

SEABOARD AIR LINE RAILWAY

S. Davies Warfield, R. Lancaster Williams,
and E. C. Duncan, Receivers.

CONTRACT.

Articles of Agreement, Made and concluded this thirtieth day of

April A. D. 1909, by and between George Y. Alsop and R. T. Pierce, trading as Alsop & Pierce, a copartnership with offices in Newport News, Virginia, parties of the first part and S. Davies Warfield, R. Lancaster Williams, and E. C. Duncan, Receivers of

of the first part, and the SEABOARD AIR LINE RAILWAY, a consolidated corporation of the States of Virginia, North Carolina, South Carolina and Georgia, of the second part, witnesseth:

I. That for and in consideration of the covenants and payments hereinafter mentioned, to be made and performed by the said party of the second part, the part of the first part hereby covenant and agree to complete, in the most substantial and workmanlike manner, to the satisfaction and accept-

ance of the Chief Engineer of the said Railway, the substructure of a bridge known as Cedar Creek Bridge, located at the point where the main line of the said Railway crosses Cedar Creek about two and one quarter miles, more or less, South of Franklinton, North Carolina.

of said Railway, said work to be done and finished agreeably to the directions and orders of the said Chief Engineer of the Seaboard Air Line Railway, or his Assistants, on or before the thirtieth day of September, A. D. 1909, and according to the specification as follows, to-wit:

The entire work **SPECIFICATIONS:** in accordance with the inquiry B-115, the specifications for Cedar Creek, the specifications for cement, the specifications for concrete, and the drawing B-481-1, all of which are attached to and part of this contract.

The estimated quantities required for the work are as follows;

Piles to be furnished and driven under footings	540
Cubic yards concrete	884
Old trestling to be removed, Ft B.M.	60000
Old Trestling to be erected, Ft B.M.	30000
New trestling to be furnished and erected-----	30000

II. The part ¹⁰⁰ of the first part agree so to conduct the erection of the structure as not to interfere with the passage of trains of the party of the second part, and without causing delay to same.

III. No charge or claim shall be made by the Contractor for hindrances or delay from any cause in the progress of any portion of the work in this Contract, whether for want of Right of Way, litigation or other causes, but these may entitle him to an extension of the time allowed for completing this work sufficient to compensate for the detention, to be determined by the Engineer, provided immediate notice in writing of the cause of detention has been given to the party of the second part and to the said Engineer, nor shall any claim or claims be allowed for extra work, unless the same shall be done in pursuance of an order in writing from the Engineer, and the claims made at the first settlement after the work was executed, unless the Engineer at his discretion should direct the claim of such parts as he may deem just and equitable to be allowed.

IV. The quantities exhibited to the Contractor at the time of soliciting proposals for the work herein contracted for are necessarily only approximate, and they furnish only general information, and will in no way govern or affect the final estimate, which will be made out on the completion of the work from actual measurements and established facts not determinable at the time of letting the work.

V. And the said party of the second part does promise and agree to pay the said part ¹⁰⁰ of the first part for work done and material furnished by ^{them} under this Contract as follows, to-wit:

- Eight Dollars (\$8.00) per pile furnished and driven in permanent structure.
 - Nine Dollars and Forty Cents (\$9.40) per cubic yard of concrete.
 - Thirty-Five Dollars (\$35.00) per thousand feet of new trestling required, furnished in place.
 - Ten Dollars (\$10.00) per thousand feet of old trestling erected in place.
 - Six Dollars (\$6.00) per thousand feet of old trestling torn out.
- The above prices to cover the cost of the entire structure.

VI. Payment is to be made by the party of the second part for work done and materials furnished under this Contract, on or about the twentieth day of each month, upon proper estimates rendered on the last day of the preceding month, for work done and materials furnished during the preceding month, to the extent of and not beyond ⁹⁰ per cent. of the amount of such estimates, and such monthly estimate, to be valid, must be accompanied by the certificate of the Engineer of the Company approving the same, and declaring that the work done and materials furnished, as therein stated, are according to this Contract, and that the charges for the same are according to this Contract; and without such certificate, no estimate shall be valid, and no payment can be demanded, and in all questions connected with such estimates and the amounts payable thereby and thereunder, the decisions of the Engineer of the said Railway shall be final and conclusive on all parties; and the balance thereof, or the ¹⁰ per cent. remaining due on such estimates, shall not be payable until the whole work to be done under this Contract has been fully completed, but shall be kept back as part of the security for the performance of this Contract on the part of the part ¹⁰⁰ of the first part.

VII. When the Engineer has furnished his certificate that all the work embraced in this Contract has been completed agreeably to the specifications, and in accordance with the directions, and to the satisfaction and acceptance of the said Engineer, there shall be a final estimate made of the quality, character and value of said work, according to the terms of the Agreement, when the balance appearing due to the said part ¹⁰⁰ of the first part, according to the certificate of the said Engineer, shall be paid to ^{them} within thirty days thereafter, and upon ^{their} giving a release, under seal, to the party of the second part, from all claims or demands whatsoever, growing in any manner out of this Agreement, and upon ^{their} procuring and delivering to the party of the second part, full release in proper form, and duly executed, from mechanics and material-men, of all liens, claims and demands for materials furnished and provided, and work and labor done and performed upon or about the work herein contracted for under this Contract.

