

0637V

IR 25-2(191)--6TH AVE.,
RAMPS E, H & I (BN)
PE, UTILITIES AND RAILROAD
WORK CHARGEABLE TO PROJECT
IR 25-2(174), SUBACCOUNT 83312

AP87-246

CONTRACT

THIS CONTRACT, made this 4th day of February, 1987, by and between the State of Colorado for the use and benefit of THE STATE DEPARTMENT OF HIGHWAYS, DIVISION OF HIGHWAYS, hereinafter referred to as the State, and THE BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware Corporation, hereinafter referred to as the Burlington Northern,

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number 2001, G/L Account Number 52046, Contract Encumbrance Number 86037; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, the State has the authority, as provided in Section 43-1-106, C.R.S., as amended, to enter into contracts, including contracts with railroads for safeguarding life and property by separation of grades; and

WHEREAS, under authority of the laws and statutes of the United States and of the State of Colorado, funds have been made available to accomplish phase two of a multi-phased project to modify the 6th Avenue/I 25 interchange within the City and County of Denver, Colorado; and

WHEREAS, said phase two provides for, among other things, a grade separation structure as part of a new access ramp (Ramp H) connecting westbound 6th Avenue to Interstate Highway 25; and

WHEREAS, Ramp H overpasses the Burlington Northern's property and tracks via Structure No. F-16-OK in the vicinity of railroad milepost 2.14 (Sheridan Branch), more or less; and

WHEREAS, the State has prepared construction plans and specifications for State's project IR 25-2(191) and that portion of said plans involving the Burlington Northern has been examined and approved by Burlington Northern; and

WHEREAS, it is desirable, for the benefit, convenience and safety of the public using the state highway system and for the parties hereto, that the improvements provided for herein be accomplished; and

WHEREAS, the State and/or its contractor(s) shall perform certain project work in and upon Burlington Northern's properties in conjunction with said improvements; and

WHEREAS, Burlington Northern is willing to accomplish certain railroad work in conjunction with said improvements as hereinafter set forth, provided the costs thereof are assumed by the State; and

WHEREAS, Burlington Northern is adequately staffed and suitably equipped to undertake and satisfactorily complete the railroad work necessary to accomplish the proposed improvements, and can more advantageously perform the railroad work than the State.

NOW, THEREFORE, it is hereby agreed that:

ARTICLE I
GENERAL PROVISIONS

SECTION A. DEFINITIONS

FHWA = U.S. Department of Transportation,
Federal Highway Administration.

FHPM 6-6-2-2 = Federal Highway Program Manual
Volume 6, Chapter 6, Section 2,
Subsection 2.

The term "railroad work" (work done by Burlington Northern Forces) shall include furnishing all materials and doing all work necessary to:

Make any temporary and/or permanent changes in Burlington Northern's facilities such as, but not limited to, communication line adjustments that may be required to complete this construction project.

The term "project work" shall include any work performed by the State or its contractor(s) under this construction project No. IR 25-2(191).

SECTION B. EXHIBITS

The Exhibits listed below are hereto attached and made a part of this Contract:

Civil Rights Exhibit.

Insurance Exhibit.

Exhibit "A" Alignment, Grade and General Layout of viaduct structure.

Exhibit "B" Burlington Northern's Force Account and Materials Estimates.

SECTION C. REFERENCE DOCUMENTS

The following are made a part of this Contract by reference the same as if attached hereto, including any supplements or amendments thereto effective prior to date of this Contract:

FHPM 1-4-3	Dated	April 25, 1975
FHPM 6-6-2-1	Dated	April 24, 1984
FHPM 6-6-2-2	Dated	October 25, 1974

ARTICLE II

COMMITMENTS ON THE PART OF BURLINGTON NORTHERN

SECTION A. RIGHT OF WAY

1. Property Rights. By separate document (Right of Way Agreement) made a part hereof by reference, the Burlington Northern conveys to the State the property rights necessary to construct, use, repair and maintain the aforesaid grade separation structure No. F-16-OK carrying 6th Ave./I 25 interchange traffic over and across the right of way of the Burlington Northern within the City and County of Denver. The consideration to be paid by the State for the required property rights is contained in said separate document. This contract shall become effective only after such consideration has been negotiated and accepted by the parties hereto.

SECTION B. CHANGES IN BURLINGTON NORTHERN FACILITIES

1. **Temporary and Permanent.** Burlington Northern agrees, at the expense of the State, to make any and all necessary temporary and/or permanent changes and modifications in its facilities that may be required to allow the satisfactory completion of the State's construction project No. IR 25-2(191). Burlington Northern shall have no obligation with respect to removing, relocating or reinstalling the facilities of its lessees or licensees, required to be removed, relocated or reinstalled incident to viaduct construction and use. The State will make all arrangements with the lessees and/or licensees, which arrangements shall be subject to the approval of Burlington Northern.

2. **Force Account and Material Estimates of Cost.** Prior to execution of this Contract, Burlington Northern shall submit to the State an estimate of the cost of the railroad work to be performed by Burlington Northern forces on a force account basis and an estimate of the cost of materials required for completion of this work. Such preliminary estimates of required materials and costs of any work done by Burlington Northern shall be determined and billed to the State in accordance with FHPM 1-4-3. Labor charges for any services or work performed by Burlington Northern personnel for the convenience of the State or the State's Contractor(s) shall be in accordance with the then current working agreements between Burlington Northern and its employees.

3. **Changes and Extra Work.** No change shall be made in the railroad work which will increase the cost of the project or alter the character or scope of the work without prior authorization of the State and FHWA. Major changes and extra work must be approved in writing in advance; minor changes and extra work must also be approved in writing but such approval may be given retroactively at the discretion of the State and FHWA.

SECTION C. GRADE SEPARATION

1. **Plans and Specifications.** Detailed construction plans and specifications for said project IR 25-2(191), have been prepared by the State at its expense. All project work performed on Burlington Northern property pursuant to this contract shall be done strictly in accord with said plans and specifications as heretofore or hereafter approved by State, FHWA and Burlington Northern. Notwithstanding any consents or approvals given by Burlington Northern, Burlington Northern shall not be liable or responsible in any manner for the structural design, details or construction of the viaduct structures and approaches.

2. **Maintenance.** Burlington Northern shall retain full responsibility for care and maintenance of its roadbed, tracks and appurtenances underneath the viaduct and ramp structures herein contemplated.

SECTION D. BURLINGTON NORTHERN'S RELATIONS WITH STATE'S CONTRACTOR

1. **Insurance - Notice to State.** Burlington Northern agrees to notify the State, following delivery of the certificates and policies of insurance specified in the Insurance Exhibit to Burlington Northern whether said insurance has been accepted or rejected. Burlington Northern further agrees to notify the State promptly upon receipt of advice that any of the insurance specified has been or may be canceled during progress of the work.

