

City Original

CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this 19th day of March, 1986, by and between THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter designated "Santa Fe", and the CITY OF RIVERSIDE, a municipality in the State of California, hereinafter designated "City".

WITNESSETH:

WHEREAS, City proposes to extend River Crest Drive, at grade, with curbed width of 64 feet on each side of and including the crossing of Santa Fe's San Jacinto track, designated by California Public Utilities Commission as Crossing No. 2X-7.0 and;

WHEREAS, the term "Project", as used in this agreement, shall include all work of every kind and character necessary to accomplish the extension of River Crest Drive including, but not limited to, pole line relocation, rehabilitation of track, placing of rubber crossing material, installation of gate type crossing warning system, grading, paving and drainage as shown on print of C.E. Drawing No. 1-03789 dated April 23, 1985, revised September 25, 1985, marked Exhibit "A", attached hereto and made a part hereof, and;

WHEREAS, the parties hereto are in accord and desire to express in writing their understandings and agreement pursuant to which Project is to be constructed, used, and maintained, subject to authorization by Decision of the Public Utilities Commission, State of California.

NOW THEREFORE IT IS AGREED:

1. City, or City's Contractor, will do all construction work of said Project, including adequate drainage and paving, except that work hereinafter specified to be done by Santa Fe.
2. City, or City's Contractor, will comply with Santa Fe's rules and regulations as shown in Exhibit "C", Relations With Railway Company, attached hereto and made a part hereof, and instructions of Santa Fe's representatives in relation to proper manner of protecting Santa Fe's tracks and traffic moving thereon, pole lines, signals, and other property of Santa Fe, or its tenants or licenses, at or in the vicinity of the work during the period of construction of said Project, and shall perform the work at such times as shall not endanger or interfere with safe and timely operation of Santa Fe's tracks and other facilities.
3. Santa Fe will, at City's expense:
 - (a) prepare its track to receive planking, including placement of 90 lb. welded rail through crossing area,

- (b) install 66 track feet of rubber crossing material to accommodate proposed roadway width of 64 feet
- (c) install four (4) No. 9 crossing gates flasher signals and appurtenances.
4. Work specified to be done in above Paragraphs 3 by Santa Fe shall be done as soon as practicable, considering availability of materials and manpower. In consideration thereof, City will pay to Santa Fe the actual total cost of work specified in above Paragraph 3, presently estimated by Santa Fe to be ONE HUNDRED EIGHTY THOUSAND, EIGHT HUNDRED EIGHTY EIGHT (\$180,888.00) DOLLARS, as shown on Exhibit "B" attached hereto and made a part hereof.
5. Santa Fe shall submit to City a bill for ninety percent (90%) of City's share of the estimated cost prior to commencement of work contemplated, which bill City agrees to promptly pay. City shall pay the actual cost upon completion of audit, less credit for the sum previously paid.
6. After installation of railroad crossing warning signals and appurtenances under terms of this agreement, Santa Fe shall physically maintain same so long as they remain in place. The maintenance cost of said signals and appurtenances shall be shared equally by City and Santa Fe in accordance with Section 1202.2 of the California Public Utilities Code, except that City's liability therefor shall be limited to such funds as may be set aside for allocation to the Public Utilities Commission pursuant to Section 1231.1 of the Public Utilities Code.
7. Santa Fe will, at its expense, maintain that portion of the crossing lying between lines two feet outside of and parallel to the rails of the tracks.
8. City will, at its expense, maintain any street improvement within said crossing other than specified to be maintained by Santa Fe in above Paragraphs 6 and 7.
9. That all work covered by this Agreement shall conform to requirements of the Public Utilities Commission of the State of California.
10. Santa Fe agrees to give and hereby gives permission and license to City, its successors and assigns, to enter that portion of Santa Fe's right of way shown shaded on said Exhibit "A" solely for the purpose of construction and maintenance of said project. This License and permission is subject to:
- (a) All licenses, leases, easements, restrictions, reservations, conditions, covenants, encumbrances, rights and rights of way, liens and claims of title which may in any manner affect the said right of way.
- (b) The prior and continuing right and obligation of Santa Fe its successors and assigns, to use in the performance of its public duty as a common carrier. This license and permission is given without warranty of title of any kind, expressed or implied.

