



**SPECIAL PROVISION  
FOR  
MAINTENANCE WORK ON RAILROAD RIGHT-OF-WAY  
(BURLINGTON NORTHERN AND SANTA FE)**

**Pottawattamie County**

**ESL-1642(660)--7S-78**

**Effective Date  
December 15, 2009**

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

**A. DESCRIPTION**

This Special Provision involving construction or maintenance of roadways and trails that do not require additional property rights or facility adjustments from the Burlington Northern and Santa Fe Railway Inc. (BNSF).

This Special Provision describes the requirements when work is within the Right-of-way (ROW) or properties of the BNSF and adjacent to tracks, wire lines, and other facilities. This specification describes the coordination with BNSF when work by the Contractor will be performed upon, over, or under the BNSF ROW, or may impact current or future BNSF operations. The Contractor shall coordinate with the BNSF while performing work on BNSF ROW.

The Contracting Authority has obtained an agreement with the BNSF for the work on BNSF ROW. The Contractor is not required to enter into an agreement with the BNSF.

The Contractor shall provide track protection for all equipment operating within 25 feet (7.62 m) from nearest rail.

**B. GENERAL**

1. Indemnify and save harmless BNSF, their agents and employees, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property because of any act, omission, or neglect in safeguarding or performing the work, or through use of unacceptable materials in constructing the work. So much of the money due the said Contractor under any by virtue of the Contractor's contract as may be considered reasonable and necessary by the Contracting Authority for such purpose may be retained for the use of the State. In case no money is due, the Contractor's surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid have been settled and suitable evidence to that effect furnished to the Contracting Authority. Money due the Contractor will not be withheld when the Contractor produces satisfactory evidence of ownership of adequate public liability and property damage insurance. Notwithstanding the above, it is specifically agreed between the parties executing this contract that it is not intended

by any of the provisions of any part of the contract documents to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suite for personal injuries or property damage pursuant to the terms or provisions of this contract. The duties, obligations, and responsibility of the parties to this contract with respect to third parties are to remain as imposed by law. The intention of the parties that indemnity here provided does not extend to acts or omissions of negligence for which the Railroad is solely responsible. Indemnity does extend to all claims in which the Contractor, Subcontractor, or either's employee and the Railroad are alleged to be or could be, in the absence of an immunity provision in the Worker's Compensation Act, either jointly or concurrently negligent for the injury or damage.

2. It is understood that no subcontractor is a third party beneficiary to any contract between the Contracting Authority and the prime contractor. Nothing in any special provision or any supplemental specification is to be construed as eliminating or superseding the requirements of this section.
3. Cooperate with the Burlington Northern Santa Fe Railway Company, hereinafter referred to as "BNSF" where work is over, under, on, or adjacent to BNSF property and/or right-of-way, hereafter referred to as BNSF property, during the construction work, and do not interfere with the movement of any trains on BNSF property.
4. The Contractor's right to enter BNSF's property is subject to the absolute right of BNSF to cause the Contractor's work on BNSF's property to cease if, in the opinion of BNSF, Contractor's activities create a hazard to BNSF's property, employees, and/or operations.
5. It is expected that the BNSF will cooperate with the Contractor such that the work may be handled and performed in an efficient manner.

#### **C. AGREEMENT**

Ensure that, at a minimum, Project Supervisors have attended a Safety Orientation conducted by BNSF, or its Representative, and that each employee, subcontractor, agent, or invitee has received the same Safety Orientation (by the Contractor's Project Supervisor or by BNSF) before work is performed on the BNSF property. Provide BNSF a minimum of 30 calendar days advance notice for scheduling the Safety Orientation.

