



**SPECIAL PROVISIONS
For
WORK ON RAILROAD RIGHT-OF-WAY (BNSF)**

**Monroe County
STP-U-0065(612)--70-68**

**Effective Date
May 15, 2012**

THE STANDARD SPECIFICATIONS, SERIES 2009, ARE AMENDED BY THE FOLLOWING MODIFICATIONS AND ADDITIONS. THESE ARE SPECIAL PROVISIONS AND THEY SHALL PREVAIL OVER THOSE PUBLISHED IN THE STANDARD SPECIFICATIONS.

1.01 General.

1.01.01 The Contractor shall cooperate with the Burlington Northern Santa Fe (BNSF) Railway Company, hereinafter referred to as "Railroad" where work is over, under, on, or adjacent to Railroad property, and/or right-of-way, hereafter referred to as Railroad property, during the work which shall not interfere with the movement of trains on Railroad property.

1.01.02 The Contractor's right to enter Railroad's property is subject to the absolute right of Railroad to cause the Contractor's work on Railroad's property to cease if, in the opinion of Railroad, Contractor's activities create a hazard to Railroad's property, employees, and/or operations.

1.01.03 The Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorney's fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. The liability assumed by contractor shall not be affected by the fact, if it is a fact, that the destruction, damage, death, or injury was occasioned by or contributed by the negligence of railway, its agents, servants, employees or otherwise, except to the extent that such claims are proximately caused by the intentional misconduct or gross negligence of railway.

The indemnification obligation assumed by contractor shall include any claims, suits or judgments brought against railway under the federal employee's liability act including claims for strict liability under the safety appliance act or the boiler inspection act, whenever so claimed.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it shall adjust and settle all claims made against Railway, and shall, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway shall give notice to Contractor, in writing, of the receipt or pendency of such claims and thereupon Contractor shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

1.01.04 The Contractor shall notify the Engineer and Railway's Roadmaster, John Bainter (319.758.5638), at least 30 working days before commencing any work over, under, on, or adjacent to Railroad Property. Contractor's notification to Railroad shall refer to Railroad's file numbers.

1.01.05 The Railroad will cooperate with the Contractor such that the work may be handled and performed in an efficient manner.

1.02 Protection of Railroad Facilities and Railroad Flagger Services.

1.02.01 The Contractor shall give a minimum of 5 working days notice to the Railroad's Roadmaster, John Bainter (319.758.5638), in advance of when flagging services will be required.

1.02.02 Railroad flagger and protective services and devices will be required and furnished when Contractor's work activities are located over, under, or within 25 feet measured horizontally from center line of the nearest track, and when cranes or similar equipment are positioned outside of 25 feet measured horizontally from the track center line that could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto, for the following conditions:

1.02.02a When in the opinion of the Railroad's Representative it is necessary to safeguard Railroad's employees, trains, engines, facilities, and property.

1.02.02b When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railroad's representative, track or other Railroad facilities may be subject to movement or settlement.

1.02.02c When work, in any way interferes with the safe operation of trains at timetable speeds.

1.02.02d When any hazard is presented to Railroad track, communications, signal, electrical, or other facilities due to persons, material, equipment, or blasting in the vicinity.

1.02.02e Special permission shall be requested from the Railroad before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

1.02.03 Flagging services will be performed by qualified Railway flaggers. The estimated cost for one flagger is \$800.00 for an eight hour basic day with time and one-half or double time for overtime,

rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by Contractor hereunder shall be used to calculate the actual costs of flagging pursuant to this paragraph.

1.02.03a Flagger crew generally consists of one employee. Additional personnel may be required to protect Railroad operations and property, if deemed necessary by the Railroad's representative.

1.02.03b Each time a flagger is called the minimum period for billing will be the eight-hour basic day.

1.02.03c The cost of flagger services provided by the Railroad, as deemed necessary by the Railroad's representative, shall be borne by the Contractor.

1.03 Contractor General Safety Requirements.

1.03.01 Safety is of the utmost importance in performing work on the Railroad's property. The Railroad does not in any manner assume the control or responsibility of the Contractor to provide safe working conditions for the Contractor or subcontractors in requiring the Contractor to follow the Railroad's General Safety Requirements.

1.03.02 Safety rules cannot be all-inclusive. Workers shall refrain from unsafe and improper practices, including the violation and/or disregard of written rules and regulations, and rules of common sense.

1.03.02a Any damage to Railroad property, or if any hazard is noticed on passing trains, shall be reported immediately to the Railroad's representative. Any vehicle or machine which may come in contact with a track, signal equipment, or structure (bridge) could result in a train derailment and shall be reported by the quickest means possible to the Railroad representative and to the Railroad's Network Operations Center at (800.832.5452). Local emergency numbers shall be obtained from the Railroad representative prior to the start of any work and shall be posted at the job site.

1.03.02b The Contractor shall not pile or store any materials, or equipment closer than 25 feet to the center line of the nearest Railroad track.

1.03.02c Machines or vehicles shall not be left unattended with the engine running. Parked machines or equipment shall be in gear with brakes set and if equipped with blade, pan, or bucket, they shall be lowered to the ground. All machinery and equipment left unattended on the right-of-way, shall be left inoperable and secured against movement.

1.03.02d Machinery or equipment shall not be stored or left temporarily near a highway/rail at-grade crossing in a manner to interfere with the sight distances of motorists approaching the crossing. Prior to beginning work, the Contractor shall establish a storage area with concurrence of the Railroad's representative.

1.03.02e Workers shall not create and leave any conditions at the work site that would interfere with water drainage.

1.03.02f Safeguards and safety signs shall be kept in place and in good condition. It is the responsibility of the Contractor to provide same.

1.03.02g Before excavating, it shall be ascertained by the Contractor if there are any underground pipe lines, electric wires, or cables, including fiber optic cable systems that either cross or run parallel with the track which are located within the project's work area. Excavating on right-of-way could result in damage to buried cables resulting in delay to railroad traffic, including disruption of service to users resulting in business interruptions involving loss of revenue and profits. Before any excavation commences, the Contractor shall contact the Railroad's Signal Supervisor and Roadmaster. All underground and overhead wires shall be considered high voltage and dangerous until verified with the company having ownership of the line. The Contractor shall notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.

1.03.02h The Contractor shall cease all work and the Railroad shall be notified immediately before continuing excavation in the area of obstructions are encountered that do not appear on drawings. If the obstruction is a utility, and the owner of the utility can be identified, then the owner should also be notified immediately. If there is any doubt about the location of underground cables or lines of any kind, no work shall be performed until the exact location has been determined. There will be no exceptions to these instructions.

1.03.02i All excavations, regardless of depth shall be shored where there is any danger to tracks, structures, or employees.

1.03.02j Any excavations, holes, or trenches on the Railroad's property shall be covered, guarded, and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas shall be secured and left in a condition that will ensure that railroad employees who might be working in the area are protected from all hazards. All excavations shall be back filled as soon as possible.

1.03.02k All power line wires shall be considered dangerous and of high voltage unless informed to the contrary by proper authority. For lines rated 50 KV or below, minimum clearance between the lines and any part of the equipment or load shall be 10 feet. For lines rated over 50 KV, minimum clearance between the line and any part of equipment or load shall be 10 feet plus 0.4 inches for each 1 KV over 50 KV. If the capacity of the line is not known, minimum clearance of 20 feet shall be maintained. The Contractor shall designate a person to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.03.02l In all cases of doubt or uncertainty, the safest course shall be taken.

1.04 Personal Injury Reporting.

1.04.01 The Railroad is required to report certain injuries as a part of compliance with Federal reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor, or invitees while on the Railroad's property shall be reported immediately (by phone, mail if unable to contact in person) to the Railroad's representative. The Injury Report Form contained herein shall be completed and sent by Fax to the Railroad (817.352.7595), no later than the close of shift on the date of the injury.

1.05 Insurance Form and Submittal.

1.05.01 The Contractor shall procure and maintain, from beginning to end of construction work on or about Railroad property, the following insurance coverage types and limits:

1.05.01a Railroad Protective Insurance.

The Railroads Protective Public Liability and Property Damage Liability Insurance shall be written on ISO Form No. CG00351093 and include the Limited Seepage and Pollution Liability Endorsement. The named insured is BNSF Railway Company with coverage of at least \$2,000,000 per occurrence with \$6,000,000 aggregate for the term of the policy.

The policy shall be issued on a standard ISO form CG00351093 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO Form CG28311093)
- Endorsed to include the Limited Seepage and Pollution Endorsement
- Endorsed to include Evacuation Expense Coverage Endorsement
- No other endorsements restricting coverage may be added
- The original policy must be provided to the Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$500.00.

1.05.01b Commercial General Liability Insurance.

This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage shall be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to Railroad employees.
- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of Railroad property.
- Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage as respects obligations may be included on the policy with regard to the work being performed under this contract.

1.05.01c Business Automobile Insurance.

This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily Injury and property damage
- Any and all vehicles owned, used, or hired

1.05.01d Workers Compensation and Employers Liability Insurance.

Workers Compensation and Employers Liability Insurance including coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State Law, the insurance shall cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit, \$500,000 by disease each employee.

1.05.01e Other Requirements.

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance shall reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under Contractor's care, custody or control.

Contractor's insurance policies, through policy endorsement, shall include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Railroad. The certificate of insurance shall reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and Railroad shall be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.

Contractor will not be allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this specification, be covered by Contractor's insurance shall be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing work, Contractor shall furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 calendar days prior to any cancellation, non-renewal, substitution, or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Railroad

arising out of this agreement, Contractor shall make available any required policy covering such claim or lawsuit.

Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state of Iowa.

Contractor represents that this specification has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by the contract documents. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Railroad as an additional insured, and shall require that the subcontractor shall release, defend, and indemnify Railroad to the same extent and under the same terms and conditions as Contractor is required to release, defend, and indemnify Railroad herein.

Failure to provide evidence as required by this specification will entitle, but not require, Railroad to remove Contractor from or deny entry of Contractor to Railroad property immediately. Acceptance of a certificate that does not comply with this specification shall not operate as a waiver of Contractor's obligations hereunder.

The fact that this insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this specification. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad shall mean "Burlington Northern Santa Fe Corporation", "BNSF Railway" and the subsidiaries, successors, assigns and affiliates of each.

1.05.02 The insurance policy(ies) and a copy of the Certificate of Liability shall be sent to Engineering Services, Insurance Approval, BNSF Railway Company, 2500 Lou Menk Drive, Building AOB-1, Ft. Worth, Texas 76131. A copy(ies) shall also be sent to the Iowa DOT, Office of Accounting, 800 Lincoln Way, Ames, IA 50010.

1.06 Independent Contractor.

In the performance of the Work under these specifications, Contractor will be considered as an Independent Contractor, neither Contractor nor any of its employees, subcontractors, agents or servants will be considered as employees of Railway in any respect. Contractor shall have the exclusive right and duty to control the work of its employees. All persons employed by Contractor or any of its subcontractors in the performance of this Agreement shall be the sole employees of Contractor or its subcontractors. Contractor will be given general directions and instructions regarding the Work to be rendered under this Agreement; however, direct supervision of Contractor's employees will be Contractor's responsibility and obligation.

1.07 Method of Measurement and Basis of Payment.

BNSFRR Insurance Provisions required by this specification above those required by Division 11 of the Standard Specifications will be measured as a lump sum. The cost of the insurance provisions above that required by Division 11 of the Standard Specifications shall be included in the lump sum bid price for BNSFRR Insurance Provisions.