

The Utah
Construction
Company

Constructing roadbed & wagon
Roads Oroville to California
State line.

No 2

< Agreement to cover >

Agreement, made and entered into this 31st
day of October, 1905, by and between WESTERN PACIFIC
RAILWAY COMPANY, a corporation organized under the
laws of the State of California, the party of the first
part, hereinafter called the "Railway Company," and
THE UTAH CONSTRUCTION COMPANY, a corporation or-
ganized under the laws of the State of Utah, the party
of the second part, hereinafter called the "Contractor":

Whereas, the parties hereto have entered into
certain contracts (hereinafter called "permanent con-
tracts") wherein and whereby the Contractor has un-
dertaken to do certain work and furnish certain materials
for the Railway Company in and about the preparation
of its roadbed for the laying of rails on various sections
of that part of the line of railroad of the Railway
Company extending from the City of Oroville, in Butte
County, California, to the boundary line of the State of
California on the east, and

Whereas, it is provided in and by each of said
permanent contracts that work shall not be commenced
thereunder prior to October 1st, 1906, unless the Presi-
dent or other chief executive officer of the Railway
Company shall direct the Contractor to begin work
under such permanent contract at an earlier date, in
which case the Contractor is to commence work there-
under at the date or dates so fixed by the President or
other chief executive officer of the Railway Company,



the said direction to be given by notice in writing of at least ten (10) days ; and

Whereas, it is further provided in and by each of said permanent contracts that in the event that the Contractor shall at any time prior to October 1st, 1906, request in writing the President or other chief executive officer of the Railway Company to direct the Contractor to begin work under such permanent contract, the President or other chief executive officer of the Railway Company shall thereupon direct the Contractor to begin work thereunder, and the Contractor shall commence work thereunder at the date or dates fixed by the President or other chief executive officer of the Railway Company in such notice, provided, however, that the date or dates so fixed shall not exceed ten (10) days from the date that the request is delivered by the Contractor to the President or other chief executive officer of the Railway Company; and

Whereas, it is necessary that certain work shall be performed in and about the construction of said line of railway prior to the commencement of work under any of said permanent contracts entered into as aforesaid ;

Now, THEREFORE, THIS AGREEMENT WITNESSETH : that the Contractor will immediately begin to do and will perform in a workmanlike manner any work designated and required by the Chief Engineer of the Railway Company, upon the said line of railroad of the

Railway Company between the points above designated, and in the case of each section of said line that is covered by one of said permanent contracts will prosecute all said work continually and diligently during the period elapsing from the date hereof to the first day of October, 1906, or until notice is given by the President or other chief executive officer of the Railway Company to begin work upon such section under the permanent contract relating thereto, as above provided; and the Contractor will do all the said work designated by the said Chief Engineer during said period when and as required by him and to his satisfaction.

All work to be performed by the Contractor shall be performed except as the Chief Engineer may otherwise specifically direct, under the authority of subsequent provisions hereof, in accordance with the specifications prepared therefor by the said Chief Engineer, which said specifications are on file in the office of the said Chief Engineer and consist of all the various specifications contained in the several permanent contracts between the parties hereto hereinabove mentioned.

The Railway Company hereby agrees to pay to the Contractor the reasonable value of such work and of the labor done and materials furnished by the Contractor hereunder (which value shall not, in any case, exceed the prices fixed for the same work or work of a similar character in the subjoined schedule of prices), in the manner following, to wit: Approximate estimates of the amount of work done and materials furnished hereunder shall be made by the Chief Engineer, or by

the engineer in charge of the work subject to the approval of the Chief Engineer, on or about the last day of each calendar month, such estimate to cover the work done and materials furnished during such month. The value of the work done and materials furnished during such month shall be ascertained approximately by applying to such approximate estimate of the work done the prices fixed in said schedule of prices, and upon the certificate of the Chief Engineer as to the value of the work so done, ascertained as aforesaid (a separate certificate being given in the case of each section of road that is the subject of a permanent contract), payment shall be made by the Railway Company to the Contractor as follows:

The Railway Company shall pay to the Contractor on or before the 20th day of each calendar month ninety per cent. (90%) of the value of said work, labor and materials furnished by the Contractor during the preceding calendar month, and covered by any such certificate. The remaining ten per cent. (10%) of the estimate contained in any such certificate shall in each case be held and retained by the Railway Company until thirty-six (36) days after the completion of all work to be done and performed by the Contractor upon the section to which such certificate relates pursuant to the terms hereof or to the terms of the permanent contract covering such section, and all moneys so retained by the Railway Company shall be held by it as security for the full performance of the obligations of the Contractor under this contract and under the

permanent contract relating to such section of said line of railway.

