

2. AMENDMENT/MODIFICATION NO. 3	3. EFFECTIVE DATE 17-OCT-2003	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. <i>(If applicable)</i>
6. ISSUED BY US Army Corps of Engineers, Kansas City District 760 Federal Building, 601 East 12th Street Kansas City, Missouri 64106-2896		7. ADMINISTERED BY <i>(If other than item 6)</i>	

8. NAME AND ADDRESS OF CONTRACTOR <i>(No., street, county, State and ZIP Code)</i>	(x)	9a. AMENDMENT OF SOLICITATION NO. DACW41-03-B-0013
	X	9B. DATED <i>(SEE ITEM 11)</i> 8/25/2003
		10A. MODIFICATION OF CONTRACT/ORDER NO.
		10B. DATED <i>(SEE ITEM 13)</i>

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above number solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegraph which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA *(If required)*

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(x)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: <i>(Specify authority)</i> THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBER CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES <i>(such as changes in paying office, appropriation date, etc.)</i> SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF:
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER <i>(Specify type of modification and authority)</i>

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION *(Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*

**Blue River Channel Project: Railroad Bridge Modifications (B20, B21, B21b, and B21c)
Jackson County, Missouri**

**BID OPENING IS 2:00 PM, LOCAL TIME, 28 OCTOBER 2003, ROOM 164
FEDERAL BLDG. 601 E. 12TH STREET. KCMO 64106-2896**

The Solicitation is amended in accordance with the following pages.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER <i>(Type or print)</i>	16A. NAME AND TITLE OF CONTRACTING OFFICER <i>(Type or print)</i>
15B. CONTRACTOR/OFFEROR	16B. UNITED STATES OF AMERICA
15C. DATE SIGNED	16C. DATE SIGNED
_____ <i>(Signature of person authorized to sign)</i>	BY _____ <i>(Signature of Contracting Officer)</i>

The Solicitation is amended as follows:

Specifications

1. Section 2100, pgs. 2 & 3, Para. 1.2.1.1, Stage 1 (4) & Stage 4 (20)

- Pg. 2, Stage 1(1)

Revise paragraph (1) as follows:

“Contractor shall prepare a plan for removing the existing bridges and a construction sequence for Government and Union Pacific Railroad approval. (The removal procedure and construction sequence shall not impact the mainline track operation, and shall be submitted for review at the preconstruction conference). Prepare shop drawings.”

- Pg. 2, Stage 1(2)

Add as second sentence to paragraph (2):

“The Railroad’s mainline track will remain in continuous service.”

- Pg 2, Stage 1(4)

Delete “to a storage site as directed by the Union Pacific Railroad”

- Pg 2, Stage 1(5)

Add as the second sentence to paragraph (5):

“Existing bridge elements which have been removed shall become the property of the Contractor and hauled offsite.

- Pg 3, Stage 4(20)

Delete “to a U.P.R.R. storage as directed by the railroad”

2. Section 2100, pg 4, Para. 1.2.1.2c.

- Delete 2 sentences near the end of paragraph:

“Railroad retains the right to salvage removed spans that are not used.”

“Salvaged materials shall be moved to a storage site provided by the Railroad.”

- Add new sentence at end of paragraph:

“Existing bridge elements which have been removed shall become the property of the Contractor and hauled offsite.”

3. Section 2100, pg 1, para. 1.1.2

Add new paragraph h.:

“h. Provide access at any time to the UPRR for inspection of construction progress of the bridges. The Railroad has 20 calendar days after an inspection to submit any objections to the work. Railroad inspections and objections shall be coordinated through the Contracting Officer.”

4. Section 2100, pg. 6, para. 1.3.5

- Delete last part of sentence: “in order to minimize delays and interferences”

- Add 2 sentences at end of paragraph:

“Neither the Government nor the Contractor have any right to interfere in any way with the operation of the Railroad’s trains or facilities (except as provided in paragraph 1.1.2). The Contractor shall abide by the terms of the Government’s Contract for Relocation, Rearrangement, or Alteration of Railroad Facilities (DACW41-94-C-0017) and subsequent First Contract Amendment dated April 2, 2003.”

5. Section 1100, pg. 6, para. 1.15(c)

- Delete sentence:

“A copy of the Government-Railroad agreement is available for review at the COE District Office (Rm 824).”

- Replace the deleted sentence with the following sentence:

“Copies of the UPRR-Government agreement dated 14 September 1994 and subsequent First Contract Amendment dated 2 April 2003 are included at the end of this section, and the terms herein are incorporated by reference as though fully set forth on this solicitation. The contractor shall fully comply with these terms.”

6. Section 1100, pg. 8, para. 1.22

Add new paragraph (e):

“(e) UPRR Bridge As-Builts. Available as-built drawings of the existing UPRR bridges can be reviewed at the COE District Office (Rm 824). Contact Mr. Dan Jones at 816-983-3603.”

7. Section 1100, end of section.

Add copies of the UPRR-Government Agreement dated 14 September 1994 and First Contract Amendment dated 2 April 2003 at the end of Section 1100. [See attached UPRR Agreement]

8. Section 2456, pg.3, para. 2.1

In the first sentence of para. 2.1, delete “A572” and replace with “A709”.

9. Section 2456, pg. 6, para. 3.1

Add new paragraph 3.1.13 entitled “Monitoring”

“3.1.13 Monitoring. Contractor shall monitor the UPRR mainline track for settlement during the pile driving operation. Monitoring along the mainline track shall extent a minimum distance of 80 feet in each direction from the pile driving, with at least 5 monitoring points. Top of rail elevations shall be recorded before pile driving begins. Total settlement due to pile driving at any monitoring point shall not exceed ¼”. If it becomes evident from the readings that further driving will cause ¼” of settlement, the Contracting Officer shall be notified in advance for further direction. Pile driving shall cease if total settlement equals ¼”. The Contractor’s plan of operations shall address how the monitoring will be accomplished and include measures that will be implemented during pile driving that will minimize or avoid impact to the mainline track. Access to conduct monitoring shall be subject to the safety and flagging requirements of the Railroad. Settlement monitoring data shall be furnished to the Contracting Officer on a daily basis.”

10. Bid Schedule, pg 9 of 169, Item 0040 (Option 1), “Predrilling H-Piles”

Delete the word “piers” from the description.”

Plan Sheets

11. Plans, Sheet S-03, General Notes, Note 9.

Delete the first sentence.

12. Plans, Sheet S-06, Stage 1(4) & Stage 4(20).

- Stage 1(4):

Delete “and remove to a storage site as directed by the Union Pacific Railroad”

- Stage 4(20):

Delete “and remove to a U.P.R.R storage as directed by the railroad”.

13. Plans, Sheet S-13, Detail 1 – Sheetpiling Attachment at Pier 2

Change the spacing of anchor bolts from 18” O.C. to 36” O.C.

