

J. Carmichael



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TEXAS HIGHWAY DEPARTMENT
11TH AND BRAZOS
AUSTIN, TEXAS 78701

STATE HIGHWAY ENGINEER
J. C. DINGWALL

December 4, 1972

IN REPLY REFER TO
FILE NO. D-588
Your files: 4000-30.97

Ernesto County
Control 508-2-3
Project C 508-2-3
State Highway 308

The Atchison, Topeka and Santa Fe Railway Company overpass at Tom Colony
(150 feet east of Railroad Milepost 39)

Mr. E. C. Housch
Assistant General Manager-Engineering
The Atchison, Topeka and Santa Fe Railway Company
900 Polk Street
Amarillo, Texas 79101

Dear Sir:

Reference is made to your letter of November 21, 1972, transmitting executed State-Railroad agreement for the above identified project. Enclosed is the "Railroad Original" copy of the agreement dated November 14, 1972.

Copies of Exhibit "B" referred to in the agreement will be submitted for your approval at a later date.

Sincerely yours

J. C. Dingwall
State Highway Engineer

Wayne Henneberger
Wayne Henneberger
Bridge Engineer

Enclosure

bcc: ✓ District 12: Attached are three copies of the above mentioned agreement and three copies of the detailed estimate of cost.

D-3: Attached is a copy of the above mentioned agreement and a copy of the detailed estimate of cost.

STATE OF TEXAS X

COUNTY OF TRAVIS X

THIS AGREEMENT, made this 14th day of November, 1972, by and between the State of Texas, hereinafter called the "State," Party of the First Part, and The Atchison, Topeka and Santa Fe Railway Company, a corporation, hereinafter, whether one or more, called the "railroad company" or "company," Party of the Second Part, acting by and through John C. Davis its Vice President

W I T N E S S E T H

WHEREAS, State Highway 288 crosses the line of the railroad company at a point 150 feet east of Railway Milepost 39 (Highway Station 717+04.645) at Iowa Colony, Brazoria

County, Texas, and the State proposes to separate the grades of the railroad and highway by the construction of an overpass over the railroad company's track, as shown on print, marked Exhibit "A," attached hereto and made a part hereof.

A G R E E M E N T

NOW THEREFORE, in consideration of the premises and of mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, as hereinafter set forth, it is agreed as follows:

1. The railroad company hereby gives to the State license and permission for the construction and use of the aforesaid overpass and highway across its property and over its track at the intersection of the railroad and highway, as shown on Exhibit "A."

2. The State agrees to and will prepare plans and specifications, subject to approval by the Assistant General Manager-Engineering of the railroad company, for the proposed overpass structure. Said plans and specifications, after having been approved in writing by the Bridge Engineer of the Texas Highway Department and the Assistant General Manager-Engineering of the railroad company, are hereby adopted as plans and specifications covering the construction of said overpass, and when so approved, shall be attached hereto, marked Exhibit "B," and made a part hereof. No changes in these plans and specifications are to be made without the written approval of such changes by the Bridge Engineer of the Texas Highway Department and the Assistant General Manager-Engineering of the railroad company.

3. Cost of preliminary engineering ineligible for reimbursement with Federal funds due to being incurred prior to date of program approval will be reimbursed with State funds if incurred after the State's request for preparation of plans and estimates.

4. The railroad company, unless otherwise provided, shall make such changes or alterations in the tracks, communication and signal, pole and wire lines, pipe sewer and drainage or other facilities or buildings located upon the railroad company's right of way, which may be displaced or required by the construction of the project, as may be necessary to maintain continuous service and conform them to said construction and restore them to former condition for service either prior to, during or following construction of said work, all of which, as far as known to the railroad company, shall be shown on the said plans. The railroad company shall prepare plans and estimates subject to approval by the State, for the adjustment of such facilities. Such plans and estimates shall be attached hereto and made a part of Exhibit "B." Any known work to be done, not shown on the plans and in the estimates will not be paid for.