When all of the work to be performed hereunder, and all of the work to be performed under any permanent contract, shall have been completed and accepted by the Chief Engineer, he shall return to the Contractor a final certificate that the whole work provided for in this contract, so far as it affects the section of the line of railway covered by such permanent contract, has been acceptably completed, and the time for the payment of the ten per cent. (10%) so retained under certificates relating to said section shall begin to run from the date of the delivery of said final certificate, and upon the expiration of said period of thirty-six (36) days thereafter, provided that no claim or claims of lien upon said line of railway or any part thereof by any person, firm or corporation has been filed, or, if so filed, if the same has been satisfied and discharged by the Contractor, the Railway Company shall pay to the Contractor the balance due upon such final certificate, including the percentage retained on account of previous approximate estimates relating to said section.

The Chief Engineer in preparing any final certificate shall not be bound by the preceding estimates and certificates, such preceding estimates being intended to be only approximate and in no case to be taken as an acceptance of the work or as releasing the Contractor from responsibility therefor until the final certificate is made and the work in its entirety is accepted.

The Contractor hereby agrees promptly to pay for

all labor done for or materials furnished to it in the performance of this agreement, and in any case on or before the 20th day of the month following that during which the same shall have been employed or used; in default whereof the Railway Company may retain from payments as they become due such amounts of money as the said Chief Engineer shall deem sufficient to pay any amounts in default, and before any payments shall be required to be made hereunder the Contractor shall furnish to said Chief Engineer satisfactory evidence that no claim then exists against the Contractor for labor done or materials furnished in or about said work. In the event that the Railway Company shall be compelled to pay any claims for labor done for or materials furnished to the Contractor which it was the duty of the Contractor to pay, any amount so paid shall be credited upon the contract price which would otherwise have been due hereunder and shall be in reduction of the amount to be paid the Contractor.

The Chief Engineer of the Railway Company shall designate the work to be done in such a manner as to permit the Contractor to make rapid progress, it being the intent hereof that the Contractor shall not be hindered or delayed in the speedy completion of the work to be done and performed by the Contractor from Oroville to the said boundary line of the State of California.

This contract shall continue in force as to the portion of the work covered hereby that is also covered

by any one of the permanent contracts until such time as the President or other chief executive officer of the Railway Company shall fix by notice to the Contractor to begin work under such contract, whereupon this contract shall terminate as to the work covered by such permanent contract, but shall continue in force as to the work covered by any of such permanent contracts as to which notice shall not have been given until the giving of such notice, provided, however, that unless the life of this contract shall be extended by mutual agreement, the same shall terminate in all its parts on the first day of October, 1906.

And it is further mutually agreed as follows between the parties to this contract:

The words "Chief Engineer" shall refer to the Chief Engineer of the Railway Company; the word "Engineer," without the prefix "Chief," shall refer to the Engineer of the Railway Company for the time being in charge of the work, and may include the Chief Engineer.

2. No part of the work to be performed under this contract shall be sublet or transferred without the written consent of the Chief Engineer, and no such subletting, transfer or consent shall release the contractor from any obligation, either to the Railway Company or to any persons employed by the Contractor, and in all cases the sub-contractors are to be considered merely as foremen employed by the Contractor, and, with other foremen and employees of the Contractor, are liable to

discharge by the Engineer for incompetence, misconduct, neglect of duty, or whenever in the opinion of the Engineer the interest of the party of the first part demands such discharge.

3. The work shall be performed under the direction and supervision of the Engineer, by whose measurements and calculations the amount of work to be performed under this contract shall be determined, and who shall have full power to condemn and reject any or all work or material which, in his opinion, is unsatisfactory or does not conform to the spirit of this agreement, and all such imperfect or insufficient work or material shall be immediately remedied by the Contractor at his sole cost and expense and to the satisfaction of the Engineer; provided, however, that no omission by said Engineer to disapprove of or reject any insufficient or defective or imperfect work or material at the time of any monthly or other estimate shall be deemed an acceptance of such work or material, and said Engineer shall have the power to have any defective work or material taken out and rebuilt or replaced at the expense of the Contractor at any time prior to the final acceptance of the work.

4. The Chief Engineer shall decide all questions which may arise between the parties hereto relative to said work, or the construction or meaning of any of the provisions and stipulations contained in this agreement or the sufficiency of performance or classifi-

