



**SPECIAL PROVISIONS
FOR
CONSTRUCTION OR MAINTENANCE WORK ON RAILROAD RIGHT-OF-WAY
(CANADIAN PACIFIC RAILROAD COMPANY)**

**Scott County
SB-IA-6492(602)--7T-82**

**Effective Date
August 19, 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.

127018.01 DESCRIPTION.

This specification applies to projects involving construction or maintenance of roadways and structures on Canadian Pacific (CP) Right-of-way (ROW).

This specification describes the following:

- Requirements when work is within the ROW or properties of the CP and adjacent to tracks, wire lines, and other facilities.
- Coordination with CP when work by the Contractor will be performed upon, over, or under the CP ROW, or may impact current or future CP operations.

The CP representative will be the person or persons identified by the CP Public Works Manager to handle specific tasks related to the project. The contract documents will specify the contact information for this individual(s).

Prior to advertising the project for letting, the Contracting Authority will negotiate and obtain an agreement with the CP for the work on CP ROW. The Contractor will also be required to enter into a Right of Entry agreement with the CP for the purpose of coordinating Contractor work and CP train activities. A copy of this agreement is attached as SP-127018, Attachment A.

The Contractor shall provide physical barriers approved by CP to protect track and ballast from damage and contamination when the Contractor's equipment is operating within 25 feet from nearest rail.

127018.02 REQUESTS FOR INFORMATION.

All requests for information involving work within any CP ROW shall be in accordance with the procedures listed in the contract documents. All requests shall be submitted to the Engineer. The Engineer will forward the request to the CP as necessary.

127018.03 CONSTRUCTION AND AS-BUILT SUBMITTALS.

- A. Submittals are required for construction materials and procedures as outlined below. The submittals shall include all review comments from the Engineer. All design submittals shall be stamped and signed by a Professional Engineer registered in the State of Iowa.
- B. The tables below provide CP's minimum submittal requirements for the construction items noted. Submittal requirements are in addition to those specified elsewhere in the contract documents. The minimum review times indicated below represent CP's requirements only. The Contractor shall allow additional time for the CP's review time as stated elsewhere in the contract documents.

For this specification the following definitions shall apply:

Overpass: when the roadway bridges over the railroad.

Underpass: when the roadway crosses under the railroad.

- C. Submittals will be made by the Engineer to the CP. Items in Table SP-127018.04-1 shall be submitted for both railroad overpass and underpass projects, as applicable. Items in Table SP-127018.04-2 shall be submitted for underpass projects only.

Prior to or during construction of underpass structures, the CP requires the review and approval of drawings, reports, test data, and material data sheets to determine compliance with the specifications. Product information for items noted in Table SP-127018.04-2 shall be submitted to CP through the Engineer for their review and approval. The signed submittal and the Engineer's review comments will be reviewed and approved by CP. Review of the submittals by CP will not be conducted until after review by the Engineer.

Table SP-127018.04-1: Review Sets and Minimum Time for Review

Description	Sets Required	CP's Minimum Review Time
Shoring design and details	2	4 weeks
Falsework design and details	2	4 weeks
Drainage design provisions	2	4 weeks
Erection diagrams and sequence	2	4 weeks
Demolition diagram and sequence	2	4 weeks

Table SP-127018.04-2: Sets Required

Description	Sets Required	Notes
Shop drawings	4	Steel and Concrete members
Bearings	4	For entire structures
Concrete Mix Designs	4	For entire structures
Rebar & Strand certifications	4	For superstructure only
28 day concrete strength	4	For superstructure only
Waterproofing material certifications and installation procedure	4	Waterproofing & protective boards
Structural steel certifications	4	All fracture critical members & other members requiring improved notch toughness
Fabrication and Test reports	4	All fracture critical members & other members requiring improved notch toughness.

Welding Procedures and Welder Certification	4	AWS requirements
Foundation Construction Reports	4	Pile driving, drilled shaft construction, bearing pressure test reports for spread footings.
Compaction testing reports for backfill at abutments	4	Must meet 95% maximum dry density, Modified Proctor ASTM D 1557.

D. As-Built Records will be submitted to the CP within 1 year of completion of the structures. These records shall consist of the following items:

1. Overpass Projects:

- Electronic files of all structure design drawings with as-constructed modifications shown in Auto-Cad Civil 3D or Acrobat .PDF format.
- Hard copies of all structure design drawings with as-constructed modifications shown.

2. Underpass Projects:

- Electronic files of all structure design drawings with as-constructed modifications shown, in Auto-Cad Civil 3D or Acrobat .PDF format.
- Hard copies of all structure design drawings with as-constructed modifications shown.
- Final approved copies of shop drawings for concrete and steel members.
- Foundation Construction Reports
- Compaction testing reports for backfill at abutments

127018.04 SITE INSPECTIONS BY THE CP.

Site inspections may be performed by the CP at any point during construction, including but not limited to the following:

- Preconstruction meetings
- Pile driving, drilling of caissons or drilled shafts
- Reinforcement & concrete placement for railroad bridge substructure or superstructure
- Erection of precast concrete or steel bridge superstructure
- Placement of waterproofing (prior to placing ballast on bridge deck)
- Completion of the bridge structure

A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided to the Engineer for submittal to the CP for review and approval prior to commencement of work. This schedule shall also include the anticipated dates when the above listed events will occur. This schedule shall be updated for the above listed events as necessary, but at least monthly so that site visits may be scheduled.

127018.05 CP REPRESENTATIVES.

CP representatives will be provided at the expense of the Contracting Authority to protect CP facilities, property, and movements of its trains or engines. CP may, at the Contractor's sole cost, risk and

expense, furnish whatever protective services it considers necessary, including, but not limited to, flagger(s), inspector(s), and stand-by personnel.

In general, CP will furnish such personnel or other protective services as follows:

- Flagging protection will be required during any operation involving direct and potential interference with CP's tracks or traffic. This may include but is not limited to fouling of railroad operating clearances, reasonable proximity of accidental hazard to railroad traffic, work within 25 feet horizontally of the nearest centerline, any work over any railroad track, or in any other condition that CP deems protective services necessary, which may include work on or off CP's property more than 25 feet from the nearest centerline of a railroad track, such as any equipment extension (including but not limited to a crane boom) that will reach or has the potential to reach within 25 feet of any track.
- For any excavation below elevation of track subgrade if, in the opinion of CP, track or other CP facilities may be subject to settlement or movement.
- During any clearing, grubbing, excavation, or grading, or other construction activity in proximity to CP facilities, which, in the opinion of CP, may endanger CP facilities or operations.
- During the Contractor's operations when, in the opinion of CP, CP facilities, including, but not limited to, tracks, buildings, signals, wire lines, or pipe lines, may be endangered.
- The Contractor shall arrange with the CP to provide the adequate number of flag persons to accomplish the work.

The Contractor shall be required to pay CP in advance for the cost of personnel or other protective services. Prepayment will be based on the Contractor's estimated time for needing protective services, and if that prepayment will be exhausted prior to the expiration of the contractor's need for protective services, additional prepayment funds will be needed to cover the new projected completion of the project.

In the event CP is unable to furnish flagging protection, inspection services, or standby personnel at the desired time or on the desired date(s), Contractor shall not perform the said operation or work until such time and date(s) that appropriate CP services can be made available. CP shall not be liable for any delay or increased costs incurred by Contractor owing to CP's inability or failure to have appropriate CP services available at the time or on the date requested.

