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February 3, 1958
Rev. February 17, 1958
I 092-3(8)
Pueblo Freeway -
Railroad Overpasses

MICROFILMED

AGREEMENT, Made this 3rd day of February, 1958, between THE DEPARTMENT OF HIGHWAYS of the STATE OF COLORADO, hereinafter called the "Department" and the MISSOURI PACIFIC RAILROAD COMPANY, a Missouri corporation, hereinafter called "MoPac"; THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Rio Grande"; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Kansas corporation, hereinafter called "Santa Fe", and THE COLORADO AND SOUTHERN RAILWAY COMPANY, a Colorado corporation, hereinafter called C & S, collectively referred to hereinafter as the "Railroads", WITNESSETH:

R E C I T A L S

WHEREAS, under authority of the laws and statutes of the United States and of the State of Colorado, the Department, with concurrence and approval of the Bureau of Public Roads, has allocated funds for constructing a Freeway through the City of Pueblo, location of which is shown on Exhibit A, attached hereto and made a part hereof, and

WHEREAS, the Department's proposal includes: (1) construction of twin structures overpassing MoPac tracks and industrial properties at MoPac Survey Station 65+60.5 (East Branch Main Line); (2) construction of twin structures overpassing Santa Fe tracks and right-of-way at Santa Fe Milepost 618+207.5 ft.(Freight House Lead), said right-of-way also occupied by C & S; and (3) construction of twin structures spanning Rio Grande tracks and right-of-way at Rio Grande Survey Station 242+36.7 (Westbound Main Line) and 242+43.9 (Eastbound Main Line), said right-of-way also occupied by Santa Fe, centerline of highway survey crossing being Santa Fe Milepost 618+48 feet (Union Depot Lead); all situated in the West ½ Section 31, Township 20 South, Range 64 West of the Sixth Principal Meridian, Pueblo County, State of Colorado, and

WHEREAS, the Department has made plans, specifications and estimates which plans for these structures have been examined and approved individually, as their interests may appear, as to general layout and clearances as follows: MoPac, September 6, 1957; Rio Grande, December 12, 1957; Santa Fe, October 11, 1957; C & S August 30, 1957, representative sheets marked Exhibit B and Exhibit C, attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the undertakings and agreements on the part of all parties hereinafter set forth and the faithful performance thereof, the parties hereto promise and agree:

ARTICLE I.

AGREEMENTS ON THE PART OF THE DEPARTMENT

1. ADVERTISEMENT FOR BIDS - CONTRACT. Department agrees to advertise for bids and to enter into contract for all work in accordance with this contract, of which said Plans and Specifications are a part, which said Plans and Specifications will have been approved by MoPac, Rio Grande, Santa Fe, C & S, Department and United States Bureau of Public Roads, prior to award of any construction contract by the Department.

2. CONSTRUCTION BY DEPARTMENT. Department agrees to perform or cause to be performed, in manner acceptable to MoPac, Rio Grande, Santa Fe and C & S, all work on Railroad properties relating to construction of the highway overpass structures and to the highway, and grading and location thereof including drainage in accordance with said Plans and Specifications.

3. SUPERVISION BY DEPARTMENT. Department agrees to maintain direct supervision over the operations of all its Contractors and Subcontractors performing work upon the property of MoPac, Rio Grande, Santa Fe and C & S.

4. PLANS AND SPECIFICATIONS. All work performed on MoPac, Rio Grande, Santa Fe and C & S properties pursuant to this Agreement shall be done strictly in accord with said Plans and Specifications as heretofore or hereafter approved in writing by Department, Railroads and Bureau of Public Roads; but, notwithstanding any consents or approvals given by Railroads, the Department shall be liable and responsible for the structural design, details or construction of the overpass structures and highway approaches. No work upon Railroad properties not contemplated by said Plans and Specifications shall be done or performed except by and with the prior written consent of MoPac, Rio Grande, Santa Fe or C & S, as the case may be.

5. CONTRACTOR'S OPERATIONS. Department agrees that, as a part of any contract between Department and any Contractor performing work on the Railroad properties pursuant to this Agreement, it will require such Contractor to enter into Contract with the Railroads in the form, and containing the covenants, conditions and stipulations set forth in Exhibits D and E hereto attached and made a part hereof.

6. MAINTENANCE. Upon completion of said highway overpass structures (including superstructure, substructure, piers, abutments and walls, approaches and backfill), highway and drainage required by reason of each said structure and highway, Department shall and will, at its sole cost and expense, maintain the same in first class condition and repair and renew the same whenever necessary. While the Department will be required to maintain pre-existing drainage where the same will be obstructed, interfered with, or changed by the highway or highway overpass, the Department will not be responsible for the care or maintenance of pre-existing drainage which is not caused by or in any way affected or interfered with by the highway and highway overpass construction herein described, nor for care or maintenance of tracks and appurtenances, roadbeds and drainage of Railroads.

7. CONTRACTOR'S DEFAULTS AND OMISSIONS. Department shall be responsible, within the limits of its contract with its Contractor performing work on Railroads' properties, for correction or elimination of defaults or omissions of Contractor or any Subcontractor in respect of its or their performance under this contract or any contract between MoPac, Rio Grande, Santa Fe or C & S and Department's Contractor.

8. INSURANCE. Department agrees to procure from its Contractor the certificates and policies of insurance described in said Exhibits D and E and to deliver the same directly to MoPac's Chief Engineer, Rio Grande Insurance Department, Santa Fe's Chief Engineer and to C & S's Assistant Chief Engineer. No Contractor or Subcontractor shall enter upon or perform any work on Railroads' properties unless or until the insurance specified herein and in Exhibits D and E hereof, shall be delivered to and accepted by the Railroads, and all such insurance shall be kept in full force and effect during all times any such work is being performed on or in close proximity to Railroad's properties by Department's Contractor or Subcontractor.