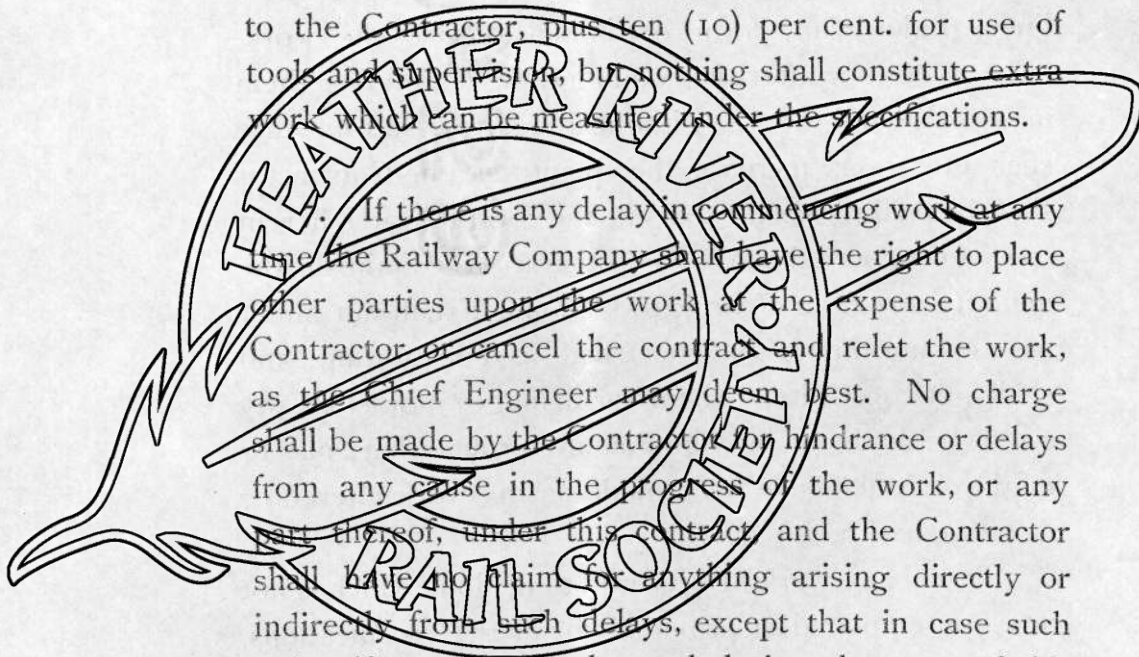
cation of work and materials performed and furnished by the Contractor, or the price to be paid; and his decision shall be final and binding upon both parties to this contract.

5. The Railway Company shall have the right to make any alterations that may be hereafter determined upon as necessary or desirable in the location, line, grade, plan, form or dimensions of the work, either before or after the commencement, defining them in writing and by or without drawings, and in case such alterations increase the quantities the Contractor shall be paid for such excess at the contract rates herein specified; but should such alterations diminish the quantity or extent of work to be done, it shall not under any circumstances be construed as constituting, and shall not constitute, a claim for damages, nor shall any claim be made on account of any profits that may or might or could have been made on the work altered or dispensed with.

Should any work be required to be done which is not now contemplated or provided for in the specifications, the Chief Engineer shall fix the prices for the same and the parties hereto shall abide by such prices, provided the Contractor enters upon and commences such work. But if the Contractor declines to undertake such work at the prices so fixed by the said Chief Engineer, then the Railway Company may enter into a contract with any other party or parties for its execution, or perform the same as if this contract had never existed.

6. Claims for extra work will not be allowed unless the same shall be done in pursuance of a written order of the Engineer, to be presented with the claim, and the claim made at the end of the month in which the work is done, unless the Chief Engineer, at his discretion, shall direct the claim, or such part as he may deem just, to be allowed. Payment for extra work, when not otherwise provided for, shall be at actual cost to the Contractor, plus ten (10) per cent. for use of tools and supervision, but nothing shall constitute extra work which can be measured under the specifications.

If there is any delay in commencing work at any time the Railway Company shall have the right to place other parties upon the work at the expense of the Contractor or cancel the contract and relet the work, as the Chief Engineer may deem best. No charge shall be made by the Contractor for hindrance or delays from any cause in the progress of the work, or any part thereof, under this contract, and the Contractor shall have no claim for anything arising directly or indirectly from such delays, except that in case such delay, if occurring under and during the term of this contract, shall be due to the default or other voluntary action of the Railway Company, the time wherein the Contractor shall be required to perform the work as to which such delay shall occur shall be extended, both hereunder and under the permanent contract relating thereto, for a reasonable period not exceeding the period of such delay.



8. If the said Contractor shall fail to prosecute the work or any division or portion thereof with such diligence and with such force as shall be required by the Chief Engineer, or if the character of the work is not in accordance with the specifications hereinbefore mentioned, the Chief Engineer may serve written notice on the Contractor, if found upon the work, or, if not, by posting said notice in a conspicuous place upon the work, or by notifying the foreman on the work, stating the amount of increase of force, appliances or tools required or the desired improvement in the character of the work, and if at the end of ten (10) days thereafter the Contractor shall have failed to comply with said notice such failure shall be considered a breach and forfeiture of its rights under this contract, and the Railway Company at its option may declare this contract, or any portion or section included therein, abandoned and forfeited, and enter upon and take possession of said work or portion thereof, and proceed to perform or re-let the same, as it may think best, and in case it so does the Contractor shall be liable for the actual damages thereby sustained up to the time the work is completed; or the Railway Company may employ such additional force as may be necessary, in the opinion of the Chief Engineer, to insure the speedy completion of said work and pay the expenses thereof and charge the same to the Contractor.