2. **Methods and Procedures - Notice to State.** Burlington Northern agrees to advise the State whether or not the proposed methods and procedures of the State's Contractor for performing the project work on Burlington Northern property, as provided for in Article III, Section B, are satisfactory, within twenty calendar days after submission thereof by State's Contractor, or the State, to Burlington Northern.

3. State's Construction Contract Requirements. In conformity with the requirements of FHPM 6-6-2-1 and 1-4-3, Burlington Northern agrees to furnish the State the detailed information set forth in Article III, Section A, paragraph 6 hereinafter, which data shall be included in the State's construction contract provisions for the project.

4. Burlington Northern's Right to Stop Work. If the State's Contractor employed upon Burlington Northern property, pursuant to this contract, shall prosecute the project work thereon contrary to State's Plans and Specifications; or if such Contractor shall prosecute said work on Burlington Northern property in a manner deemed hazardous by Burlington Northern to its property and facilities or the safe and expeditious movement of its traffic, or if the insurance prescribed in the Insurance Exhibit hereof, shall be canceled during progress of said work, Burlington Northern shall have the right to stop said work on Burlington Northern property until the acts or omissions of such Contractor have been fully rectified to the satisfaction of Burlington Northern or additional insurance has been delivered to and accepted by Burlington Northern. Such work stoppage shall not give rise to nor impose upon Burlington Northern any liability to the State or its Contractor. In the event Burlington Northern shall stop the project work upon its property, Burlington Northern agrees to give immediate notice thereof, in writing, to the Chief Engineer, Division of Highways, 4201 East Arkansas Avenue, Denver, Colorado 80222.

5. Burlington Northern's Billing to State's Contractor. Burlington Northern agrees that for all eligible charges for which the State's Contractor shall be required to make reimbursement, for any railroad work performed by Burlington Northern personnel for the convenience of the State's Contractor, including flagging and/or protective services, Burlington Northern will present its final bill for such charges to the State's Contractor within 120 calendar days after completion and acceptance of that portion of said work on or within Burlington Northern properties to which this contract applies.

SECTION E. CIVIL RIGHTS

Burlington Northern, in its prosecution of the railroad work herein prescribed, will adhere to the requirements of the Civil Rights Exhibit and will include the provisions of said Civil Rights Exhibit in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instructions issued pursuant thereto. For the purpose of interpretation of said Civil Rights Exhibit, Burlington Northern shall be known as the Contractor.

ARTICLE III

COMMITMENTS ON THE PART OF THE STATE

SECTION A. STATE ACTIVITIES

1. Advertisement for Bids - Contract. State will advertise the invitation for Bids and enter into a construction contract with the lowest responsible bidder for the project work on and adjacent to Burlington Northern properties described in the aforementioned right of way agreement in accord with the terms of this contract. Those portions of State's construction plans and specifications, marked IR 25-2(191) which relate directly to the project work on and adjacent to Burlington Northern properties are hereby made a part hereof by reference. Prior to the award of a construction contract by the State said plans will have been approved by State, Burlington Northern and the FHWA.

2. Construction by the State. State shall perform or cause to be performed, in manner acceptable to Burlington Northern all project work on Burlington Northern property in accordance with said approved plans and specifications.

3. Supervision by the State. State shall maintain supervision and control over the operations of its Contractor while performing project work upon or adjacent to the property of Burlington Northern.

4. Plans and Specifications. Detailed construction plans and specifications for State's Project IR 25-2(191) shall be furnished to Burlington Northern by the State at State's expense. Work upon Burlington Northern property not contemplated by said plans and specifications, shall be done or performed only by and with the prior written consent of Burlington Northern.

5. Utilities. The State will require its Contractor to take such measures as may be agreed upon between the Burlington Northern and the State respecting any utilities located upon Burlington Northern right of way as hereinafter provided. It is understood and agreed that the owner of any utility in, on or above Burlington Northern right of way retains the right to move, repair, recondition or relocate the same. The State shall require that, if during progress of the project work the State's Contractor shall discover any utility not specifically mentioned and provided for elsewhere in the documents constituting the State's construction contract with its Contractor which utility has to be moved, repaired, reconditioned or relocated because of the construction of this project, the State's Contractor shall initiate immediate notice thereof to the State and Burlington Northern, and the State will furnish directions respecting the same; but, unless otherwise agreed upon between the State and Burlington Northern the State will authorize its Contractor to make only such temporary or emergency repairs as may be required to protect and safeguard the utility and the property of Burlington Northern prior to commencement of work thereon by the owner of the utility or the Burlington Northern. Whenever or wherever such operations are undertaken by the owners of the utility or the Burlington Northern, the State will require its Contractor to cooperate to the extent that ample protection of such work will be provided, to the end that the entire project contemplated by this contract 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.

6. Protective Service Costs (Specifications for Construction). In consideration of the requirements of FHPM 6-6-2-1 and 1-4-3 the State agrees that any construction contract awarded to a Contractor as herein provided will include in the specifications for construction the following general information:

- (1) The pertinent provisions of this contract relating to flagging and/or protective services Burlington Northern will require during periods of conflicts between performance of the project work and operation of the railroad.
- (2) A list of the numbers and the classifications of Burlington Northern employees that may be furnished by said Burlington Northern during progress of the project work, and the applicable rates of pay of such employees and other charges that are to be an obligation of the State's Contractor for direct reimbursement to Burlington Northern.
- (3) The times and manner in which Burlington Northern will submit its billing to the State's Contractor.

7. Advance Warning Protection. The State will require its Contractor to furnish, maintain and install any advance warning signs or barricade protection which may be required for the duration of their need.

SECTION B. STATE'S CONSTRUCTION CONTRACTOR ACTIVITIES

1. Operations of State's Contractor. In consideration of the premises and of the property rights conveyed to the State in the above referenced right of way agreement, State hereby agrees to require its Contractor to keep and perform the following covenants, conditions and stipulations:

- (a) Notice. The State will require its Contractor to notify Burlington Northern at least 72 hours in advance of commencing any operations which require protective services and 48 hours in advance of discontinuance of such protective services.
- (b) Methods and Procedures of State's Contractor. Unless methods and procedures are provided for in the State's construction plans and specifications as approved by the parties hereto, the State's Contractor and Burlington Northern shall agree, in advance of the State's Contractor performing the project work, upon methods and procedures covering all construction on Burlington Northern property, and, when required by Burlington Northern, State's Contractor shall submit such proposals in writing. State's Contractor shall at all times keep all pits or openings near or under tracks covered, except during the time required for actual operations in making such pits or openings and performing project work therein. The provisions of this paragraph shall not be construed as relieving State's Contractor of or subjecting Burlington Northern or State to any responsibility or liability for said Contractor's operations, methods and procedures.