11. City agrees to incorporate in each prime contract for construction of structure, or the specifications therefor, the provisions, entitled "Relations with Railway Company" set forth in Exhibits "C", "C-1", and "C-2", attached hereto and made a part hereof, and accepts responsibility of compliance by its prime contractor.
12. That, except as hereinafter otherwise provided, all work to be done hereunder by City in the construction of said Project will be done pursuant to a contract or contracts to be let by City to a contractor or contractors, and all work performed thereunder within the limits of said right of way shall be performed in a good and workmanlike manner and in accordance with plans and specifications approved by Santa Fe and only those changes or modifications during construction that affect Santa Fe shall also be subject to approval by Santa Fe and all such contracts shall provide:
 - (a) That all work performed over, under, or adjacent to the track of the Santa Fe shall be done to the satisfaction of Santa Fe.
 - (b) That no work shall be commenced over or adjacent to Santa Fe track until each of the prime contractors employed in connection with said work shall have (i) executed and delivered to Santa Fe a letter agreement in the form of said Exhibit "C-1", and (ii) delivered to and secured the approval by Santa Fe of the insurance required by said Exhibit "C-2".
 - (c) That if, in the opinion of the City, it shall be for the best interest of the City, it may direct that the construction of said project be done by day labor under the direction and control of City, or if, at any time, in the opinion of the City, the contractor has failed to prosecute with diligence and force the work specified in and by the terms of said contract, it may in the manner provided by law, terminate the contractor's control over said work and take possession of all or any part thereof, and proceed to complete same by day labor or by employing another contractor or contractors on informal contracts, provided that all such informal contracts shall require the contractor to comply with the obligations in favor of Santa Fe hereinabove set out in above Paragraph 11, and provided further, that if such construction is performed by day labor, City will, at its expense, procure and maintain in behalf of Santa Fe insurance required by said Exhibit "C-2".

IN WITNESS WHEREOF, THE CITY OF RIVERSIDE has caused these presents to be executed and attested by its duly qualified and authorized officials pursuant to authority regularly granted them by its City Council and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY has executed these presents both as of the day and year first above written.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By J. L. Kuyper
Its Manager of Contracts

CITY OF RIVERSIDE

By [Signature]
Its Mayor

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM
[Signature]
CITY CLERK

EXHIBIT "A"