9. It is further mutually agreed that the Railway Company, at any time before the completion of the

work contracted for, may order a reduction of the force engaged thereon, or may suspend the work or any part thereof, for any length of time, without liability for damages, or may discontinue the entire work and cancel this contract, and in case of such cancellation a full and final estimate of the work done shall be made and the Contractor paid in full therefor, at the contract price, less all proper deductions hereunder or hereinafter specified; and such payment shall be in full satisfaction of all claims and demands arising out of this contract, and no additional claim shall be made on account of such cancellation.

10. The Contractor shall at his own expense make good all loss or damage for casualties of every kind, including those which may be occasioned by winds, floods, lightning or other action of the elements, or loss of materials in building embankments in water or streams, and shall claim no compensation therefor or extension of time by reason thereof.

11. The Contractor shall at his own expense provide commodious passing places for public and private roads and keep them in a safe condition, and will also, at his own expense, construct and maintain in good repair fences sufficient for keeping up enclosures for the protection of stock and crops.

12. The Contractor must carefully preserve all stakes and benchmarks, and in case of neglect he will

be charged with and shall pay for all expenses in replacing them.

13. In the prosecution of work under this contract at or near the operated tracks of any Railway or Railroad Company, everything must be subservient to the safe and uninterrupted use of said tracks, and nothing shall be done or suffered to be done by the Contractor, his agent, or employees, which will, in the opinion of the Chief Engineer, endanger or delay the operation of trains on the tracks contiguous to or crossing the work. In the event of any claims on the part of any such Railway or Railroad Company due to any failure on the part of the Contractor to comply with the foregoing conditions, said Contractor shall be solely liable.

In making excavations and embankments close to any operated track, the Contractor shall be governed by the instructions of the Engineer or his assistants as to how near to said track said excavations or embankments shall be made, and as to the slopes thereof close to said track. Tramways or tracks used by the Contractor shall be placed and always kept at a safe distance from said operated track.

No grading material shall be handled across the operated track of any Railway or Railroad Company, except by order of the Engineer, and in each and every case where such crossing is ordered to be made, a flagman or watchman shall protect such crossing place and the crossing shall be made in every case according

to the signals or warnings of said flagman or watchman. In no case whatsoever shall such crossing of material be made while trains are approaching the place of crossing. The Contractor shall use the highest degree of care in taking precautions to avoid accidents to trains, persons and teams while running on or crossing an operated track.

14. It is understood and agreed that the Contractor shall indemnify and hold the party of the first part harmless and free from all liability for injuries to any person or persons, whether employees of the Contractor or any sub-contractor, or any third person or persons, and also any and all damage to property owned either by the Contractor or any other person or persons, caused in any way by the Contractor, his agents, employees or sub-contractors, or any agent or employee of such sub-contractor, or caused by the prosecution of the work hereby contracted for, and all damages and liability and judgments, costs, charges, expenses and attorney's fees arising or to arise from any of these causes.

15. None of the provisions of this contract shall be held to be waived by the Railway Company by reason of any act whatsoever or in any manner other than by an express waiver thereof in writing by the Chief Engineer.

16. Transportation at free rates shall be given the Contractor by the Railway Company over any part

of the main line of its road that may be operated for any time, long or short, during the term of this contract, for laborers or others employed by the Contractor on the work of this contract and for construction tools, plant, live stock, powder, feed for stock, wood, coal and fuel oil, used in the performance of this contract, but the supplies sold through stores or used in feeding the men shall pay regular tariff rates.

17. It shall be the right and duty of the Contractor to obtain the lowest possible rates for men, plant, tools, live stock or supplies, that must be shipped over foreign lines, but should the Contractor be unable to obtain rates on such lines not exceeding one cent per passenger mile for men employed on this contract and one-half cent per ton mile for the plant, tools, live stock or supplies mentioned, required in carrying on the work of this contract, with the exception of powder and supplies sold through the stores or used in feeding the men, the Railway Company will endeavor to obtain the rates mentioned, viz.: one cent per passenger mile and one-half cent per freight ton mile over Missouri Pacific, Wabash and Denver and Rio Grande Railway systems and Boca and Loyaltan Railroad. In all cases where the Railway Company may fail to obtain such rates over said lines, it will pay or credit the excess on properly approved bills to the Contractor, in effect guaranteeing the rates mentioned to the Contractor over the lines named; provided, however, that the Contractor

shall route all men, materials, live stock and supplies of all kinds, required in carrying out the terms of this contract, without detriment as to rates or cost, via Missouri Pacific, Wabash and Denver and Rio Grande Railway systems and the Boca and Loyalton Railroad or other so-called "Gould" lines as may be indicated by the General Agent of the Denver and Rio Grande Railroad located in San Francisco, California.