14. Plans, Sheet S-17, Detail 1

In Detail 1 under the capitalized word “NOTE”, insert:

“E.T. = EverTight (Lewis Bolt & Nut @ www.LewisBolt.com, 1-800-328-3480) or equivalent, as approved by the UPRR through the Contracting Officer.”

Bidders are required to acknowledge receipt of this amendment on the Bidding Form, in the space provided, or by separate letter or telegram prior to opening of bids. Failure to acknowledge all amendments may cause rejection of the bid.

Bids will be received until 2:00 p.m., local time, 28 October 2003, in Room 164 Federal Building, 601 E. 12th Street, Kansas City, Missouri 64106-2896, and at that time publicly opened.

Points of Contact are as follows:

Contract Specialist: Rosalind Whitfield 816-983-3923

Technical Manager Daniel Jones 816-983-3603

3-8-83
copy

Contract No. DACW41-94-C-0017
Blue River Channel Modification Project
Kansas City, Missouri

FIRST CONTRACT AMENDMENT TO CONTRACT FOR RELOCATION,
REARRANGEMENT, OR ALTERATION OF RAILROAD FACILITIES
(Cost Reimbursable)

OWNER AND ADDRESS: Union Pacific Railroad Company
Chief Engineer - Design
1416 Dodge Street, Room 1000
Omaha, Nebraska 68179

CONTRACT FOR: Alteration of Railroad Facilities

LOCATION: Blue River Channel Modification Project
Kansas City, Missouri

ESTIMATED AMOUNT: \$3,556,937.00

ADMINISTRATIVE DATA: Invoices shall be mailed to:

U.S. Army Corps of Engineers, Kansas City District
700 Federal Building
601 East 12th Street
Kansas City, Missouri 64108-2896

Payment to be made by:

Disbursing Officer
U.S. Army Corps of Engineers Finance Center
5722 Integrity Drive
Millington, Tennessee 38054-5005

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following appropriation:

This contract is authorized under the Flood Control Act of 1970, approved December 31, 1970, (P.L. 91-611, 91st Congress, 2nd Session).

Contract No. DACW41-94-C-0017
Blue River Channel Modification Project
Kansas City, Missouri

FIRST CONTRACT AMENDMENT TO CONTRACT FOR RELOCATION,
REARRANGEMENT, OR ALTERATION OF RAILROAD FACILITIES
(Cost Reimbursable)

THIS FIRST CONTRACT AMENDMENT (hereinafter the "Amendment") entered into this 2nd day of April, 2003 between the United States of America (hereinafter called "Government"), represented by the Contracting Officer executing this contract and the Union Pacific Railroad Company, formerly known as Missouri Pacific Railroad Company. Union Pacific Railroad Company is a corporation organized and existing under the laws of Delaware with its principal office and place of business in the City of Omaha, State of Nebraska (hereinafter called the "Owner").

WITNESSETH, that

Whereas, the Government, under authority of Public Law 91-611, 91st Congress, 2nd Session, approved December 31, 1970, has undertaken the development of a flood protection project known as the Blue River Channel Modification Project; (hereinafter called the "Project") and

Whereas, the Owner is the holder of certain fee title and/or easement rights appurtenant thereto on which the Owner has constructed and is operating and maintaining certain facilities consisting of railroad trackage, bridges, and other facilities and appurtenances which will be affected by the development and use of the Project by the Government and the operation, use, and maintenance of the Project by the City of Kansas City, Missouri (hereinafter called the "Sponsor"); and

Whereas, it is necessary in the construction, completion, and enjoyment by the Government and in the Sponsor of said Project that the aforementioned title, rights, and privileges of the Owner be modified and restricted and that said facilities of the Owner be altered: and

Whereas, the Government and Missouri Pacific Railroad Company entered in Government Contract Number DACW41-94-C-0017, also known as Missouri Pacific Railroad Company Audit Number 173295 on September 14, 1994 for certain railroad bridge modifications and replacements; and

Whereas, Contract Number DACW41-94-C-0017, a cost reimbursable contract (as identified in Owner's records as its Audit No. 173295) is hereinafter referred to as the "Original Agreement."

Whereas, on January 1, 1997, Missouri Pacific Railroad Company was merged with and into Union Pacific Railroad Company, a Utah corporation; and

Whereas, on February 1, 1998, Union Pacific Railroad Company, a Utah corporation, merged with and into Southern Pacific Transportation Company, a Delaware corporation (SPT), with SPT, as the surviving corporation, immediately on February 1, 1998 changing its name to Union Pacific Railroad Company, a Delaware corporation; and

Whereas, revisions to the scope of work requiring removal of railroad bridges B-20 and B-21 and construction of a single double track railroad bridge with associated relocation work make it necessary to amend the Original Agreement.

Now, therefore, in consideration of the faithful performance of each party of the mutual covenants and agreements hereinafter set forth, it is mutually agreed that the Original Agreement shall be amended in Articles 1, 2, 3, and no others. All other articles in Contract No. DACW41-94-0017 are in full force and effect. Contract No. DACW41-94-0017 is incorporated and made a part of this amendment and is identified as Exhibit "I."

Article 1. AMENDMENT OF ARTICLE 1 OF ORIGINAL AGREEMENT.

Article 1 of the Original Agreement is hereby amended to read as follows:

The following exhibits are attached hereto and made a part hereof:

- (1) Exhibit A: Union Pacific Railroad Company Bridge 280.72, USCE Bridge B-14.
- (2) Exhibit B: Union Pacific Railroad Company Bridge 284.66, USCE Bridge B-20
Union Pacific Railroad Company Bridge 284.66S, USCE Bridge B-21
- (3) Exhibit C: Union Pacific Railroad Company Bridge 284.66-1, USCE Bridge B-21A

- (4) Exhibit D: Union Pacific Railroad Company Bridge 284.66-2, USCE Bridge B-21B
- (5) Exhibit E: Union Pacific Railroad Company Bridge 284.66-3, USCE Bridge B-21-C
- (6) Exhibit F: Union Pacific Railroad Company's Material and Force Account Estimate dated July 19, 2002.
- (7) Exhibit G: Union Pacific Railroad Company's Plans of Track Relocation Construction (five drawings with the latest revision date being August 11, 2001).
- (8) Exhibit H: Contractor's Right of Entry Agreement
- (9) Exhibit I: Contract No. DACW41-94-0017

Article 2. AMENDMENT OF ARTICLE 2a OF ORIGINAL AGREEMENT.

Article 2a of the Original Agreement is hereby amended to read as follows:

- "a. The Owner shall furnish, or cause to be furnished, at the expense of the Government, all labor, material and equipment required to perform and complete:
- (i) All track work, including removal, construction, and relocation, located within Railroad right-of-way as in accordance with Exhibits F and G as may be necessitated by the Project.
 - (ii) Preparation of railroad subgrade and placement of sub ballast for track work described in subparagraph (i) above, and construction or alteration of railroad access roads as may be necessitated by the Project.
 - (iii) All temporary and permanent alterations, relocations, removals, and installation of railway signals, appurtenances, communication facilities, and wire lines as may be necessitated by the Project.
 - (iv) Installation of new bridge ties and reinstallation of rail, and installation of walkways and handrails on new or reconstructed portions of Bridges

B-21B and B-21C in accordance with plans prepared by the Government and approved in writing by the Railroad.

