

AGREEMENT.

YOSEMITE SHORT LINE RAILWAY

COMPANY,

-with-

TULOAHNE CONSTRUCTION COMPANY.

Dated July

1905.

(SECTION A.)

Filed July 31st 1905
at 9.0'clock A. M.

at request of deputy
and of the in Marshall
Pass of Yosemite County

J. P. Clark

C. S. Beards

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THIS AGREEMENT made and executed this 29th day of July, nineteen hundred and five (1905) by and between the YOSEMITE SHORT LINE RAILWAY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the City and County of San Francisco, State of California, the party of the first part, and hereinafter called "The Company", and the TUOLUMNE CONSTRUCTION COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and having its office and principal place of business in the said City and County of San Francisco, State of California, the party of the second part, and hereinafter called "The Contractor",

W I T N E S S E T H:

THAT WHEREAS, the said corporation, party of the first part "The Company", is about to construct, build and fully equip a thirty (30) inch gauge steam railway from a point connecting with the Sierra Railway owned by the Sierra Railway Company of California, near the so-called Oil Siding, about one (1) mile southwesterly from the Town of Jamestown in the County of Tuolumne, State of California, and thence in a generally southeasterly direction by the most practicable route to some available point at or near the Big Trees, and on or near the boundary line of the so-called Yosemite National Park in Tuolumne County, California,

AND WHEREAS, the said party of the first part, "The Company", proposes to contract for the construction of said railway in ten (10) mile sections, commencing at said Oil Siding near Jamestown in Tuolumne County, and which said ten (10) mile sections so commencing at said Oil Siding and extending along said proposed line of railway to the said Big Trees

in Tuolumne County, shall be designated respectively as Section A, Section B, Section C, Section D, and Section E.

AND WHEREAS, the party of the second part "The Contractor" is willing to enter into a contract with the said corporation "The Company" to construct and build the said ten (10) miles of said railway commencing at the said Oil Siding, near Jamestown and designated herein as Section A, upon the terms and conditions and in the manner hereinafter stated.

NOW THEREFORE, The Contractor, for and in consideration of the premises and of the covenants, agreements and payments hereinafter to be made and performed by the company, hereby covenants to and with The Company as follows, to wit:

I.

FIRST. To construct in accordance with the plans, profiles and specifications to be hereafter prepared and furnished from time to time by the engineer of the Sierra Railway Company of California, and in every respect complete a single track narrow gauge line of railway to be thirty (30) inches between the rails and of a surface of seven (7) feet in width on the fills and eight (8) feet in width in cuts, along that portion of said proposed railway commencing at the said Oil Siding near Jamestown in Tuolumne County, and running thence in a generally southeasterly direction along the proposed line of said railway a distance of ten (10) miles from said point of commencement, and being the portion of said railway hereinabove designated and described as Section A, and to fully complete said railway construction for a distance of ten (10) miles, and said railroad to be in operation on or before the first (1st) day of June, one thousand nine hundred and six (1906); said railroad line to be so constructed in the manner as follows;

SECOND. The contractor in the construction of said

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SECTION V' SECTION 2' SECTION 3' SECTION 4' SECTION 5'
IN PROVISIONS...
railroad agrees that the grade of said railroad shall not exceed four (4%) per cent, and that the curves along the line of said railroad track to to be constructed shall not exceed ninety (90) degrees; that the road-bed shall not be less than seven (7) feet surface on the fills and not less than eight (8) feet surface in the cuts; that the track at the points where curves exceed fifty (50) degrees shall be braced with pressed steel bracing..

THIRD. The contractor further agrees that it shall and will furnish, deliver and supply all materials of whatsoever kind necessary and required in the construction of said railway, and including without prejudice to said general description all rails, steel, lumber, timber, stone, iron work, ties, fastenings that may be necessary or required to fully and properly construct and complete said railroad, and will also furnish and supply all labor and will construct, build, and in every respect complete all grading, trestling, bridging, building of culverts and drains, all timbering and ditching, ballasting, surfacing, curving the rails and laying of all track and rails, and will do and perform all spiking, bolting and bonding of said track for the successful completion and proper construction and operating of a narrow gauge railroad to be thirty (30) inches between the rails; and that the said The Contractor, shall and will clear all brush, trees and stubble for a space of fifty feet in width along the line of said railroad and shall and will supply all material and construct all bridges, trestles, culverts, and shall and will supply and lay ties of fir, cedar, pine or redwood, five (5) inches by eight (8) inches by five (5) feet in length and shall and will supply and lay steel rails of not less than thirty (30) pounds weight to the linear yard, with all necessary fittings, tracks, switches and turn-outs; that the