18. It is distinctly understood and declared by the Contractor that this contract is made by it for the consideration herein named, solely on its own knowledge and information derived from others than the Railway Company, its agents or officers, of the nature and formation of the country in which said work is to be done, and the proximity of other public works, roads, etc., and the means of access thereto, also of the character, quantities and location of the material to be used or required in forming the roadbed for said railroad and in performing and completing all the work described herein; and that the plans, maps and profiles of said work prepared by the Chief Engineer and his assistants and the quantities estimated therefrom are approximate only, and are subject to change and alteration as herein provided.

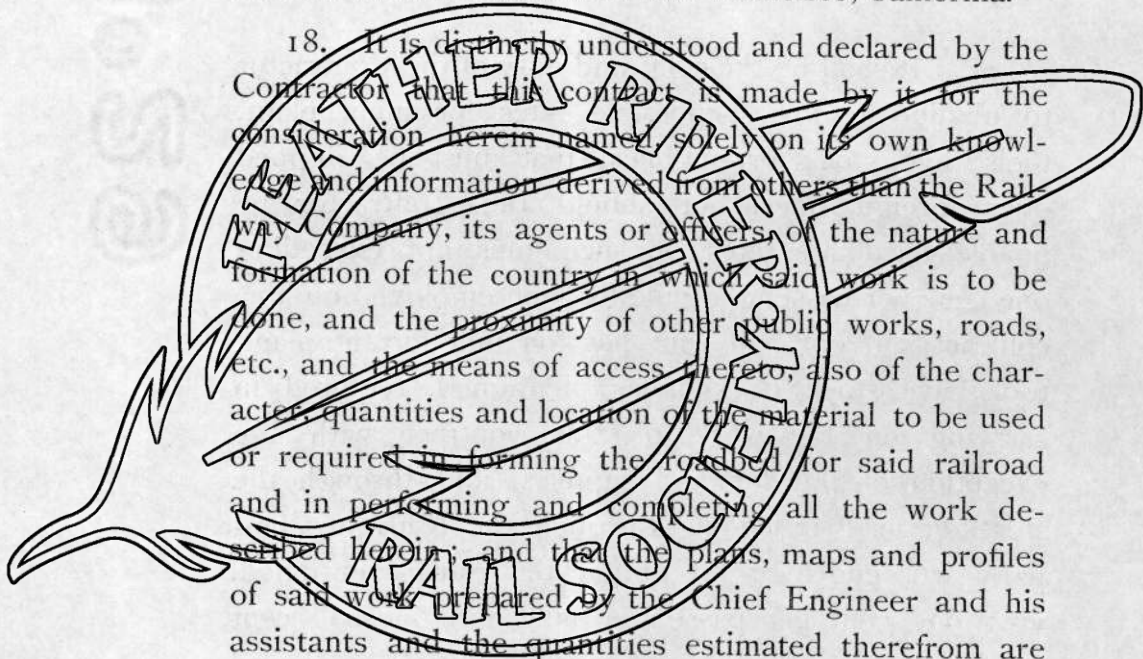
19. The schedule of prices hereinabove mentioned and referred to is the following :

CLEARING AND GRADING.

For clearing, forty-five dollars no cents (\$45.00) per acre.

ABCDEF

45.00



abcde x 7

" .84

For solid rock excavation, no dollars eighty-four cents (\$0.84) per cubic yard.

" .38

For loose rock excavation, no dollars thirty-eight cents (\$0.38) per cubic yard.

" .17

For common excavation, no dollars seventeen cents (\$0.17) per cubic yard.

ABC & D .02

For overhaul, per 100 feet, no dollars two cents (\$0.02) per cubic yard, on all work from Oroville to Survey Station 183 of Green's Line on Spanish Creek.

E & F .01

For overhaul, per 100 feet, no dollars one cent (\$0.01) per cubic yard, from Survey Station 183 of Green's Line on Spanish Creek to the State line.

ABCDE & F .01 1/2

For overhaul, beyond 2,000 feet by Contractor's train, for each 1,000 feet, no dollars one and one-half cents (\$0.01 1/2) per cubic yard.

" 16.00

For bridge masonry, 1st class, sixteen dollars no cents (\$16.00) per cubic yard.

" 12.00

For bridge masonry, 2d class, twelve dollars no cents (\$12.00) per cubic yard.

" 8.00

For masonry, 3d class, eight dollars no cents (\$8.00) per cubic yard.

" 7.00

For masonry, 4th class (in mortar), seven dollars no cents (\$7.00) per cubic yard.