- (v) Engineering and supervision to prepare plans for and perform the above.
- (vi) Incidental work necessary to perform the above."

Article 3. AMENDMENT OF ARTICLE 3a OF ORIGINAL AGREEMENT.

Article 3a of the Original Agreement is hereby amended to read as follows:

- a. Subject to the availability of funds, the Government shall reimburse the Owner for all costs expended (including costs expended for engineering services performed by the Owner prior to the date of execution of this Amendment in connection with providing protective services and devices, handling all rail traffic, and removing and restoring trackage during and following construction by the Government's contractor performing the alterations on the Owner's bridges and railroad facilities. Such costs shall include, but are not limited to, engineering, labor, materials, transportation, insurance, overhead charges properly allowable to the work, supervision, surveys, rental of tools, equipment, and machinery employed in the work, together with such other items of expense (exclusive of profit to the Owner) as should, in the opinion of the Contracting Officer acting in good faith, be included in the cost of the work. The total cost of such work is estimated by Owner to be Three Million Five Hundred Fifty Six Thousand Nine Hundred Thirty Seven Dollars (\$3,556,937.00). During the progress of the work, the Government shall reimburse the Owner based on Owner's actual costs upon receipt of invoices supported by such reasonable supporting documentation of payment made by the Owner as may be required by the Contracting Officer. All original time cards or payrolls, material records, and accounts for all charges and expenditures for which reimbursement will be claimed from the Government shall be available at all reasonable times, to allow the Government to check and audit the invoices submitted by the Owner. So far as practicable, separate records shall be maintained by the Owner for a period of three (3) years from and after Government's final payment to Owner on all items and accounts, which shall constitute the basis of information, from which the invoices will be prepared. The Owner shall be allowed one hundred twenty (120) days to submit a final billing to Government after all work is completed. The Government shall also furnish, or cause to be furnished, at its

expense, all labor, material, and equipment required to perform and complete the following:

- (i) Removal of Bridge B-21, construction of new bridge B-21 and removal of bridge B-20 in accordance with plans and specifications prepared by the Government and approved in writing by the Railroad.
- (ii) Removal of Bridge B-21A, and alteration of bridges B-21B and B-21C, except work described in Section 2 a (iv) above, in accordance with plans and specifications prepared by the Government and approved in writing by the Railroad.
- (iii) Construction of earthen embankment widening between the north abutment of bridge B-21 and railroad station 75+00 (approximately), in accordance with Exhibit G and cross-sections and specifications prepared by the Railroad and approved in writing by the Government.
- (iv) Construction of new and/or alteration of existing routes required for project's access, as indicated in the construction plans and in accordance with a separate easement agreement obtained from the railroad by the City of Kansas City, Missouri.
- (v) Engineering and permitting necessary to perform the above.

Article 4. OBLIGATIONS OF THE OWNER AND THE GOVERNMENT REGARDING REVIEW AND INSPECTION

Each party shall provide the necessary engineering and inspection for carrying out its work as set forth in this Amendment, and the costs for such work shall be Project costs and shall be at Government expense. Costs incurred by the Owner for inspecting the work performed by the Government as may affect Owner's property and facilities, or the safety and continuity of its train operations, and costs for review and approval of plans and specifications prepared by the Government, shall be Project costs and shall be borne by the Government.

Article 5. CORRECTION OF ARTICLE NUMBERS IN ORIGINAL AGREEMENT

Certain Article Numbers in the Original Agreement are numbered incorrectly. Therefore, the following corrections are being made to the Article Numbers:

Contract No. DACW41-94-C-0017
Blue River Channel Modification Project
Kansas City, Missouri

<u>Initial Article Number</u>		<u>Corrected Article Number</u>
14	(Gratuities)	16
17	(Approval)	19

Article 6. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

When letting bids for the Project, the Government shall inform and require its contractors to execute the Owner's Contractor's Right of Entry Agreement in the form marked Exhibit H, attached hereto and hereby made a part hereof, and to obtain the insurance coverage and endorsements set forth therein before commencing any work on Owner's property.

Article 7. EFFECTIVE DATE

This Amendment shall be effective when executed by both parties to this Amendment.

Article 8. AMENDMENT SUPPLEMENTAL IN NATURE

This Amendment is supplemental to the Original Agreement and nothing herein contained shall be construed as amending or modifying the same except as herein specifically provided.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the day and year first herein written.

UNION PACIFIC RAILROAD
COMPANY

By: 
Printed Name: DENNIS J. DUFFY
Title: V.P. OPER.

THE UNITED STATES OF AMERICA

By: 
Printed Name: ELIZABETH M. ERVIN
Title: GRANTS CONTRACTING OFFICER

805359 EXISTING
CONTRACTOR AGREEMENT

Contract No. DACW41-94-C-0017

**CONTRACT FOR RELOCATION, REARRANGEMENT, OR
ALTERATION OF RAILROAD FACILITIES
(Cost Reimbursable)**

152295

OWNER AND ADDRESS: Missouri Pacific Railroad Company
1416 Dodge Street, Room 920
Omaha, Nebraska 68179

CONTRACT FOR: Alteration of Railroad Facilities

LOCATION: Blue River Channel Modification Project
Kansas City, Missouri

ESTIMATED AMOUNT: \$1,504,916.00

ADMINISTRATIVE DATA: Invoices shall be mailed to:

U.S. Army Engineer District, Kansas City
700 Federal Building
601 East 12th Street
Kansas City, Missouri 64101-2896

Payment to be made by:

Disbursing Officer
U.S. Army Engineer District, Omaha
6014 U.S. Post Office and Court House
215 North 17th Street
Omaha, Nebraska 68102

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following appropriation: 96X3122 BE8610262FO-0
(Continuing Contract)

This contract is authorized under the Flood Control Act of 1970, approved 31 December 1970, (P.L. 91-611, 91st Congress, 2nd Session).

CONTRACT FOR RELOCATION, REARRANGEMENT, OR
ALTERATION OF RAILROAD FACILITIES
(Cost Reimbursable)

THIS CONTRACT, entered into this 14th day of Sept., 1974, between the UNITED STATES OF AMERICA (hereinafter called the "Government"), represented by the Contracting Officer executing this contract, and the MISSOURI PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business in the City of Omaha, State of Nebraska (hereinafter called the "Owner").