#### **D. RAILROAD REQUIREMENTS**

1. Comply with the rules and regulations of BNSF and the instructions of the BNSF's representatives in relation to the proper manner of protecting the tracks and property of BNSF and the traffic moving on such tracks, as well as the wires, signals, and other property of BNSF, its tenants or licensees, at and in the vicinity of the work area during construction.
2. Perform work in such manner and at such times that do not endanger, delay or interfere with the safe and timely operation of the tracks and property of BNSF and the traffic moving on such tracks, as well as the wires, signals, and other property of BNSF its tenants, or licensees.
3. Take protective measures as are necessary to keep railroad facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from the construction operations. The BNSF will repair all damage to railroad facilities resulting from Contractor's operations (cost borne by the Contractor).
4. Abide by the following clearances during the course of construction:
  - 25.0 feet (7.7 m) horizontally from centerline of nearest track.

5. At other than public road crossings, do not move any equipment or materials across BNSF's tracks until permission has been obtained from BNSF. Obtain a temporary private crossing agreement from BNSF prior to moving equipment or materials across BNSF's tracks. Gate and lock the temporary private crossing at all times when not required for use. The temporary private crossing is at the Contractor's expense.
6. Upon completion of the work covered by this contract, promptly remove from the premises of the BNSF all tools, implements, and other materials, whether brought upon the premises by the Contractor or subcontractors, or employees or agents of the Contractor or subcontractors. Leave the premises in a condition acceptable to the BNSF's representative.

#### **E. PROTECTION OF BNSF FACILITIES AND BNSF FLAGGER SERVICES**

1. Provide a minimum of 5 working days notice to the appropriate BNSF's Roadmaster in advance of when flagging services will be required.
2. BNSF flagger and protective services and devices will be required and furnished when:
  - Contractor's work activities are located within 25 feet (7.7 m) measured vertically over or under the centerline of the track, or within 25 feet (7.7 m) measured horizontally from center line of the nearest track.
  - In the opinion of the BNSF's Representative it is necessary to safeguard BNSF's employees, trains, engines, facilities, and property.
3. Flagging services will be performed by qualified railroad flaggers. The cost per day for one Flagger is \$600.00, which includes Vacation Allowance, Paid Holidays, Railroad and Unemployment Insurance, Public Liability and Property Damage Insurance, Health and Welfare Benefits, transportation, meals, lodging, and supervision, for an 8 hour basic day, with time and one-half or double time for overtime, rest days, and holidays. These rates are subject to any increases which may result from BNSF Employees-BNSF Management negotiations or which may be authorized by Federal authorities. The Contractor will be billed on actual costs in effect at the time work is performed.
  - a. Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railroad operations and property, if deemed necessary by the BNSF's Representative.
  - b. Each time a flagger is called, the minimum period for billing is the 8 hour basic day.
  - c. The cost of flagger services provided by the BNSF, as deemed necessary by the BNSF's representative, is borne by the Contractor.

#### **F. CONTRACTOR GENERAL SAFETY REQUIREMENTS**

1. Safety is of the utmost importance in performing work on the BNSF's property. BNSF does not in any manner assume the control or responsibility of the Contractor to provide safe working conditions for the Contractor or subcontractors in requiring the Contractor to follow BNSF's General Safety Requirements.
2. Work in the proximity of a railroad track is potentially dangerous. The Contractor, subcontractors, and invitees are governed by the following safety rules and general safety requirements while on BNSF property. The Contractor is responsible for enforcement of these safety rules and requirements. The BNSF has the right to bar the Contractor, subcontractors, and invitees from working on BNSF property if the BNSF deems such persons are acting in an unsafe manner.
3. Before beginning any task on BNSF property, conduct a complete job safety briefing with all individuals involved with the task, and again if the task changes. If the task is within 25 feet

(7.7 m) of any track, include the BNSF's flagger and the procedures to be used to protect employees, subcontractors, agents, or invitees from moving any equipment adjacent to or across any railroad tracks.