" 5.50

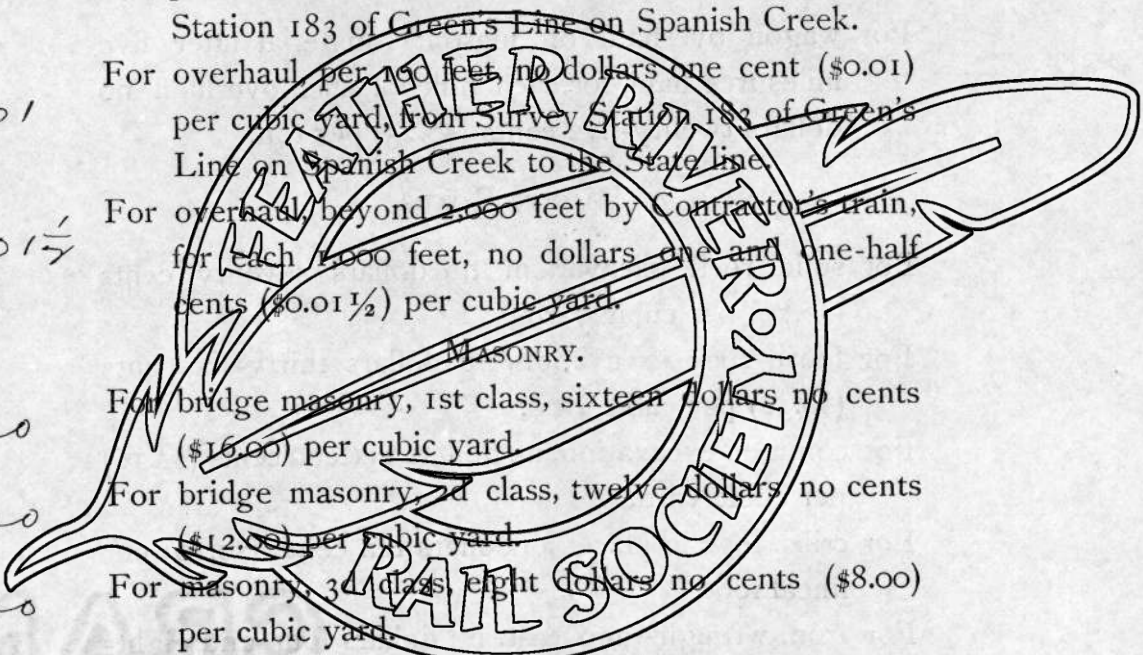
For masonry, 4th class (laid dry), five dollars and fifty cents (\$5.50) per cubic yard.

" 18.00

For arch masonry, 1st class, eighteen dollars no cents (\$18.00) per cubic yard.

" 13.00

For arch masonry, 2d class, thirteen dollars no cents (\$13.00) per cubic yard.



ABCS&A 2.80
 " 2.50
 " .20
 " 9.00
 " .25
 D .70
 " .36
 " .16
 " .10
 " .048
 " 20.00
 " .015

For retaining walls (laid dry), two dollars and eighty cents (\$2.80) per cubic yard.

For paving, two dollars and fifty cents (2.50) per cubic yard.

For rip rap, no dollars twenty cents (\$0.20) per cubic yard.

For concrete, nine dollars no cents (\$9.00) per cubic yard.

For wagon overhaul on masonry material after five miles free haul, for each mile of such overhaul, no dollars twenty five cents (\$0.25) per ton.

For solid rock excavation, no dollars seventy cents (\$0.70) per cubic yard.

For loose rock excavation, no dollars thirty-six cents (\$0.36) per cubic yard.

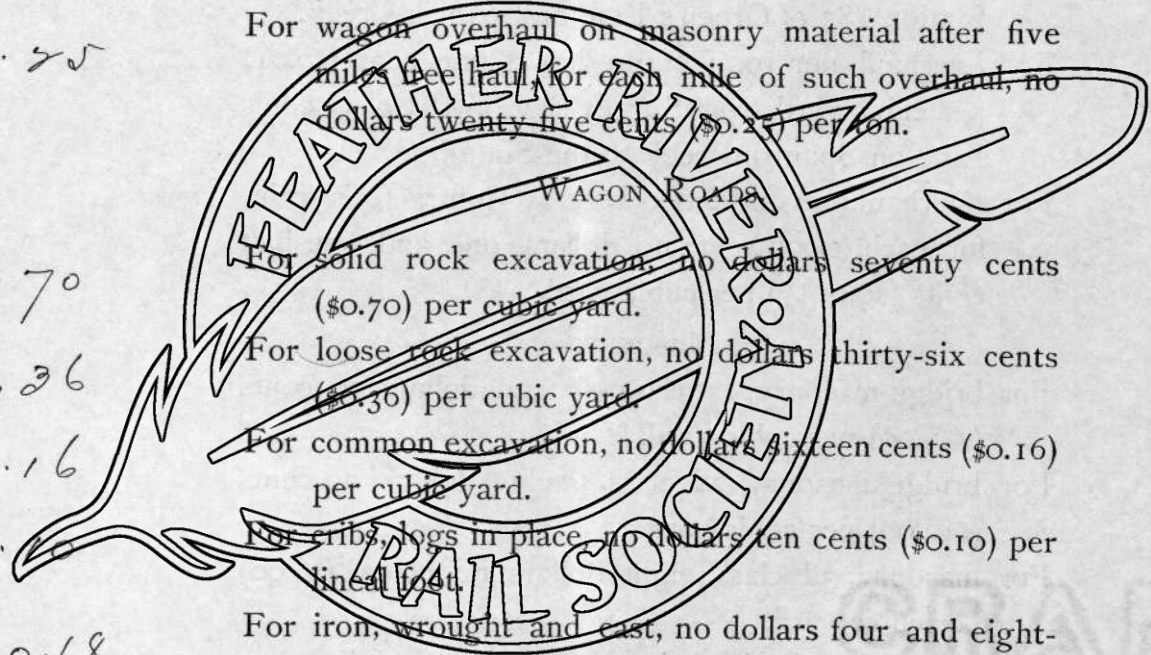
For common excavation, no dollars sixteen cents (\$0.16) per cubic yard.