WITNESSETH, that:

WHEREAS, the Government has, under authority of Public Law 91-611, 91st Congress, 2d Session, approved 31 December 1970, undertaken the development of a flood protection project known as the Blue River Channel Modification Project located in Kansas City, Missouri (hereinafter called the "Project"); and

WHEREAS, the Owner is the holder of certain fee title and/or easement rights appurtenant thereto on which the Owner has constructed and is operating and maintaining certain facilities, consisting of railroad trackage, bridges and other facilities and appurtenances which will be affected by the development and use of the Project by the Government and the operation, use, and maintenance of the Project by the City of Kansas City, Missouri (hereinafter called "Sponsor"); and

WHEREAS, it is necessary in the construction, completion, and enjoyment by the Government and the Sponsor of said Project that the aforementioned title, rights and privileges of the Owner be modified and restricted and that said facilities of the Owner be altered; and

WHEREAS, pursuant to Public Law 91-611, assurances have been given by the Sponsor to provide, without cost to the Government or to the Owner, all easements, rights-of-way, or other interests in real property necessary for the construction, operation and maintenance of the Project; and

WHEREAS, requirements of local cooperation for the Project are prescribed under section 3 of the Flood Control Act approved 22 June 1936, and additional obligations have been imposed on Sponsors of certain Water Resource Projects by subsequent legislation (Section 221 of Public Law 91-611, approved 31 December 1979, Sections 210 and 305 of Public Law 91-646

approved 2 January 1971, and Title VI of the Civil Rights Act of 1964 (78 stat. 241; 41 U.S.C. 2000-d, et. seq.) and Department of Defense Directive 5500.11 issued pursuant thereto and published in part 300 of Title 32, Code of Federal Regulations), and the Sponsor has furnished the Government with the assurance required by these Acts; and

WHEREAS, the Government and the Owner under earlier Contract No. DACW41-85-C-0034 agreed to add Owner's bridges and facilities to the contract by supplemental agreement as channel construction progressed upstream; and

WHEREAS, it is mutually agreed by the Government and the Owner that it is in the best interest of both parties to alter Owner's bridges by a new contract in lieu of Supplemental Agreements; and

WHEREAS, the Owner is willing to grant to the Sponsor easements for the construction, operation and maintenance of the Project in consideration of the fulfillment by the Sponsor of the assurances made to the Government and payment by the Government to the Owner of all necessary costs of the alterations to be performed by the Owner, as hereinafter set forth in Article 2, and of the performance by the Government in construction of the Project as hereinafter set forth in Article 3, and is agreeable to altering said facilities in such manner as to facilitate the construction, development, use and enjoyment of said Project by the Government and by the Sponsor and the Owner agrees that said consideration constitutes full, just and complete compensation for the acquisition by the Sponsor of certain rights in the property of, the Owner as hereinafter set forth in Article 2; and

WHEREAS, in the performance of the Project, the Government will use its best efforts not to disturb Owner's operations and facilities;

NOW, THEREFORE, in consideration of the faithful performance of each party of the mutual covenants and agreements hereinafter set forth, it is mutually agreed as follows:

ARTICLE 1. Exhibits.

The following exhibits are attached hereto and made a part hereof:

- (1) Exhibit A: Missouri Pacific Railroad Company Bridge 280.72, USCE Bridge B-14, Channel Station 368+20.

- (2) Exhibit B: Missouri Pacific Railroad Company Bridge 283.45, USCE Bridge B-20, Channel Station 189+40.
Missouri Pacific Railroad Company Bridge 283.45A, USCE Bridge B-21, Channel Station 189+00.
- (3) Exhibit C: Missouri Pacific Railroad Company Bridge 1, USCE Bridge B-21A, Channel Station 187+80.
- (4) Exhibit D: Missouri Pacific Railroad Company Bridge 2, USCE Bridge B-21B, Channel Station 178+70.
- (5) Exhibit E: Missouri Pacific Railroad Company Bridge 3, USCE Bridge B-21C, Channel Station 176+80.
- (6) Exhibit F: Union Pacific Correspondence dated 8 March 1993, subject: Blue River Channel Modification Project. (1)

ARTICLE 2. Obligations of the Owner.

a. The Owner shall: furnish all materials, labor, tools, and equipment necessary to provide protective services, handle all rail traffic, and remove and restore trackage during and following construction by the Government's contractor in performing the alterations on the Owner's bridges and railroad facilities in accordance with Exhibit A through F, and plans and specifications prepared by the Government and approved by the Owner.

b. All lines are to remain operational as determined by the Owner. The Owner is to complete all arrangements and details for operation of trains during construction.

c. The Owner shall provide flagmen, inspectors, and protective services and devices as in the opinion of the Owner may be required for protection of railroad traffic and operations during construction by the Owner and during construction by the Government's Contractor.

d. The Owner shall perform all such other items of work directly affecting its facilities including removal and salvage of any materials, equipment, and supplies not specifically mentioned herein but required for the Government to construct the

Project.

e. The Owner shall procure all necessary permits and licenses in connection with work to be performed by the Owner, obey and abide by all applicable laws, regulations, ordinances, and other rules of the United States of America, of the State, or political subdivisions thereof wherein the work is done, or of any other duly constituted public authority.

f. Without additional consideration, the Owner shall grant and by these presents does grant, to the Government, its agents, employees, and contractors, the right to enter upon those portions of the Owner's rights-of-way as required to construct the Project and perform such acts in connection therewith as required, but without undue interference with Owner's normal operations.

g. The Owner, without additional consideration, shall grant by good and sufficient written instrument to the Sponsor, subject to the right of the Owner to construct, maintain, operate, and use its right-of-way, bridges, tracks, and other facilities thereon, but solely to the extent of the Owner's rights, title, and interest, without warranty, express or implied, an easement, in form satisfactory to the parties, for the construction, operation, and maintenance of the Project within rights-of-way of the Owner's existing facilities.

ARTICLE 3. Obligations of the Government.

a. Subject to the availability of funds, the Government shall reimburse the Owner for all costs expended (including costs expended for engineering services performed by the Owner prior to the date of execution of this contract but subsequent to 0) in connection with providing protective services and devices, handling all rail traffic, and removing and restoring trackage during and following construction by the Government's Contractor performing the alterations on the Owner's bridges and railroad facilities. Such costs shall include all items of expense properly chargeable to the work including, but not limited to, engineering, labor materials, transportation, insurance, overhead charges properly allowable to the work, supervision, surveys, rental of tools, equipment and machinery employed in the work, together with such other items of expense (exclusive of profit to the Owner) as should, in the opinion of the Contracting Officer acting in good faith, be included in the cost of the work. The total cost of such work is estimated at \$1,504,916.22. During the progress of the work, the Government shall reimburse the Owner for such costs upon receipt of invoices supported by such reasonable supporting documentation of payment

made by the Owner as may be required by the Contracting Officer. All original time cards or payrolls, material records, and accounts for all charges and expenditures for which reimbursement will be claimed from the Government shall be available at all reasonable times, to allow the Government to check and audit the invoices submitted by the Owner. So far as practicable, separate records shall be maintained by the Owner on all items and accounts which shall constitute the basis of information from which the invoices will be prepared.

b. At the request of the Owner, partial payments will be made as the work progresses on monthly estimates approved by the Contracting Officer.

d. All plans and specifications prepared by the Government for Project construction on Owner's rights-of-way shall be approved in writing by the Owner before any work thereunder is commenced. All work performed by the Government shall be in strict accordance with the approved plans and specifications. No changes will be made by the Government in the approved plans and specifications without the written approval of the Owner.

e. The Government shall, if it so chooses, contract for all services, including engineering services, labor, materials, and equipment necessary to construct those portions of the Project on Owner's property following receipt of Owner's written approval of plans and specifications.

f. The Government shall include the requirements in Appendix A in its construction contract for work adjacent to and on Owner's rights-of-way.