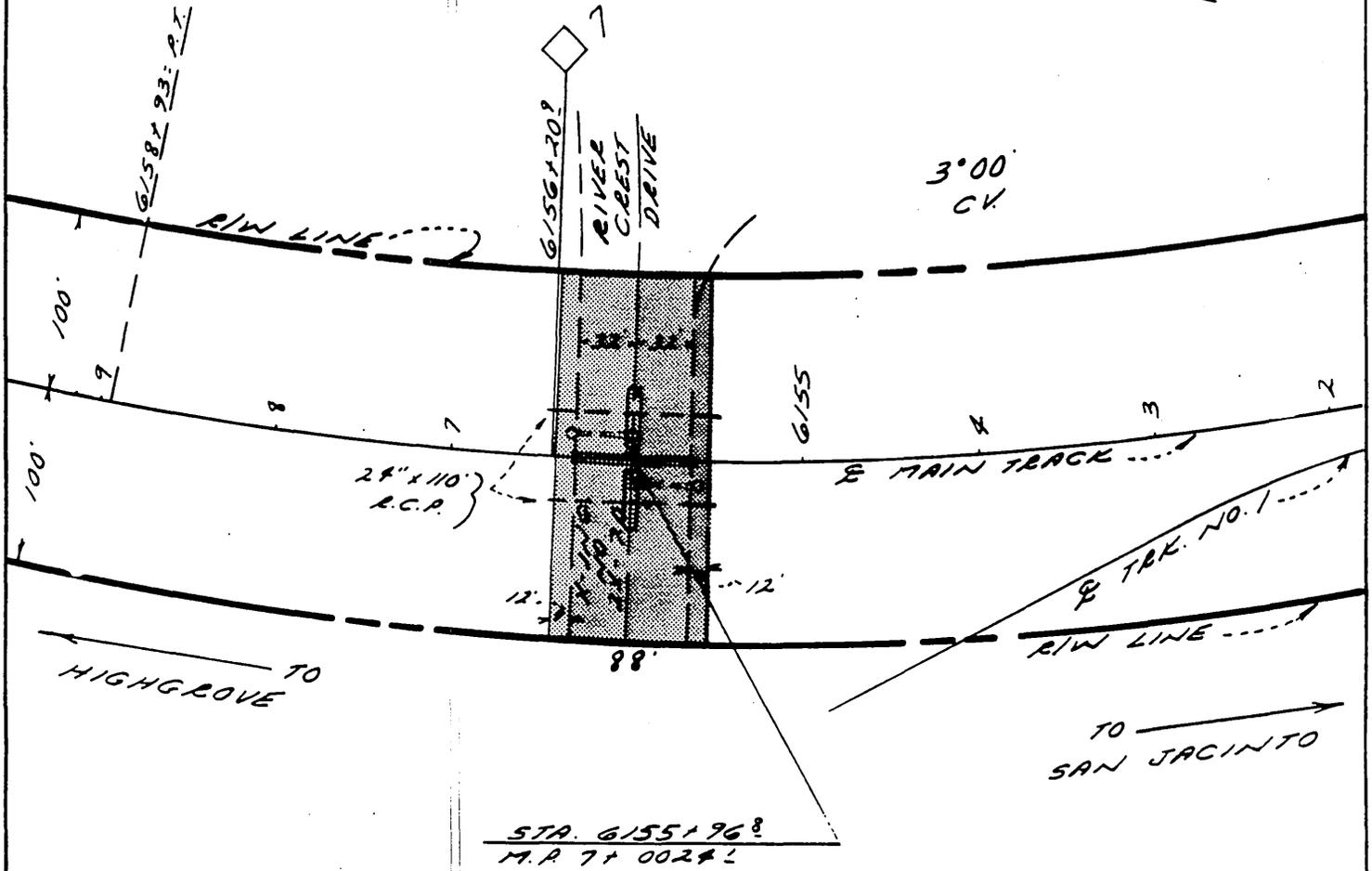
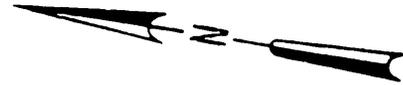
ATTACHED TO CONTRACT BETWEEN THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND CITY OF RIVERSIDE

CHICAGO, ILLINOIS
SCALE: 1 IN. TO 100 FT.
LOS ANGELES DIV.
SAN JACINTO DIST.

DATE: APRIL 23, 1985
REVISED: SEPTEMBER 25, 1985

H.G. WEAR
CHIEF ENGINEER
DESCRIPTION APPROVED

STA MAP REF. 229-1182



DESCRIPTION:
 A 66 FT. RUBBER PLANK
 PUBLIC ROAD CROSSING
 SHOWN HEREON BY
 SHADED AREA.
 FOUR NO. 9 FLASHERS
 WITH GATES

**AT BOX SPRINGS
RIVERSIDE COUNTY, CALIFORNIA** C.E. DRAWING NO. 1 - 03789

D 10476(4)

THE ATCHAFALAYA, TOPEKA AND SANTA FE RAILWAY COMPANY
 FORCE ACCOUNT ESTIMATE FOR
 CITY OF RIVERSIDE

Install four each No. 9 flashing light signals with gates, two of which are to be placed in medians. Place filter fabric. Spot surface 200-ft. track. Renew 8-ft. crossties with 75 9-ft. crossties. Relay 117-T.F. of 90 lb. jointed rail with SH 90 lb. welded rail. Place two whistle posts. River Crest Drive, Box Springs, California, M.P. 7+0024, San Jacinto District, Los Angeles Division.