2. Contractor's Insurance. The State shall procure from its Contractor the certificates and policies of insurance described in the Insurance Exhibit and shall deliver the same directly to the Burlington Northern. The maximum limits of liability to Burlington Northern, as the insured, shall be for a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence with an aggregate limit of Six Million Dollars (\$6,000,000) applying separately to each annual period for:

- (a) All damages arising out of bodily injuries to or death of one or more persons.
- (b) All damages arising out of injury to or destruction of property.

The State's Contractor, or his subcontractors, shall not be authorized to enter upon or perform any project work on Burlington Northern properties unless or until the aforesaid insurance shall have been accepted by Burlington Northern. All such insurance shall be kept in full force and effect during all times the State's Contractor is performing any such work on or adjacent to Burlington Northern property.

3. Clearances. The State will require its Contractor to refrain from placing or allowing to remain any scaffold, material, equipment or any other temporary obstruction closer than 8-1/2 feet from the centerline of any track and 22-1/2 feet vertically above top of rail. For all fixed obstructions, the State will require its Contractor to maintain vertical and horizontal clearances of not less than that shown on Exhibit A. These clearances equal or exceed those specified by Colorado Public Utilities Commission Clearance Regulations of June 1, 1952 and any supplements or amendments thereto dated prior to date of this contract.

4. Crossing and Roadways. The State shall require of its Contractor that new crossings at grade of Burlington Northern tracks or roadways or unloading pits on Burlington Northern right of way shall not be established or used by State's Contractor except by

separate agreement between State's Contractor and Burlington Northern at such places, and under such flag protection or protective devices as shall be approved or designated by Burlington Northern. Burlington Northern may perform all or any part of the work incident to establishing any such crossing at grade or roadways or of removing the same and restoring its tracks and roadbed, or Burlington Northern may require the State's Contractor to perform all or any portion of such work. State will require its Contractor to maintain any such crossing so established in first-class condition at all times and to keep flangeways free of ice, snow, dirt, rock and debris and to install, operate, maintain and remove in manner satisfactory to Burlington Northern suitable barricades adequate to prevent unauthorized vehicles or equipment from using 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 Burlington Northern or by State's Contractor, shall be borne and paid by State's Contractor as part of the State's construction contract. Notwithstanding anything elsewhere contained in this contract, it is understood and agreed that State will require its Contractor to agree that he will not at any time cross Burlington Northern tracks with vehicles or equipment of any kind or character, except at existing public crossings or at crossings established as provided for in this paragraph.

5. Delay to Trains. State shall require its Contractor to be responsible to Burlington Northern and its tenants for all damages for delays which may be sustained by Burlington Northern or its 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 the project work.

6. Reimbursement of Burlington Northern by State's Contractor. The State will require its Contractor to reimburse Burlington Northern for the cost of all services, including flagging and/or protective services, and materials supplied to and railroad work performed for the State's Contractor, and for any insurance premium payments advanced by Burlington Northern for the insurance coverages herein provided, within thirty calendar days after Burlington Northern has formally billed said Contractor.

7. Subcontractors. All of the limitations and obligations imposed upon the State's construction Contractor by the State and all rights reserved to Burlington Northern by this contract shall apply with equal force and effect to any Subcontractor(s) performing any project work for the State's Contractor upon the rights of way of Burlington Northern. The State will provide that its Contractor shall be primarily liable and responsible to Burlington Northern for all acts or omissions of any Subcontractor employed upon the right of way of Burlington Northern. Nothing herein contained shall be construed to preclude the Burlington Northern from proceeding against the State's Contractor and Subcontractors individually or collectively. Only those Subcontractors whose operations are covered by the insurance provisions of Article III, Section B.2. hereof will be authorized to work upon or adjacent to, the right of way of Burlington Northern.

SECTION C. STATE OBLIGATIONS

1. Acceptance of Burlington Northern Estimate. The estimated cost of the railroad work to be performed by Burlington Northern under this contract is shown on Exhibit B. Subject Estimate has been examined by the State and judged to be satisfactory as a basis for reimbursing Burlington Northern, it being understood and agreed that total reimbursement shall be made on the basis of actual costs in accord with FHPM 1-4-3 aforesaid.

2. Reimbursement of Burlington Northern by the State. The State agrees to reimburse Burlington Northern for all railroad work and services performed by Burlington Northern forces for the State's

convenience, including the cost of preliminary engineering. Progress billings of incurred costs are acceptable in minimum amounts of \$500 for each billing. The Burlington Northern shall present its final bill to the State for said railroad work within 120 calendar days of completing such work. Burlington Northern's billing for incurred costs of any such work by Burlington Northern forces shall be audited by the State for compliance with FHPM 1-4-3. Labor costs for any services or work performed directly on the project by Burlington Northern personnel for the convenience of the State shall be in accord with the then current working agreements between the Burlington Northern and its employees, when supported by adequate records.

3. Maintenance. Upon completion of construction of said grade separation structure (including superstructure, substructure, piers, abutments and walls, approaches and backfill, grading and drainage required by reason of said grade separation structure), the State shall and will, at its sole cost and expense, including protective services required by Burlington Northern, maintain all of the same in first-class condition and repair and renew the same whenever necessary. At least 48 hours advance notice to Burlington Northern's Division Superintendent will be given by State prior to beginning such maintenance operations. These maintenance requirements do not impose upon the State any responsibility for care or maintenance of pre-existing drainage not affected by the construction herein described, nor for care or maintenance of Burlington Northern's roadbed, tracks and appurtenances.

4. Abandonment. If at any future time the aforesaid grade separation structure, roadway and approaches shall be abandoned, or shall cease to be used as a public highway, the State agrees; at no cost to Burlington Northern, to restore Burlington Northern property to the property's original conditions, as nearly as possible.

ARTICLE IV

ADDITIONAL PROVISIONS

SECTION A. FEDERAL AID PROJECT

It is understood that the project herein contemplated shall be financed in part from funds made available by the Federal Government and expended under Federal regulations; that all plans, cost estimates, specifications, authorizations, contract awards, acceptances of work and procedures in general are subject at all times to all Federal laws, rules, regulations, orders and approvals applying to Federal projects.

SECTION B. NO BENEFITS TO BURLINGTON NORTHERN

Pursuant to 23 U.S.C. 130(b) and 49 C.F.R. 1.48, and in accordance with Paragraph 6b(2) of FHPM 6-6-2-1, it is determined that the improvements herein provided will not result in ascertainable benefits to Burlington Northern and consequently liability for the cost thereof shall not be assigned to Burlington Northern.

SECTION C. CANCELLATION

In the event delays or difficulties arise in securing necessary Federal approvals, or in acquiring necessary right of way, or in settling damages or damage claims, or for any other reason, which, in the opinion of the State render it impracticable to utilize Federal funds from the current appropriation for the construction of the project, then at any time before actual construction is started pursuant to proper Federal approval or authority, the State may serve formal notice of cancellation upon Burlington Northern and this contract shall thereupon become null and void. In the event of any such cancellation the State shall reimburse Burlington Northern for all related preliminary engineering costs incurred by Burlington Northern prior to the effective cancellation date.

SECTION D. APPLICATION TO PUBLIC UTILITIES COMMISSION

The State shall make application to the Public Utilities Commission for its approval of the construction of aforesaid grade separation structure, and for approval of the continuing maintenance provisions herein agreed to by the parties. The parties hereto shall cooperate in presenting all matters involved to said Commission at the hearing on such application.

SECTION E. APPROVAL BY PUBLIC UTILITIES COMMISSION

The provisions of this contract, pertaining to the modifications required in Burlington Northern's facilities shall not become effective until approval thereof has been obtained from the Public Utilities Commission and an order issued.

SECTION F. COSTS REIMBURSABLE TO BURLINGTON NORTHERN

The estimated costs for the railroad work herein provided which are reimbursable to Burlington Northern by the State are shown on Exhibit B, which cost shall not be exceeded unless covered by a Supplemental Contract approved by the State and FHWA.

SECTION G. SUCCESSORS AND ASSIGNEES

All of the covenants and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

SECTION H. SPECIAL PROVISIONS

The Special Provisions attached hereto are hereby made a part of this contract. For the purpose of interpretation of said Special Provisions Burlington Northern shall be known as the contractor.

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

ATTEST:

STATE OF COLORADO
RICHARD D. LAMM, GOVERNOR



Chief Clerk

By *James E. Siebels*
for the Executive Director
DEPARTMENT OF HIGHWAYS

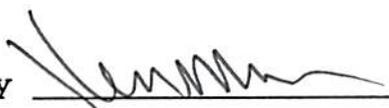
THE BURLINGTON NORTHERN
RAILROAD COMPANY

By *X D. E. Baker*

Title VICE PRESIDENT
DENVER REGION

APPROVED:
State Controller

DUANE WOODARD
Attorney General

By 

JAMES A. STROUP

By *William H. Bassett*

WILLIAM H. BASSETT
Assistant Attorney General
Natural Resources Section/
Highway Unit

SPECIAL PROVISIONS**CONTROLLER'S APPROVAL**

1. This contract shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado or such assistant as he may designate. This provision is applicable to any contract involving the payment of money by the State.

FUND AVAILABILITY

2. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

BOND REQUIREMENT

3. If this contract involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public works for this State, the contractor shall, before entering the performance of any such work included in this contract, duly execute and deliver to and file with the official whose signature appears below for the State, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety, conditioned for the due and faithful performance of the contract, and in addition, shall provide that if the contractor or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provendor or other supplies used or consumed by such contractor or his subcontractor in performance of the work contracted to be done, the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond, when so required, is executed, delivered and filed, no claim in favor of the contractor arising under this contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with 38-26-106 CRS, as amended.

INDEMNIFICATION

4. To the extent authorized by law, the contractor shall indemnify, save and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

DISCRIMINATION AND AFFIRMATIVE ACTION

5. The contractor agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (24-34-402. CRS 1982 Replacement Vol.), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975. *Pursuant thereto, the following provisions shall be contained in all State contracts or sub-contracts.*

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this non-discrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

(3) The contractor will send to each labor union or representative of workers with which he has collective bargaining agreement or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of the contractor's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and of the rules, regulations, and relevant Orders of the Governor.

(4) The contractor and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, and by the rules, regulations and Orders of the Governor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(5) A labor organization will not exclude any individual otherwise qualified from full membership rights in such labor organization, or expel any such individual from membership in such labor organization or discriminate against any of its members in the full enjoyment of work opportunity, because of race, creed, color, sex, national origin, or ancestry.

(6) A labor organization, or the employees or members thereof will not aid, abet, incite, compel or coerce the doing of any act defined in this contract to be discriminatory or obstruct or prevent any person from complying with the provisions of this contract or any order issued thereunder; or attempt, either directly or indirectly, to commit any act defined in this contract to be discriminatory.

(7) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further State contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975 and the rules, regulations, or orders promulgated in accordance therewith, and such other sanctions as may be imposed and remedies as may be invoked as provided in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, or by rules, regulations, or orders promulgated in accordance therewith, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraph (1) through (8) in every sub-contract and subcontractor purchase order unless exempted by rules, regulations, or orders issued pursuant to Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any sub-contracting or purchase order as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with the subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the State of Colorado to enter into such litigation to protect the interest of the State of Colorado.

COLORADO LABOR PREFERENCE

6 a.

b. When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a non-resident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the non-resident bidder is a resident. If it is determined by the officer responsible for awarding the bid that compliance with this subsection .06 may cause denial of federal funds which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this subsection shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with federal requirements (section 8-19-101 and 102, CRS).

GENERAL

7. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this contract. Any provision of this contract whether or not incorporated herein by reference which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

8. At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be established.

9. The signatories hereto aver that they are familiar with 18-8-301, et. seq., (Bribery and Corrupt Influences) and 18-8-401, et. seq., (Abuse of Public Office), CRS 1978 Replacement Vol., and that no violation of such provisions is present.

10. The signatories aver that to their knowledge, no state employee has a personal or beneficial interest whatsoever in the service or property described herein:

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day first above written.

Contractor
(Full Legal Name) _____

Position (Title) _____

Social Security Number or Federal I.D. Number _____

(If Corporation:)
Attest (Seal)
By _____
Corporate Secretary, or Equivalent, Town/City/County Clerk

STATE OF COLORADO
RICHARD D. LAMM, GOVERNOR

By _____
*5 EXECUTIVE DIRECTOR

DEPARTMENT OF _____

APPROVALS

ATTORNEY GENERAL
By _____

CONTROLLER
By _____

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964, and with Section 162(a) of the Federal Aid Highway Act of 1973, the railroad company, for itself, its assignees and successors in interest hereinafter referred to as the "Contractor," agrees as follows:

1. Compliance with Regulations. The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap, or national origin in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

4. Information and Reports. The Contractor will provide all information and reports required by the Regulations, orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate, and shall set forth what efforts have been made to obtain the information.

5. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to:

(a) Withholding of payments to the Contractor under the contract until the Contractor complies, and/or

(b) Cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The Contractor will include the provisions of Paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interests of the State and, in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

RAILROAD INSURANCE

The Contractor on this project will be required to carry insurance of the following kinds and amounts:

A. CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE LIABILITY INSURANCE.

The Contractor shall furnish evidence to the Division that with respect to the operations he performs, he carries Contractor's Public Liability Insurance providing for a limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total limit of Two Million Dollars (\$2,000,000.00) for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence; and Contractor's Property Damage Liability Insurance providing for a limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of injury to or destruction of property in any one occurrence and subject to that limit per occurrence, a total (or aggregate) limit of Two Million Dollars (\$2,000,000.00) for all damages arising out of injury to or destruction of property during the policy period.

If any part of the work affecting railroad property or facilities is sublet, similar insurance shall be provided by or in behalf of the Subcontractor(s) involved.

B. CONTRACTOR'S PROTECTIVE PUBLIC LIABILITY AND PROPERTY DAMAGE LIABILITY INSURANCE.

The Contractor shall furnish evidence to the Division that with respect to the operations performed for him by Subcontractors, he carries in his own behalf Contractor's Protective Public Liability Insurance providing for a limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person a total limit of Two Million Dollars (\$2,000,000.00) for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence; and Contractor's Protective Property Damage Liability Insurance providing for a limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of injury to or destruction of property in any one occurrence, and subject to that limit per occurrence, a total (or aggregate) limit of Two Million Dollars (\$2,000,000.00) for all damages arising out of injury to or destruction of property during the policy period.

-2-
RAILROAD INSURANCE

C. RAILROAD'S PROTECTIVE LIABILITY AND PROPERTY DAMAGE INSURANCE.

In addition to the above, the Contractor shall furnish evidence to the Division that, with respect to the operations he or any of his Subcontractors perform, he has provided for and in behalf of the Railroad Company, and each Railroad Company when more than one is involved, Railroad Protective Public Liability and Property Damage Insurance providing for a combined single limit of Two Million Dollars (\$2,000,000.00) per occurrence with an aggregate limit of Six Million Dollars (\$6,000,000.00) applying separately to each annual period for:

1. All damages arising out of bodily injuries to or death of one or more persons including, but not necessarily limited to, claims against the railroad by employees of the railroad under the Federal Employees Liability Act, 454 SC 351 et seq and claims against the railroad by employees of the Contractor.
2. All damages arising out of injury to or destruction of property.

D. GENERAL.

Said policy or policies of insurance shall be deemed to comply with the requirements of this Special Provision if each of said policies contains properly completed and executed "Railroad Protective Liability Form", reference copies of which are available from the Staff Construction Engineer of the Division of Highways, State of Colorado, 4201 East Arkansas Avenue, Denver, Colorado 80222.

Certificates of insurance required under A. and B. above, and policy or policies of Insurance required under C. above shall be furnished to the Division's Staff Construction Engineer for transmittal to the Railroad Company's Insurance Department.

The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by the formal acceptance of the Division. The Railroad Company shall be furnished with the original of each policy carried in its behalf.

Rev. May, 1985

STATE DEPARTMENT OF HIGHWAYS
DIVISION OF HIGHWAYS - STATE OF COLORADO

4201 EAST ARKANSAS AVENUE
DENVER, COLORADO 80222

STANDARD PROVISIONS FOR GENERAL LIABILITY POLICIES

RAILROAD PROTECTIVE LIABILITY FORM
(State or Federal Highway Projects)

Including Instructions for
Preparation of Policies by Companies

STANDARD PROVISIONS FOR GENERAL LIABILITY POLICIES

Railroad Protective Liability Form (State or Federal Highway Projects)

GENERAL INSTRUCTIONS

1. Standard Language

This form is expressed in standard language which may not be amended and no part of which may be omitted except (a) as indicated by these instructions, or (b) as indicated in reference notes referring to specific portions of the form, or (c) by an endorsement which states an amendment or exclusion of some provision of the form in accordance with the provisions of a manual rule, the form of which endorsement has been approved, if required, by the supervising authority of the state in which the policy is issued.

2. Optional Sequence and Arrangement

The several parts of the form, viz. "Insuring Agreements," "Exclusions," "Conditions" and "Declarations" may appear in the policy in such sequence as the company may elect and the sequence and arrangement of the several provisions of those parts are also optional with the company.

3. Descriptive Headings--Identifying or Indexing Designations

The descriptive headings of the parts of the form (as quoted above) and of the major insuring agreements ("Bodily Injury Liability," "Property Damage Liability," etc.) are standard expressions which may not be amended or omitted, but all other identifying or indexing designations (such as "Coverage A," "Defense, Settlement, Supplementary Payments," "Cancellation," etc.), including literal or numerical designations or paragraphs or phrases, may be amended or omitted at the company's option. When such identifying or indexing designations, used for the purpose of reference in the text of the form or any endorsement form applicable thereto, are amended or omitted, descriptive designations shall be substituted therefor.

4. Additional Coverages or Companies, Explanatory or Connective Language

When policies are issued to provide insurance in this form together with insurance covering other risks, the addition of necessary explanatory or connective language which does not amend the expression of this form is permissible and the introductory language of the "Insuring Agreements" which provides for the issuance of a policy by two companies may be used and, if necessary, paraphrased to permit such policies to be issued by more than two companies.

5. Declarations--Including Other Risks

A common set of declarations may be used in those cases where policies in this form are issued with policies covering other risks.

6. Installment Premium Payment

Policies written to provide for payment of premium in installments may provide for lapse or suspension of the policy upon default of payment when due.

7. Addition of Coverage by Endorsement

When insuring agreements and other provisions relating to any particular class of insurance are added to this policy by endorsement, such additional insurance must be expressed in approved standard language relating to the particular class and must be subject to all standard provisions applicable to that class by the expressions of the endorsement or of the policy or of both taken together.

8. Definition of "Standard" and "Approved"

"Standard language" or "approved standard language" when used in these instructions means the form and endorsements either prescribed or approved by the insurance supervising authority of the state in which policy forms and endorsements are approved or prescribed. In those states where supervising authorities do not have the authority to approve or prescribe policies, forms and endorsements, the terms mean the forms and endorsements adopted by the companies for use in such states.

9. Premium Statement

The statement with respect to payment of premium may be amended by an endorsement to make necessary provision with respect to payment of premium, payment of additional premium and return of premium and dividends under the policy.

10. Special Conditions for Mutuals, Reciprocal, and Participating Stock Companies

When the policy is issued by a mutual company, a reciprocal association or a participating stock company having special provisions applicable to its membership or policyholders, such provisions, when approved by the supervising authority of the state in which the policy is issued if such approval is required, may be inserted in the policy.