ARTICLE 4. Salvage. The Owner shall use such materials, equipment; and supplies from the facilities existing as of the date of this contract as can be placed in the facilities to be relocated, rearranged, or altered under the terms of this contract. Any existing materials, equipment, and supplies, or any part thereof, not so utilized, may be abandoned in accordance with the procedures set forth below.

a. If, in the opinion of the Contracting Officer, the existing facilities to be abandoned by the Owner will not interfere with the construction, operation, and maintenance of the Project, then such facilities need not be removed by the Owner, but may be left in place in a condition satisfactory to the Contracting Officer.

b. If, in the opinion of the Contracting Officer, the existing facilities to be abandoned by the Owner will interfere

with the construction, operation, maintenance of the Project, such facilities shall be removed and disposed of by the Owner pursuant to a method of competitive bidding or negotiation satisfactory to the Contracting Officer. The salvage value of such removed materials, equipment, and supplies, as determined by the method of disposal utilized by the Owner, shall be credited to the Government in the form of a deduction to be made from the cost properly chargeable to the work to be performed under Article 2 of this contract.

c. In the event that the Owner, with the approval of the Contracting Officer, elects not to remove and dispose of the facilities to be abandoned, the Government, at its expense, may remove such facilities in connection with the construction of the Project and provide for its disposal.

ARTICLE 5. Betterments. The Owner agrees that the alterations to be accomplished under this contract will provide the Owner with facilities equal in service and utility to those now in existence and that if the Owner desires any improvements in design, construction, or capacity over and above what is required to provide facilities of equal service and utility, such improvements shall constitute a betterment and will be paid for by the Owner, provided, however, that the term "Betterment" will not be deemed to include more costly construction or design necessitated solely as a result of the alteration.

ARTICLE 6. Ownership and Conduct of the Work.

a. The railroad facilities altered and constructed hereunder by the Owner shall be property of the Owner. The Owner shall be responsible for all materials furnished and work performed by it. The Project work consisting of channel improvements and appurtenances constructed by the Government on the Owner's rights-of-way shall be and remain the property of the Sponsor.

b. The Government may award other contracts for additional or other work in connection with the Project or in the same vicinity. The Government and the Owner shall conduct operations so as to cooperate fully with any such work being performed by either party and/or their contractors and shall carefully fit their own work to that provided under other contracts as directed by the Contracting Officer, provided that nothing herein shall be held or construed to give the Government or its agents or contractors any right to interfere in any way with the operation of the trains or facilities of the Owner. The Owner shall not commit or permit any act which may interfere with the performance of any such work by the Government and/or any Government Contractor.

ARTICLE 7. Interference. The Owner agrees that so long as the Project is operated or maintained for the purposes as described herein that the facilities as altered pursuant to this contract shall not be so further altered or modified nor other facilities constructed by the Owner, so as to interfere with the operation of the Project.

ARTICLE 8. Inspection and Acceptance.

a. The Government shall have the right to inspect the work to be performed by the Owner hereunder at any time during its progress and to make final inspection upon completion thereof. Failure of the Government to object within 20 days after any such inspection shall indicate satisfactory performance of the contract by the Owner.

b. The Owner shall have the right to inspect at any time during its progress the construction by the Government in performing the alterations to Owner's railroad bridges and facilities and the construction of the project by the Government on Owner's rights-of-way for conformance with the approved plans and specifications. Failure of the Owner to object within 20 days after any such inspection shall indicate satisfactory performance by the Government.

c. Upon written notice from the Owner that the altered and/or relocated railroad facilities have been completed, with respect to the work to be performed by the Owner hereunder, the Government shall promptly make a detailed inspection of the altered and/or relocated railroad facilities jointly with representatives of the Owner. In the event it is jointly determined and agreed between the parties, during such inspection, that the altered and/or relocated railroad facilities have been constructed in accordance with the approved plans and specifications, inclusive of any approved modifications thereof, the Government shall approve such construction in writing and the Owner shall promptly, by written notice to the Government, accept the altered and/or relocated railroad facilities as of the date of said joint inspection. However, if it is determined by such inspection that there are defects in material or construction in the work performed by or on behalf of the Owner or the Government, such remedial work as may be agreed upon between the parties shall be promptly accomplished, and upon completion of the agreed remedial work to the satisfaction of both parties, the Owner shall finally accept in writing and the Government shall finally approve in writing the altered and/or relocated railroad facilities as of the date of said completion.

ARTICLE 9. Release. The Owner agrees on completion of the alteration work provided for herein, to accept said substitute facilities and/or payment of the consideration provided for herein as full and just compensation for any and all damages that have been caused to the facilities altered hereunder and does hereby release the other from any and all causes of action, suits at law or equity or claims or demands, and from any liability of any nature whatsoever for and on account of any damages to said Owner's rights-of-way and facilities altered hereunder.

ARTICLE 10. Completion. Subject to the availability of funds and following the completion of all rights-of-way acquisitions by the Sponsor, the Government will issue a notice to proceed to the contractor. The Owner will provide the services prescribed in Article 2 herein as required following notification by the Government of the initiation of construction. It is contemplated that the alterations to each bridge will be completed within 365 days following initiation of construction.

ARTICLE 11. Deferred Construction.

a. It is recognized that the altered railroad embankment on each side of an altered railroad bridge may be subject to settlement or failures of the foundation, subsidence of track and ballast section into the roadbed, settling of fills, washouts and development of other conditions. It is therefore recognized that

because of such conditions it may be necessary to defer, beyond the periods of scheduled construction, work required to complete the altered railroad facilities. The Government, therefore, in addition to any and all other sums to be paid by it hereunder, shall and will pay to the Owner, subject to the availability of funds, the cost and expense for work done by the Owner in remedy of or in the prevention of any conditions described above during the five-year period immediately following completion of the alterations to each bridge.

b. The deferred construction costs mentioned above shall comprise costs which are incurred by the Owner and computed as provided in Article 3 hereof, for the remedy of or the prevention of the occurrences described above, including, but not restricted to the restoration and completion of the roadbed by the removal and placing of grading materials, temporary tracks; restoration of tracks, culverts, signals, signal and communication lines and other facilities; the realignment and resurfacing of tracks; all as made necessary to remedy or prevent the conditions described above occurring singly or in combination during the five-year period referred to above. Such deferred construction costs shall be exclusive of costs of ordinary maintenance.

c. Except in cases where the continuity of operations of trains over the aforesaid altered facilities is involved, the Owner shall submit to the Contracting Officer plans, specifications and estimates for such deferred construction work. These plans, specifications and estimates shall be approved by the Contracting Officer before any work to which they relate shall be commenced. The Owner shall immediately notify the Contracting Officer of any emergency work required for continuity of operations.