	QUANTITY	UNIT	SUBTOTALS	TOTAL COST
LABOR:				
Engineering-Signal, construction			2,150	
Engineering-Signal, preliminary			3,250	
Section gang labor			13,863	
Signal Department labor			21,500	
Engineering costs - track			1,386	
Payroll associated costs			22,170	
Subsistence allowance			15,346	
Insurance			<u>5,251</u>	
Total Labor				84,916
MATERIAL:				
Ballast, Shipley	55	CY	381	
Boutet weld	4	EA	222	
Crossties, No. 1-9 ft.	75	EA	1,558	
Filter fabric	88	SY	220	
Joint, 90 lb. 3-M insl.	8	EA	1,947	
Rail anchors, 90 lb.	150	EA	131	
Rail, 90 lb. SH welded	3.510	NT	427	
Rubber crossing for 90 lb. rail	66	TF	17,606	
Signal Department material	1	LS	39,892	
Tie plates, 90 lb. DS	150	EA	421	
Track spikes, 5/8 x 6	720	EA	170	
Whistle sign, 24-A	2	EA	32	
Handling			3,150	
Transportation			<u>1,291</u>	
Total Material				67,448
OTHER:				
Equipment rental			<u>10,598</u>	
Total Other				10,598
Billing and accounting				1,630
Contingencies				<u>16,296</u>
Total Estimated Cost				<u>\$180,888</u>

The A.T. & S.F. Railway Company
 Chief Engineer System - Chicago
 (date) October 18, 1985 (file) 76-008-00518

DWM/3489e

EXHIBIT "B"

D 10476 (V)

EXHIBIT "C"

RELATIONS WITH RAILWAY COMPANY

-1.01 General.--The Contractor, as a prerequisite for award, shall be satisfactory as to his responsibility and ability to perform the work over and across the property and over or under the tracks of The Atchison, Topeka and Santa Fe Railway Company.

It is expected that The Atchison, Topeka and Santa Fe Railway Company 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 of the Railway Company forces.

-1.02 Agreement.--Before doing any work on Railway right of way, or property, the Contractor will be required to execute and deliver to The Atchison, Topeka and Santa Fe Railway Company a letter agreement, in the form attached hereto, obligating the Contractor to provide and keep in full force and effect the insurance called for under "insurance" of these special provisions.

-1.03 Railway Requirements.--The Contractor shall cooperate with The Atchison, Topeka and Santa Fe Railway Company where work is over or under the tracks, or within the limits of Railway property in order to expedite the work and to avoid interference with the operation of Railway equipment.

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

The Contractor shall take protective measures necessary to keep Railroad facilities, including track ballast, free of sand or debris resulting from his operations. Any damage to Railroad facilities resulting from contractor's operations will be repaired or replaced by Railroad and the cost of such repairs or replacement shall be deducted from the contractor's progress and final pay estimates.

The Contractor shall not pile or store any materials, park or use his equipment closer to the center of the nearest Railway track, or overhead lines, than permitted by the following clearances:

- 10'-0" Horizontally from centerline of track
- 22'-6" Vertically above top of rail
- 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
- 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
- 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

Any infringement on the above clearances or walkways due to the Contractor's operations shall be submitted to the Railway and to the Engineer and shall not be undertaken until approved by the Railway, and until the Engineer has obtained any necessary authorization from the Public Utilities Commission for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and Public Utilities Commission authorization.

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

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

If the Contractor desires to move his equipment or materials across Railway's tracks he shall obtain permission from Railway and, should it be required, the Contractor shall obtain a private crossing agreement. The crossing installation for the use of the Contractor, if required, shall be at the expense of the Contractor.

The Contractor shall, upon completion of the work covered by this contract to be performed by the Contractor upon the premises or over or beneath the tracks of Railway, promptly remove from the

-1.04 Protection of Railroad Facilities:-

- (1) Upon advance notification of not less than 24 hours by contractor, Railroad representatives, conductors, flagmen or watchmen will be provided by railroad to protect its facilities, property and movements of its trains or engines. In general, Railroad will furnish such personnel or other protective services:
 - (a) When any part of any equipment is standing or being operated within 10 feet, measured horizontally, from centerline of any track on which trains may operate, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track.
 - (b) For any excavation below elevation of track subgrade if, in the opinion of Railroad's representative, track or other railroad facilities may be subject to settlement of movement.
 - (c) For any clearing, grubbing, grading, or blasting in proximity to Railroad facilities which, in the opinion of Railroad's representative, may endanger Railroad facilities or operations.
- (2) Railroad will furnish such personnel or other protective services when, in the opinion of Railroad's representative, Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.
- (3) Information as to the Railroad employees which may be required to provide protection to Railroad facilities is as follows:
 - (a) Inspector \$250.00 per day plus expenses
 - (b) Flagman \$200.00 per day plus expenses

The above rates are for information only, and rates in effect at the time of construction will be used.