127018.06 INSURANCE.

The Contractor shall not enter upon or over CP's ROW until the Engineer and CP have been furnished the insurance policies, binders, certificates, and endorsements required by the contract documents and the CP has notified the Engineer that such insurance provisions are in accordance with the contract documents. The insurance shall be kept in full force and effect during the performance of work and thereafter until the Contractor removes all tools, equipment, and material from CP's property and cleans the premises in a manner reasonably satisfactory to CP.

In addition to providing to CP the insurance binders, endorsements, and certificates described below, the Contractor shall also provide the subcontractor insurance endorsements that are described in Article SP-127018.07.

The Contractor shall provide the following kinds of insurance in addition to the requirements of Article 1107.02 of the Standard Specifications.

A. Commercial General Liability Insurance.

Commercial general liability (CGL) (occurrence based) with a limit of not less than \$5,000,000.00 each occurrence and an aggregate limit of not less than \$10,000,000.00. CGL insurance shall be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy shall also contain the following endorsement, which shall be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Canadian Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. Business Automobile Coverage Insurance.

Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000.00 for each accident.

The policy shall contain the following endorsements, which shall be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Canadian Pacific Railroad Company Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90), if required by law.

C. Workers Compensation and Employers Liability Insurance.

Coverage shall include, but not limited to:

- The Contractor's statutory liability under the workers' compensation laws of the State of Iowa.
- Employers' Liability (Part B) with limits of at least \$500,000.00 each accident, \$500,000.00 disease policy limit, \$500,000.00 each employee.

If the Contractor is self-insured, evidence of the State of Iowa's approval and excess workers compensation coverage shall be provided. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall contain the following endorsement, which shall be stated on the certificate of insurance:

Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing CP in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. Umbrella Insurance.

If the Contractor utilizes umbrella policies, these policies shall "follow form" and afford no less coverage than the primary policy. Excess coverage is not allowed.

E. Pollution Liability Insurance.

Pollution liability coverage shall be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$1,000,000.00 per occurrence and an aggregate limit of \$2,000,000.00.

If the scope of work as defined in this contract includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor shall furnish to CP evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000.00 per loss, and an annual aggregate of \$2,000,000.00.

- F. All policy(ies) required above (except worker's compensation and employers liability) shall include the CP and its Parents as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to the CP and its Parents as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for the CP's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions contained in the specifications.
- G. Punitive damages exclusion, if any, shall be deleted (and the deletion indicated on the certificate of insurance), unless the law governing prohibits all punitive damages that might arise in connection with this contract.
- H. The Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors, and employees. This waiver shall be stated on the certificate of insurance.
- I. Prior to commencing the work, the Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this contract.
- J. All insurance policies shall be written by a reputable insurance company acceptable to the CP or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of Iowa.
- K. The fact that insurance is obtained by the Contractor or by the CP on behalf of the Contractor shall not be deemed to release or diminish the liability of the Contractor, including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by the CP from the Contractor or any third party shall not be limited by the amount of the required insurance coverage.

127018.07 ASSIGNMENT, SUBCONTRACTING, AND INSURANCE ENDORSEMENTS.

The Contractor shall not assign or subcontract the provisions of this specification, or any interest therein, without the written consent of the Engineer. The Contractor shall be responsible for the acts and omissions of all subcontractors. Before the Contractor commences any work, they shall, except to the extent prohibited by law; (1) require each subcontractor to include the Contractor and CP as "Additional Insureds" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each subcontractor to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each subcontractor to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

127018.08 ADDITIONAL SAFETY REQUIREMENTS.

Personnel employed by the Contractor or subcontractors shall complete the course "CP Contractor Security/Safety Course", and be registered prior to working on CP property, except that such personnel are not required to execute the Right of Entry form for contractors, it being understood that all contractors or subcontractors shall instead execute the Right of Entry Agreement attached to this specification. The CP orientation course is available at: www.erailsafe.com This course shall be completed annually.

CP has exempted from this requirement those it classifies as "Delivery Persons" from this training, such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.

The Contractor shall require its employees to be suitably dressed to perform their duties safely. The Contractor shall require workers to wear personal protective equipment as specified by CP rules and regulations. All personal protective equipment will be of safe design and construction for the work to be performed and shall be maintained in a sanitary and reliable condition. Protective equipment shall include, but not be limited to the following PPE listed below that meet the U.S. ANSI standards (American National Standards Institute):

- Eye and face protection ANSI Z 87.1
- Head protection ANSI Z 89.1
- Foot protection ANSI Z 41.1
- High Visibility apparel ANSI / ISEA Z 107

Additional eye protection shall be provided to meet specific job situations such as welding, grinding, burning, etc.; and hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Only waist length shirts with sleeves and trousers covering the entire leg shall be worn. Flare-legged trouser bottoms shall be tied to prevent catching.

CP requires that the Contractor provide their personnel with the proper training, and that the Contractor's personnel are provided with 1) a sticker to be affixed visibly on their hard hat and 2) a qualification card so that CP employees know that the Contractor's personnel are familiar with CP safety practices and proof of having successfully completed the "CP Contractor Security/Safety Course" course. If a Contractor's employee does not have the sticker and qualification card, that Contractor employee will not be allowed on CP property.

Heavy equipment operating within CP ROW shall be equipped with audible back-up warning devices. If in the opinion of the CP the Contractor's equipment is unsafe for use on the CP's ROW, the Contractor shall remove such equipment from the CP ROW.

The Contractor shall promptly notify the CP of any U.S. OSHA reportable injuries occurring to any employee that arises during the work performed on the work site within CP ROW.

If at any time the Engineer or the CP is of the opinion that any work of the Contractor is being or is about to be done or prosecuted without due regard and precaution for safety and security, or in violation of any applicable safety rule, the Engineer may suspend the work until proper protective measures are adopted and provided. In addition, if CP has a reasonable, good faith belief that the Contractor is engaging, or is about to engage, in any activity that poses a substantial risk of causing great bodily injury or death to any person, or significant property damage, CP may suspend the work of the Contractor and shall as soon as possible thereafter contact the Engineer to review the circumstances of the work stoppage. CP shall thereafter abide by the decision of the Engineer as to the necessity of the work stoppage.

127018.09 SAFETY MEASURES-PROTECTION OF OPERATIONS.

The Contractor shall perform work in a safe manner and in conformity with the following standards:

A. Explosives.

The Contractor shall not discharge any explosives on or in the vicinity of the CP's property without the prior consent of the CP, which shall not be given if, in the sole discretion of the CP, such discharge would be dangerous or would interfere with the CP's property or facilities. For the purposes hereof, the "vicinity of the CP's property" shall be deemed to be any place on the CP's property or in such close proximity to the CP's property that the discharge of explosives could cause injury to the CP's employees or other persons, or cause damage to or interference with the facilities or operations on the CP's property. The CP reserves the right to impose limitations on the transportation, handling, storage, security, and use of explosives as the CP, in the CP's sole discretion, may deem to be necessary, desirable, or appropriate. In addition to any limitations as may be specifically imposed:

1. The Contractor shall provide no less than 48 hours written notice, excluding weekends and holidays, before discharging any explosives.
2. Any explosives loaded in holes, placed or otherwise readied for discharge, they shall be discharged the same day during daylight hours, and at mutually acceptable times.
3. The Contractor, at its own expense, shall take all precautionary measures and construct all temporary shelters necessary to guard against danger of damage, destruction, or interference arising out of or connected with any blasting or any transportation, handling, storage, security, or use of explosives.

B. Obstructions to View.

Except as otherwise provided herein, the Contractor shall not cause or permit the view along the tracks of the CP to be obstructed, nor place any combustible material on the crossing area, nor erect any structures thereon except as allowed by the contract documents.