9. ABANDONMENT OF HIGHWAY. If at any future time the said highway and/or overpasses located on properties of MoPac, Rio Grande, Santa Fe or C & S shall be abandoned or shall cease to be used as a public roadway, the licenses granted hereinbelow shall terminate: and, in that event, Department, at its sole cost and expense agrees to remove said overpasses and restore respective Railroad properties to their first and former state and condition, as nearly as possible.

10. REIMBURSEMENT TO RAILROADS. Notwithstanding the provisions of Article VII, Paragraph 1, Department agrees to reimburse the Railroads for any and all work performed by them, or any one of them, for the Department, including the cost of temporary and permanent changes in rail facilities and installation of inside guard rails, and including the cost of protective service and devices; such service and devices to embrace those referred to in Paragraph 2-G of the Contract and License hereto attached as Exhibit D, made necessary by reason of said highway improvements. Such costs of any work done by the Railroads, or any one of them, shall be determined in accordance with Department of Commerce, Bureau of Public Roads Policy and Procedure Memorandum 30-3, dated August 15, 1955, and any amendments of or supplements thereto becoming effective prior to date of this Agreement. Labor charges for any services or work performed by Railroad personnel will be in accord with working agreements between the Railroad doing such work and its employees.

ARTICLE II

AGREEMENTS ON THE PART OF MOPAC

1. LICENSE BY MOPAC TO DEPARTMENT: The MoPac, without warranty of title, and without consideration other than the performance of this contract by the Department, hereby licenses the Department to construct new highway overpass at MoPac Survey Station 65+60.5 (Eastbound Main Line), in Pueblo County, State of Colorado, and thereafter to maintain, repair, renew and use said structure, approaches, and highway provided for by this Agreement. MoPac reserves to itself, its successors and assigns, notwithstanding the license hereby granted, the perpetual, continued, uninterrupted and unlimited right to use its right-of-way and property for railroad purposes, and also reserves the right to use its right-of-way and property for any other purposes not inconsistent with the maintenance and use of said highway and highway overpass. Department understands that the license hereby granted is and shall remain subject to prior rights of any person, firm or corporation to use any portion of MoPac's property at or near the project site.

2. RIGHTS-OF-WAY: MoPac premises to be used for construction of highway overpass purposes as licensed in Paragraph 1 above, are more particularly designated as:

A tract or parcel of land No. E-390 Rev. 2, of Colorado Department of Highways Project No. I 092-3(21), now identified as Project No. I 092-3(8), containing 2.625 acres, more or less, in the southwest quarter of Section 31, Township 20 South, Range 64 West of the Sixth Principal Meridian, Pueblo County, Colorado, said tract or parcel being described as follows:

Beginning at a point in the northerly right-of-way line of the Missouri Pacific Railroad Company from which the southwest corner of Section 31, Township 20 South, Range 64 West bears South 34 degrees 34 minutes 30 seconds West, a distance of 1126.6 feet, said point of beginning being North 41 degrees 07 minutes East, a distance of 201.6 feet from centerline of MoPac's East Bound Main Line track 3950.3 feet northwesterly of Mile Marker 895; thence North 66 degrees 28 minutes West along said northerly right-of-way line of MoPac, a distance of 329.1 feet; thence along the arc of a curve to the left, said curve having a radius of 5880.0 feet, a distance of 60.2 feet (the chord of which arc bears South zero degrees 34 minutes 30 seconds East, a distance of 60.2 feet); thence South 51 degrees 34 minutes East, a distance of 96.9 feet; thence South zero degrees 52 minutes East, a distance of 550.7 feet to a point in the southerly right-of-way line of MoPac; thence South 47 degrees 03 minutes East along said southerly right-of-way line, a distance of 173.2 feet; thence North zero degrees 52 minutes West, a distance of 18.8 feet; thence North 42 degrees 57 minutes East, a distance of 36.1 feet; thence North zero degrees 52 minutes West, a distance of 490.8 feet; thence North 55 degrees 27 minutes East, a distance of 90.1 feet; thence North zero degrees 52 minutes West, a distance of 70.6 feet, more or less to the point of beginning, containing 2.625 acres, more or less, and shown on Exhibit B.

ARTICLE III

AGREEMENTS ON THE PART OF RIO GRANDE

1. LICENSE BY RIO GRANDE TO DEPARTMENT: The Rio Grande, without warranty of title, and without consideration other than the performance of this contract by

the Department, hereby licenses the Department to construct new highway overpass at Rio Grande Survey Station 242+43.0 (Eastbound Main Line) and Rio Grande Survey Station 242+36.7 (Westbound Main Line), in Pueblo County, State of Colorado, and thereafter to maintain, repair, renew and use said structure, approaches, and highway provided for by this agreement. Rio Grande reserves to itself, its successors and assigns, notwithstanding the license hereby granted, the perpetual, continued, uninterrupted and unlimited right to use its right-of-way and property for railroad purposes, and also reserves the right to use its right-of-way and property for any other purposes not inconsistent with the maintenance and use of said highway overpass and highway. Department understands that the license hereby granted is and shall remain subject to prior rights of any person, firm or corporation to use any portion of Rio Grande's property at or near the project site.