BLANK INDEMNITY COMPANY
BLANK INSURANCE COMPANY

NOTE:

Matter in brackets may be included, omitted or amended at the option of the company.

Railroad Protective Liability
Policy No. _____
(State or Federal Highway
Projects)

DECLARATIONS

Item 1. Named Insured _____
Address _____
(No. Street Town (or City) County State)

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. (A statement may be added that a definite notation may be made in the premium column to show that a particular coverage is not afforded).

SCHEDULE

Coverage	Limits of Liability
A-Bodily Injury Liability,	\$ _____ each occurrence
B-Property Damage Liability and	\$ _____ aggregate
C-Physical Damage to Property	

Item 4. Name and Address of Contractor: _____

Item 5. Name and Address of Governmental Authority for whom the work by the contractor is being performed _____

Item 6. Designation of the Job Site & Description of Work. _____

<u>PREMIUM BASES</u>	<u>RATES</u>	<u>ADVANCE PREMIUMS</u>
	<u>Coverage A</u> <u>Coverages B&C</u>	<u>Coverage A</u> <u>Coverages B&C</u>
Contract Cost	Per \$100 of Cost	
Rental Cost	Per \$100 of Rental Cost	

If Policy Period more than 1 year:
Premium is payable: On effective date of Policy
\$ 1st Anniversary
\$ 2nd Anniversary
Date and Place of Issue _____

Countersigned [_____ 19 ____, at _____]

By _____

- A. Renewal of policy number.
- B. The named insured is a corporation.
- C. Endorsement serial numbers.
- D. Rating plan or premium discount.

(For policy issued by one company)

NAME AND LOCATION OF INDEMNITY COMPANY

A (type of company) 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:

(For policy issued by two companies)

NAME AND LOCATION OF INDEMNITY COMPANY

and

NAME AND LOCATION OF INSURANCE COMPANY

Each a (type of company) insurance company, herein called the company,

severally agree 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, provided the Blank Indemnity Company shall be the insurer with respect to coverage _____ and no other and the Blank Insurance Company shall be the insurer with respect to coverage _____ and no other:

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 employee of the governmental authority specified in Item 5 of the DECLARATIONS, 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 railroad tracks, roadbeds, catenary, signals, bridges, buildings, 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 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 job site,
 - (2) any employee of the insured while operating, attached to or engaged on work trains or other railroad equipment at the job site which are assigned exclusively to the contractor, or
 - (3) any employee of the insured not within (1) or (2) who is specifically loaned or assigned to the work of the contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the contractor or by governmental authority.
- (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 claim 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 (I), 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, of 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 at 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) below;

"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;

with respect to injury to or destruction of property, the word "injury" or "destruction" 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 4, 6, 7, 8, 9, 10, 11 and 12 apply to all coverages. Conditions 4, 6, 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 the 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 DECLARATIONS 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.

If 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 - Coverages A, B and C

Regardless of the number of (1) insureds under this policy, (2) persons or organizations who sustain bodily injury, property damage or loss or (3) claims made or suits brought on account of bodily injury, property damage or loss, the company's liability is limited as follows:

The limit of liability stated in the Schedule of this endorsement as applicable to "each occurrence" is the total limit of the company's liability for all damages because of bodily injury, (including damages for care and loss of services) all property damage (including damages for loss of use to which the policy applies) and subject to the provisions of the next succeeding paragraph (relating to Coverage C, Physical Damage to Property), all loss sustained by one or more persons or organizations as a result of any one occurrence.

Under Coverage C, Physical Damage to Property, 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, or what it would then cost to repair or replace the property or such part thereof with other of like kind and quality.

Subject to the above provision respecting "each occurrence", the total liability of the company for all damages because of all bodily injury, property damage and all loss shall not exceed the limit of liability stated in the Schedule of this endorsement as "aggregate".

4. Severability of Interests - Coverages A and B

The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

5. Notice - In the event of an occurrence of 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.

6. Assistance and Cooperation of the Insured - Coverages A and B

The insured shall cooperate with the company and, 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.

7. Action Against Company - Coverages A and B

No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the 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 part 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.

8. Action Against Company - 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 on this policy nor until 30 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 - Coverage C

In the event of loss the insured shall:

- (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 in affording such protection shall be deemed 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 - Coverage C

If the insured and the company fail to agree as to the amount of loss, either may, 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 insurance afforded by this policy shall not enure 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 rights 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 3 years is comprised of 3 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 [signed by _____ (here insert titles of authorized company officials or representatives); provided, however, changes may be made in the written portion of the DECLARATIONS by _____ (here insert titles of authorized company representatives) when initialed by such _____ (here insert titles of authorized company representatives) or by endorsement issued to form a part of this policy signed by such _____ (here insert titles of authorized company representatives)].

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 30 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 statement 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.

(For policy issued by one company)

In witness whereof, the Blank 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