The cost of all Railroad personnel, equipment, and facilities deemed necessary by the Railway and provided by the Railway for the protection of Railroad facilities and trains during the period of construction within Railway right-of-way and the cost of installing protective devices in the case of impaired clearance shall be borne by the City/County. The Contractor shall be responsible for payment of all costs incurred for any damages to Railroad roadbed, track and/or appurtenances thereto, resulting from use, occupancy, presence of its employees or agents on or about the construction site.

- (4) Railroad will submit its final bills for flagging and related services to City/County after completion of the project. City/County will pay all flagging charges.

EXHIBIT "C-1"

agreement between
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
AND THE CONTRACTOR
IN CONNECTION WITH

The Atchison, Topeka and Santa Fe Railway Company
One Santa Fe Plaza, 5200 E. Sheila Street
Los Angeles, CA 90040

Attention: General Manager

Gentlemen:

The undersigned has entered into a contract dated _____, 19____, with the
certain work in connection with _____, for the performance of

in the performance of which work the undersigned will necessarily be required to conduct operations within your right of way and property. The Contract provides that no work shall be commenced within your right of way or property until the contractor employed in connection with said work for _____ shall have executed and delivered to you a letter agreement in the form hereof and shall have provided insurance of the coverage and limits specified in said contract. If this letter agreement is executed by other than the Owner, General Partner, President or Vice President of the undersigned firm, evidence is furnished to you herewith certifying that the signatory is empowered to execute this agreement for the firm.

Accordingly, as one of the inducements to and as part of the consideration for your granting permission to the undersigned to enter upon your right of way or property for the performance of so much of the work as is necessary to be done within your right of way or property, the undersigned, effective on the date of the contract with the _____, has agreed and does hereby agree with you as follows:

1. The undersigned shall indemnify and save harmless the Santa Fe, its agents and employees against all liability, claims, demands, damages, or costs for (a) death or bodily injury to persons, including without limitation the employees of the parties hereto, (b) injury to property, including without limitation, the property of the parties hereto, (c) design defects, or (d) any other loss, damage, or expense arising under either (a), (b), or (c), and all fines or penalties imposed upon or assessed against Santa Fe, and all expenses of investigating and defending against same, arising in any manner out of (1) use, occupancy or presence of the undersigned, sub-contractors, employees, or agents in, on, or about the construction site, (2) the performance, or failure to perform, by the undersigned, its subcontractors, employees, or agents, its work or any obligation under this agreement, or (3) the sole or contributing acts or omissions of the undersigned, its subcontractors, employees, or agents in, on, or about the construction site. Nothing contained in this provision is intended to, nor shall be deemed or construed to, indemnify Santa Fe from its sole negligence or willful misconduct, or that of its agents, servants or independent contractors who are directly responsible to it.

2. That the undersigned will procure, and maintain in force, insurance meeting all of the requirements outlined in the special provisions for and in contract referred to in the second paragraph above, and there is handed you herewith:

- (1) Original Policy in Railroad Protective Liability Form, favor of The Atchison, Topeka and Santa Fe Railway Company, One Santa Fe Plaza, 5200 East Sheila Street, Los Angeles, CA 90040, and
- (2) Certificate reflecting the existence of Contractor's Public Liability and Property Damage Liability Insurance and Contractor's Protective Public Liability and Property Damage Liability Insurance,

meeting such requirements. It is further distinctly understood and agreed by the undersigned that its liability to the Railway Company herein under Paragraph 1, will not in any way be limited to the amount of insurance obtained and carried by the undersigned in connection with said contract.

3. That the undersigned will observe and comply with all the provisions, obligations and limitations to be observed by Contractor which are contained in the sub-division of the specifications of the contract referred to in the second paragraph hereof, entitled "Relations with Railway Company", and shall include, but not be limited to, payment of all costs incurred for any damages to Railroad roadbed, tracks, and/or property, resulting from use, occupancy, presence of its employees or agents in or about the construction site.

AT&SF Railway Co.

Date: _____

Kindly acknowledge receipt of this letter and of the insurance policies herein provided to be furnished to you by signing and returning to the undersigned a copy of this letter, which shall thereupon constitute an agreement between us.

