SPECIAL PROVISIONS
FOR
WORK ON RAILROAD RIGHT-OF-WAY (CNH AMERICA, LLC)

Des Moines County
STP-ES-E-0977(636)--8T-29

Effective Date
March 18, 2014

THE STANDARD SPECIFICATIONS, SERIES 2012, ARE AMENDED BY THE FOLLOWING MODIFICATIONS AND ADDITIONS. THESE ARE SPECIAL PROVISIONS AND THEY SHALL PREVAIL OVER THOSE PUBLISHED IN THE STANDARD SPECIFICATIONS.

127003.01 GENERAL.

A. The Contractor shall cooperate with CNH America, LLC, hereinafter referred to as “CASE” where work is over, under, on, or adjacent to CASE railroad right-of-way and/or property, hereafter referred to as “CASE Property,” during the construction of the Proposed PCC Trail – Flint River Trail Phase III – Burlington, IA – 2013. The Contractor shall also cooperate with Burlington Short Line Railroad, Inc. dba Burlington Junction Railway where feasible, hereinafter referred to as “Railway User,” during the proposed construction. CASE will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. In the event of differences between CASE and Railway User, CASE shall govern.

B. The City of Burlington, hereinafter referred to as “Contracting Authority” has obtained an easement to work on CASE Property. The Contractor’s right to enter CASE Property is subject to the absolute right of CASE to cause the Contractor’s work on CASE Property to cease if, in the opinion of CASE, Contractor’s activities create a hazard to CASE Property, employees, and/or operations. CASE will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor performs the work in a manner contrary to the plans and specifications approved by CASE; (ii) Contractor, in CASE’s opinion, prosecutes the work in a manner which is hazardous to CASE Property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described herein is canceled during the course of the Project. The work stoppage will continue until all necessary actions are taken by Contractor to rectify the situation to the satisfaction of CASE or until additional insurance has been delivered to and accepted by CASE. In the event of a breach of this Agreement, CASE may immediately terminate any permits or easements. Any such work stoppage under this provision will not give rise to any liability on the part of CASE or Contracting Authority. CASE’s right to stop work is in addition to any other rights CASE may have including, but not limited to, actions or suits for damages or lost profits. In the event that CASE desires to stop work on the Project, CASE agrees to immediately notify the following individuals in writing:
C. The Contractor shall fully indemnify and hold harmless CASE; Railway User; and their agents and employees against any and all liability, claims, demands, damages, or costs for death or bodily injury to persons, including without limitation the employees of the parties hereto; injury to property, including without limitation, the property of the parties hereto; and/or other loss, damage, or expenses arising under and of those previously listed, and all fines or penalties imposed upon or assessed against the listed parties, and all expenses of investigation and defending against same (including but not limited to costs and attorneys' fees), regardless of the negligence or alleged negligence of the parties, arising in any manner out of the use, occupancy, or presence of the Contractor, employees, or agents in, on or about the construction site; the performance, or failure to perform, by the Contractor, its employees, or agents, its work or any obligation under this contract; or any and all acts or omissions of the Contractor, its employees, or agents in, on or about the construction site. Nothing contained in this specification is intended to, nor shall be deemed or construed to, indemnify, CASE or Railway User from its sole negligence or willful misconduct, or that of its agents, servants, or independent contractors who are directly responsible to it.

D. The Contractor is responsible for determining and complying with all Federal, State, and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act; the Oil Pollution Act; the Hazardous Materials Transportation Act; and CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless CASE, Railway User, Contracting Authority, and French-Reneker-Associates, Inc., hereinafter referred to as “Engineer;” for, from, and against all fines or penalties imposed or assessed by Federal, State, or Local Governmental Agencies against CASE or Railway User which arise out of Contractor's work under this special provision.

E. The Contractor shall plan, schedule, and conduct all work activities so as not to interfere with the movement of any trains on CASE Property.

127003.02 AGREEMENT.

A. The Contracting Authority has entered into agreement with CASE and Railway User for construction of the Proposed PCC Trail – Flint River Trail Phase III – Burlington, IA – 2013. A signed copy of said agreement can be obtained from the Contracting Authority or the office of the Engineer at the contact information provided under Article 127003.01, B. Terms of the agreement are contained herein. It is the Contractor's responsibility to ensure work performed by the Contractor in no way deviates from that allowed in the agreement.