5. The railroad company shall commence the work to be done by it herein within thirty (30) days after receipt of written notice from the State that the work may proceed and shall proceed diligently to the conclusion of its obligations herein. Reimbursement will not be made for work undertaken by the railroad company which is performed at the site of the project prior to the issuance of such work order by the State. This does not apply to the assembly at the railroad stores or loading points of materials which might be used on the project. Such assembly may be undertaken sufficiently in advance to assure prompt delivery but reimbursement for any materials or handling charges will be contingent upon the issuance of a work order by the State to the railroad company.

6. Reimbursement to the railroad company will be made for work performed and materials furnished, including, but not limited to, insurance premiums and coverage at the rate and amount set forth in the approved cost estimate attached, in accordance with the provisions of Policy and Procedure Memorandum No. 30-3 issued by the Federal Highway Administration on October 26, 1971, and amendments thereto except as modified by the provisions herein.

7. Railroad and utility company bills.

a. The railroad company may submit monthly bills prepared in satisfactory form for work performed in compliance with this agreement provided the cost to be billed exceeds \$500.00. Upon receipt of said monthly bills, the State will make payment to the railroad company. The amount of such payment may be up to 90% of the cost of the work performed and as covered by said bill. Subsequent to the final audit the State will make final payment to the railroad company for work performed and materials furnished in accordance with this agreement and approved plans and specifications and approved changes thereof.

b. In the event that the railroad company does not desire monthly payments, then upon satisfactory completion of the work performed by the railroad company under this agreement and receipt of a statement in proper form, the State shall make payment to the railroad company. The amount of said payment may be up to 90% of the cost of such work. Subsequent to the audit the State will make final payment to the railroad company for work performed and materials furnished in accordance with this agreement and approved plans and specifications and approved changes thereof.

8. The State expects to be reimbursed for its expenditures hereunder from funds provided by the United States Government. Such reimbursement can only be obtained by the State by compliance with the statutes, rules and regulations from time to time enacted and promulgated by the United States Government and its Federal Highway Administration. In case such statutes, rules or regulations shall hereafter be altered or amended in such manner as to affect the State's right to such reimbursement or funds from which this construction is proposed are not available, the State reserves the right to cancel this agreement at any time prior to the actual letting of a contract by the State hereunder.

9. In the event that construction is not undertaken, or in the absence of a work order being issued by the State to the railroad company, the State will not be responsible for any expenses incident to any cost incurred in connection with any provision of this contract.

10. It is agreed that should the property licensed hereunder or any portion thereof cease to be used for public road purposes, this license, as to the portion so abandoned, shall immediately cease and terminate.

11. The State shall furnish material for and perform the work to be done by it hereunder in accordance with approved plans and specifications referred to in paragraph 2 hereof.

The State shall install the overpass structure, drainage facilities and build its roadway, sidewalks and pavement across the railroad company's right of way as shown on plans and in accordance with approved specifications and shall maintain or arrange for the maintenance of these facilities.

12. If provided by the plans and specifications, the railroad company shall furnish and install materials for the inner guard rail, of the railroad company's standard design through the overpass structure. The rail, angle bars, tie plates and frog points, for the guard rail, shall be secondhand.

13. The State assumes the entire responsibility for the construction, maintenance and use of said highway upon the railroad company's property at the location herein described; and nothing contained herein shall ever be construed to place upon the railroad company any manner of liability for injury to or death of persons, or for damage to or loss of property, arising from or in any manner connected with the construction, maintenance or use of the portion of said highway located upon the railroad company's said property.

14. The license, given hereby, shall not in any way prevent the railroad company from operating its trains or multiplying or changing its tracks across the land over which license has been given, or under the overpass contemplated hereby.

15. The contract or contracts to be let by the State for the construction of the work to be undertaken by it hereunder shall provide:

A. Standard Manufacturer's and Contractor's Liability Insurance. The Contractor shall furnish evidence to the Texas Highway Department that, with respect to the operations he performs, he carries regular Contractors' Liability Insurance providing for a limit of not less than five hundred thousand dollars (\$500,000.00) 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 one million dollars (\$1,000,000.00) for all damages arising out of bodily injuries to/or death of two or more persons in any one accident, and Property Damage Liability Insurance providing for a limit of not less than five hundred thousand dollars (\$500,000.00) for all damages arising out of injury to/or destruction of property in any one accident and subject to that limit per accident a total (or aggregate) limit of one million dollars (\$1,000,000.00) for all damages arising out of injury to/or destruction of property during the policy period.