2. RIGHTS-OF-WAY: Rio Grande premises, also occupied by Santa Fe, to be used for construction of highway overpass purposes as licensed in Paragraph 1 above, are more particularly designated as:

> A tract or parcel of land No. E-393 of Colorado Department of Highways Project No. I 002-3(21), now identified as Project No. I 092-3(8), containing 0.658 acres, more or less, in the southwest quarter of Section 31, Township 20 South, Range 64 West, Sixth Principal Meridian, Pueblo County, Colorado, said tract or parcel being described as follows:
>
> Beginning at a point in the southerly right-of-way line of The Denver and Rio Grande Western Railroad Company from which the southwest corner of Section 31, Township 20 South, Range 64 West bears South 19 degrees 53 minutes 30 seconds West, a distance of 1725.2 feet, said point of beginning being South 19 degrees 25 minutes East, a distance of 50.0 feet from centerline of Rio Grande's Eastbound Main line track at a point 2199.0 feet northeasterly of Rio Grande Milepost 119, said beginning point also being South 19 degrees 25 minutes East, a distance of 81.2 feet from a point on centerline of Santa Fe's track at a point of 2.0 feet northeasterly from Santa Fe Milepost 618 (Union Depot lead); thence North 4 degrees 35 minutes East, a distance of 154.0 feet to the northerly right-of-way of Rio Grande; thence along said

northerly right-of-way line along the arc of a curve to the right with a radius of 477.47 feet, a distance of 86.0 feet (the chord of which arc bears North 85 degrees 49 minutes 30 seconds West, a distance of 85.9 feet); thence continuing along said northerly right-of-way line along the arc of a curve to the right with a radius of 268.0 feet, a distance of 69.8 feet (the chord of which arc bears North 62 degrees 27 minutes West, a distance of 69.7 feet); thence South 4 degrees 35 minutes West, a distance of 247.3 feet to the southerly right-of-way line of Rio Grande; thence North 70 degrees 35 minutes East along said southerly right-of-way line, a distance of 164.2 feet, more or less, to the point of beginning, containing 0.658 acres, more or less, and shown on Exhibit C.

ARTICLE IV

AGREEMENTS ON THE PART OF SANTA FE

1. LICENSE BY SANTA FE TO DEPARTMENT: The Santa Fe, without warranty of title, and without consideration other than the performance of this contract by the Department, hereby licenses the Department to construct new highway overpass at Santa Fe Milepost 618+140 feet (Freight House lead) and Milepost 618+48 feet (Union Depot lead) in Pueblo County, State of Colorado, and thereafter to maintain, repair, renew and use said overpasses, approaches, and highway provided for by this agreement. Santa Fe reserves to itself, its successors and assigns, notwithstanding the license hereby granted, the perpetual continued, uninterrupted and unlimited right to use its right-of-way and property for railroad purposes, and also reserves the right to use its right-of-way and property for any other purposes not inconsistent with the maintenance and use of said highway and highway overpass. Department understands that the license hereby granted is and shall remain subject to prior rights of any person, firm or corporation to use any portion of Santa Fe's property at or near project site.

2. RIGHTS-OF-WAY: Santa Fe premises, also occupied by C & S, to be used for construction of highway overpass purposes as licensed in Paragraph 1 above, are more particularly designated as:

A tract or parcel of land No. E-395 of Colorado Department of Highways Project No. I 002-3(21), now identified as Project No. I 092-3(8), containing 0.394 of an acre, more or less, located in the northwest quarter of Section 31, Township 20 South, Range 64 West of the Sixth Principal Meridian, in Pueblo County, Colorado, said tract or parcel of land being described as follows:

Commencing at the southwest corner of Baxter Subdivision of Homestead Block 18, Original Town of Pueblo; thence along the easterly line of Santa Fe Avenue, South 2 degrees 3 minutes 45 seconds East (bearings assumed for the purpose of this description), a distance of 251.3 feet, more or less, to the northeasterly property line of The Atchison, Topeka and Santa Fe Railway Company; thence along said northeasterly property line, South 54 degrees 45 minutes 15 seconds East, a distance of 568.6 feet, more or less, to a point in the westerly right-of-way line of highway and the point of beginning of the metes and bounds of the tract of land herein described; thence continuing on last described course, a distance of 43.4 feet to a point of curve; thence continuing along said Railway property line, along the arc of a curve to the left with a radius of 2814.9 feet (the chord of said arc bearing South 56 degrees 04 minutes 09 seconds East, a distance of 129.2 feet), an arc distance of 129.3 feet, more or less, to a point in the easterly right-of-way line of said highway; thence South 4 degrees 35 minutes West along said highway right-of-way line, a distance of 112.7 feet, more or less, to said Railway Company's southwesterly property line; thence along said Railway property line, along the arc of a curve to the right with a radius of 2914.9 feet (the chord of said arc bearing North 56 degrees 44 minutes 44 seconds West, a distance of 170.9 feet), an arc distance of 170.9 feet, more or less, to the westerly right-of way line of said highway; thence North 4 degrees 35 minutes East along said highway right-of-way line, a distance of 116.2 feet, more or less, to the point of beginning.

ARTICLE V

AGREEMENTS ON THE PART OF C & S

1. LICENSE BY C & S TO DEPARTMENT: The C & S, without consideration other than the performance of this contract by Department, hereby licenses the Department to construct new highway overpass over and across its tracks located on Santa Fe properties, opposite Santa Fe Milepost 618+207.5 ft.(Freight House lead), in Pueblo County, State of Colorado, and thereafter to maintain, repair, renew and use said structure, approaches and highway provided for by this agreement. C & S reserves to itself, its successors and assigns, notwithstanding the license hereby granted the perpetual, continued, uninterrupted and unlimited right to use its facilities so located on Santa Fe properties at subject location for railway purposes not inconsistent with the maintenance and use of said highway improvements. Department understands that the license hereby granted is and shall remain subject to prior rights of C & S to use such portion of Santa Fe's property at or near the project site.

2. RIGHTS OF WAY: It is understood and agreed between the parties hereto that C & S tracks and facilities, at the location specified hereinbefore, are situated on Santa Fe properties and that insofar as right-of-way from Santa Fe is concerned, the License granted the Department by Santa Fe in Article IV hereof, includes the right for the Department to perform the proposed work herein provided across the C & S tracks and shown on Exhibit C.

ARTICLE VI

AGREEMENTS ON THE PART OF THE RAILROADS

1. CHANGES IN RAILROAD FACILITIES. MoPac, Rio Grande, Santa Fe and C & S individually, and not collectively, agree, at Department's cost and expense, to make any and all temporary or permanent changes and modifications in their operating facilities located on their respective right-of-way that may be necessary to permit construction and maintenance of the highway and highway overpass structures, in accordance with said Plans and Specifications, except grading, surfacing and backfilling as provided for in Article I, Paragraph 2, hereof. Railroads shall have no obligations with respect to removing, relocating or reinstalling the facilities of any of their respective lessees or licensees, required to be removed, relocated or reinstalled incident to construction of the highway and highway overpass structures,

but Department shall make all arrangements with respect thereto with the owners thereof, which arrangements shall be subject to approval of the respective Railroad's Chief Engineer or Assistant Chief Engineer of the C & S, obtained prior to commencement of the work.