C. Excavation.

The Contractor shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, impair, or endanger the clearance between existing or new slopes and the tracks of the CP. The Contractor shall not perform any work that may disturb the stability of any area or adversely affect the CP's tracks or facilities. The Contractor, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation or trenching performed by them in connection with construction, maintenance, or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the CP to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the CP's operations in the vicinity.

D. Drainage.

The Contractor, at its expense, shall provide and maintain suitable facilities for draining the highway and its appurtenances, and shall not suffer or permit drainage water to flow or collect upon property of the CP that may adversely affect any of the CP's operations, equipment or any third parties with permitted facilities on the CP's ROW. The Contractor, at its own expense, shall provide adequate passageway for the waters of any streams, bodies of water, and drainage facilities (either natural or artificial, and including water from the CP's culverts and drainage facilities), so that said waters may not, because of any facilities or work of the Contractor, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the CP or any part thereof, or property of others. The Contractor shall not obstruct or interfere with existing ditches or drainage facilities.

E. Clearances.

The Contractor shall provide a minimum vertical clearance of 22.0 feet above top of rails and a minimum lateral clearance of 12.5 feet from centerline of track nearest temporary construction falsework. No materials, supplies, or equipment will be stored within 25 feet from the centerline of any railroad track, measured at right angles thereto.

Proposed changes to the specified minimum clearances shall be submitted in writing to CP, through the Engineer, at least 30 calendar days in advance of the work. No work shall commence until the Engineer receives concurrence, in writing, from CP that approval is given and that arrangements have been made for flagging service, as may be necessary. The CP will have 15 calendar days to respond to the request.

F. Demolition of Existing Structures.

The Contractor shall submit demolition plans to the Engineer for review and approval. The Engineer will forward such plans to the CP as identified in the project agreement for CP to review and approve. Demolition performed over or near CP track will require proper protective shielding or other measures (as identified on the plans) as maybe required by CP, and the Contractor shall be required provide signed plans, signed by a Professional Engineer licensed in the State of

Iowa, and schedule for review and approval by CP. Such protective shielding or measures shall be designed for immediate removal by Contractor whenever instructed to do so by CP. Demolition shall not be undertaken until CP has advised Engineer of its approval of the plans and schedule, and the Contractor has received the Engineer's and CP's written approval of such demolition plans and schedule. All such reviews and approvals or rejections will be completed by the Engineer and CP within 45 calendar days of receipt from the Contractor.

127018.10 WALKWAYS.

Along the outer side of each exterior track of multiple operated track, and on each side of single operated track, an unobstructed continuous space suitable for CP's use in walking along trains, extending to a line not less than 12 feet from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while CP's flagging service is provided shall be removed before the close of each work day. Walkways with railings shall be constructed by Contractor over open excavations when in close proximity of track, and railings shall not be closer than 8.5 feet horizontally from center line of tangent track or 9.5 feet horizontally from centerline of curved track.

127018.11 EXCAVATIONS IN CLOSE PROXIMITY TO CP FACILITIES.

The Contractor shall take special precaution in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls, or other facilities that require shoring shall comply with the following requirements: OSHA, AREMA, and CP "Guidelines for Temporary Shoring".

The Contractor shall contact CP for facility locates at least 5 working days prior to commencing work at 1.248.740.6227 during normal business hours (7:00 a.m. to 3:00 p.m. C.S.T., Monday through Friday, except holidays). The Contractor shall pay CP in advance for the cost of CP locates. The cost for a cable locate is \$250.00. If a telecommunications system is buried anywhere on or near CP property, the Contractor shall coordinate with CP and the telecommunication company to arrange for relocation or other protection of the system prior to beginning any work on or near CP property.

127018.12 NO INTERFERENCE WITH CP'S OPERATION.

The Contractor shall not interfere with the constant, continuous, and uninterrupted use of the tracks, property, and facilities of the CP its lessees, licensees, or others, unless specifically permitted and authorized in advance by the CP. When not in use, the Contractor's machinery and materials shall be kept at least 50 feet (15.24 m) from the centerline of CP's nearest active track, and there shall be no crossings of CP's tracks except at existing open public crossings or as provided by private construction crossing agreement between CP and the Contractor. CP may require the Contractor to furnish detailed plans prior to entry upon the premises and to view and inspect any activity or work on or above the CP's property.

127018.13 TRAFFIC CONTROL.

The Contractor's operations that control traffic across or around CP facilities shall be coordinated with and approved by the CP.

127018.14 INDEMNITY.

As used in this Article, "CP" includes other railroad companies using the CP's property at or near the location of the Contractor's work and CP's and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from the following:

- Injury to or death of persons whomsoever (including the CP's officers, agents, and employees, the Contractor's officers, agents, and employees, as well as any other person); and
- Damage to or loss or destruction of property whatsoever (including Contractor property, damage to the roadbed, tracks, equipment, or other property of the CP, or property in its care or custody).

The Contractor shall indemnify, hold harmless, and defend to the extent allowed by law the CP from any loss which is due to or arises from any cause and is associated in whole or in part with the work covered herein, a breach of the contract or the failure to observe the health and safety provisions herein, or any activity or omission arising out of performance or nonperformance; except when caused by the sole negligence of the CP, or except to the extent caused by the gross negligence or willful misconduct of the CP.

127018.15 MAINTENANCE OF CP FACILITIES.

The Contractor shall maintain all ditches and drainage structures free of silt or other obstructions which may result from its operations, promptly repair eroded areas within CP's ROW, and repair any other damage to CP property, or its tenants; at no cost to the CP. Contractor will be required upon the completion of the work to remove from within the limits of CP's property all machinery, equipment, surplus materials, false work, rubbish or temporary buildings, and to leave said property in a condition satisfactory to the Engineering Manager of CP or their authorized representative.

127018.16 COMMUNICATIONS AND SIGNAL LINES.

No digging, trenching or boring activities shall be conducted in the proximity of any known buried Railroad Company signal cables without Railroad Company's Signal Department representative being present. If required, CP will rearrange its communications and signal lines, grade crossing warning devices, train signals and tracks, and facilities that are in use and maintained by CP's forces in connection with its operation at the expense of the Contracting Authority. This work will be performed by the CP and it is not a part of the contract. In addition to the local utility locate telephone numbers, contact CP One Call at 866-291-0741.

127018.17 FIBER OPTIC CABLE SYSTEMS.

Fiber optic cable systems may be buried on the CP's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. The Contractor shall contact the Iowa One Call (1.800.292.8989 (a 24-hour number)) to determine if fiber optic cable is buried anywhere on the CP's ROW to be used by the Contractor. If it is, the Contractor shall telephone the telecommunications company involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the CP's ROW.

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

127018.18 COOPERATION.

The CP will cooperate with the Contractor so that work may be conducted in an efficient manner, and will cooperate with the Contractor in enabling use of CP's ROW in performing the work.

127018.19 WAIVER OF BREACH.

The waiver by the CP of the breach of any condition, covenant, or specification herein contained to be kept, observed and performed by the Contractor shall in no way impair the right of the CP to avail itself of any subsequent breach thereof.

127018.20 CP OPERATIONS.

The Contractor shall be advised that trains or equipment are expected on any track, at any time, in either direction. Contractor shall become familiar with the train schedules in this location and structure its bid assuming intermittent track windows in this period, as defined below.

All railroad tracks within and adjacent to the work are active and rail traffic over these tracks shall be maintained throughout the contract. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations may occur continuously throughout the day and night on these tracks and shall be maintained at all times. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with CP operations.