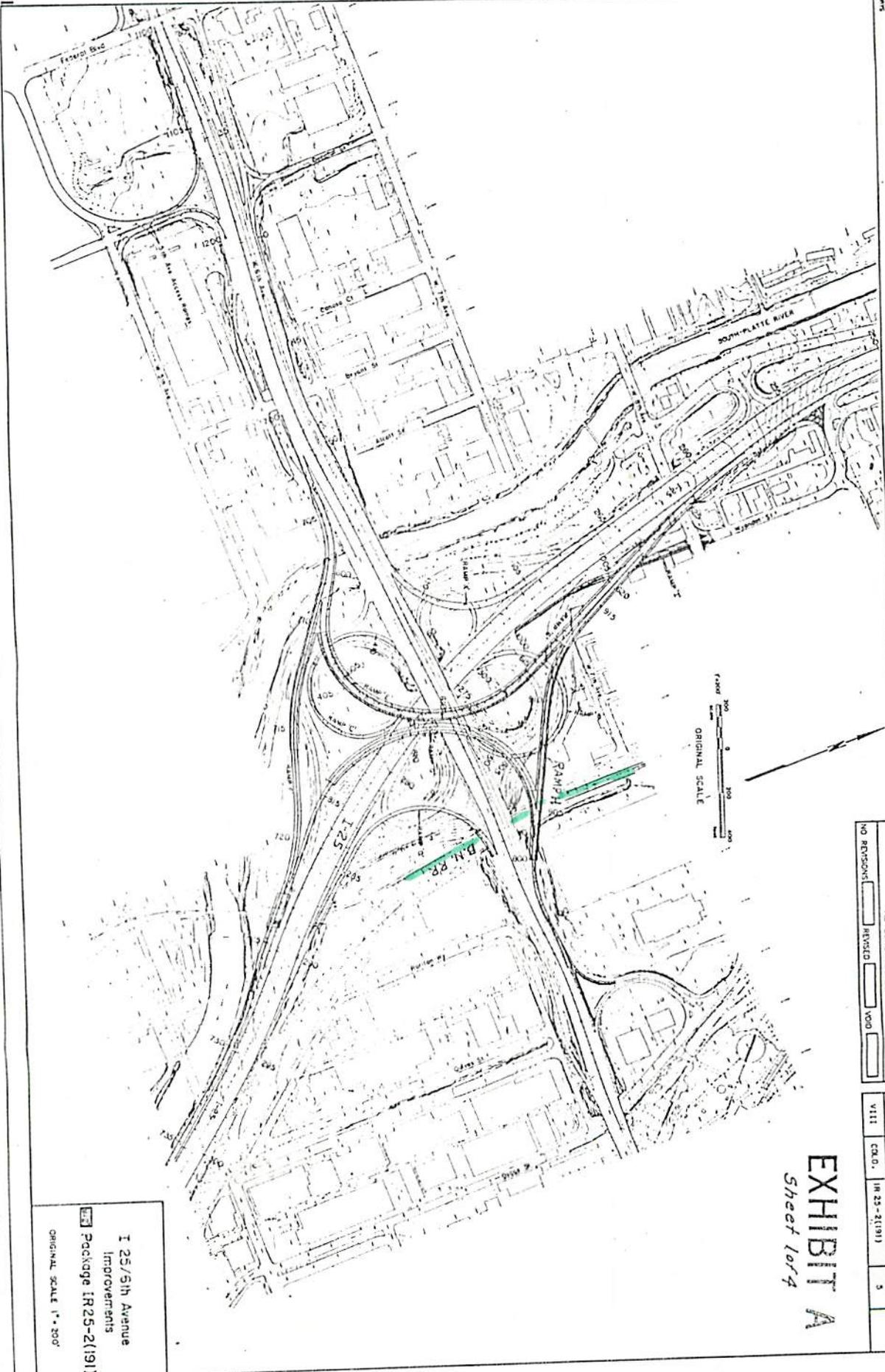
(For policy issued by two companies)

In witness whereof, the Blank Indemnity Company has caused this policy with respect to coverages _____ and such other parts of the policy as are applicable thereto 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

In witness whereof, the Blank Insurance Company has caused this policy, with respect to coverages _____ and such other parts of the policy as are applicable thereto, 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



1" = 200'
 ORIGINAL SCALE

NO. PERSONS	AS CONSTRUCTED
<input type="checkbox"/>	<input type="checkbox"/>
FINISHED	VOID
<input type="checkbox"/>	<input type="checkbox"/>

DESIGN	EXHIBIT	PROJ. NO.	SHEET
VIII	CNO. 0.	118 23-2(191)	5
			TOTAL
			10

EXHIBIT A
 Sheet 1 of 4

I 25/5th Avenue
 Improvements
 Package IR25-2(191)
 ORIGINAL SCALE 1" = 200'

