the court may adjudge reasonable as attorneys fees for the bringing of said suit or action.

Damage  
claims

9. The Purchaser agrees to indemnify and hold harmless the Railroad from any and all claims for damages of every nature and description arising from or through the operation of the Purchaser, its servants, agents, employees or sub-contractors, in the removal, restoration or rehabilitation of the property sold hereunder, or from the presence of the Purchaser, its servants, agents, employees or sub-contractors, or of third persons at the instigation or with the permission of any such persons upon or in the vicinity of the right of way and property of the Railroad where the rail and other personal property covered by this agreement is situated, or from the use of any such rail or other personal property in the construction of tracks for the use of the Purchaser, including all claims for death of or injury to persons, and for injury of or damage to the property or rights of any person or corporation, and the Purchaser further agrees to indemnify and save the Railroad harmless from any claim of the State or other authority for any fines or penalties, or for fees, compensation or industrial insurance or medical aid for workmen employed in connection with the operations of the Purchaser hereunder. In the event of the failure of the Purchaser promptly to secure a valid release of any and all such claims within such time as the Railroad determines reasonable,

then the Railroad is hereby empowered to settle or compromise such claims as best it can and charge the cost thereof to the Purchaser.

#### **Liens**

10. The Purchaser hereby agrees to keep and preserve the property of the Railroad free and clear from all liens, taxes, claims and demands of every person whomsoever, and to indemnify and preserve harmless the Railroad and its property from all actions, causes of action, claims or liens asserted or undertaken to be asserted by any person whomsoever on account of the furnishing of any money, service, equipment, outfit, labor, material, machinery or supplies used in the prosecution of the operations of the Purchaser hereunder, or for injuries to person or property in the prosecution thereof.

#### **Termination**

11. If the Purchaser shall fail within six (6) months after execution of this contract to commence work in an active and substantial manner for the removal or restoration of the property covered hereby, the Railroad may at its election cancel and terminate this agreement upon written notice mailed to the Purchaser at Gibbs, Idaho; provided, however, that the Railroad may at its option for good cause shown by the Purchaser extend the time for the commencement of such work.

#### **Assignment**

12. The Purchaser shall not assign this agreement or any interest therein without the written consent of the Railroad, and for any departure in this respect the Railroad may terminate this agreement.

When  
Title  
Trans-  
ferred

13. If the Purchaser shall pay in full the purchase price of said rail and fastenings in accordance with the terms of this agreement or prior thereto the act of such payment shall automatically work a transfer of the legal title to said property from the Railroad to the Purchaser. Time is of the essence of this contract.

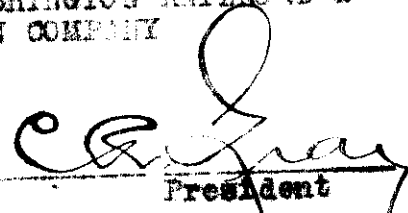
Successors  
and  
Assigns

14. This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns; provided, however, that nothing herein contained shall be construed as permitting the Purchaser to assign this agreement without the written consent of the Railroad.

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

SEACON-WASHINGTON RAILROAD &  
NAVIGATION COMPANY

By

  
President

Attest:

  
Asst. Secretary

WINTON LUMBER COMPANY

By

  
President

Attest:

  
Secretary

STATE OF NEBRASKA       )  
                              : ss  
County of Douglas       )

On this 15<sup>th</sup> day of April in the year  
1924, before me a Notary Public in and for said County and  
State, personally appeared G.R. GRAY, known to me to be the  
President of OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY,  
the corporation that executed the within instrument and  
acknowledged to me that such corporation executed the  
same.

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

*G. S. Mahoney*  
Douglas County,  
Notary Public for Nebraska  
Residing at Omaha, Neb.  
My Commission expires 9/2/26

STATE OF Nebraska )  
County of Douglas ) ss

On this 15<sup>th</sup> day of April in the  
year 1924, before me a Notary Public in and for said County  
and State, personally appeared C. B. Matthai.  
known to me to be the Asst. Secretary of OREGON-WASHINGTON  
RAILROAD & NAVIGATION COMPANY, the corporation that executed  
the within instrument and acknowledged to me that such  
corporation executed the same.

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

J. S. Mahby  
Notary Public for Douglas Co., Neb.  
Residing at Omaha, Neb.  
My Commission expires 9/2/26

*Idaho*  
STATE OF MINNESOTA )  
*Hootenai* : ss  
County of Hennepin )

On this 5 day of February  
in the year 1924, before me a Notary Public in and for said  
County and State, personally appeared C.E. WILSON, known to  
me to be the President of WILSON LUMBER COMPANY, the corporation  
that executed the within instrument and acknowledged to me that  
such corporation executed the same.

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

*J. J. J. J.*  
Notary Public for *Idaho*  
Residing at *Idaho*

My Commission expires 3/22/24

STATE OF IDAHO,       )  
                          : ss  
County of MOCTENAI    )

On this 5 day of February  
in the year 1924, before me a Notary Public in and for said  
County and State, personally appeared J. J. ROSENBERY, known to  
me to be the Secretary of LITTON LUMBER COMPANY, the  
corporation that executed the within instrument and acknowledged  
to me that such corporation executed the same.

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

*Donnell*  
Notary Public for Idaho  
Residing at Idaho  
My Commission expires 3/22/24