2. GUARD RAILS. Railroads, at the sole cost and expense of Department, agree to construct guard rails along their respective tracks beneath the highway overpass structures, said guard rails to be installed in accordance with current standards and specifications of the specific Railroad involved.

3. INSURANCE - NOTICE TO DEPARTMENT. No Contractor or Subcontractor of the Department shall enter upon or perform any work contemplated by this Agreement upon Railroads' properties unless or until the insurance specified in Article I, Paragraph 8, and Exhibits D and E, hereof, shall be delivered to and accepted by the Insurance Departments of MoPac, Rio Grande, Santa Fe and C & S respectively, and all such insurance shall be kept in full force and effect during all times any such work is being performed on Railroad property by any Contractor or Subcontractor. Railroads agree to notify Department within twenty (20) days following delivery of said certificates and policies of insurance to their respective Insurance Department whether said insurance has been accepted or rejected, and, failing so to do, will be deemed to have accepted such Insurance. Railroads further agree to notify Department promptly upon receipt of advice by their respective Insurance Departments that any of the insurance specified has been or may be cancelled during the progress of the work.

4. CONTRACTOR'S METHODS AND PROCEDURES - NOTICE TO DEPARTMENT. Railroads agree to advise Department whether or not Contractor's proposed methods and procedures for performing the work on their respective properties, as provided for in said Exhibit D, are satisfactory, within twenty (20) days after submission thereof by Contractor to the specific Railroad involved; and, failing so to do, the Railroads will be deemed to have accepted same.

5. RIGHT TO STOP WORK. If any Contractor or Subcontractor employed upon MoPac, Rio Grande, Santa Fe or C & S properties, pursuant to this agreement, shall prosecute the work thereon contrary to Department's Plans and Specifications, or contrary to the Contract and License between Contractor and the Railroads, or if such Contractor or Subcontractor shall prosecute the work on Railroads' properties in a manner deemed by Railroad to be hazardous to its property and facilities or the

safe and expeditious movement of its traffic, or if the insurance prescribed in Article I, Paragraph 8, and in Exhibits D and E hereof, shall be cancelled during progress of the work, MoPac, Rio Grande, Santa Fe or C & S, as the case may be, shall have the right to stop the work on their respective property until the acts or omissions of such Contractor or Subcontractor have been fully rectified to the satisfaction of its respective Chief Engineer or additional insurance has been delivered to and accepted by the respective Railroad. No such work stoppage shall give rise to or impose upon the Railroads, collectively or individually, any liability to Department or any Contractor or Subcontractor. In the event any of the Railroads shall stop the work upon its property, immediate notice thereof shall be given to Department's Chief Engineer at Denver, Colorado.

ARTICLE VII

APPROVAL, CANCELLATION, ETC.

1. FEDERAL AID PROJECT: It is understood that the project herein contemplated is to be financed in part from funds appropriated by the Federal Government and expended under Federal regulations; that all plans, estimates of cost, specifications, agreements, awards of contracts, acceptances of work and procedure in general are subject at all times to all Federal laws, rules, regulations, orders and approvals applying to it as a Federal Aid Highway Project.

2. NO BENEFIT TO RAILROADS: It is understood no benefit accrues to MoPac, Rio Grande, Santa Fe or C & S with respect to the provisions of Section 5-B of Federal Aid Highway Act approved December 20, 1944 (58th Statute 841), requiring certain participation on the part of a railroad company in the construction costs of railroad-highway grade separations on the basis of the net benefit received. It is understood and agreed on the part of the parties hereto that, in accordance with the provisions of General Administrative Memorandum No. 325, no benefit will accrue to the Railroads because the new highway overpasses herein provided create new grade separations.

3. CANCELLATION: In the event delays, expenses or difficulties arise in securing necessary approvals, or in acquiring necessary right-of-way, or in settling damage claims, or for any other reason, which, in the opinion of the Department, render it impractical to utilize funds from the current appropriation for the construction of the project, then at any time before actual construction is started

pursuant to proper approval or authority, the Department may serve formal notice of cancellation upon the Railroads, and this agreement shall thereupon become null and void; provided, however, that each Railroad shall be paid by the Department in full for any and all costs and expenses which are reimbursable to the Railroads under this contract and which were incurred by that Railroad up to the date of its receipt of notice of such cancellation.

4. APPROVAL BY THE PUBLIC UTILITIES COMMISSION: The provisions of this agreement, other than for the preliminary preparation of plans and specifications for the highway-railroad grade separation structures, shall not become effective unless and until the location of and the plans ahd specifications for the structures, hereby provided for, have been approved by the Public Utilities Commission of the State of Colorado, it being understood and agreed that the Department shall make application to the Public Utilities Commission for authority and approval of construction of the new highway-railroad grade separation structures over the tracks and rights-of-way of the Railroads at the locations herein provided and the Department and the Railroads shall cooperate in presenting all matters involved to said Commission at the hearing on such application.

5. APPROVAL BY STATE CONTROLLER: This agreement shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado, or by such assistant as he may designate.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in quintuplicate, by their proper officers, and it shall be binding upon the parties hereto, their successors and assigns, from the day and year first above written.

ATTEST:

Chief Clerk

DEPARTMENT OF HIGHWAYS
STATE OF COLORADO

By

MARK U. WATROUS
Chief Engineer

ATTEST:

By
Assistant Secretary

MISSOURI PACIFIC RAILROAD COMPANY

By
Vice-President - Operation

WITNESS:

Secretary

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

By
Chief Engineer

ATTEST:

Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By
Vice-President

ATTEST:

Secretary

THE COLORADO AND SOUTHERN RAILWAY COMPANY

By
Vice-President

APPROVED:

State Purchasing Agent

APPROVED:

Assistant Chief Engineer, C&S Ry.