ARTICLE 12. Condemnation. Should it be determined for any reason that the right, title and interest of the Owner in and to the lands referred to in Article 2 above shall be acquired by condemnation, or other judicial proceedings, the Owner shall cooperate in the prosecution of the proceedings and this agreement shall, without more, constitute a stipulation which may be filed in the proceedings and be final and conclusive evidence of the adjustments to be made to the facilities herein mentioned.

ARTICLE 13. Disputes.

a. Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Owner. The

decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Owner mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of act arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged. Provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Owner shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Owner shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

b. This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

ARTICLE 14. Covenant Against Contingent Fees.

a. The Owner warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

b. "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by an owner for the propose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by an Owner and subject to the Owner's supervision and control as to time, place, manner of performance, who neither exerts nor proposes to exert improper influence to

solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

ARTICLE 15. Officials Not To Benefit. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation's general benefit.

ARTICLE 14. Gratuities.

a. The right of the Owner to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Owner, its agent, or another representative -

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract, or favorable treatment under a contract.

b. The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

c. If this contract is terminated under paragraph (a) above, the Government is entitled -

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Owner in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph (c) (2) is applicable only if this contract uses money

appropriated to the Department of Defense).

d. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

ARTICLE 17. Equal Opportunity.

a. If, during any 12-month period (including the 12 months preceding the award of this contract), the Owner has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Owner shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Owner shall provide information necessary to determine the applicability of this clause.

b. During performing this contract, the Owner agrees as follows:

(1) The Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Owner shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Owner shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Owner shall, in all solicitations or advertisement for employees placed by or on behalf of the Owner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Owner shall send, to each labor union representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Owner's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Owner shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Owner shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor, Standard Form 100 (EEO-1), or to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Owner shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Owners compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Owner is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Owner may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Owner as provided in Executive Order 11246, as amended, the rules, regulations and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Owner shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Owner shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Owner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Owner may request the United States to enter into the litigation to protect the interests of the United States.

c. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

ARTICLE 18. Definitions.

a. "Head of the agency" (also called "agency head") or "Secretary" means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency, and, in the Department of Defense, the Under Secretary and any Assistant Secretary of the Department of the Army, Navy, and Air Force and Director and Deputy Director of Defense agencies; and the term "authorized representative" means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

b. "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

ARTICLE 17. APPROVAL.

This contract shall be subject to the written approval of the Division Commander, Missouri River Division, or his authorized representative, and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By Valerie A Phillips 94 Sep 14
VALERIE A. PHILLIPS Date
CONTRACTING OFFICER

MISSOURI PACIFIC RAILROAD COMPANY

By R D Urich
Signed Date
R. D Urich Assistant Vice President
Name Title

CERTIFICATE

I, P.W. SAYLORS, certify that I am the Asst
Secretary of the corporation named as Owner herein; that
_____ who signed this contract on behalf of the Owner
was then Assistant Vice President of said corporation; that said
contract was duly signed for and on behalf of said corporation by
authority of its governing body and is within the scope of its
corporate powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the
seal of said corporation this _____ day of _____, 19 _____

Asst P.W. Saylor
Secretary

APPENDIX A

REQUIREMENTS FOR WORK ON
RAILROAD PROPERTY

The Government shall include the following requirements in all construction contracts for work adjacent to or on the Owner's ("Railroad") right-of-way.

1. The Government Contractor (Contractor), in performing work for the Government adjacent to or on the Railroad's rights-of-way as now existing or as relocated, shall comply with the Railroad's rules and regulations, a copy of which the Government will furnish to its Contractor, shall enter into a Right of Entry Agreement with the Railroad Company and shall coordinate, as necessary, with the Chief Engineer of the Railroad, or his authorized representative.

2. When necessary for the Contractor to be upon or across the Railroad's right-of-way and tracks in performing this work, the Contractor shall give notice, as required in paragraph 3 below, and shall enter under such protective measures as may be approved by the Chief Engineer of the Railroad or his authorized representative.

3. The Contractor shall notify the Railroad Representative at least 48 hours in advance of Contractor commencing its work and at least 24 hours in advance of proposed performance of any work by the Contractor in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. Upon receipt of such notice, the Railroad Representative will determine and inform the Contractor whether a flagman need be present and whether the Contractor need implement any special protective or safety measures.

4. INSURANCE REQUIREMENTS

(a) At least 10 calendar days before entering on Railroad Right-of-way, the Contractor shall furnish to the Government evidence of the following required insurance coverage and endorsement(s) and upon request a certified duplicate original of any of those policies:

(1) General Public Liability insurance providing bodily injury, including death, personal injury and property damage coverage with a combined singled limit of at least \$2,000,000 each occurrence or claim and a general aggregate limit of at least \$4,000,000. This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement, Underground hazard, Products-Completed Operations with products-completed operations aggregate of at least \$2,000,000, a separate general aggregate for the project (ISO Form CG 25 03 or equivalent), Broad Form Property Damage, severability of interests and name Railroad as an additional insured with respect to all liabilities arising out of Contractor's obligations in the Contractor's agreement with the Government. If coverage is purchased on a "claims made" basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Agreement be canceled.

(2) Automobile Public Liability insurance providing bodily injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall provide contractual liability by endorsement ISO Form CA 00 25 or equivalent covering all motor vehicles including hired and non-owned, mobile equipment to the extent it may be excluded from general liability insurance, severability of interests and name Railroad as an additional insured with respect to all liabilities arising out of Contractor's obligations in the Contractor's agreement with the Government.

(3) Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the state(s) affected by this Agreement and Employers' Liability. The insurance shall also comply with all laws of states which require participation in their state workers' compensation fund.

(4) Railroad Protective Liability insurance naming Railroad and any railroad operating over its tracks as insured with a combined single limit of \$5,000,000 per occurrence with a \$10,000,000 aggregate. The policy form shall be AAR-AASHTO with broad form coverage for "Physical Damage to Property" (ISO Form GL 00 30) or as revised ISO-R1MA (Form CG 00 35) and include pollution arising out of fuels and lubricants brought to the job site (ISO Form CG 28 31 or equivalent). If the Lloyd's of London policy form is used, limits shall be \$5,000,000 per occurrence with a \$10,000,000 aggregate and the Extended Claims Made Date shall be determined by adding the length of the original policy period plus one year to the policy expiration date.