Yours truly,

By _____

Receipt of the foregoing letter and of the policies and certificates of insurance herein provided to be furnished is hereby acknowledged this

_____ day of _____, 19____,
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By _____

Its _____

EXHIBIT "C-2"

RAILROAD PROTECTIVE INSURANCE

In addition to any other form of insurance or bonds required under the terms of the contract and specifications, the Contractor will be required to carry insurance of the kinds and in the amounts hereinafter specified. Such insurance shall be approved by:

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

hereinafter called "Railroad" before any work is performed on Railroad property and shall be carried until all work required to be performed on or adjacent to the Railroad's property under the terms of the contract is satisfactorily completed as determined by the Engineer, and thereafter until all tools, equipment and material have been removed from Railroad's property and such property is left in a clean and presentable condition.

The insurance herein required shall be obtained by the successful bidder, and the original and certified copies of all policies as hereinafter specified shall be furnished to the Engineer,

The Contractor shall furnish the Engineer with one (1) certified copy of each of the executed policies required by 1, 2, and 3 below, and in addition, shall furnish Railroad through the Engineer, one (1) certificate reflecting the existence of the executed policies required by 1 and 2 and the original policies of the insurance required by 3 below.

A certification on such copies of insurance shall guarantee that the policy under 1 and 2 will not be amended, altered, modified, or canceled insofar as the coverage contemplated hereunder is concerned, without at least thirty (30) days notice mailed by registered mail to the Engineer and to Railroad.

Full compensation for all premiums which the Contractor is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the contract, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.

The approximate ratio of the estimated cost of the work over or under or within 50 feet of Railroad's tracks to the total estimated contract cost is 0.---

1. Contractor's Public Liability and Property
Damage Liability Insurance

The Contractor shall, with respect to the operations he performs within or adjacent to Railroad's property, carry regular contractor's Public Liability and Property Damage Liability Insurance providing for the same limits as specified for Railroad's Protective Public Liability and Property Damage Liability Insurance to be furnished for and in behalf of Railroad as hereinafter provided.

If any part of the work within or adjacent to Railroad's property is subcontracted, the Contractor in addition to carrying the above insurance, shall provide the above insurance in behalf of the subcontractors to cover their operations.

2. Contractor's Protective Public Liability and
Property Damage Liability Insurance

The Contractor shall, with respect to the operations performed for him by Subcontractors who do work within or adjacent to Railroad's property, carry in his own behalf regular Contractor's Protective Public Liability and Property Damage Liability Insurance providing for the same limits as specified for Railroad's Protective Public Liability and Property Damage Liability Insurance to be furnished for and in behalf of Railroad as hereinafter provided.

3. Railroad's Protective Public Liability and
Property Damage Liability Insurance

The Contractor shall, with respect to the operations he performs within or adjacent to Railroad's property or that of any of his subcontractors who do work within or adjacent to Railroad's property, have issued and furnished separately, policy or policies of insurance in the Railroad Protective Liability Form as hereinafter specified in favor of The Atchison, Topeka and Santa Fe Railway Company, One Santa Fe Plaza, 5200 East Sheila Street, Los Angeles, CA 90040.

Railroad Protective Liability Form

(Name of Insurance Company)

DECLARATIONS:

Item 1. Named Insured:

The Atchison, Topeka and Santa Fe Railway Company
 One Santa Fe Plaza, 5200 East Sheila Street
 Los Angeles, CA 90040

Item 2. Policy Period:

From _____ to _____
 12:01 a.m., Standard Time, at the designated job site as stated herein.

Item 3. The insurance afforded is only with respect to such of the following coverages as are indicated in Item 6 by specific premium charge or charges. The limit of the company's liability against such coverage or coverages shall be as stated herein, subject to all the terms of this policy having reference thereto.