General Attorney, C&S Ry.

APPROVED:

State Controller

APPROVED AS TO FORM:

DUKE W. DUNBAR
Attorney General

Deputy Attorney General

APPROVED:

Governor

EXHIBIT D

February 3, 1958
Rev. February 17, 1958
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CONTRACT AND LICENSE

THIS AGREEMENT, Made this_____day of_____, 195__, by and between the MISSOURI PACIFIC RAILROAD COMPANY (hereinafter called the "MoPac"); THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY (hereinafter called the "Rio Grande"); THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (hereinafter called the "Santa Fe"); THE COLORADO AND SOUTHERN RAILWAY COMPANY (hereinafter called the "C&S"), collectively referred to hereinafter as the "Railroads"; and

_____

hereinafter called the "Contractor":

WITNESSETH: That

WHEREAS, The Department of Highways of the State of Colorado, hereinafter called the "Department", and the Railroads have entered into a contract dated _____, relating to highway overpass construction on the rights-of-way and properties of the MoPac at MoPac Survey Station 65+60.5 (Eastbound Main Line); of the Rio Grande at Rio Grande Survey Stations 242+36.7 (Westbound Main Line) and 242+43.0 (Eastbound Main Line), said rights-of-way also occupied by Santa Fe at Santa Fe Milepost 618+48 feet (Union Depot lead); of the Santa Fe at Santa Fe Milepost 618+[illegible]7.5 ft.(Freight House lead), said rights-of-way also occupied by The Colorado and Southern Railway Company; all situate in Pueblo County, State of Colorado, in connection with certain highway construction on State Highway No. 1, designated as Colorado Project No. I 092-3(8), which said contract provides, among other things, that Department shall and will require its Contractor to enter into a contract with the Railroads for the protection of the property and facilities of each of the Railroads, and for the indemnification of each of the Railroads against loss, damage, injuries and deaths resulting from or growing out of said work, and for the procurement of insurance; and

WHEREAS, Department and Contractor have entered into a contract dated _____, 195____, covering, among other things, the construction of said highway overpasses on the Railroads rights-of-way and properties, which said contract provides that Contractor will enter into contract with Railroads as aforesaid.

NOW, THEREFORE, it is mutually agreed by and between the Railroads and the Contractor as follows:

1. LICENSE. In consideration of the premises and of the covenants, conditions and stipulations hereinafter agreed to be kept and performed by Contractor and subject to the limitations hereinafter set forth, Railroads hereby license Contractor to enter upon the right-of-way and property of the MoPac at MoPac Survey Station 65+60.5 (Eastbound Main Line); of the Rio Grande at Rio Grande Survey Stations 242+36.7 (Westbound Main Line) and 242+43.0 (Eastbound Main Line); said rights-of-way also occupied by Santa Fe at Santa Fe Milepost 618+48 feet (Union Depot lead); of the Santa Fe at Santa Fe Milepost 618+207.5 ft. (Freight House lead); said rights-of-way also occupied by The Colorado and Southern Railway Company, all in Pueblo County, State of Colorado, for the sole purpose of performing said contract between Department and Contractor.

2. CONTRACTOR'S OPERATIONS. In consideration of the premises and of the license hereby granted, Contractor hereby agrees to keep and perform the following covenants, conditions and stipulations:

A. Notice. Contractor shall notify the Chief Engineer of MoPac, 1200 Missouri Pacific Building, St. Louis 3, Missouri; the Chief Engineer of Rio Grande, 1531 Stout Street, Denver 2, Colorado; the Chief Engineer of Santa Fe, Amarillo, Texas; and the Assistant Chief Engineer of C & S, C. A. Johnson Building, Denver 2, Colorado, at least ten (10) days

in advance of the date on which Contractor expects to begin any work on, near or over MoPac, Rio Grande, Santa Fe or C & S property and railroad facilities.

B. Care in Performance. During the entire progress of work on or about Railroads' property, Contractor shall maintain contact and liaison with the respective Chief Engineer of MoPac, Rio Grande or Santa Fe or with the Assistant Chief Engineer of C & S, as the case may be, so as to ascertain time of passage of any trains at the project site and so as to clear Railroads' tracks and facilities of men, equipment and obstructions to permit free flow of any rail traffic. Contractor shall perform all work on and about Railroads' premises without interference with Railroads' tracks, structures and facilities, operations or the operations of Railroads' tenants, or with communication and signal lines upon said premises, except under arrangements effected between Contractor and the respective Railroad. Contractor shall use the utmost care in protecting all Railroad property and in avoiding accidents and shall keep Railroads' tracks and grade free of earth, rock, construction materials, debris and obstructions in any manner deposited by reason of Contractor's operations, so as to permit safe and expeditious movement of rail traffic.

C. Contractor's Methods and Procedures. Unless methods and procedures are provided for in the Plans and Specifications approved by Railroads and Department, Contractor and Chief Engineer of either the MoPac, the Rio Grande, the Santa Fe or Assistant Chief Engineer of The C & S as the case may be, shall agree, in advance of Contractor's performing the work, concerning methods and procedures covering all construction on Railroads' property, and, when required by said Chief Engineer, or Assistant Chief Engineer, Contractor shall submit such proposals in writing. Contractor shall at all times keep covered all pits or openings near or

under Railroads' tracks, except during the time required for actual operations in making such pits or openings and performing work therein. No provisions of this paragraph shall be construed as relieving Contractor of, or subjecting Railroads or Department to any responsibility or liability for Contractor's operations, methods and procedures.

D. Clearances. Contractor shall refrain from placing or permitting to be placed or to remain any material, equipment or any other temporary obstruction closer than ten (10) feet to the nearest rail of any track or closer than twenty (20) feet above the top of any rail, except that construction forms and scaffolding may be placed not closer than ten (10) feet from the centerline of any such track. The structure or other obstructions shall not be placed closer to Railroads' tracks and structures than the clearances specified by Colorado Public Utilities Commission Clearance Regulations of June 1, 1952, or any supplements or amendments thereto. Any changes necessary in the clearances set forth herein shall be made only by special arrangement with the appropriate Chief Engineer of MoPac, Rio Grande, or Santa Fe or Assistant Chief Engineer of C & S, or the respective authorized representatives thereof.

E. Crossings and Roadways. No new crossing at grade of Railroads' tracks or roadways on Railroads' rights-of-way shall be established or used by contractor except under plans and specifications, at such places, and under such flag protection devices as shall be approved or designated by the Railroads. The Railroads may perform all or any part of the work incident to establishing any such crossing at grade of roadways or of removing the same and restoring its tracks and roadbed, or they may require Contractor to perform all or any portion of such work. Contractor shall maintain any such crossing so established in first-class condition at all times and shall keep flange-ways free from ice, snow, dirt, rock and debris.

Contractor shall install, operate, maintain and remove in manner satisfactory to Railroads, suitable barricades adequate to prevent unauthorized vehicles or equipment from using any such crossings or roadways. All cost and expense incident to establishment, maintenance, operation and removal of any such crossings or roadways and barricades, whether the work be performed by the Railroads or by Contractor, shall be borne and paid by Contractor.

Notwithstanding anything elsewhere contained in this contract, it is understood and agreed that Contractor shall at no time cross Railroads' tracks with vehicles or equipment of any kind or character, except at existing public crossings or at crossings established as provided for in the preceding paragraph.

F. Utilities. Contractor shall take such measures as may be agreed upon between the Railroads and the Department respecting any utilities located upon Railroads' properties. It is understood and agreed that the owner of any utility in, on or above Railroads' properties retains the right to move, repair, recondition or relocate the same. If, during progress of the work, Contractor shall discover any utility not specifically mentioned and provided for elsewhere in the documents constituting this contract, which utility has to be moved, repaired, reconditioned or relocated because of the construction of this project, Contractor shall give immediate notice thereof to Chief Engineer or Assistant Chief Engineer, as the case may be, and Department will furnish directions respecting the same; but, unless otherwise agreed upon between Department and the Railroads, and directed by Department, Contractor shall make only such temporary or emergency repairs as may be required to protect and safeguard the utility and the properties of Railroads as are necessary prior to commencement of work thereon by the owner of the utility or the Railroads. Whenever or wherever such operations are undertaken by the owners of the utility or the Railroads, the Contractor shall cooperate therewith to the extent that ample protection of their work will be provided to the end that the entire improvement contemplated by this agreement may be expedited to the best interests of all concerned. The terms "utility" and "utilities" as used

herein include all properties and facilities of any person, firm or corporation constituting any part of the utility system, including, but not limited to, pipe lines, tube lines, water and gas mains, electrical conduits, sewer pipes, overhead wiring, and supporting structures and appurtenances.

G. Protective Services and Devices - Notice. Contractor shall bear and pay all costs of protecting Railroads' property and traffic made necessary or occasioned by Contractor's operations under this contract. The Railroads will furnish at the sole cost and expense of Contractor, such switch tenders, flagmen, telegraph and telephone operators, watchmen and other protective services and devices, as, in the judgment of the Railroads, are required to insure the safety and continuity of any rail traffic during Contractor's operations on or about the respective Railroad's property. Railroad personnel while assigned to such protective services at the project shall be and remain the sole employees of Contractor. All flagging and protective services shall be performed strictly in accordance with the directives and instructions issued by the Railroad concerned.

Contractor shall confer with the Chief Engineer of the MoPac, or the Rio Grand Grande, or the Santa Fe, or with the Assistant Chief Engineer of the C & S, as the case may be, prior to commencing any operations on the respective Railroad's property with respect to the protective service and devices which will be required by the respective Railroad, and Contractor agrees to use said Railroads' right-of-way and property and to cross Railroads' tracks, in performing its said contract with said Department of Highways, only in the manner, and at such times and locations, and under such protective measures as are designated by such Chief Engineer or Assistant Chief Engineer, as the case may be.

Contractor shall notify the respective Chief Engineer of the MoPac, Rio Grande or the Santa Fe, or the Assistant Chief Engineer of the C & S, as the case may be, at least seventy-two (72) hours in advance of commencing any operations on Railroads' property which require protective services or devices.

H. Delay to trains. Contractor shall be responsible to Railroads, and each of them, and its or their tenants for all damages for delays which may be sustained by Railroads or its or their tenants, its or their employees, passengers or freight in its or their care, caused by any interference which could have been avoided by proper handling of said work.

I. Reimbursement to Railroads by Contractor. Contractor shall reimburse Railroads, and each of them, for the cost of all services and materials supplied to and work performed for Contractor, and for premiums advanced by Railroads, and each of them, for the insurance herein specified, within thirty (30) days after receipt of bills therefor. Cost of labor furnished to Contractor by Railroads, or either of them, including protective services, will be charged in accordance with the respective working agreements between the Railroad doing the work and its employees. Reimbursement costs shall include, but shall not be limited to, actual cost of wages paid, plus 10 per cent for supervision, accounting and the use of small tools, plus unemployment and retirement taxes, other similar payroll taxes, vacation and holiday allowances, and other customary charges incident thereto, rental of equipment at current rental rates of the Railroad doing the work, as well as cost of any materials and supplies, f.o.b. rails, of Railroad doing the work, plus 15 per cent to cover transportation and handling, plus any excise taxes on such materials and supplies.