For cribs, logs in place, no dollars ten cents (\$0.10) per lineal foot.

For iron, wrought and cast, no dollars four and eight-tenths cents (\$0.048) per pound.

For timber in place in trestle bridging, including placing iron, twenty dollars no cents (\$20.00) per 1,000 ft. B. M.

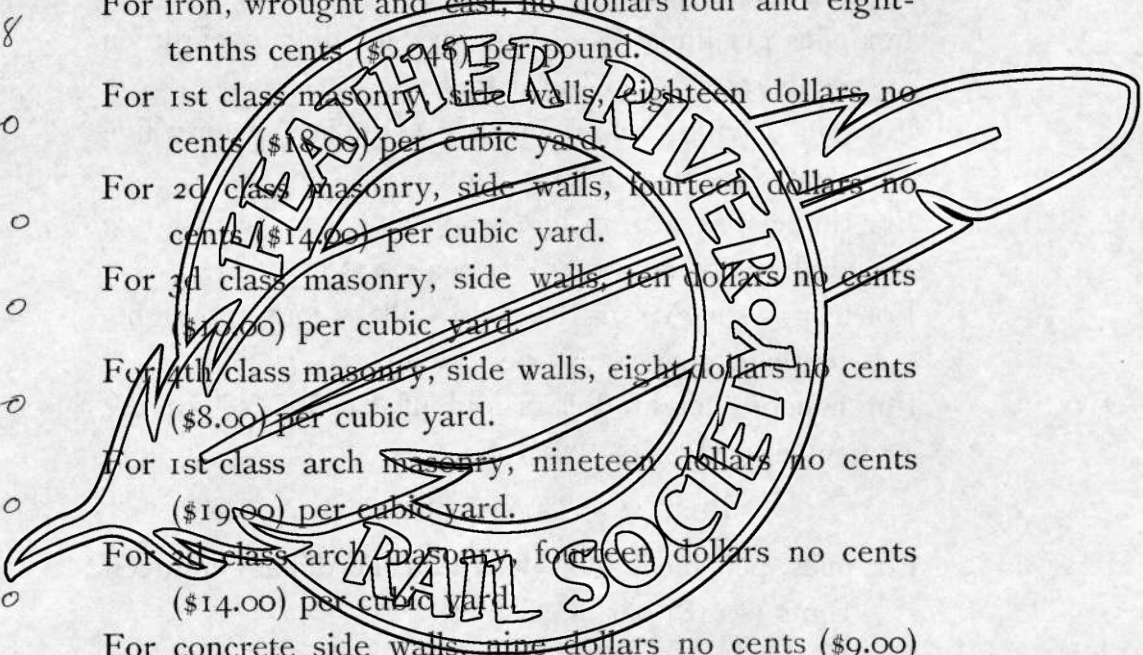
For overhaul beyond free haul of 200 feet, for each 100 feet of such overhaul, no dollars one and one-half cents (\$0.015) per cubic yard.



TUNNELS.

ABCDEF

- " 3.55 For tunnel excavation, neat rock section, single track, three dollars and fifty-five cents (\$3.55) per cubic yard.
- " 2.95 For enlargement for lining, two dollars and ninety-five cents (\$2.95) per cubic yard.
- " 27.00 For timber lining in place, including placing iron, twenty-seven dollars (\$27.00) per 1,000 feet B. M.
- " .048 For iron, wrought and cast, no dollars four and eight-tenths cents (\$0.048) per pound.
- " 18.00 For 1st class masonry, side walls, eighteen dollars no cents (\$18.00) per cubic yard.
- " 14.00 For 2d class masonry, side walls, fourteen dollars no cents (\$14.00) per cubic yard.
- " 10.00 For 3d class masonry, side walls, ten dollars no cents (\$10.00) per cubic yard.
- " 8.00 For 4th class masonry, side walls, eight dollars no cents (\$8.00) per cubic yard.
- " 19.00 For 1st class arch masonry, nineteen dollars no cents (\$19.00) per cubic yard.
- " 14.00 For 2d class arch masonry, fourteen dollars no cents (\$14.00) per cubic yard.
- " 9.00 For concrete side walls, nine dollars no cents (\$9.00) per cubic yard.
- " 10.00 For concrete arch, ten dollars no cents (\$10.00) per cubic yard.
- " 2.00 For dry packing, two dollars no cents (\$2.00) per cubic yard.
- ABC* .07 For overhaul of tunnel excavation, per 100 feet, see
E.F. .01 Specifications.