B. The Contractor shall supply the Engineer, Contracting Authority; CASE; and Railway User a written notice of work proceeding at least 10 working days before commencing any work over, under, on, or adjacent to CASE Property. Contact information is as follows.

ENGINEER: Mr. Kent Rice, PE
French-Reneker-Associates, Inc.
PO Box 135
Fairfield, IA 52556
CASE will supply the Contractor with written confirmation to proceed upon receiving the written notice of work proceeding. The Contractor shall not proceed until receiving confirmation from CASE.

C. The Contractor shall ensure that at a minimum its Project Supervisors have attended a Safety Orientation conducted by Railway User, or its representative, and that each of its employees, subcontractors, agents, or invites have received the same Safety Orientation (by the Contractor’s Project Supervisor or by the Railway User) before any work is performed on the project. The Contractor shall give the Railway User, CASE, Contracting Authority, and Engineer a minimum of 5 working days advance notice for scheduling the Safety Orientation.

127003.03 INSURANCE REQUIREMENTS.

A. The Contractor shall, at its sole cost and expense, procure and maintain during the life of the Project the following insurance coverage:

1. 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 but in no event less than the amount otherwise carried by the Contractor. 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 definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of CASE Property.
   • Waver of subrogation in favor of and acceptable to CASE and Railway User.
   • Additional insured endorsement in favor of and acceptable to CASE and Railway User.
   • Separation of insureds.
   • The policy shall be primary and non-contributing with respect to any insurance carried by CASE and Railway User.

No other endorsements limiting coverage as respect to obligations under these terms may be included on the policy with regard to the work being performed under this special provision.
2. 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

   The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
   - Waiver of subrogation in favor of and acceptable to CASE and Railway User.
   - Additional insured endorsement in favor of and acceptable to CASE and Railway User.
   - Separation of insureds.
   - The policy shall be primary and non-contributing with respect to any insurance carried by CASE and Railway User.

3. 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 occurrence.

   This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
   - Waiver of subrogation in favor of and acceptable to CASE and Railway User.

4. Railroad Protective Liability insurance naming CASE and Railway User as the Insured with coverage of at least $2,000,000 per occurrence and $6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
   - Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
   - Endorsed to include the Limited Seepage and Pollution Endorsement.
   - Endorsed to remove any exclusion for punitive damages.
   - No other endorsements restricting coverage may be added.
   - The original policy shall be provided to CASE and Railway User prior to performing any work or services under this Agreement

5. Any additional coverage per Standard Specifications.

B. All policies (applying to coverage listed above) shall not contain an exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

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

D. The Contractor shall not allow self-insuring without the prior written consent of CASE and Railway User. If granted by CASE and Railway User, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all CASE and Railway User liabilities that would otherwise, in accordance with the provisions of this special provision, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention, or other financial responsibility for claims.
E. Prior to commencing work, the Contractor shall furnish to CASE and Railway User 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 CASE and Railway User in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from CASE and Railway User, a certified duplicate original of any required policy shall be furnished.

F. Any insurance policy shall be written by a reputable insurance company acceptable to CASE and Railway User or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

G. The Contractor shall have these terms thoroughly reviewed by its insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this special provision. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

H. Failure to provide evidence as required by this section will entitle, but not require, Contracting Authority to terminate its contract with the Contractor immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder.

I. The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions herein. Damages recoverable by CASE and Railway User will not be limited by the amount of the required insurance coverage.

127003.04 CASE REQUIREMENTS.

A. The Contractor shall take protective measures as are necessary to keep railroad facilities, including track and ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by CASE and the cost of such repairs or replacement shall be paid for by the Contractor.

B. The Contractor shall abide by the following clearances upon completion of the crossing construction:

- 25' Horizontally from centerline of nearest track
- 23'-3½" Vertically above top of rail

C. Any infringement within the above noted clearances due to the Contractor's operations shall be submitted to CASE, Railway User, and Contracting Authority and shall not be undertaken until approved in writing by CASE. No extra compensation shall be allowed in the event the Contractor's work is delayed pending CASE approval, and/or the State Regulatory Authority's approval.

D. The Contractor shall allow the Contracting Authority to inspect any materials salvaged by the Contractor on CASE Property. First salvage rights after inspection belong to the Railroad. In the event CASE does not desire to salvage the recovered material, it shall be the responsibility of the Contractor to dispose of the material in accordance with all applicable rules and regulations.