Coverages

Limits of Liability

A Bodily Injury Liability	\$2 million Combined Single Limit per occurrence, with an aggregate limit of \$6 million for the term of the policy.
B Property Damage Liability & C and Physical Damage to Property	

Item 4. Name and Address of Contractor:

Item 5. Name and address of Government Authority for whom the work by the Contractor is being performed:

Item 6. Designation of the Job Site and Description of Work:

Premium Bases	Rates per \$100 of Cost		Advance Premiums	
	Coverage A	Coverages B&C	Coverage A	Coverages B&C
Contract Cost	\$	\$	\$	\$
Rental Cost	\$	\$	\$	\$

Countersigned _____ 19____ By _____

POLICY

(Name of Insurance Company)

A _____ insurance company, herein called the Company, agrees with the insured named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations made by the named insured and subject to all of the terms of this policy:

INSURING AGREEMENTS

I. Coverage A - Bodily Injury Liability

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness, or disease, including death at any time resulting therefrom, hereinafter called "bodily injury", either (1) sustained by any person arising out of acts or omissions at the designated job site which are related to or are in connection with the work described in Item 6 of the declarations, or (2) sustained at the designated job site by the contractor or any employee of the contractor or by any designated employee of the insured whether or not arising out of such acts or omissions.

Coverage B - Property Damage Liability

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of physical injury to or destruction of property, including loss of use of any property due to such injury or destruction, hereinafter called "property damage", arising out of acts or omissions at the designated job site which are related to or are in connection with the work described in Item 6 of the declarations.

Coverage C - Physical Damage to Property

To pay for direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment, or motive power equipment, hereinafter called loss, arising out of acts or omissions at the designated job site which are related to or are in connection with the work described in Item 6 of the declarations; provided such property is owned by the named insured or is leased or entrusted to the named insured under a lease or trust agreement.

II. Definitions

- (a) Insured - The unqualified word "insured" includes the named insured and also includes any executive officer, director or stockholder thereof while acting within the scope of his duties as such.
- (b) Contractor - The word "contractor" means the contractor designated in Item 4 of the declarations and includes all subcontractors of said contractor but shall not include the named insured.
- (c) Designated employee of the insured - The words "designated employee of the insured" mean:
 - (1) any supervisory employee of the insured at the jobsite.
 - (2) any employee of the insured while operating, attached to or engaged on work trains or other railroad equipment at the jobsite which are assigned exclusively to the contractor, or
- (d) Contract - The word "contract" means any contract or agreement to carry a person or property for a consideration or any lease, trust or interchange contract or agreement respecting motive power, rolling stock or mechanical construction equipment.

III. Defense, Settlement, Supplementary Payments

With respect to such insurance as is afforded by this policy under coverages A and B, the Company shall:

- (a) defend any suit against the insured alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the Company may make such investigation and settlement of any claims or suit as it deems expedient;
- (b) pay, in addition to the applicable limits of liability:
 - (1) all expenses incurred by the Company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
 - (2) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, but without obligation to apply for or furnish any such bonds;
 - (3) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of the occurrence;
 - (4) all reasonable expenses, other than loss of earnings, incurred by the insured at the Company's request.

IV. Policy Period, Territory

This policy applies only to occurrences and losses during the policy period and within the United States of America, its territories or possessions, or Canada.

EXCLUSIONS

This policy does not apply:

- (a) to liability assumed by the insured under any contract or agreement except a contract as defined herein;
- (b) to bodily injury or property damage caused intentionally by or at the direction of the insured;
- (c) to bodily injury, property damage or loss which occurs after notification to the named insured of the acceptance of the work by the governmental authority, other than bodily injury, property damage or loss resulting from the existence or removal of tools, uninstalled equipment and abandoned or unused materials;
- (d) Under Coverages A(1), B and C, to bodily injury, property damage or loss, the sole proximate cause of which is an act or omission of any insured other than acts or omissions of any designated employee of any insured;
- (e) under Coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law; provided that the Federal Employers' Liability Act, U.S. Code (1946) Title 45, Sections 51-60, as amended, shall for the purposes of this insurance be deemed not to be any similar law;
- (f) under Coverage B, to injury to or destruction of property (I) owned by the named insured or (II) leased or entrusted to the named insured under a lease or trust agreement.
- (g) 1. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
 - (a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
2. Under any medical Payments Coverage, or under any Supplementary-Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
3. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
 - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
4. As used in this exclusion:

"Hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "Special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof.

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material:

- (1) containing byproduct material and
- (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means:

- (a) any nuclear reactor
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"injury" or "destruction", with respect to injury to or destruction of property, the word includes all forms of radioactive contamination of property.

- (h) under coverage C, to loss due to nuclear reaction, nuclear radiation or radioactive contamination, or to any act or condition incident to any of the foregoing.