If any part of the work is sublet similar insurance shall be provided by or in behalf of the subcontractors to cover their operations.

B. Contractor's Protective Liability Insurance. The Contractor shall furnish evidence to the Texas Highway Department that, with respect to the operations performed for him by subcontractors, he carries in his own behalf regular Contractors' Protective Liability Insurance providing for a limit of not less than five hundred thousand dollars (\$500,000.00) 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 one million dollars (\$1,000,000.00) for all damages arising out of bodily injuries to/or death of two or more persons in any one accident, and Protective Property Damage Liability Insurance providing for a limit of not less than five hundred thousand dollars (\$500,000.00) for all damages arising out of injury to/or destruction of property in any one accident and subject to that limit per accident, a total (or aggregate) limit of one million dollars (\$1,000,000.00) for all damages arising out of injury to/or destruction of property during the policy period.

C. Railroads' Protective Liability and Property Damage and Physical Damage to Property Insurance. In addition to the above, the Contractor shall furnish evidence to the Texas Highway Department that, with respect to the operations he or any of his subcontractors perform, he has provided for and in behalf of the railroad company the Standard Railroad Protective Liability Policy, with coverage as outlined in General Casualty Bulletin No. 258, dated July 9, 1958, and General Casualty Bulletin No. 345, dated February 19, 1965, both issued by the State Board of Insurance of Texas, providing for Bodily Injury Liability a limit of not less than five hundred thousand dollars (\$500,000.00) for each person and one million dollars (\$1,000,000.00) for each occurrence and for Property Damage a limit of not less than five hundred thousand dollars (\$500,000.00) for each occurrence and one million dollars (\$1,000,000.00) aggregate during the policy period.

D. General. The insurance, as specified in paragraphs A. and B. above, 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 by the Texas Highway Department.

The insurance, as specified in paragraph C. above, shall be carried until all work to be performed on the railroad right of way has been completed and the temporary grade crossing, if any, is no longer used by the contractor.

16. Compliance with Title VI of the Civil Rights Act of 1964.

During the performance of this contract, the Railroad Company (referred to as the "contractor" in the following paragraphs numbered 1 through 6), for itself, its assignees and successors in interest, agrees to comply with the following six paragraphs except in those instances where work undertaken under this agreement is performed by its own forces.

(1) Compliance with Regulations: The contractor will comply with the Regulations of the Department of Commerce relative to nondiscrimination in federally-assisted programs of the Department of Commerce (Title 15, Code of Federal Regulations, Part 8, 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, 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 8.4 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A-II of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements 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 or national origin.

(4) Information and Reports: The contractor will provide all information and reports required by the Regulations, or 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 Highway Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has 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 Highway Department shall impose such contract sanctions as it or the Federal Highway Administration 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 Highway Department or the Federal Highway Administration may direct, as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a 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 United States to enter into such litigation to protect the interests of the United States.

17. The railroad company shall retain adequate cost accounting records for auditing purposes for a period of three years after payment of the final bill, in accordance with Federal Highway Administration Policy and Procedure Memorandum 30-9, paragraph 2.b., issued March 31, 1972.

18. In accordance with the provisions of Policy and Procedure Memorandum No. 21-10, issued by the Federal Highway Administration, October 3, 1958, this project has been determined to conform to Class 4, "Existing Railroad Crossed by New Highway." Under this classification no benefits shall be construed as accruing to the railroad company and no contribution by the railroad company will be required.

IN TESTIMONY WHEREOF, the parties hereto have caused these presents to be executed in duplicate on the day above stated.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

THE STATE OF TEXAS

By: [Signature]
(Title) VICE PRESIDENT

Attest:
(Seal)

[Signature]
Asst. Secretary for Railroad Company

RECOMMENDED:

(Title)

(Title)

APPROVED AS TO FORM:

Attorneys for Railroad Company

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies, or work programs heretofore approved and authorized by the State Highway Commission:

By: [Signature]
Bridge Engineer
Under authority of Highway Commission Minute Order No. 63933, dated July 9, 1970

RECOMMENDED FOR APPROVAL:

[Signature]
Chief Engineer of Highway Design

[Signature]
Supervising Office Engineer