(b) The Contractor shall require the insurance company(ies) issuing such policy(ies) to notify the Government in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

(c) The Contractor, in the above insurance policies, shall endorse them waiving its rights to subrogation against the Railroad. The Contractor's insurance shall be primary with respect to any insurance carried by the Railroad.

(d) The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to the Government or with a current Best's Insurance Guide Rating of B and Class VII or better. Such insurance Company shall be authorized to transact business in Missouri.

(e) Each and every of the above insurance policies shall be kept by the Contractor in full force and effect until all work required to be performed under the construction contract has been completed to the satisfaction of and has been accepted by the Government.

(f) The Government shall deliver the Railroad Protective Liability Policy to the Owner and shall furnish the Owner evidence of all other insurance required pursuant to this section.

5. The Project includes removal, alteration and replacement of bridges and trackage used by the Owner in railroad common carrier operations which must be conducted timely and safely and contemporaneously with work by the Government and its contractors on the Project. Continuous and uninterrupted rail operations shall have priority with respect to all Project work performed on Owner's rights-of-way. The Government and its contractors acknowledge that rail operations may cause some delays to Project Work and assume responsibility for such delays.

6. Continuing Contracts Clause

DACW41-94-C-0017

24.0 EFARS 52.232-10001 - CONTINUING CONTRACTS (1985 JAN HO USACE)

(a) This is a continuing contract, as authorized by Section 10 of the River and Harbor Act of September 22, 1922 (33 U.S. Code 621). The payment of some portion of the contract price is dependent upon reservations of funds from future appropriations. The responsibilities of the Government are limited by this notwithstanding any contrary provision of the "Payments to Contractor" clause or any other clause of this contract. (b)(1) The sum of \$100,000.00 has been reserved for this contract and is available for payments to the contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds will be reserved for this contract. (2) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraphs (d) and (e) below. No such failure shall constitute a breach of this contract, except that this provision shall not bar a breach-of-contract action if an amount finally determined to be due as a termination allowance remains unpaid for one year due solely to a failure to reserve sufficient additional funds therefore. (c)(1) The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The contracting officer will promptly notify the contractor of any additional funds reserved for the contract by issuing an administrative change order to the contract. (2) If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the contractor shall give written notice to the contracting officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet payments due or to become due under the contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion. (d)(1) No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. The contractor shall be entitled to simple interest on any payment that the contracting officer determines was actually earned under the terms of the contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, for the Renegotiation Board, as in effect on the first day of the delay in such payment. (2) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the contractor to any price adjustment under the "Suspension of Work" clause or in any other manner under this contract. (3) An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds. (e) If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments otherwise due, the contractor, by written notice delivered to the contracting officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be considered a termination for the convenience of the Government. (f) If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the contractor because of work performed and to be performed under the contract during the fiscal year, the Government reserves the right, after notice to the contractor, to reduce said reservation by the amount of such excess.

**CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter referred to as the "Railroad"); and _____, a _____ corporation (hereinafter referred to as the "Contractor").

RECITALS:

Contractor has been hired by the United States of America Corps of Engineers (hereinafter the "Government") to perform work relating to _____

(the "work"), partially located on property of Railroad in the vicinity of Railroad's Milepost _____ on its _____ Subdivision, which work is the subject of a contract dated _____ between Railroad and Government in connection with a flood control project known as the Blue River Channel Modification Project in Kansas City, Missouri.

Contractor has requested Railroad to permit it to perform the work on Railroad property, and Railroad is agreeable thereto, subject to the following terms and conditions.

AGREEMENT:

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

ARTICLE 1 - DEFINITION OF CONTRACTOR

For purposes of this agreement, all references in this agreement to the Contractor shall include the Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE

The Railroad hereby grants to the Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing any work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS 1, 2 AND 3

The terms and conditions contained in Exhibit 1, Exhibit 2 and Exhibit 3, attached hereto, are hereby made a part of this agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE

The Contractor shall bear any and all costs and expenses associated with any work performed by the Contractor, or any costs or expenses incurred by the Railroad relating to this agreement. All work performed by Contractor on Railroad's property shall be performed in a manner satisfactory to the Railroad's Director of Track Maintenance or his authorized representative (hereinafter the "Railroad Representative") identified below:

Union Pacific Railroad Company
6455 East Commerce Avenue
Kansas City, Missouri 64120
Attn: Director of Track Maintenance
Telephone: (816) 245-2726
Fax: (816) 245-2864
Cell Phone: (816) 225-5782

ARTICLE 5 - TERM; TERMINATION

- a). The grant of right herein made to Contractor shall commence on the date of this agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.
- b). This agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 6 - INSURANCE

- a). Before commencing any work, Contractor will obtain the insurance coverage set forth in **Exhibit 2**, and comply with the terms and conditions contained therein, including, without limitation, providing the insurance policies or certificates set forth therein to the Government.
- b). Contractor warrants that this agreement and **Exhibit 2** has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.
- c). All insurance correspondence shall be directed to the person named in Article 4 above.

ARTICLE 7 - CHOICE OF FORUM

This agreement shall be governed, construed and enforced in accordance with the laws of the state of Missouri. Litigation arising out of or connected with this agreement may be instituted and maintained in the courts of the State of Missouri only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

ARTICLE 8 - DISMISSAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE

At the request of Railroad, Contractor shall remove from Railroad property any employee of Contractor or any subcontractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad property.

ARTICLE 9 - SPECIAL PROVISIONS

- a). No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- b). Explosives or other highly flammable substances shall not be stored on Railroad property without the prior written approval of the Railroad Representative.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT 1 TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

a. The Contractor agrees to notify the Railroad Representative at least 10 working days in advance of Contractor commencing its work and at least 10 working days in advance of proposed performance of any work by the Contractor in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such 10-day notice, the Railroad Representative will determine and inform the Contractor whether a flagman need be present and whether the Contractor need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at Contractor's expense with the understanding that if the Railroad provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. Contractor shall promptly pay to Railroad all charges connected with such services within 30 days after presentation of a bill therefor.

b. The rate of pay per hour for each man will be the prevailing hourly rate in effect for an eight hour day for the class of men used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health & welfare, supplemental sickness, Railroad Retirement & UC, supplemental pension, Empl. Liability & Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect on the day of execution of this agreement. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Contractor shall pay on the basis of the new rates and charges.

c. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Contractor may not be working during such time. When it becomes necessary for the Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Contractor must provide the Railroad a minimum of 5 days notice prior to the cessation of the need for a flagman. If 5 days notice of cessation is not given, the Contractor will still be required to pay flagging charges for the 5 day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional 10 days notice must then be given to the Railroad if flagging service are needed again after such five day cessation notice has been given Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

a. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Railroad without liability to the Licensee or to any other party for compensation or damages.

b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH RAILROAD'S OPERATION.