PROFILE	DATE	BY	CHKD

PLAN	DATE	BY	CHKD

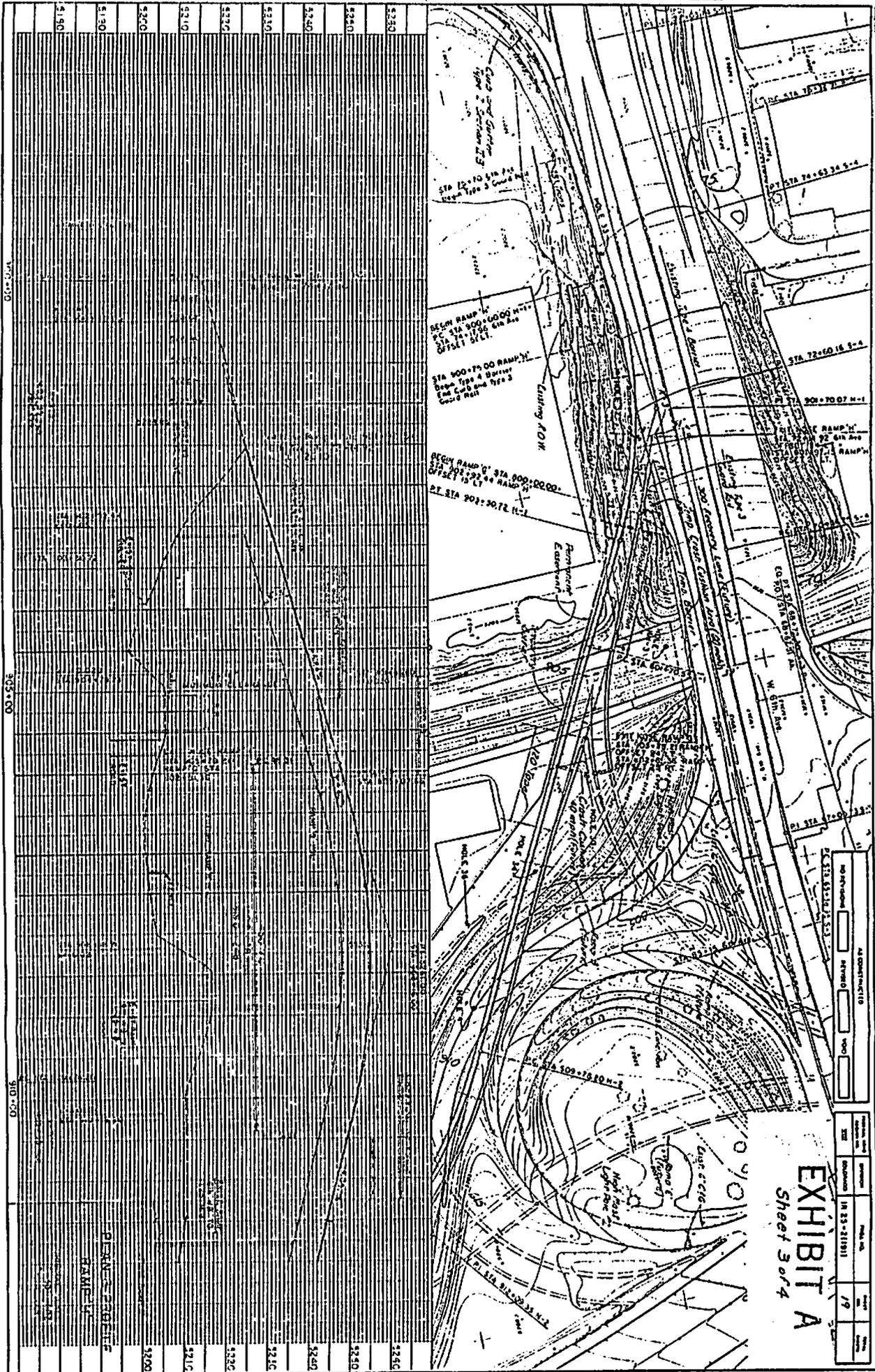


EXHIBIT A
Sheet 3 of 4

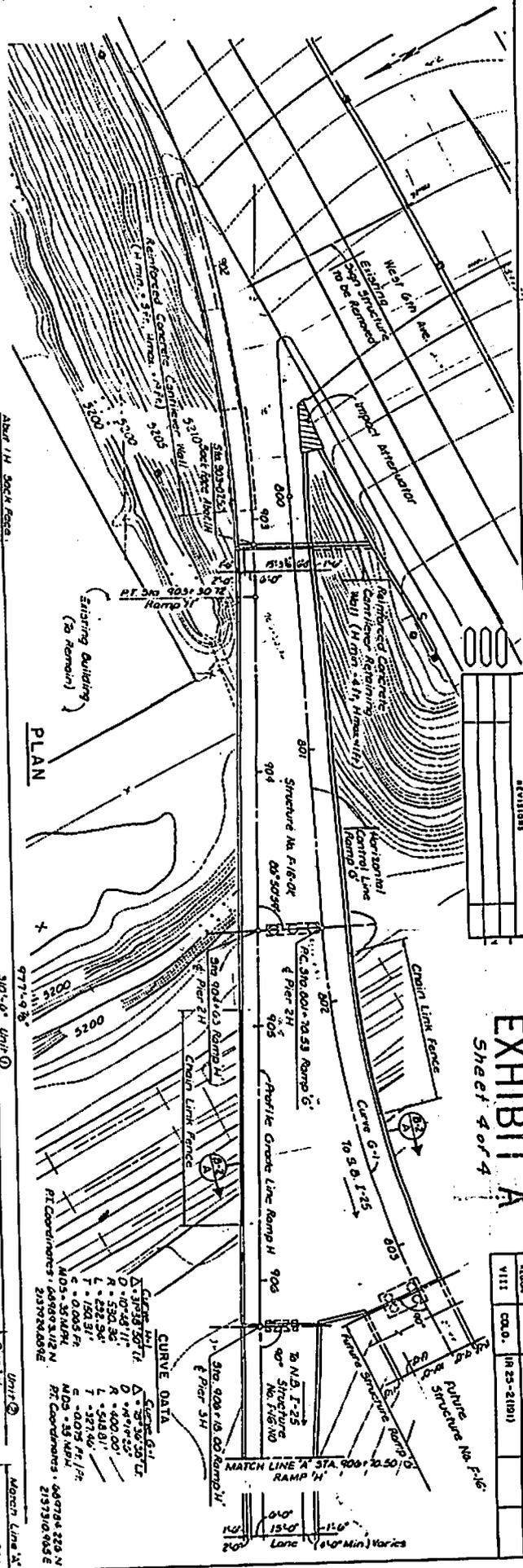
Project No.	18-23-211011
Sheet No.	1/9
Scale	
Author	
Checked	
Approved	

REVISION	DATE	BY	DESCRIPTION

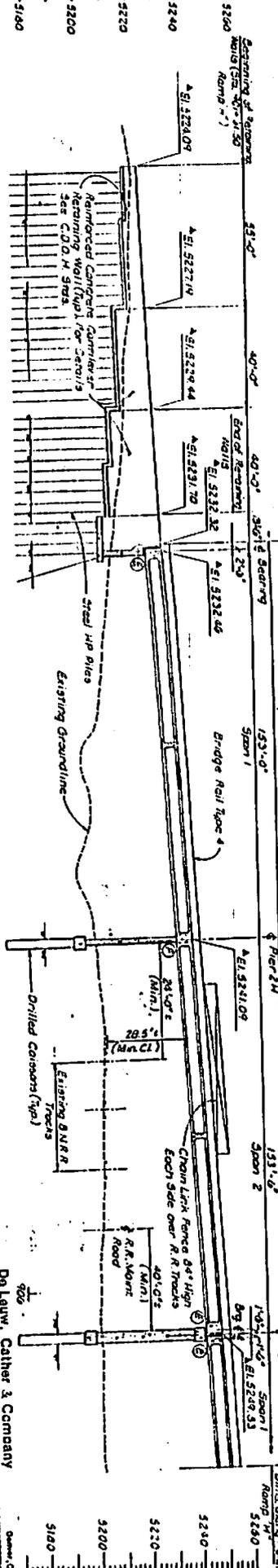
EXHIBIT A

Sheet 4 of 4

PROJECT NO.	1111
DIVISION	10-25-2101
COL. O.	
DATE	
DRAWN BY	
CHECKED BY	



PLAN



SECTION

Finished Grade Elevations taken at Profile Grade Line Ramps 'H'

NOTE: For Continuation of Structure See Drawg. B-2109 and B-2109A for Profile Grade See Drawg. B-2101

GENERAL LAYOUT

RAMP 'H' STRUCTURE

Do Law, Cather & Company
 DIVISION OF HIGHWAYS

DESIGNED BY	J. T. [Name]	CHECKED BY	E. I. [Name]
DRAWN BY	R. [Name]	IN CHARGE	E. I. [Name]
DRAWING NUMBER	B-1197	DATE	

REVISION	DATE	BY	DESCRIPTION

Preliminary Estimate

RFA 45-056-87

AFE ESTIMATE SHEET



Sheet No. 1 of 1

LINE SEGMENT No. 477				
Remove communication / signal line to accommodate construction of Ramp "H" connecting W. 6th Ave. to Interstate Highway 25				
<u>100% State of Colorado</u>				
Change Act 709 - Accrued Accounts Receivable				
<u>CONSTRUCTION EXPENDITURES; REIMBURSABLE</u>		<u>LABOR</u>	<u>MATERIAL</u>	<u>TOTAL</u>
Preliminary engineering		100		
Remove communication pole line		2,000		
Remove signal line		1,575		
Accounting		110		
Liability insurance			143	
Expenses			1351	
Labor surcharges		1778		
Contingencies		537	106	
Total Act 709		6,100	1,500	7,600
Total % vs. State of Colorado		6,100	1,500	7,600
<u>LEDGER VALUE RETIREMENT</u>				
Credit Road & Equipment Property				
Road Retirements				
Act 26 - Communication Systems				
0.155% pole line	65			
Total Retirement	65			
Change Act 735 - Accumulated Depri: Road				
As Retired	65			
NOTE: Director Accounts Receivable and Contracts to prepare bill for collection vs. State of Colorado for the actual cost of labor estimated at 7,600; billing to be based on FHPM activities				
EXHIBIT "B"				
Office of Chief Engineer - Denver		1 of 2		
FKD 12/16/86				