Work windows for this contract shall be coordinated with the Engineer, who shall receive CP's approval before advising the Contractor of the availability of any work window. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:

- A. Conditional Work Window:** A period of time that CP operations have priority over construction activities. At the direction of the CP flag person, upon approach of a train, and when trains are present, the tracks shall be cleared (i.e., no construction equipment, materials, or personnel within 25 feet, or as directed by the CP, from the tracks). Conditional Work Windows are available for the contract.
- B. Absolute Work Window:** A period of time that construction activities are given priority over CP operations. During this time frame the designated tracks will be inactive for train movements and may be fouled by the Contractor. At the end of an Absolute Work Window the tracks or signals shall be completely operational for train operations and all CP, Public Utilities Commission, and Federal Railroad Administration requirements, codes, and regulations for operational tracks shall be met. In the situation where the operating tracks or signals have been affected, the CP will perform inspections of the work prior to placing back into service. CP flag persons will be required for construction activities requiring an Absolute Work Window.

Absolute Work Windows will not generally be granted, and any provided shall require the express written approval by CP's Transportation Department. Any request will require a detailed explanation for CP review and approval.

- C.** All work on CP's ROW shall be done at such times and in such manner so as not to interfere with or endanger the operations of CP. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to the CP for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor that requires flagging or inspection service shall be deferred until the flagging protection required by CP is available at the job site.
- D.** The Contractor shall make requests in writing for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request shall include:
 - Exactly what the work entails.
 - The days and hours that work will be performed.

- The exact location of work, and proximity to the tracks.
- The type of window requested and the amount of time requested.
- The designated contact person.

The Contractor shall provide written notice to the CP at least 48 hours before commencing work in connection with approved work windows when work will be performed within 25 feet (7.62 m) of any track center line.

- E. Should a condition arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of CP, the Contractor shall make such provisions. If in the judgment of the CP such provisions are insufficient, the CP may require or provide such provisions as deemed necessary. In any event, such provisions shall be at the Contractor's expense. The CP or Engineer will have the right to order Contractor to temporarily cease operations in the event of an emergency or, if in the opinion of the CP, the Contractor's operations could endanger CP's operations. In the event such an order is given, Contractor shall immediately notify the Engineer of the order.

127018.21 RAILROAD FLAGGING.

A. Notification.

The Contractor shall notify the CP and Engineer at least fifteen 15 working days in advance of commencement of any work on CP property and at least 10 working days in advance of proposed performance of any work by the Contractor in which any person or equipment will be within 25 feet of any track, or near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. Notice shall be made using CP's "Request for Flagging Services" form attached as SP-127018, Attachment B.

The services of a flagman will be required during any operation involving direct interference with CP's tracks or traffic, fouling of railroad operating clearances, or reasonable proximity of accidental hazard to railroad traffic, when work takes place within 25 feet horizontally of the nearest centerline, any work over any railroad track, or in any other condition that CP deems the services of a flagman necessary, which may include work on or near CP's property more than 25 feet from the nearest centerline of a railroad track. Additional flagmen will also be furnished whenever in the opinion of CP such protection is needed.

Upon receipt of 10 working day notice, the CP will determine and inform the Contractor whether a railroad flagger need be present and whether the Contractor need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the CP, such services will be provided at Contractor's expense with the understanding that if the CP provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. Contractor shall be required to pay CP in advance for the cost of personnel or other protective services. CP shall not be liable for any increased costs incurred by the Contractor or Contracting Authority owing to CP's inability or failure to have appropriate CP personnel available at the time or on the date requested.

To enable orderly flagger reassignment to other projects the Contractor shall notify the CP 5 working days prior to the termination of flagging need or 5 working days prior to completion of the Contractor's work, whichever is sooner. The Contractor shall inform the CP when work requiring flaggers is complete.

The CP will notify the Engineer and Contractor when non-compliance is reported by CP train crews or other CP employees. Contractor work performed without proper flagging services, when such flagging is required, will be subject to a \$5,000.00 per day price adjustment to Contractor, and may result in the removal of Contractor by CP or Engineer from the project.

B. Flagger Rate of Pay.

The rate of pay for each flagger will be at the base rate of \$1,300.00 per weekday (1-10 hour continuous period). Prepayment for weekend flagman protection will be at the rate of \$150.00 per hour, with an 10 hour minimum of \$1,500.00. Any hours in excess of 10 continuous hours per flagman on either weekday or weekend days shall be prepaid at the rate of \$150.00 per hour. Hours of flagman protection provided in excess of prepayment amounts will be billed at the proper rate and will be promptly paid by over-night delivery. Rates are subject to change, at any time, by law or by agreement between the CP, its employees or contractors, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Contractor shall pay on the basis of the new rates and charges.

C. Reimbursement to the CP.

In the event the Contractor fails to reimburse or pay the CP for hours of flagman protection provided in excess of prepayment amounts, the Contracting Authority will reimburse the CP within 30 calendar days of the Contractor defaulting on the payment (default is defined as non-payment within 30 calendar days of billing by the CP to the Contractor). Failure of the Contractor to reimburse the CP may result in a reduction or suspension of the Contractors bidding qualifications according to Article 1102.03 of the Standard Specifications.

D. Documentation and Reimbursement to the Contractor.

The Contractor shall initially pay CP for all flagging costs in conjunction with railroad flaggers when any of the conditions identified in Article SP-127018.05, warrant a flagger. The Contracting Authority will reimburse the Contractor for any daily cost that exceeds \$1,000.00 per day for the cost of flagger services provided by the CP. The Contracting Authority will reimburse the Contractor 100% of the total cost of flagger services, as deemed necessary by the CP, that does not meet any of the conditions identified in Article SP-127018.05, unless the flagger's presence on the project was a result of the Contractor's communication, or lack of communication, with the CP. The Contracting Authority will reimburse the Contractor following completion of all work necessitating flagging operations by the CP and receipt of documentation verifying the CP invoices have been paid.

For each day that railroad flaggers have been provided, the Contractor shall document daily the conditions on the project site that warrant the flagger. The Contractor shall submit the daily records to the Engineer each week. The Engineer will review the daily logs and promptly notify the Contractor if any information in the daily log is believed to be incorrect.

The Contractor shall forward copies of the invoices received from the CP for flaggers and a summary of the flagging costs incurred that exceed the Contractors' requirements described in Article SP-127018.05, to the Engineer with a request for payment for the additional railroad flagger costs. The Engineer will review the Contractor's daily logs against the CP's invoice and make payment for the eligible costs in accordance with Article 1109.03, of the Standard Specifications.

The Contractor shall be responsible to the CP for all flagging costs. Flagging costs for subcontracted work shall be the responsibility of the Contractor. Reimbursement from subcontractors to the Contractor shall be the sole responsibility of the Contractor.

The Contractor shall forward, to the Engineer, copies of payments made to the CP for flagging costs.

The Contracting Authority may award multiple contracts for work in the same general area. The Contractor shall try to stage work to minimize the need for railroad flaggers. In the event of multiple projects in a particular location, the Contractor initially requiring flagging on a daily basis shall be responsible for all flagging costs for that day.

127018.22 TEMPORARY CROSSINGS.

At other than established public road crossings, the Contractor shall not move any equipment or materials across the CP's tracks until written permission has been obtained from the CP.

If the Contractor requires a temporary railroad crossing the Contractor shall arrange for the crossing installation at a location acceptable to the Contractor and CP at the Contractor's expense to include all CP costs of installation, maintenance, removal, and track restoration. The temporary crossing shall be gated and locked at all times when not required for use by the Contractor. Flagging will always be required during use of a temporary crossing. The billing, Contractor payment provisions, and final Contractor payment requirements for crossing costs except flagging are to be covered as agreed to in a separate private construction crossing agreement between the Contractor and CP. Prior notice of need for a temporary crossing is required to allow for CP site review, cost estimating, securing material, and work crew scheduling and will vary. The Contractor should contact the CP prior to making a bid when a temporary crossing is required.