CONDITIONS

(The conditions, except conditions 3, 4, 5, 7, 8, 9, 10, 11 and 12, apply to all coverages. Conditions 3, 4, 5, 7, 8, 9, 10, 11 and 12 apply only to the coverage noted thereunder.)

1. Premium The Premium bases and rates for the hazards described in the declarations, are stated therein. Premium bases and rates for hazards not so described are those applicable in accordance with the manuals in use by company. The term "contract cost" means the total cost of all work described in Item 6 of the declarations.

The term "rental cost" means the total cost to the contractor for rental of work trains or other railroad equipment, including the remuneration of all employees of the insured while operating, attached to or engaged thereon.

The advance premium stated in the declaration is an estimated premium only. Upon termination of this policy the earned premium shall be computed in accordance with the company's rules, rates, rating plans, premiums and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the company shall look to the contractor specified in the declarations for any such excess; if less, the company shall return to the said contractor the unearned portion paid.

In no event shall payment of premium be an obligation of the named insured.

2. Inspection The named insured shall make available to the company records of information relating to the subject matter of this insurance.

The company shall be permitted to inspect all operations in connection with the work described in Item 6 of the declarations.

3. Limits of Liability Coverage A The limits of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence; the limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provisions respecting each person, the total limit of the company's liability for all such damage arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

4. Limits of Liability Coverages B&C The limit of liability under Coverages B and C stated in the declarations as applicable to "each occurrence" is the total limit of the company's

arising out of physical injury to, destruction or loss of all property of one or more persons or organizations, including the loss of use of any property due to such injury or destruction under Coverage B, as the result of any one occurrence.

Subject to the above provisions respecting "each occurrence", the limit of liability under Coverages B and C stated in the declaration as "aggregate" is the total limit of the company's liability for all damages and all loss under Coverages B and C combined arising out of physical injury to, destruction or loss of property, including the loss of use of any property due to such injury or destruction under Coverage B.

Under Coverage C, the limit of the company's liability for loss shall not exceed the actual cash value of the property or if the loss is of a part thereof the actual cash value of such part, at time of loss, nor what it would then cost to repair or replace the property or such part thereof with other of like kind and quality.

5. Severality of Interests The term "the insured" is used severally and not collectively, but Coverages A&B the including herein of more than one insured shall not operate to increase the limits of the company's liability.

6. Notice In the event of an occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. If claim is made or suit is brought against the insured, he shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

7. Assistance and Cooperation of the Insured The insured shall cooperate with the company and, Coverages A&B upon the company's request, attend hearings and trials and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

8. Action Against Company No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the Coverages A&B terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

Coverage C No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy nor until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

9. Insured's Duties in Event of Loss In the event of loss the insured shall: Coverage C
 - (a) protect the property, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred at the company's request;
 - (b) file with the company, as soon as practicable after loss, his sworn proof of loss in such form and including such information as the company may reasonably require and shall, upon the company's request, exhibit the damaged property.

10. Appraisal If the insured and company fail to agree as to the amount of loss, either may, Coverage C within 60 days after the proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

11. Payment of Loss Coverage C The company may pay for the loss in money but there shall be no abandonment of the damaged property to the company.
12. No Benefit to Bailee Coverage C The insured afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or bailee, other than the named insured, liable for loss to the property.
13. Subrogation In the event of any payment under this policy, the company shall be subrogated to all the insured's right of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.
14. Application of Insurance The insurance afforded by this policy is primary insurance.
15. Three Year Policy A policy period of three years is comprised of three consecutive annual periods. Computation and adjustment of earned premium shall be made at the end of each annual period. Aggregate limits of liability as stated in this policy shall apply separately to each annual period.
16. Changes Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.
17. Assignment Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon.
18. Cancellation This policy may be cancelled by the named insured by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the named insured, contractor and governmental authority at the respective addresses shown in this policy written notice stating when not less than thirty days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
19. Declarations By acceptance of this policy the named insured agrees that such statements in the declarations as are made by him are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

IN WITNESS WHEREOF, the _____ Indemnity Company has caused this policy to be signed by its president and a secretary at _____ and countersigned on the declarations page by a duly authorized agent of the company.

(FACSIMILE OF SIGNATURE)

(FACSIMILE OF SIGNATURE)

Secretary

President

D 10476 (V)