J. Indemnity. Contractor hereby assumes and agrees to protect, indemnify, save harmless and defend each of the Railroads and its tenants, and its and their respective successors and assigns, and its and their officers, agents and employees, from all liability for any and all personal injuries or death which may be sustained by Contractor, Subcontractors, and the officers, agents and employees

of either, while on or about the premises of Railroads in connection with the performance of the work contemplated by this contract, and from all liability for loss, destruction or damage to property of or in the possession of Contractor, Subcontractors, or officers, agents and employees of either, while on or about the premises of Railroads for such purposes.

Contractor hereby further assumes and agrees to protect, indemnify, save harmless and defend each of the Railroads and its tenants, and its and their respective successors and assigns, and its and their officers, agents and employees, from and against any and all liability, claims, suits, damages, losses or expenses whatsoever, on account of injury to or death of persons, including the officers, agents and employees of each of the Railroads and its or their tenants or any property in its or their care, custody and control, which said injury, death, damage, destruction or loss shall arise, in whole or in part, proximately or remotely, out of or be connected with the work contemplated by this contract, or which shall occur or be occasioned, in whole or in part, proximately or remotely, by reason of the presence of Contractor, Subcontractors, its or their officers, agents, employees, equipment or property on or about the Railroads' premises.

K. Insurance. Contractor, at the sole cost and expense of Contractor, shall procure, in a company or companies acceptable to the Railroads, and containing provisions acceptable to each of the Railroads, the following insurance protection covering all of Contractor's operations on the property of the Railroads:

(1) Workmen's Compensation Insurance in statutory limits.

(2) Contractors Comprehensive General Liability Insurance in minimum limits of $200,000.00 for injury to or death of any one person, of $1,000,000.00 for injury to or death of more than one person in any one accident, and of $500,000.00 for damage to property in any one accident.

(3) Railroad Protective Liability Insurance, naming Missouri Pacific Railroad Company; The Denver and Rio Grande Western Railroad Company; The Atchison, Topeka and Santa Fe Railway Company, and Colorado and Southern Railway Company as insureds, and providing minimum coverages set forth in Exhibit E, labeled "RAILROAD PROTECTIVE INSURANCE ENDORSEMENT - PUBLIC LIABILITY AND PROPERTY DAMAGE", attached.

All of the aforesaid insurance shall be made subject to cancellation only upon not less than thirty (30) days written notice delivered to the Railroads individually. Contractor shall cause Certificates of Insurance, in quintuplicate, covering the insurance specified in (1) and (2) above and quadruplicate originals of the policies of insurance specified in (3) above, to be delivered to the Department for delivery to the Railroads. Contractor shall not enter upon or perform any work upon the property of Railroads until the specified insurance certificates and policies have been delivered to and accepted by the Railroads. The insurance hereinabove specified shall be carried until all work required to be performed under the terms of this contract is satisfactorily completed as evidenced by the formal acceptance by the MoPac, the Rio Grande, the Santa Fe and the C & S and by the Department. In the event Contractor shall fail to keep in effect the insurance hereinabove specified, Railroads, at the sole cost and expense of Contractor, are authorized, but shall not be required to obtain and keep in effect such insurance.

L. Railroads Right to Stop Work. If Contractor shall fail to keep and perform any of the obligations imposed by this Contract and License or by the contract between Department and Contractor, with respect to work performed upon or about Railroads' properties, or if Contractor shall conduct operations in any manner deemed hazardous by the Railroads, to the safe and expeditious operation of

Railroads' trains, engines, cars and equipment, the MoPac, the Rio Grande, the Santa Fe and/or the C & S shall have the right to stop Contractor's operations on their or its properties until the acts or omissions of Contractor have been fully rectified, and no such work stoppage shall create or impose any liability upon the Railroads or on the Department or relieve the Contractor of any obligations imposed by this Contract and License.

3. SUBCONTRACTORS. All of the limitations and obligations imposed upon Contractor and all rights reserved to Railroads by this Contract and License shall apply with equal force and effect to any Subcontractor performing all or any part of the work contemplated hereunder upon Railroads' properties. Contractor shall be and remain primarily liable and responsible to Railroads for all acts or omissions of any Subcontractor employed upon or about Railroads' properties. Nothing herein contained shall be construed so as to preclude Railroads from proceeding against Contractor and Subcontractors individually or collectively. Any Subcontractor whose operations are not covered by the insurance provided for hereinabove will not be permitted to work upon Railroads' properties.

4. ASSIGNMENT. This Contract and License shall not be assigned by Contractor to any person, firm or corporation without the express written consent of Railroads, first had and obtained.

4. SUCCESSORS. Except as limited by the foregoing Section 4, this agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, personal representatives and successors and assigns.

EXHIBIT D

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year hereinabove written.

ATTEST:

MISSOURI PACIFIC RAILROAD COMPANY

_____

By _____

WITNESS:

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

_____

By _____

ATTEST:

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

_____

By _____

ATTEST:

THE COLORADO AND SOUTHERN RAILWAY COMPANY

_____

By _____

ATTEST:

_____

_____
Contractor

EXHIBIT E

RAILROAD PROTECTIVE INSURANCE ENDORSEMENT

PUBLIC LIABILITY AND PROPERTY DAMAGE

In consideration of the premium charged for the policy of insurance to which this endorsement is attached, it is further understood and agreed as follows:

1. That MISSOURI PACIFIC RAILROAD COMPANY; THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY; THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; and COLORADO AND SOUTHERN RAILWAY COMPANY are hereinafter referred to as the "Insured".

2. That the Insurance Company hereby agrees to pay to and on behalf of the Insured and indemnify the Insured against:

(A) All loss from and liability for damages for bodily injuries (including death at any time resulting therefrom, and including care and loss of service) suffered or alleged to have been suffered by any person or persons (including, but not limited to, passengers and employees of the Insured), caused by, resulting from or in any manner connected with the prosecution of the work hereinafter described; and

(B) All loss from and liability for damage to or loss or destruction of property and loss of use thereof (including, but not limited to property owned, leased, occupied or used by, or in the care, custody and control of the Insured or any employees of the Insured), caused by, resulting from or in any manner connected with the prosecution of the work hereinafter described.