127018.23 LIMITATION OF RIGHTS GRANTED.

The Contract, any Temporary Easement, and Permanent Easement are all subject to the prior and continuing right and obligation of the CP to use and maintain its property, not inconsistent with highway purposes, including the right and power of the CP to construct, maintain, repair, renew, use, operate, change, modify, or relocate CP tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines, and other facilities upon, along, or across any or all parts of its property, all or any of which may be freely done at any time or times by the CP, not inconsistent with highway purposes and at CP's sole cost and expense.

The Contract, Temporary Construction Easement, and Permanent Easement, whether recorded or unrecorded, are subject to all outstanding rights (including those in favor of licensees and lessees of the CP's property, and others) and the right of the CP to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

127018.24 MECHANIC'S LIENS.

The Contractor shall not permit or suffer any mechanic's or material supplier's liens of any kind or nature to be enforced against any property of the CP for any work performed. The Contractor shall indemnify and hold harmless the CP from and against any liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. It is understood that this specification may be recorded in the county in which the work is to be performed and such recording shall serve as public notice that no Contractor, subcontractor, or material supplier shall file any notice of a mechanic's or material supplier's lien or permit or suffer any mechanic's lien or material supplier's lien on the property of the CP to the extent permitted by law.

127018.25 METHOD OF MEASUREMENT AND BASIS OF PAYMENT.

CP 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 CP Insurance Provisions.

Attachments to this specification:

- SP-127018, Attachment A: Right of Entry Agreement
- SP-127018, Attachment B: Requirements Regarding Flagging and Cable Location for Construction on CP

RIGHT OF ENTRY LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made by and between Canadian Pacific and _____

1. PARTIES:

Dakota, Minnesota and Eastern Railroad Corp., doing business as Canadian Pacific with general offices at:

Address	Contact Info	
120 S. Sixth Street Suite 9126 Minneapolis, MN 55402	Name:	Edward A. Oom
	Phone:	612.330.4553
	Fax:	612.904.5917
	Email:	Edward_Oom@cpr.ca

hereinafter called "**CP**,"

and _____ whose address is:

Address	Contact Info	
	Name:	
	Phone:	
	Fax:	
	Mobile:	
	Email:	

hereinafter called "**Licensee**."

2. PROPERTY; SCHEDULE; GRANT OF LICENSE;

2.1. Property

CP hereby grants Licensee a license to enter in and upon certain property owned or controlled by CP in Riverdale, Scott County, Iowa near railroad mile post 186.60 on the South Bellingham Road DOT 865635T Subdivision, Quad Cities Division as shown upon the map labeled Exhibit B that is attached hereto and made a part hereof (the "**Property**")

2.2. Work Schedule:

for the sole for the purpose of performing, generally, the following activities: construction of bike trail within the scope and in the manner described by the Iowa Department of Transportation in approved detailed plans, specifications and special provisions affecting the interest of CP and subject to approval by CP's authorized representative.

2.3. Grant of License:

This license is granted subject to all the terms and conditions set forth below and apply to all Work and activities upon the Property that may be performed by Licensee through its employees, agents, and contractors. For the purposes of this Agreement, the actions and omissions of such employees, agents, and contractors shall be deemed the actions and omissions of Licensee.

2.4. Agreement To Be Available At Work Site:

Licensee shall keep a copy of this Agreement at the Work site and shall make it available upon demand by any employee or agent of CP.

3. TERM, EFFECTIVE DATE, EXPIRATION & TERMINATION

3.1. Term: The term of this Agreement shall

Commence at 12:01 am on _____ 2014, the "**Commencement Date**;" and

Expire at 11:59 pm on _____ 2014, the "**Expiration Date**;"

the "**Term**." Upon agreement between CP and Licensee, the Term may be lengthen or shorten without affecting any other provisions of this Agreement

3.2. Effective Date:

This Agreement shall be effective upon the date that it has been signed by both parties.

3.3. Expiration:

This Agreement will expire at the Expiration Date, or when the Work is completed, whichever occurs first. Notwithstanding any other provision of this Agreement, the preceding sentence shall not terminate or limit any claim by CP against Licensee arising prior to the Expiration Date. If the Work includes monitoring wells, and if such wells remain on the Property after the Expiration Date, this Agreement shall remain in effect for those wells until the earlier of the following:

(i) the date they are properly closed (i.e., sealed and abandoned in accordance with applicable legal requirements) by Licensee or

(ii) the date CP assumes ownership of such wells pursuant to section 10.8.

3.4. TERMINATION; EXCLUSION:

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, this Agreement is terminable by CP prior to the Expiration Date in the event Licensee breaches any of its obligations under this Agreement. If CP elects to terminate this Agreement, it shall give Licensee notice of termination, which notice shall specify the obligation or obligations breached by Licensee; and this Agreement shall terminate 30 days after such notice is given (provided, however, that this Agreement shall not terminate if the breach is cured within said 20 day period). This Agreement is also subject to early termination pursuant to paragraph 21. The early termination of this Agreement shall not terminate or limit any claim by CP against Licensee arising prior to such termination. If Licensee is in breach of any of its obligations under this Agreement, any employee or agent of CP may order Licensee off the Property, in which case Licensee shall immediately leave the Property; moreover, Licensee shall leave the property immediately upon receipt of a notice given pursuant to this paragraph 3(D); and in either case, Licensee shall not re-enter the Property until such time as the breach is cured.

4. PAYMENTS

4.1. License Fee.

In consideration of the permissions herein granted, the Licensee shall with its execution hereof pay to CP the sum of Five Hundred (**\$ 500.00**) Dollars.

4.2. Utilities.

Licensee shall assume and timely pay for any gas, electrical, telephone, computer, sewer, water, storm water, waste or trash removal or any other service or commodity connected with the Work, collectively "**Utility Service**." If any Utility Service fee is in common with CP or other parties, Licensee shall be liable for its proportionate share of any such Utility Service Fee and upon receipt of a bill therefor, promptly pay CP or such other party for its share. It shall be a default in the terms of this lease if it can be shown that Licensee has not made such payments within 30 days if due to CP, or within 60 days if payable to any other party.

4.3. Mechanics' And Materialmen's Liens:

If any mechanics' or materialmen's lien, or similar lien, is asserted against the Property, or any other property of CP, as a consequence of the Work, Licensee shall immediately satisfy, defend, or obtain the release of such lien, all at Licensee's expense, and Licensee shall indemnify and defend CP against any Claims arising out of or connected with such lien.

4.4. Additional Charges.

Licensee shall within 30 days of receipt of a bill therefor, pay to CP costs for flagging, track changes or damage, or other such charges as may be provided by this Agreement or that CP may reasonably impose in connection with Licensee's Work.

4.5. Due Dates; Penalties; Other Charges

4.5.1. Due Dates

Any item, submission or payment required to be made shall be deemed timely made if received by the other party on or before the specified due date, or prior to expiration of the applicable period for compliance, submission or payment.

4.5.2. Late Fees

In addition to any amounts payable by Licensee to CP, Licensee shall pay CP a late fee for any payment not timely made by Licensee. The late fee shall be at the rate for overdue accounts set by CP's Accounting Department that is in effect at the time that any such payment is due. Said late fee shall initially be an amount equal to 1% of the invoice amount per month.

4.5.3. Fines & Service Fees

In addition to any other amounts payable by Licensee to CP, Licensee shall pay CP for any bank fines or service incurred by it in connection with the handling, non-payment, return or currency conversion incurred by CP in connection with processing of any payment made by Licensee to CP.