No work performed by Contractor shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad its lessees, licensees or others, unless specifically permitted under this agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Contractor at any time that would in any manner impair the safety thereof. When not in use, Contractor's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

Section 4. MECHANIC'S LIENS.

The Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. The Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of the Railroad for any such work performed. The Contractor shall indemnify and hold harmless the Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

a. Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, and will commence no work on the right of way until all such protection or relocation has been accomplished.

b. In addition to other indemnity provisions in this Agreement, the Contractor shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Contractor, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this agreement, the Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Contractor shall use only such methods as are consistent with safety, both as concerns the Contractor, the Contractor's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Contractor (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Contractor to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Contractor shall reimburse and indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorneys' fees, court costs and

expenses. The Contractor further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

Section 7. SAFETY INSTRUCTIONS.

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the Work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Contractor (and not by way of limitation), the Contractor shall comply with the minimum safety requirements described in **Exhibit 3**, hereto attached and hereby made a part hereof.

Section 8. INDEMNITY.

a. As used in this Section, "Railroad" includes other railroad companies using the Railroad's property at or near the location of the Contractor's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, the Contractor's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Contractor's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).

b. As a major inducement and in consideration of the license and permission herein granted, the Contractor agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this agreement, a breach of the agreement or the failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of performance or nonperformance of this agreement regardless of whether contributed to in part by the negligence or fault of Railroad. However, the Contractor shall not indemnify the Railroad when the Loss is caused by the sole negligence of the Railroad.

c. Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings resulting from any employee's suit against either party pursuant to any such Act(s) be relied upon or used by either party in any attempt to assert common law liability against the other.

Section 9. RESTORATION OF PROPERTY.

In the event the Railroad authorizes the Contractor to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Contractor, then in that event the Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. The Contractor shall remove all of Contractor's tools, equipment and materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF BREACH.

Waiver by the Railroad of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Contractor shall in no way impair the right of the Railroad to avail itself of any remedy for any subsequent breach thereof.

Section 11. ASSIGNMENT - SUBCONTRACTING.

The Contractor shall not assign, sublet or subcontract this agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Contractor permission to subcontract all or any portion of the work herein described, the Contractor is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this agreement.

INSURANCE REQUIREMENTS

A. At least ten (10) calendar days before entering onto railroad right-of-way, the Contractor shall furnish to the Government evidence of the following required insurance coverage and endorsement(s) and upon request a certified duplicate original of any of those policies.

(1) Commercial General Liability insurance providing bodily injury, including death, personal injury and property damage coverage with a combined singled limit of at least \$2,000,000 each occurrence or claim and a general aggregate limit of at least \$4,000,000 and purchased on a past 1998 ISO or equivalent form. This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement, Underground hazard, Products-Completed Operations with products-completed operations aggregate of at least \$2,000,000, Broad Form Property Damage, severability of interests and name Railroad as an additional insured with respect to all liabilities arising out of Contractor's obligations in the Contractor's agreement with the Government. If coverage is purchased on a "claims made" basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Agreement be canceled.

(2) Automobile Public Liability insurance providing bodily injury and property damage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall provide contractual liability by endorsement ISO Form CA 00 25 or equivalent covering all motor vehicles including hired and non-owned, mobile equipment to the extent it may be excluded from general liability insurance, severability of interests and name Railroad as an additional insured with respect to all liabilities arising out of Contractor's obligations in the Contractor's agreement with the Government.

(3) Worker's Compensation insurance covering the statutory liability as determined by the compensation laws of the state(s) affected by this Agreement and Employers' Liability. The insurance shall also comply with all laws of states which require participation in their state workers' compensation fund.

(4) Railroad Protective Liability insurance naming Railroad and any railroad operating over its tracks as insured with a combined single limit of \$5,000,000 per occurrence with a \$10,000,000 aggregate. The policy shall be a broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Government.

B. The Contractor shall require the insurance company(ies) issuing such policy(ies) to notify the Government and Railroad in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

C. The Contractor in the above insurance policies, shall endorse them waiving its rights to subrogation against the Railroad. The Contractor's insurance shall be primary with respect to any insurance carried by the Railroad.

D. The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to the Government or with a current Best's Insurance Guide Rating of B and Class VII or better. Such insurance Company shall be authorized to transact business in Missouri.

E. Each and every of the above insurance policies shall be kept by the Contractor in full force and effect until all work required to be performed under the construction contract has been completed to the satisfaction of and has been accepted by the Government.

F. The Government shall deliver the Railroad Protective Liability Policy to the Railroad and shall furnish the Railroad evidence of all other insurance required pursuant to this section.

MINIMUM SAFETY REQUIREMENTS

The safety of personnel, property, rail operations, and the public is of paramount importance in the prosecution of the work pursuant to this agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Contractor (and not by way of limitation), the following special safety rules shall be followed. The terms "Contractor" and "employees" as used in this document refers to all employees of the contractor as well as all employees of any subcontractor.

Clothing

All employees of the Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet. Specifically, the Contractor's employees must wear:

Waist-length shirts with sleeves.

Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.

Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

Personal Protective Equipment

The Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or the railroad's employee in charge. In particular, the protective equipment to be worn shall be:

Hard hat that meets the American National Standard (ANSI) Z89.1 - latest revision. Hard hats should be affixed with the contractor's or subcontractor's company logo or name.

Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 - latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.

Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:

100 feet of a locomotive or roadway/work equipment

15 feet of power operated tools

150 feet of jet blowers or pile drivers

150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection - plugs and muffs)

Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as directed by the employee in charge.

On Track Safety

The Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations - 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on these regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all Contractor's employees must:

Maintain a distance of 25 feet to any track unless a Railroad representative is present to authorize movements.

Wear an orange, reflectorized workwear approved by the employee in charge.
Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed.
Contractors must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. They will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

Equipment

It is the responsibility of the Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad representative, any of the Contractor's equipment is unsafe for use, the Contractor shall remove such equipment from the Railroad's property. In addition, the Contractor must ensure that:

The operators of all equipment are properly trained and competent in the safe operation of the equipment.

In addition, operators must be:

- Familiar and comply with Railroad's rules on lockout/tagout of equipment.
- Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
- Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.

All self-propelled equipment is equipped with a first aid kit, fire extinguisher, and audible back-up warning device. Unless otherwise authorized by the employee in charge, all equipment is parked a minimum of 25 feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.

Cranes are equipped with three cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

General Safety Requirements

The Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and properly trained in all safety and health aspects of the job. Specifically the Contractor must ensure that:

The Railroad is promptly notified of any reportable injury (as defined by the U.S. Occupational Safety and Health Administration) to an employee that occurs during the performance of work at the job site.

Employees do not use, be under the influence of, or have in their possession any alcoholic beverage, drug, or other substance that may inhibit the safe performance of any work while on Railroad property.

All waste is properly disposed of in accordance with applicable federal and state regulations.

All employees participate in and comply with the job briefing conducted by the employee in charge. During this briefing, the employee in charge will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any participant has any questions or concerns about the work, he/she must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.