VIII. It is further covenanted and agreed between the said parties, that the said part ¹⁰⁰ of the first part shall not sub-let or transfer this Contract or any part thereof to any person (excepting for the delivery of material) without the written consent of the Engineer, but will at all times give personal attention and superintendence to the work.

IX. It is further agreed and understood that the work embraced in this Contract shall be commenced within ^{thirty} days from this date, and prosecuted with such force as the Engineer shall deem adequate to its completion within the time specified, and if at any time the said part ¹⁰⁰ of the first part shall refuse or neglect to prosecute the work with force sufficient, in the opinion of the said Engineer, for its completion within the time specified in this Agreement, then, and in that case, the said Engineer in charge, or such other agents as the Engineer shall designate, may proceed to employ such a number of workmen, laborers and overseers as may, in the opinion of the said Engineer, be necessary to insure the completion of the work within the time hereinbefore limited, at such wages as he may find it necessary or expedient to give, pay all persons so employed, and charge over the amount so paid to the part ¹⁰⁰ of the first part, as for so much money paid to ^{them} on this Contract, or for the failure to prosecute the work with an adequate force, for non-compliance with his direction in regard to the manner of constructing it, or for failure to complete the work within the time, according to the terms of this Agreement, or for any other delay

in the performance of, or any omission, or neglect of the requirements of this Agreement and specifications on the part of the part 100 of the first part, the said Engineer may, at his discretion, declare this Contract or any portion or section embraced in it forfeited, which declaration shall exonerate the said Company from any and all obligations and liabilities arising under this Contract, the same as if this Agreement had never been made, and the part 100 of the first part shall not be entitled to the payment of the reserved percentage of 10 per cent. upon any work done by the part 100 of the first part the reserved percentage upon any work done by the part 100 of the first part may be retained forever by the party of the second part.

X. The said part 100 of the first part ha ve further covenanted and agreed to take, use, provide all proper, necessary and sufficient precautions, safeguards, and protection against the occurrence or happening of any accidents, injuries, damages, or hurt or delays to any person or property during the progress of the construction of the work herein contracted for, and to be responsible for and to idemnify and save harmless the said party of the second part, and the said Engineer, for the payment of sums of money by reason of all or any such accident, injuries, damage, or hurts or delays that may happen or occur upon or about said work and from all fines, penalties, and loss incurred for and by reason of the violation of any city or borough ordinance, or regulation or the law of the State, or the United States, including all claims, litigation, expenses, damages, losses or liability while the said work is in progress of construction until the same is completed and accepted. Receivers

The said Contractor ha ve further covenanted and agreed to protect and save harmless the Railway from any and all claims arising out of the use of patented articles and devices.

XI. If in the performance of this Contract, or any part hereof, the party of the second part shall be or become subject to any claims, litigation, expenses, or damages, losses or liability by reason of any act or default or negligence of the part 100 of the first part, or any of their Agents or employes, then the party of the second part shall have the right by way of set-off or defalcation, at any time or times, to withhold and retain such sums of money—current and other estimates and all payments—which may or might otherwise be or become payable by the party of the second part hereunder, to the part 100 of the first part, whether growing out of the same or another piece of work, construction, or transaction hereunder, as may in the opinion of the party of the second part, be necessary to reimburse or idemnify the party of the second part against all such claims, litigation, expenses, damages, losses or liability, whether the same shall or shall not have been definitely liquidated or ascertained, or shall or shall not be in dispute or litigation, and to apply the sums of money so retained, or so much thereof as may be ultimately found necessary to reimburse and idemnify the party of the second part.

XII. It is further understood and agreed that the party of the second part may, at any time, either with or without an estimate furnished, pay directly to the employes and others having claims and demands against the part 100 of the first part, for work done and materials furnished to the part 100 of the first part for the purpose of this Contract, and may at any time require vouchers for the payments to employes and others having claims and demands against the part 100 of the first part, for work done and materials furnished to the part 100 of the first part for the purposes of this Contract.

XIII. If, during the progress of the work herein contracted for, work should be done under the direction of the Engineer, which cannot, in the opinion of the Engineer, be accurately measured or estimated. It is further mutually agreed that the parties of the first part shall furnish an acceptable Surety Company bond in the amount of Two Thousand and Two Hundred (\$2,200.00) Dollars, payable to the parties of the second part, conditioned upon the faithful and complete fulfillment of this contract. Bonds of the American Bonding Company or Fidelity & Deposit Company, of Baltimore - Md., will be satisfactory to the Seaboard Air Line Railway Company. Contract, it relates to and limits the

XV. It is further agreed that time shall be the essence of this Contract, and shall not be relievable

XVII. The Contractors shall pay full tariff rates for all material shipped in connection with this contract. However, as a consideration of the contract, the Seaboard Air Line Railway will furnish transportation over its own lines for men and tools necessary to the construction of this work, Contractors hereby agreeing to route or cause to be routed via the lines of the said Seaboard Air Line Railway, when possible, all shipments of material for said work, provided the rates charged are no greater than those charged by competing lines under similar circumstances and conditions. SEAL SEAL SEAL

S. Davies Warfield, R. Lancaster Williams,
and E. C. Duncan, Receivers.

SEABOARD AIR LINE RAILWAY,

By _____
First Vice-President.

Chf Executive Officer for Receivers.

ATTEST:

Assistant Secretary.