E. The details of construction affecting CASE Property and tracks not included in the contract plans will be submitted to CASE by Contracting Authority for approval before work is undertaken and this work shall not be undertaken until approved by CASE.
F. Discharge, release, or spill on CASE Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor shall immediately notify CASE of any discharge, release, or spills in excess of a reportable quantity.

G. The Contractor shall only work within 25 feet of the railroad tracks between the hours of 8:00 AM and 5:00 PM. Upon daily completion of work, the Contractor will be required to promptly remove from CASE Property all tools, equipment, implements, and other materials, whether brought upon said property by said Contractor, employee or agent of Contractor and shall cause CASE's Property to be left in an operable condition acceptable to the CASE and Railway User's representative.

H. The Contractor, upon completion of all work within 25 feet of the railroad tracks shall submit a written notice of completion of work at the railroad crossing to CASE and Railway User at the contacts listed in Article 127003.02, B. CASE will notify the Federal Railroad Administration (FRA) and obtain and post the unique crossing identifier number as administered by FRA.

127003.05 RAILROAD FLAGGER REQUIREMENTS.

A. The Contractor is responsible for contacting CASE and Railway User a minimum of 5 working days prior to required flagging services. Flagging services shall be required in the event the tracks are not shut down when the Contractor is within the clearance requirements set forth by CASE. The work, on the railroad tracks, takes place on a dead end track and it is anticipated the track can be shut down for a period long enough to allow said Contractor, to complete the necessary work. The Contractor shall make every effort to work with CASE and Railway User to construct within CASE Property when the tracks can be shut down.

B. Flagging services shall be performed by qualified flaggers as trained by Railway User. A flagging crew generally consists of one employee. Each time a flagger is called, the minimum period for billing will be the 8 hour basic day. Flagging services shall be paid by the Contractor and submitted to the Contracting Authority for payment to the Contractor.

C. The cost of one flagger is estimated at $800.00 - $1,600.00 for an 8 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, Railroad and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railroad 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 the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

D. In the event the railroad tracks are not shut down and CASE or Railway User needs access to the railroad tracks, CASE/Railway User shall contact the on-site trained flagger. Contact information for the flagger will be provided to all parties at the Safety Orientation meeting. In the event the railroad tracks are shut down and CASE or Railway User needs access to the railroad tracks, CASE/Railway User shall contact the Contractor. Contact information for the Contractor will be provided to all parties at the Safety Orientation meeting. Contact shall be made no less than 1 hour prior to needing access. The Contractor shall confirm the location has been cleared of all debris, materials, and persons prior to CASE/Railway User utilizing the tracks.

127003.06 CONTRACTOR GENERAL SAFETY REQUIREMENTS.

A. Work in the proximity of railroad track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track shall be in compliance with FRA Roadway Worker Protection Regulations.
B. Before beginning any task on CASE Property, a daily thorough task safety briefing shall be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing shall include the Railroad's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railroad track(s). Daily coordination with the Railway User and CASE is also required. Contact information for daily coordination is as follows:

CASE: John Koch & Joe Hager
(319) 754-3565 & (319) 754-3876

RAILWAY USER: Robert Wingate
(319) 753-6157

C. Workers shall not work within 25 feet of the centerline of any track without an on track safety strategy approved by CASE. When authority is provided, every Contractor employee shall know: (1) who the Railroad flagger is (if applicable), and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, shall notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

D. Any employees, agents or invitees of Contractor under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from CASE Property and subsequently released to the custody of a representative of Contractor management. Future access to CASE Property by that employee will be denied.

E. Any damage to CASE Property, or any hazard noticed on passing trains shall be reported immediately to CASE's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment shall be reported immediately to CASE representative in charge of the project.

F. For safety reasons, all persons are prohibited from having pocket knives, firearms, or other deadly weapons in their possession while working on CASE Property.

G. All personnel protective equipment (PPE) used on CASE Property shall meet applicable OSHA and ANSI specifications. A partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoes with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Contractor is in charge of meeting the most current applicable specifications. (NOTE – Should there be a discrepancy between the OSHA or ANSI specifications and the information in this paragraph, the OSHA and ANSI specifications will govern.)

H. The Contractor shall not pile or store any materials, machinery, or equipment closer than 25 feet to the center line of the nearest Railroad track. Prior to beginning work, the Contractor shall establish a storage area with concurrence of CASE's representative.

I. 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 CASE Property shall be left inoperable and secured against movement.