4.6. Work At No Cost To CP:

The Work completed by Licensee shall be performed at no cost to CP.

5. CONTACT, NOTICES, ETC.

5.1. Contact Persons; Communications:

Communications pursuant to this Agreement shall be directed to the contact persons designated in Section 1 or their designees. Either party may change its contact person, or the address(es), telephone number, or fax number for the contact person, by notice to the other party.

5.2. Notices:

Except as otherwise provided in this Agreement, all notices pursuant to this Agreement shall be in writing and shall be effective upon delivery to the address or fax number of the contact person for the party to whom notice is being given. If notice is given by fax, the notice shall not be deemed effective until received in legible form.

5.3. Notification Prior To Beginning Work:

Licensee must notify CP's contact person by telephone at least three working days prior to beginning any separate phase of the Work, and again promptly after such phase of the Work has been completed.

6. PERMITTED & PROHIBITED USES; RIGHTS OF CP

6.1. Permitted Uses:

6.1.1. *The Work:*

The use of Property by Licensee shall be limited to the completion of the Work set forth in Section 2.2., or such other kind of activities as may be approved by CP in writing.

6.1.2. *Government Authorities.*

Licensee may permit governmental authorities with jurisdiction over the Work to enter the Property for the purpose of inspecting or monitoring the Work. Whenever possible, Licensee shall advise CP (by telephone or other means calculated to bring the matter to CP's immediate attention) prior to permitting such governmental authorities to enter the Property for such purposes. The actions and omissions of such governmental authorities while on the Property for such inspections and monitoring shall be deemed the actions and omissions of Licensee. Licensee is not authorized to permit governmental authorities to enter the Property for any other purpose.

6.2. Prohibited Uses and Activities.

The Licensee shall not use, occupy or permit the Property to be used for any purpose, activity or improvement except as provided in this Agreement or as may be approved of in writing by CP. Specifically, Licensee shall not:

6.2.1. *Advertising*

permit any advertisements or signs upon the Property;

6.2.2. *Use of Hazardous Substances*

without prior written disclosure to and approval by CP, Use or authorize the Use of any Hazardous Substance on the Property, including installation of any above or underground storage tanks; subject thereto, the Licensee shall arrange at its own cost for the lawful transportation and off-site disposal of any and all Hazardous Substances that it shall Use or generate;

6.2.3. *Use of Premises for waste treatment or as storage or disposal facility*

cause or allow the Property or any of CP's adjacent property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or to otherwise bring any such property within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance; or

6.2.4. *Subleasing is prohibited.*

sublease the Property or the permissions or rights herein granted in any manner or form.

6.3. Reservations and Rights of CP:

6.3.1. *Railroad Activities Take Priority over Work*

All Work by Licensee shall always and all times be subordinate to the needs of CP in connection with the operation and movement of railroad trains and equipment, and the repair of railroad track, structures, communications and appurtenances thereto.

6.3.2. Reservation of prior and future uses not inconsistent with Licensee's activities.

The rights herein granted to Licensee are subject to the rights granted in all other licenses, permits and easements for tracks, roads, walkways, poles, wires, pipelines, sewers, billboards and other improvements that exist or may be placed upon, across, above or underneath the Property by CP, or its employees, agents, licensees, grantees, representatives or invitees. Further, CP reserves unto itself the right to place (or to give others the right to place) additional tracks, roads, walkways, poles, wires, pipelines, sewers and billboards upon, across, above or underneath the Property in any manner that does not unreasonably interfere with Licensee's Work.

6.3.3. Monitoring

CP may elect to be present during the conduct of the Work and to monitor same.

7. COVENANTS, CONDUCT & RESPONSIBILITIES

7.1 Definitions

7.1.1 "Claim" or "Claims" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);

7.1.2 "Environmental Law" or "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Water Act, 33 U.S.C. '§1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law, ordinance, order or decree dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted;

7.1.3 "Hazardous Substance" or "Hazardous Substances" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law;

7.1.4 "Release" or "Released" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "environment" is defined in CERCLA;

7.1.5 "Response" or "Respond" means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;

7.1.6 "Use" means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon.

7.2 Investigation; Compliance with Laws; Safety Requirements.

7.2.1 Tenants and Licensees in possession of Property.

Before entering the Property, Licensee shall secure the consent of all persons or entities who are using or occupying any portion of the Property. CP will cooperate with Licensee to obtain consent from any such person or entity who unreasonably withholds consent.

7.2.2 *Underground Utilities And Structures:*

- a. Licensee shall be responsible for determining the location of all underground utilities (electric lines, telephone lines, gas lines, steam lines, sewer lines, water lines, fiber optic cables, pipes, wires, and the like) and underground structures.
- b. Licensee shall call CP “ONE CALL” at 1-866-291-0741 and Roger Communication “ONE CALL” at 1-888-625-8702 a minimum of 5 business days prior to commencing any excavation or boring on the Property.
- c. CP will cooperate with Licensee to identify the location of underground utilities and structures known to CP, but such cooperation shall not relieve Licensee from its primary responsibility to determine the locations of such utilities and structures.

7.2.3 *Permits And Licenses; Compliance With Laws:*

Licensee shall secure, at no expense to CP, any permits or licenses required in connection with the Work and shall comply with all laws applicable to the Work and the Property, including (but not limited to) any laws, standards, regulations, and permit requirements relating to environmental pollution or contamination or to occupational health and safety. Licensee shall indemnify and defend CP against any and all Claims arising out of or connected with the violation of any law by Licensee while on or about the Property.

7.2.4 *Compliance With CP Safety Requirements; Identification:*

- a. While on the Property, Licensee shall comply with the safety requirements of CP, as such requirements may be amended from time to time during the duration of the Work, all at no expense to CP. CP's safety requirements are set forth “**Exhibit C**” titled “**MINIMUM SAFETY REQUIREMENTS FOR CONTRACTORS WORKING ON RAILWAY PROPERTY**” and in CP 's current safety handbook. One free copy of the current safety handbook will be provided to the Licensee by the CP contact person. Additional copies will be provided at Licensee's expense. Licensee shall be responsible for ensuring that any person performing any of the Work for or on behalf of Licensee shall comply with the CP safety requirements that would apply to a CP employee performing similar work.
- b. Prior to any entry onto the Property, Licensee and every employee, agent or subcontractor who carries out any part of the Work on the Property shall successfully complete the safety training available through the e-railsafe program at www.e-railsafe.com in respect to requirements for Canadian Pacific operations.
- c. Licensee and every employee, agent or subcontractor who carries out any part of the Work on the Property shall at all times wear and visibly display the identification badge issued to them following successful completion of the e-railsafe safety training together with whatever additional identification materials that CP may reasonable require.

7.3 *Work In Close Proximity To Railroad Operations;*

7.3.1 *Interference With Railroad Operations:*

Licensee shall keep CP fully apprised of its proposed activities on the Property so as to prevent any interference with the operations of CP's trains or equipment (or trains or equipment of others) operating on or near the Property.

7.3.2 *Drainage;*

Licensee shall not make any changes to existing drainage patterns on or adjacent to railroad property without written approval by CP. Licensee shall not perform work that modifies capacity of drainage conveyance systems.

7.3.3 Clearance:

No work shall be done or any equipment or other obstruction placed over or within 25 feet laterally of the centerline of any track without advance notification to CP prior to performing such work or placing such equipment or obstruction.

7.3.4 Flagging:

Licensee must make arrangements with CP for such flagging or watchman service as CP deems necessary for the protection of railroad traffic. All such flagging and watchman service shall be provided by CP at Licensee's expense. The fact that CP provides such service shall not relieve Licensee from any liability under this Agreement. CP's labor and material additives are subject to change without notice to Licensee, and CP shall be reimbursed based upon its labor and material additives actually in effect as of the date of such service.

7.3.5 Certain Work Close To Track Not Permitted; Lateral Support:

- a. Unless otherwise agreed to in writing by CP, excavations, borings, wells, pits, test holes, probe sites, and the like shall not be located closer than 25 feet from the centerline of the nearest railroad track on or adjacent to the Property nor shall it take or allow any action upon the Property that would materially impair the lateral or subadjacent support of adjacent lands or railroad tracks.;
- b. Unless otherwise agreed to in writing by CP, drilling and excavating equipment and related equipment shall not be located closer than 25 feet from the nearest rail of any such track;
- c. In the event that CP permits excavations, borings, wells, pits, test holes, probe sites, or the like in close proximity to tracks, embankments or other features providing lateral or subadjacent support to land or tracks, then notwithstanding anything to the contrary in this license, Licensee shall be responsible for designing and constructing at no cost to CP any measure that is required to prevent the collapse, erosion or impairment to said land or tracks.

7.3.6 Storm Water

Licensee shall not, without the advance written approval of CP, make any changes to the Property that would either increase the historic flow rate of storm water from the Property or create an impediment to the historic flow of storm water to the Property. Unless otherwise agreed in writing, Between CP and the Licensee it is understood and agreed that Licensee shall at Licensee's cost and expense be liable to CP for the construction, maintenance, repair and replacement upon the real property or other land not belonging to Grantor such storm sewer lines, manholes, mains, rip rap, boulders, wing walls, ditches and related

7.3.7 Fencing <not applicable>

Licensee shall, at no cost to CP, construct and maintain during the term hereof a fence acceptable to CP in the location(s) designated on Exhibit B. Following completion of the Work, the Licensee shall remove the fencing, remove any post footings or concrete, and fill and tamp any post holes with clean fill material.

7.4 Conduct

7.4.1. Property clean, safe and free from nuisances

The Licensee shall not permit the existence of any nuisance upon the Property and shall at all times keep the Property in a proper, clean, safe and sanitary condition, and free from accumulations of waste materials, debris or refuse.

7.4.2. Release of Hazardous Substances:

The Licensee shall not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property.

7.4.3. Response Actions

The Licensee shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property caused by, or attributable to, any act or omission of the Licensee (or the Licensee's employees, agents, representatives or invitees) that could:

- a. give rise to any Claim under any Environmental Law,
- b. cause a public health or workplace hazard, or
- c. create a nuisance.

7.5. Required Notices/Disclosures

7.5.1 Transportation and Disposal Contracts

The Licensee shall, upon written request by CP, provide CP with copies of transportation and disposal contracts and manifests for Hazardous Waste, any permits issued under any Environmental Laws, and any other documents demonstrating that the Licensee has complied with all Environmental Laws relating to the Property

7.5.2 Releases or Suspected Releases

The Licensee shall promptly notify CP of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release.

7.5.3. Notices, summons citations, etc.

The Licensee shall promptly provide CP with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning:

- a. any Release of a Hazardous Substance on, to or from the Property,
- b. the imposition of any lien on the Property, or
- c. any alleged violation of or responsibility under any Environmental Law relating to the Property.

7.5.4. Other Reports <not applicable>

Licensee shall, at CP's option, provide CP, at no cost to CP, a copy of any other report, summary or written test results, collectively "**Report**," pertaining to the Work. If any such Report is to be filed or made available to any governmental agency acting in a regulatory capacity, then Licensee shall also give CP a reasonable time (not less than 5 working days) to review and comment on a draft of such Report and when preparing any such final Report pertaining to the Work, Licensee or its contractor shall give due consideration to CP's comments with respect to the draft of that Report. Licensee will promptly provide CP with a copy of any final Report.

7.6. CP's right to Participate in Response Actions

Following receipt of any notice, order, claim, investigation, information request, letter, summons, citation, directive, or other communication identified in 7.D.iii connection with any action taken pursuant to section 7.C.iv, Licensee shall notify CP of and permit CP to participate in any and all investigations, telephone conferences, settlement discussions, remediation plans and all other interactions, direct or indirect, with governmental or regulatory officials, and Licensee shall take all action necessary to ensure that any indemnification, release, waiver, covenant not to sue, or hold harmless agreement benefiting Licensee and arising out of such activities, whether from a governmental or regulatory entity or from a private entity, also benefits CP to at least the same extent as Licensee.

7.7. Restoration of Property;

Upon completion of the Work or expiration or early termination of this Agreement, whichever occurs first, Licensee shall remove any debris resulting therefrom and shall restore the Property to the condition it was in prior to the commencement of the Work (or such other condition as is satisfactory to CP). All excavations are to be backfilled and tamped. All borings shall be backfilled with grout. Drill cuttings shall not be used as backfill. Licensee shall dispose of all drill cuttings, soil and sediment samples, purge water, dewatering effluent, and water samples and all excess excavation material in a manner acceptable to CP and in accordance with all applicable laws, all at no expense to CP.

8. LIABILITY

8.1. Damage To Tracks, Facilities, And Equipment:

If any tracks, facilities, or equipment owned, used, or maintained by CP are damaged in connection with the Work, CP shall repair (or arrange for the repair of) such damage and Licensee shall pay the full cost of such repair within 30 days after CP shall tender a bill therefor.

8.2. Assumption Of Risk:

Licensee is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about the Property. Without in any way limiting the scope of the preceding sentence, Licensee assumes the risk that monitoring wells, elevation bench marks, reference points, and other installations located on the Property may be disturbed, damaged, or destroyed by CP or third persons, and Licensee shall not make any claim against CP on account of same, even if such disturbance, damage, or destruction arises from the negligence of CP or its employees, agents, or invitees. Licensee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on the Property.

8.3. Indemnity:

To the maximum extent permitted by applicable law, Licensee shall indemnify and defend the Indemnified Parties (as defined below) against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines, sanctions, court costs, litigation costs, and attorneys' fees (collectively, Claims) arising out of or relating to any destruction of (or damage to) any property or natural resource, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the Work, any action or omission of Licensee while on or about the Property pursuant to this Agreement, or the exercise by Licensee of the license granted by this Agreement. As used in this Agreement, Indemnified Parties means the following businesses and their officers, directors, employees, and agents: Soo Line Railroad Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing

business as Canadian Pacific Railway, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to the Property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

9. INSURANCE.

Licensee shall procure and maintain in effect (or shall cause its contractor to procure and maintain in effect), at any time when any portion of the Work is being performed, the following insurance:

9.1. Comprehensive General Liability Insurance:

Comprehensive general liability insurance with a policy limit of not less than \$2,000,000 per occurrence and \$5,000,000 aggregate for bodily injury, death, and damage to or destruction of property (including the loss of use thereof). The policy will include those policy extensions commonly referred to as broad form completed operations, contractor's protective, collapse, and underground damage. The policy shall by its wording or by endorsement insure those liabilities and obligations which this Agreement contemplates will be assumed by Licensee, including liabilities and obligations to indemnify the Indemnified Parties. The policy shall be endorsed to require that CP be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage. The policy shall be endorsed with a cross liability (severability of interest) endorsement in substantially the following form: "This policy shall insure each person, firm, or corporation hereunder in the same manner and to the same extent as if a separate policy had been issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurance company's liabilities." The policy shall be endorsed to add the following as additional insureds: Soo Line Railroad Company, Soo Line corporation Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to the Property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing (collectively, the Protected Parties). The policy shall also be endorsed to waive subrogation rights against the Protected Parties.

9.2. Automobile Liability and Property Damage Insurance:

Automobile liability and property damage insurance in an amount not less than \$2,000,000, personal injury and property damage combined, covering the ownership, use, and operation of any motor vehicles and trailers licensed for use on public highways which are owned, leased, or controlled by Licensee or its contractor and used in connection with the Work. The policy shall be endorsed to require that CP be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage.

9.3. Workers Compensation Insurance:

Workers compensation insurance that meets the requirements of applicable state law.

9.4. Railroad Protective Liability Insurance:

Railroad protective liability insurance (occurrence form), in the name of Soo Line Railroad Company and Canadian Pacific Railway Company, with limits of no less than \$2,000,000 per occurrence and \$6,000,000 aggregate for personal injury and property damage.

9.5. Environmental Pollution Impairment Liability Insurance: <not applicable>

Contractor's environmental Pollution Impairment liability insurance with a policy limit of not less than \$5,000,000 per occurrence. The policy shall be endorsed to require that CP be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage. The policy shall be endorsed with a cross liability (severability of interest) endorsement in substantially the following form: "This policy shall insure each person, firm, or corporation hereunder in the same manner and to the same extent as if a separate policy had been

issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurance company's liabilities." The policy shall be endorsed to add the Protected Parties as additional insureds and to waive subrogation rights against the Protected Parties.

9.6. Other Policies of Insurance: *<not applicable>*

Such other insurance as may be necessary to protect the Protected Parties against certain other claims arising out of the Work, to wit:

- a. claims under any workers' compensation law,
- b. claims under the Federal Employer's Liability Act, and
- c. any other claims for damages for personal injury or death.

9.7. Contractual Endorsement

Each policy of insurance required in 9.1 and 9.2 shall include the following endorsement upon the certificate, or within the binder, policy or other contractual evidence signed by the insurer and in form acceptable to CP:

"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work pursuant to the Right of Entry Agreement dated _____, 2014 by and between _____ and Dakota Minnesota and Eastern Railroad Corp., including work upon railroad property, within railroad right of way and in close proximity operating railroad tracks."

Before Licensee enters the Property, CP must receive and approve certificates of insurance evidencing the coverage's required by sections 9.1, 9.2, and endorsements 9.7 and CP must also receive and approve either the policy required by subparagraph 9.4 or a binder evidencing that that policy is in effect. CP reserves the right to demand a certified copy of any required policy, and Licensee or its contractor shall provide such copy within 10 working days after CP shall give notice to Licensee demanding such copy. All of the required policies shall be issued by insurers acceptable to CP and shall be acceptable to CP in both form and substance. Licensee shall not enter the Property until all of the required policies have been approved in writing by CP. If the comprehensive general liability and automobile policies are procured by Licensee's contractor, Licensee shall be added as an additional insured party under such policies. If the contractor uses a subcontractor, the contractor shall provide the required policies and shall, in addition, either require the subcontractor to provide insurance equivalent to that described herein (except that only one policy required by subparagraph 9.4 need be provided for the Work) or obtain endorsements to the contractor's policies naming the subcontractor as an additional insured party. If a subcontractor uses a sub-subcontractor, the sub-subcontractor shall either provide insurance equivalent to that required of the subcontractor or shall be named as an additional insured party on the contractor's or subcontractor's policies. In the event any required policy lapses, CP shall have the option of immediately terminating the License, with or without notice to Licensee; such termination shall be without prejudice to CP's rights and privileges under this Agreement. The insurance coverage obtained pursuant to section 9 and its sub-sections shall in no manner restrict or limit the liabilities assumed by Licensee under this Agreement.

10. ENTIRE AGREEMENT

10.1. Survival Of Indemnity Provisions:

The indemnification provisions of this Agreement shall survive its expiration or termination.

10.2. Mere License:

The permissions encompassed by this Agreement is a mere license to use the Property for the specified purpose and does not create any estate or interest in the Property.

10.3. No Warranty Of Title:

CP does not warrant that it has good title to the Property.

10.4. Assignment; Binding Effect:

This Agreement may not be assigned by Licensee without the advance written consent of CP. Subject to the preceding sentence, this Agreement shall be binding upon, and inure to the benefit of, the parties' respective successors and assigns.

10.5. Governing Law:

This Agreement shall be construed and interpreted in accordance with the laws of the state in which the Property is located, without reference to the choice of law rules of that state.

10.6. Entire Agreement:

This Agreement is the full, complete, and entire Agreement of the parties with respect to the subjects hereof, and any and all prior writings, representations, and negotiations with respect to those subjects are superseded by this Agreement.

10.7. Headings:

The headings used in this Agreement are provided solely as a convenient means of reference. They are not intended to, and do not, limit or expand the purpose or effect of the paragraphs to which they are appended. The headings shall not be used to construe or interpret this Agreement.

10.8. Singular And Plural:

As used in this Agreement, the singular form of a word includes the plural form of that word, and vice versa, and this Agreement shall be deemed to include such changes to the accompanying verbiage as may be necessary to conform to the change from singular to plural, or vice versa.

10.9. Duplicate Copies & Counterparts.

This Agreement may be executed in counterparts, which together shall constitute one and the same document. The parties may execute more than one copy of this Agreement, each of which shall constitute an original.

11. SIGNATURES.

THE PARTIES HERETO have executed this Agreement as evidence of their agreement to the terms herein.

**DAKOTA MINNESOTA & EASTERN RAILROAD
CORP.**

doing business as Canadian Pacific Railway

By _____

By _____

Its _____

Its _____

Date _____

Date _____

Attachment D

**REQUIREMENTS REGARDING FLAGGING AND CABLE LOCATION FOR CONSTRUCTION ON CP
(Hereinafter called "Railroad")
(Revised: Effective August 1st 2013)**

NOTE: Flagging and/or Cable Locate fees may apply

A utility or contractor shall not commence, or carry on, any work for installation, maintenance, repair, changing or renewal of any FACILITY, under, over or on RAILROAD property at any location without giving notice to the RAILROAD authorized representative at the RAILROAD's office located at Minneapolis, Minnesota Phone (612) 330-4554; and if, in the opinion of the RAILROAD the presence of an authorized representative of the RAILROAD is required to supervise the same, the RAILROAD shall render bills to the utility or contractor for all expenses incurred by it for such supervision. This includes all labor costs for flagmen or cable locate supplied by the RAILROAD to protect RAILROAD operation, and for the full cost of furnishing, installation and later removal of any temporary supports for said tracks, as the RAILROAD's Chief Engineer's Office may deem necessary.

A flagman is required anytime a utility or contractor does any work on or near RAILROAD property within twenty-five (25) feet horizontally of the centerline or any work over any railroad track. The RAILROAD, however, also reserves the right to require a flagman for work on RAILROAD property, which is more than twenty-five (25) feet from the centerline of a railroad track when there are other conditions, or considerations that would dictate the need for a flagman to safeguard the RAILROAD's operations, property and safety of working personnel.

A cable locate of RAILROAD owned facilities may be required to identify and protect Signal & Communication cables that have been installed to provide power, signal control, and wayside communications. These cables are vital to a safe and reliable railway operation. The cable locate will be performed by a qualified RAILROAD employee.

Cost for a cable locate is \$250.00, which is to be prepaid before installation is to begin.

Outside contractors are prohibited from driving on, along, or across any track that does not have a CP installed crossing. They may utilize an existing public crossing. The practice of allowing rubber tired equipment to operate over track with no crossing has been banned.

Exceptions to this rule will require the express approval from CP Engineering.

Prior to any project being started, the RAILROAD requires a "Request for Flagging Services" form to be completed and submitted; including check for prepayment based on the number of days flagman protection will be required.