said, The Contractor, shall and will complete and construct good and substantial fences along the rights of way of said railroad, and on each side of the track ywhere necessary, proper or required; that said The Contractor, further agrees that it shall and will construct a bridge of sufficient size, strength and capacity to properly operate and maintain said railway across the Tuolumne River near the Town of Jacksonville in the County of Tuolumne, State of California, about two hundred and seventy (270) feet in length, and in strength sufficient for thirty (30) ton engines to pass over in safety, the same to rest on iron caissons, filled with cement, or to rest on cement piers, the approaches to the bridge to be of wood or steel trestle as the Chief Engineer of the Sierra Railway Company of California may deem suitable or require; that all other bridges to be constructed along the line of said railway shall be of wood as specified by the said Chief Engineer of said Sierra Railway Company of California.

FOURTH. That all of said materials, supplies and labor shall be furnished and delivered by the said, The Contractor, at its sole cost and expense, and without cost, charge, liability or expense to said corporation, TThe Company.

FIFTH. That said, The Contractor, hereby agrees that it will at its own cost, expense and charge, secure and obtain the necessary rights of way, franchises and easements along the said ten (10) miles of said railroad construction, to wit: Section A, necessary and proper and required in order to permit the said construction of said railway, the said rights of way, franchises and easements to be procured in the name of said Corporation, Yosemite Short Line Railway Company, without encumbrances whatever, and at the sole cost, charge and expense of the corporation, The Contractor; the said, The Contractor, further covenants and agrees that it will fur-

nish, construct and erect on and along said ten (10) miles of railway, Section A, at its own cost, charge and expense, all necessary station houses, depots, and warehouses, together with the proper and necessary out-buildings, and will furnish, construct and erect all necessary side tracks and switches that may be required in the operation and maintenance of said portion of said road, Section A; the said, The Contractor, further agrees that it will at its own cost, charge and expense furnish and provide a ~~xxxx~~ full and ample supply of the best and most suitable tools and appliances required to be used in the performance of said contract and will furnish and provide in sufficient numbers all laborers and other workmen, and all things that may be necessary and requisite for the completing within the time herein stipulated the whole work on said Section A, herein agreed to be done.

SIXTH. That the said contract of construction shall be done in strict conformity with such lines, levels, stakes, profiles, plans, maps, drawings, specifications, and instructions as shall from time to time hereafter be furnished and given by the said chief engineer of the said Sierra Railway Company of California.

SEVENTH. The said work of construction shall commence within _____ days after the date of this agreement, and shall be completed on or before the first (1st) day of June, one thousand nine hundred and six (1906).

II.

FIRST. The said corporation, party of the first part, The Company, for and in consideration of the full and complete construction and completion of said ten miles of railway, Section A, hereinabove particularly described, and in consideration of the true and faithful performance of all the covenants and agreements herein contained by the said, The

following, to wit: That on the first (1st) and fifteenth (15th) Contractor, hereby covenants and agrees to cause to be paid, issued and delivered to the said, The Contractor, in full payment, satisfaction and discharge of all claims and demands of whatsoever kind for the full and complete performance of this contract of construction, the following considerations, stock and moneys, to wit: the sum of Eighty Five Thousand (\$85,000.00) Dollars in cash gold coin of the United States, and Twenty-five Hundred (2,500) shares of the fully paid up capital stock of the Yosemite Short Line Railway Company, The Company, the same to be so paid and delivered at the times and in the manner following, to wit:

(a) The said capital stock of the said corporation, the party of the first part, which shall be paid as a part of the consideration for the said construction of said railway along said Section A, shall be issued and delivered to the order of said, The Contractor, by the President and Secretary of said corporation, The Company, in such names and denominations as the said Contractor shall in writing direct as follows: One Thousand Eight Hundred and Fifty (1850) shares of said fully paid up shares of said corporation, Yosemite Short Line Railway Company, within ten (10) days after the said work of construction herein agreed shall have commenced, and the remaining of said shares of stock, to wit: Six Hundred and Fifty (650) shares of said fully paid up capital stock of said corporation, thirty-six (36) days after the full performance and completion of this contract by said, The Contractor, in accordance with and pursuant to the terms and conditions hereof.