J. Workers shall not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water shall meet all Federal, State and Local regulations.
K. All power line wires shall be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load shall be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet shall be maintained. A person shall be designated 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.

L. Before excavating, the Contractor shall determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor shall determine whether excavation on CASE Property could cause damage to buried cables resulting in delay to Railroad traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor shall contact CASE. All underground and overhead wires shall be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.

M. The Contractor shall cease all work and notify CASE immediately before continuing excavation in the area if obstructions are encountered which do not appear on the plans. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor shall also notify the utility owner 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 shall be no exceptions to these instructions.

N. All excavations shall be conducted in compliance with applicable OSHA regulations and, regardless of depth, shall be shored where there is any danger to tracks, structures or personnel.

O. Any excavations, holes, or trenches on CASE 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 CASE employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations shall be backfilled as soon as possible.

127003.07 HAZARDOUS WASTE, SUBSTANCES AND MATERIAL REPORTING.
If Contractor discovers any hazardous waste, hazardous substance, petroleum, or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to CASE Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor shall immediately: (a) notify CASE and Contracting Authority; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

127003.08 PERSONAL INJURY REPORTING.
CASE is required to report certain injuries as a part of compliance with FRA reporting requirements. Any personal injury sustained by an employee of the Contractor or Contractor's invitees while on CASE Property shall be reported immediately (by phone mail if unable to contact in person) to CASE's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein as “Exhibit A” shall be completed and given to CASE's Project Representative no later than the close of shift on the date of the injury.

127003.09 STATEMENT OF WORK, METHOD OF MEASUREMENT, AND BASIS OF PAYMENT.
A. Work is as shown on the plans associated with a recreational trail in Burlington, Iowa as identified by Iowa DOT project STP-ES-E-0977(636)--8T-29. The work will solely be performed by a
Contractor, hired by the Contracting Authority. No work will be completed and no costs will be required by CASE or Railway User. The portion of the project that takes place within 25 feet of the railroad tracks, as shown on plan sheets B.4, D.1, and S.3 includes excavation of material between and within 2 feet of the existing rails, installation of railroad subballast, ballast, 115 pound rail, comp bars, and railroad ties for a 39 foot portion of the existing railroad, installation of two sections of BN-UP Mainline Common Standard 8.125 foot Precast Concrete Crossing Panels, installation of 12 inches of modified subbase covered with a 10 inch thick double-reinforced PCC trail extending outside of the precast panels 5 feet, 6 inches; installation of 60 square feet of detectable warning panels; installation of 5 inch thick reinforced PCC trail extending perpendicular to the tracks; and other finish work associated with a trail project.

B. The Contracting Authority is solely responsible for all costs of materials and labor of the project as submitted by the Contractor. Method of Measurement and Basis of Payment shall be as specified in Article 1107.02, B, 7 of the Standard Specifications and as shown on the separately bound plans.

C. Liability Insurance, Modified, for CNH America; will be paid for as a Lump Sum bid item. The Contractor will be paid 100% of the lump sum bid item following the Contracting Authority executing the Contract.

D. Insurance When Working in Railroad Right-of-Way, Modified, for CNH America; will be paid for as a Lump Sum bid item. The Contractor will be paid 50% of the lump sum bid item following the Contracting Authority executing the Contract. The remainder of the bid item will be paid when the Contractor has begun work on Railroad ROW and the Engineer has verified the insurance policy is still in force.
EXHIBIT "A" NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT
SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT
INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St ___________________________________________________________

2. Date: ______________________  Time: __________________ County: __________________

3. Temperature: ________________________________

4. Weather ____________________________________________

5. Social Security # __________________________________________

6. Name (last, first, mi) __________________________________________

7. Address: Street: _____________________ City: __________________ St. _____ Zip: _____

8. Date of Birth: ______________________ and/or Age _____ Gender: __________________

9. (a) Injury: __________________________________________

   (b) Body Part: ________________________________________
   (i.e. (a) Laceration (b) Hand)

11. Description of Accident (To include location, action, result, etc.):

12. Treatment:
    ? First Aid Only
    ? Required Medical Treatment
    ? Other Medical Treatment

13. Dr. Name ____________________________________________ Date:____________________

14. Dr. Address:
    Street: ____________________________________________
    City: ______________________ St: _____ Zip: ______

15. Hospital Name: ________________________________________

16. Hospital Address:
    Street: ____________________________________________
    City: ______________________ St: _____ Zip: ______

17. Diagnosis: