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(April 1, 2013)

Relations With Railroad

Railroad Company, as used in the following specifications, shall be the railroad company or companies, or railway company or companies specified in these Special Provisions. The following provisions, though referring to a single Railroad Company, shall be applicable to each of the following railroad companies or railway companies:

*** \$\$1\$\$ ***

Protection of Railroad Property

The Contractor shall exercise care in all operations and shall, at the Contractor's expense, protect the property of the Railroad Company and the Company's appurtenances, property in its custody, or persons lawfully upon its right of way, from damage, destruction, interference or injury caused by the Contractor's operations. The Contractor shall prosecute the work to not interfere with the Railroad Company or its appurtenances, or any of the Railroad Company's trains or facilities, and shall complete the work to a condition that shall not interfere with or menace the integrity or safe and successful operations of the Railroad Company or its appurtenances, or any of the Railroad Company's trains or facilities.

The Contractor shall not transport equipment, machinery, or materials across the Railroad Company's tracks, except at a public crossing, without the written consent of the Railroad Company.

The Contractor shall keep the right of way and ditches of the Railroad Company open and clean from any deposits or debris resulting from its operations. The Contractor shall be responsible for the cost to clean and restore ballast of the Railroad Company which is disturbed or becomes fouled with dirt or materials when such deposits or damage result from the Contractor's operations, except as provided elsewhere.

The Contractor's work shall be conducted in such a manner that there will be a minimum of interference with the operation of railroad traffic. The Railroad Company will specify what periods will be allowed the Contractor for executing any part of the work in which the Railroad Company's tracks will be obstructed or made unsafe for operation of railroad traffic.

In the event that an emergency occurs in connection with the work specified, the Railroad Company reserves the right to do any and all work that may be necessary to maintain railroad traffic. If the emergency is caused by the Contractor, the Contractor shall pay the Railroad Company for the cost of such emergency work.

Protective services to protect the Railroad Company's facilities, property, and movement of its trains or engines, including railroad flagging and other devices, may be required by the Railroad Company as a result of the Contractor's operations.

The nature and extent of protective services, personnel and other measures required will in all cases be determined by the Railroad Company. Nothing in these specifications will limit the Railroad Company's right to determine and assign the number of personnel, the classes of personnel for protective services, nor other protective measures it deems necessary.

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When, in the opinion of the Railroad Company, the services of flaggers or inspectors are necessary for the protection of the Railroad Company's facilities by reason of the Contractor's operations, the Railroad Company will furnish such flaggers or inspectors as may be required. The Contractor shall notify the Railroad Company a minimum of *** \$\$2\$\$ *** in advance of whenever the Contractor is about to perform work within Railroad Company property or within 25 feet of the tracks to enable the Railroad Company to provide flagging or other protective services.

The Railroad Company's contact is:

*** \$\$3\$\$ ***

No act of the Railroad Company in supervising or approving any work shall reduce or in any way affect the liability of the Contractor for damages, expense, or cost which may result to the Railroad Company from the construction of this Contract.

Unless otherwise provided, all personnel assigned by the Railroad Company, other than those engaged in performing work by the Railroad Company as listed under Construction Work by Railroad Company, will be considered protective personnel.

In general, the Railroad Company will furnish protective services whenever any of the Contractor's operations take place within or near railroad right of way and, in the opinion of the Railroad Company's representative, could endanger railroad facilities or create a hazard to railroad operations.

The Railroad Company's policy for assignment of railroad flaggers requires that the flagging position is established for fixed work days and times. Any railroad flagging performed outside of these parameters may be subject to overtime costs. The Contractor shall verify with the Railroad Company what categories of railroad flagging constitute overtime work, and obtain prior authorization from the Engineer before coordinating with the Railroad Company for flagging requiring overtime payments.

The Contractor shall submit to the Railroad Company and the Project Engineer, in writing, an itinerary of work within the Railroad Company's right of way or otherwise requiring a Railroad Company flagger for the following week. If such work spans multiple weeks, the itinerary shall be provided in advance of each work week.

There will be no cost to the Contractor for the railroad protective services, unless:

- Such services result from the Contractor's failure to comply with the terms and conditions of its contract with the Contracting Agency or with its Contractor's Right of Entry Agreements with the Railroad Company.
- The Contractor fails to obtain authorization from the Project Engineer prior to coordinating with the Railroad Company for any flagging requiring overtime payments.
- The Contractor arranges for assignment of a railroad flagger and alters Project work so that a flagger is no longer needed, and adequate advance notice is not provided to the Railroad Company of such change in the need

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for a flagger (i.e. causing the Railroad Company to dispatch a flagger billable to the Project when one is not required).

Construction Work by Railroad Company

The work by the Railroad Company as described below will be performed by the Railroad Company with its own forces at no cost to the Contractor:

*** \$\$4\$\$ ***

All work which is performed by the Railroad Company at the Contractor's request and which is for the Contractor's benefit or convenience shall be at the Contractor's expense and the Contractor shall reimburse the Railroad Company for all costs for such work.

The Contractor shall cooperate with the Railroad Company and so conduct operations that the necessary reconstruction of its facilities and the removal of existing facilities can be accomplished without interruption of service.

Contractor's Right of Entry Agreement

No work shall be commenced within the Railroad Company's Property until the Contractor has executed, delivered, and received in return the fully executed Contractor's Right-of-Entry Agreement from the Railroad Company, and has obtained all of the insurance required by the Railroad Company as specified therein. All work within the Railroad Company's right of way or within 25 feet of a public railroad grade crossing shall be in accordance with Railroad's Contractor Requirements and the Contractor's Right of Entry Agreement (See Appendix *** \$\$5\$\$ ***).

The Contractor, it subcontractors or agents, shall at its own expense, obtain and maintain in force all insurance required by Railroad until the completion date of the contract as described in Section 1-08.5 except as stated herein.

When all the work involving construction activities within or immediately adjacent to the railroad right of way is completed, the Contractor may make a written request to the Engineer to be relieved of the responsibility to continue all or part of the insurance specified above. If the Engineer deems the portion of the work in that area is complete, the Engineer may approve the Contractor's request. However, if for any reason the Contractor resumes or starts any new work in that area (including being ordered to do so by the Engineer), the insurance shall be reinstated by the Contractor before the work is started. If the insurance must be reinstated because of the Contractor's operations or failure of the Contractor to perform all the contract requirements, the costs shall be the responsibility of the Contractor. If the insurance must be reinstated because of changes to the contract, the costs will be considered in accordance with Section 1-04.4.