(b) Said consideration of said Eighty-five thousand (\$85,000.00) Dollars in cash for the construction of said ten (10) miles of railway, Section A, pursuant to the terms of this contract shall be paid at the times and in the manner

following, to wit: That on the first (1st) and fifteenth (15th) days of each month after the commencement of said work of construction Seventy-five (75%) per cent of the amount that shall be due or owing to said corporation, The Contractor, at said dates, for work or labor done or performed or for materials furnished by said, The Contractor, according to the terms and conditions hereof, shall be paid to the party of the second part, The Contractor, by the said Sierra Railway Company of California, with which corporation the said funds for such construction and performance of this contract shall be deposited, upon the order of the President of said corporation, Yosemite Short Line Railway Company, party of the first part. The balance of said cash payment, to wit: Twenty-five (25%) per cent thereof, and amounting to Twenty-one Thousand Two Hundred and Fifty (\$21,250.00) Dollars, shall be paid to the said, The Contractor, by the said, Sierra Railway Company of California, thirty-six (36) days after the final completion and construction of the said ten (10) miles of railway, Section A, in strict accordance and pursuant to the terms and conditions of this agreement, and upon the certificate of the Chief Engineer of the said Sierra Railway Company of California, that the said construction of said ten (10) miles of Railway, Section A, has been fully completed and performed in strict accordance with the terms and conditions of this contract.

SECOND. The said corporation, Tuolumne Construction Company, The Contractor, hereby covenants and agrees to accept from the said corporation, the Yosemite Short Line Railway Company, The Company, the said Twenty-five hundred (2500) shares of the capital stock of said corporation, The Company, and said cash, Eighty-five Thousand (\$85,000.00) Dollars to be so paid and delivered at the times and in the manner as hereinabove

stated in full payment and satisfaction of all claims, demands, and considerations due and that may become due to the said, The Contractor, on the full performance of this contract of construction and equipment.

THIRD. The said corporation, The Contractor, covenants and agrees that it will in no case permit or allow any mechanics, material men's or other liens of whatsoever kind to be placed upon or enforced against the said party of the first part, corporation, Yosemite Short Line Railway Company, but that it, the said, The Contractor, will truly and faithfully discharge and pay all obligations of whatsoever kind entered into by virtue of the terms and conditions of this contract, and the performance thereof by said The Contractor.

FOURTH. It is further mutually understood and agreed that the said corporation, said party of the second part, the Contractor, may sub-let or sub-contract any portion or all of said work or services to be performed under the terms and conditions of this contract, but that it shall and will be responsible for the faithful performance of the terms and conditions of this contract of construction, and that the said contract of construction, and performance of this contract, and completion of said ten (10) miles of said railway, Section A, shall be subject to the official approval as a condition of acceptance by the said corporation, Yosemite Short Line Railway Company, and of the chief engineer of said Sierra Railway Company of California.

III.

It is mutually understood and agreed by and between the parties hereto:

FIRST. That the whole of the work of construction and completion of said ten (10) miles of railway, Section A,

shall be prosecuted in the most energetic, expeditious and workmanlike manner with the largest force that can be worked to advantage and secure expedition.

SECOND. That if at any time during the progress of the work it should appear by the report of the Chief Engineer of said Sierra Railway Company of California, that the force employed, the quality or quantity of the tools, appliances or workmen provided, or that the progress or character of the work are not respectively such as in the opinion of the Chief Engineer will insure the completion of the work under this contract within the time stipulated, or are not in accordance with the specifications annexed hereto, then in that case The Company may serve written notice on said corporation, party of the second part, The Contractor, to at once supply such increase of force, appliances or tools and to cause such improvements in the character of the work to be made as may be required to make the same conform to the stipulations of this agreement and specifications; and if on the expiration of ten (10) days after the service of such written notice upon the said The Contractor, by leaving the same at its office, The Contractor shall have failed to furnish to the said party of the first part, The Company, satisfactory evidence of its ability, efforts and intentions to remedy the specified deficiencies, the company may thereupon enter and take possession of the said work, or any part thereof, with the tools, materials, plant, appliances and other appurtenances thereon, and hold the same as security for any or all damages or liabilities that may arise by reason of the non-fulfillment of this contract within the time stipulated; and furthermore, may employ the said tools and other appurtenances and such other means as said corporation, The Company, may deem proper to complete the work at

FOURTH. Nothing herein contained shall be construed . . . the expense of said, The Contractor, and may deduct the cost of same from any payments then due or thereafter falling due to said, The Contractor; and in case the said The Contractor shall not complete the said works within the time herein specified, and said, the Company, shall notwithstanding such failure permit the said, The Contractor, to proceed with and complete the said work as if such time had not elapsed, such permission shall not be deemed a waiver in any respect by the company of any forfeiture or liability for damages or expenses thereby incurred, arising from such non-completion of said work within the time specified, but such liability shall still continue in full force against the contractor as if said permission had not been granted.

THIRD. That in all cases of non-payment by the said, The Contractor, of any sum or sums of money due by it to any laborers or other workmen for work performed under this contract, or for materials furnished to be used in the performance thereof, the said corporation, **The Company**, is hereby authorized to pay such laborers or workmen, or materialmen, the amount due or owing to them by the said, The Contractor, and deduct the same from any moneys due or to become due to the said The Contractor, and if any action at law or in equity shall be instituted by virtue of any law or statute now in force, or of any statute hereafter enacted, for labor or wages on said work, the said, The Company, may pay all damages, wages, recoveries, costs, expenses, and counsel fees arising therefrom, and in like manner deduct the same from any stock or moneys due or to become due to the said The Contractor, and the said The Company, may from time to time retain such reasonable amounts of said stock and moneys as it may deem necessary for its protection, and that the said, The Contractor shall pay the deficiency arising therefrom upon demand.

FOURTH. Nothing herein contained shall be construed into a liability for damages, nor shall any charge or claim be made by the said, The Contractor, for hindrance or delay from any cause whatever in the progress of any portion of the work or should the whole or any portion of the work embraced in this contract be for any reason suspended or delayed, in no event shall the Contractor claim or have a right to extra compensation or price for damages arising from any suspension or delay in the prosecution of said work. It being, however, understood and agreed, that said, The Contractor, shall have such extensions of time for the completion of the work embraced in this contract as shall be determined by the Chief Engineer of the said Sierra Railway Company of California, as being equal to the amount of delays caused by acts or omissions of the corporation, party of the first part, The Company, or for any other reason not within the control of the said The Contractor, provided that said, The Contractor, shall give the said Chief Engineer of the said Sierra Railway Company of California reasonable notice of the existence and cause of hindrance, detention or delay.

FIFTH In all operations connected with the work embraced in this contract, the said The Contractor, will be held responsible for any failure to respect, adhere to and comply with all local ordinances and laws controlling or limiting in any way the actions of those engaged upon the work, or affecting the materials or the transportation or the disposition of them. And the Contractor hereby assumes all liability for and agrees to indemnify The Company against all loss, cost or damage for or by reason of any liens, claims or demands for materials or supplies, or from laborers,

corporate seals by their respective Presidents and Secretaries thereto duly authorized.

YOSEMITE SHORT LINE RAILWAY COMPANY,

By F. J. Solinsky
Its President.

By John Hancock
Its Secretary.

TUOLUMNE CONSTRUCTION COMPANY,

By J. S. Bullock
Its President.

S. D. Freshman

State of California, }
CITY AND COUNTY OF SAN FRANCISCO. } ss.

On this 29th day of July in the year One Thousand Nine Hundred and nine, before me, JOHN T. WILLIAMS, a Notary Public in and for the said City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared J. S. Bullock

known to me to be the President and S. D. Freshman known to me to be the Secretary of Tuolumne Construction Company the Corporation described in the within instrument, and known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal at my office in said City and County of San Francisco, the day and year in this certificate first above written.

John T. Williams
Notary Public in and for the City and County of San Francisco, State of California.

State of California, }
CITY AND COUNTY OF SAN FRANCISCO. } ss.

On this 29th day of July in the year One Thousand Nine Hundred and nine, before me, JOHN T. WILLIAMS, a Notary Public in and for the said City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared F. J. Solinsky

known to me to be the President and John Hancock known to me to be the Secretary of Yosemite Short Line Railway Company the Corporation described in the within instrument, and known to me to be the persons who executed the within instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal at my office in said City and County of San Francisco, the day and year in this certificate first above written.

John T. Williams
Notary Public in and for the City and County of San Francisco, State of California.