3. The Insurance Company hereby agrees:

(A) To defend in the name of and on behalf of the Insured any suit or action brought against the Insured seeking damages on account of any such bodily injury or death, or property damage, loss or destruction, even if such suit or action is groundless, false or fraudulent; provided, however, that the defense of

any suit or action (or the prosecution of any subrogation rights) within the scope of the coverage of this policy, shall be handled in cooperation with the Insured if the latter so chooses.

(B) To pay, irrespective of the limits of liability stated in this endorsement, all costs, all premiums on attachment and appeal bonds taxed against the Insured or required in any such proceedings, all expenses incurred by the Insured, and all interest accruing after entry of judgment against such part thereof as shall not be in excess of the limits of the Insurance Company's liability until the Insurance Company has paid, tendered or deposited in court the amount of such judgment or such part thereof as does not exceed the limits of the Insurance Company's liability as expressed in this endorsement.

4. Description of the work: The Insurance Company hereby agrees that the work herein referred to shall mean all work and operations of the contractor hereinafter named and its subcontractors, agents and employees, under or in connection with Contract dated _____, between the Department of Highways of the State of Colorado and _____

_____
(Name of Contractor)

and any amendments thereof and supplements thereto, for the performance of the following work: Highway Overpasses at Missouri Pacific Railroad Company Survey Station 65+60.5 (Eastbound Main Line); The Rio Grande Western Railroad Company Survey Stations 242+36.7 (Westbound Main Line) and 242+43.0 (Eastbound Main Line); The Atchison, Topeka and Santa Fe Railway Company at Milepost 618+48 feet (Union Depot lead) and at Milepost 618+207.5 ft.(Freight House lead); and The Colorado and Southern Railway Company opposite Santa Fe Milepost 618+207.5 ft.(Freight House lead), all situate in Pueblo County, State of Colorado.

5. The Insurance Company hereby agrees that all exclusions in the policy of insurance to which this endorsement is attached are hereby deleted, but it is understood and agreed that this endorsement does not cover any liability or loss as a result of bodily injury or death, or property damage or destruction:

(A) Caused solely by the negligence of the Insured, its agents or employees.

(B) Suffered by any person or persons, or occasioned to any property, on account of whose injury or death or the damage or destruction of which the Insured shall have by agreement or otherwise voluntarily assumed or retained liability which, without such agreement, would not attach; provided, however, this endcrsement shall cover any such liability of the Insured arising from or as a part of any contract for the carriage of persons or property as a common carrier, and any such liability as a bailee or otherwise of property, including rolling stock and equipment.

6. It is further understood and agreed that when employees of the Insured are loaned or assigned to the contractor or his subcontractor, to perform work in connection with his operations covered by this endorsement, then for the purpose of this insurance such employees shall be regarded as employees of the contractor.

7. The limits of the Insurance Company's liability under this endorsement to each of the Insured are as follows:

	Each Person	Each Occurrence or Accident	Aggregate
Bodily injuries and death coverage:	$200,000	$1,000,000	Not Applicable
Property damage coverage:	Not Applicable	$ 500,000	$ 500,000

EXHIBIT E

8. Anything in the policy to which this endorsement is attached to the contrary notwithstanding, coverage provided under this policy is exclusive of any carried by the Insured, and coverages provided under this policy shall be exhausted first, notwithstanding the fact that the Insured may have other valid and collectible insurance covering the same risk.

9. Anything in the policy to which this endorsement is attached to the contrary notwithstanding, the policy shall not be cancelled, altered, amended or coverage reduced, without the giving of not less than thirty (30) days written notice by the Insurance Company to the Insurance Departments of each of the Insured.

10. Any of the provisions of the policy to which this endorsement is attached, inconsistent with this endorsement are hereby amended to conform with this endorsement; but, except as hereby modified and supplemented, the provisions of this policy shall be and remain in full force and effect.

This endorsement is to be attached to and forms a part of Policy No._____

_____issued to _____

and shall become effective on the _____day of _____, 195__,

at the hour designated in said policy.

IN WITNESS WHEREOF, the _____

Insurance Company has caused this Endorsement to be signed by its President; but the same shall not be binding upon the Company unless countersigned by its authorized agent.

Countersigned at_____

By:

_____ _____

Authorized Agent President

FILE Agreements

AGREEMENT CANCELLING C&S CONTRACT NO. 4938 AND D&RGW CONTRACT NO. 19247

THIS AGREEMENT, Made this 13th day of January, 1958, by and between THE COLORADO AND SOUTHERN RAILWAY COMPANY, THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, and the DEPARTMENT OF HIGHWAYS, of the STATE OF COLORADO.

W I T N E S S E T H:

It is hereby mutually agreed by and between the parties hereto that the certain agreement in writing dated January 26, 1949, between The Colorado and Southern Railway Company, The Denver and Rio Grande Western Railroad Company, and State of Colorado acting through the Colorado State Highway Department, and the certain agreement in writing dated May 5, 1949 between the same parties amending said agreement dated January 26, 1949, granting the State permission and license to connect with a certain pipe line known as the Cedarwood pipe line and take therefrom water for domestic use under certain definite conditions shall be and are hereby cancelled and set aside, effective the day on which the purchasers under a contract of sale between The Colorado and Southern Railway Company and The Denver and Rio Grande Western Railroad Company, as sellers, take possession of the pipe line referred to in said agreement of January 26, 1949 and amended as of May 5, 1949, provided, however, that such termination shall not affect any of the rights or obligations of the parties to said contracts which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior to said cancellation.

Attest:

Secretary

THE COLORADO AND SOUTHERN RAILWAY COMPANY

By

Its Vice President

Attest:

Secretary

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

By

President

Attest:

Chief Clerk

DEPARTMENT OF HIGHWAYS of the STATE OF COLORADO

By

Chief Engineer

Approved:

General Attorney-C&S

Approved:

Attorney-D&RGW

Approved:

Asst. Chief Engineer-C&S