ABCDEF

" 10.00

For drainage tunnel, 5 ft. by 5 ft., ten dollars no cents (\$10.00) per lineal foot.

" .25

For wagon overhaul on masonry material after five miles free haul, for each mile of such overhaul, no dollars twenty-five cents (\$.25) per ton.

FOUNDATIONS.

" 2.00

For excavation below water, two dollars no cents (\$2.00) per cubic yard

" .18

For piles per lineal foot, delivered, no dollars eighteen cents (\$.18) per lineal foot.

" .25

For pile driving, below cut-off, no dollars twenty-five cents (\$.25) per lineal foot.

" 25.00

For timber in place, including placing iron, twenty-five dollars no cents (\$25.00) per 1,000 ft. B. M.

" .048

For iron, wrought and cast, no dollars four and eight-tenths cents (\$.048) per pound.

" 8.50

For concrete, eight dollars and fifty cents (\$8.50) per cubic yard.

PILE AND PRESLE BRIDGING.

" .18

For piles, per lineal foot, delivered, no dollars eighteen cents (\$.18) per lineal foot.

" .22

For pile driving, below cut-off, no dollars twenty-two cents (\$.22) per lineal foot.

" 25.00

For timber in place, including placing iron, twenty-five dollars no cents (\$25.00) per 1,000 ft. B. M.

" .048

For iron, wrought and cast, no dollars four and eight-tenths cents (\$.048) per pound.

" .18

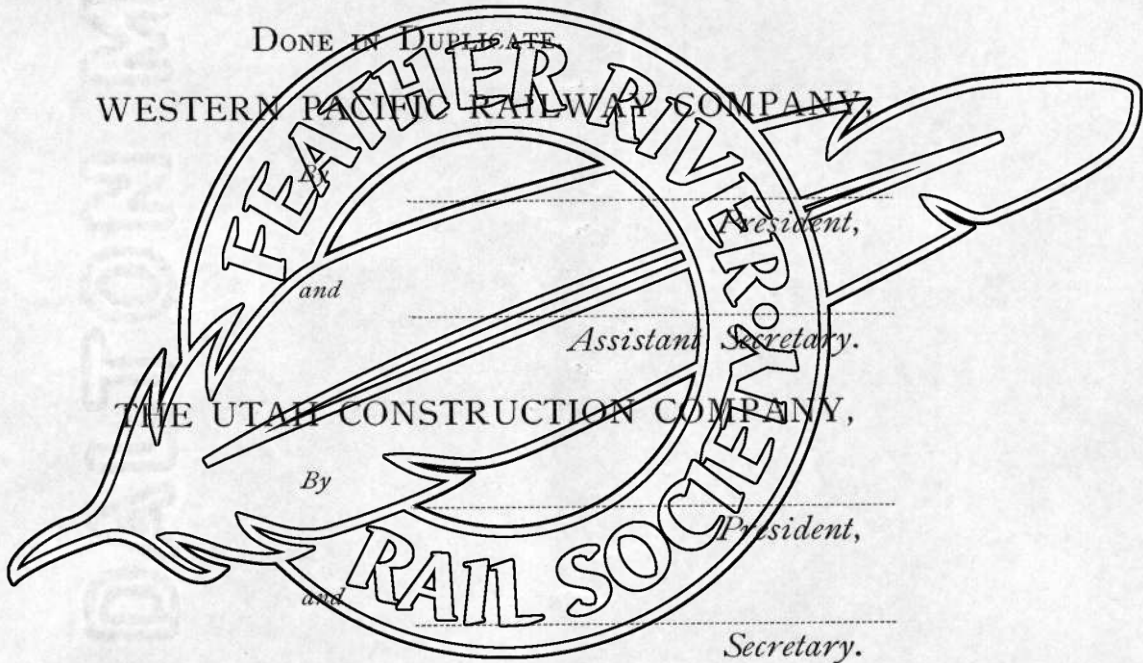
For logs in cribs and culverts, no dollars eighteen cents (\$.18) per lineal foot.



In Witness Whereof, the party of the first part has, by its President and Assistant Secretary, who are thereunto duly authorized, signed its corporate name and affixed its corporate seal, and the party of the second part has by its President and Secretary, who are thereunto duly authorized, signed its corporate name and affixed its corporate seal, all on the day and year first above written.

DONE IN DUPLICATE

WESTERN PACIFIC RAILWAY COMPANY,



.....
President,

and

.....
Assistant Secretary.

THE UTAH CONSTRUCTION COMPANY,

By

.....
President,

and

.....
Secretary.





Gay & DeWitt

The Utah Construction
Company



Constructing Roadbed &
Wagon Roads, Orville to
California State Line.