4. Prior to the start of all projects, ensure all employees of the Contractor, subcontractors, agents, and invitees receive Safety Orientation from the Contractor's Safety Officer or a qualified BNSF representative. The Contractor's Safety Officer is to review the safety guidelines contained below to familiarize their employees with safety issues that exist when working in a railroad environment. This should be reviewed at least weekly, and with any new employee working on BNSF property. The Contractor's Supervisor and/or Safety Officer is responsible for instructing employees regarding the BNSF's Safety guidelines and ensuring compliance with these guidelines.
5. Safety rules cannot be all-inclusive. Ensure workers refrain from unsafe and improper practices, including the violation or disregard, or both, of written rules and regulations and rules of common sense.
  - a. The use of alcoholic beverages, intoxicants, narcotics, marijuana, and other controlled substances by employees subject to duty, or their possession or use while on duty or on BNSF's property is prohibited. Workers are not to report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana, or other controlled substance, or medication, including those prescribed by a doctor, that may in any way adversely affect their alertness, coordination, reaction, response, or safety.
  - b. Immediately report damage to BNSF property, or hazards noticed on passing trains, to the BNSF's representative. Vehicle or machines which may come in contact with a track, signal equipment, or structure (bridge) could result in a train derailment. Report these by the quickest means possible to the BNSF representative and the BNSF's Network Operations Center (800.832.5452). Local emergency numbers are to be obtained from the BNSF representative prior to the start of any work. Post these numbers at the job site.
  - c. All persons are prohibited from having firearms or other deadly weapons, including knives with a blade in excess of 3 inches (75 mm) in their possession while working on BNSF property, except those authorized to have them in the performance of their duties or those given special permission.
  - d. When working on the BNSF's property, wear safety glasses with side shields, hard hats with high visibility orange cover, and above-the-ankle, lace-up, hardened toe safety boots with a defined heel, all approved by OSHA. High visibility retroreflective orange vests are required in certain locations as specified by the BNSF's representative. Particular attention to footing and the use of proper footwear is essential when working in snow or other slippery conditions. Wear hearing protection, fall protection, and respirators as required by State and Federal regulations.
  - e. Do not work nearer than 25 feet (7.7 m) to the centerline of any track without proper flag/work protection provided by the BNSF, unless the track is protected by track bulletin and work has been authorized by the BNSF. If flag/work protection is provided, ensure every employee knows:
    - Who the BNSF flagger is, and how to contact the flagger,
    - Limits of the flag/work protection,
    - The method of communication to stop and resume work, and
    - Entry into flag/work limits when designated.

Workers or equipment entering flag/work limits that were not previously job briefed must notify the flagger immediately, and be given a job briefing if working at less than 25 feet (7.7 m) from center line of track.

- f. Do not pile or store any materials or equipment closer than 25 feet (7.7 m) to the centerline of the nearest BNSF track.
- g. Do not leave machines or vehicles unattended with the engine running. Park machines or equipment in gear with brakes set. If equipped with blade, pan, or bucket, lower them to the ground. Ensure all machinery and equipment left unattended on the BNSF property is left inoperable and secured against movement.
- h. Do not store or temporarily leave Machinery or equipment near a highway/rail at-grade crossing in a manner to interfere with the sight distances of motorists approaching the crossing. Prior to beginning work, establish a storage area with concurrence of the BNSF's representative.
- i. Do not discharge contaminants (this includes oils, diesel fuel, gasoline, and so forth) on BNSF property. Should any discharge occur, report it by the quickest means possible to the BNSF's representative.
- j. Do not create and leave any conditions at the work site that would interfere with water drainage.
- k. Provide safeguards and safety signs. Keep them in place and in good condition.
- l. Notify the BNSF's representative when employees are required to work on the BNSF property after normal working hours or on weekends. Ensure a minimum of two employees are present at all times.
- m. In all cases of doubt or uncertainty, take the safest course of action.

#### **G. PERSONAL INJURY REPORTING**

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

#### **H. INSURANCE**

Before commencing any work on BNSF property, Contractor must provide and maintain insurance for the duration of the project, at Contractor's expense, covering all of the work and services to be performed hereunder by Contractor and each of its subcontractors, as described below:

1. Worker's Compensation coverage as is required by State law. THE CERTIFICATE MUST CONTAIN A SPECIFIC WAIVER OF THE INSURANCE COMPANY'S SUBROGATION RIGHTS AGAINST THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY.
2. Commercial General Liability insurance covering liability, including but not limited to Public Liability, Personal Injury, Property Damage and Contractual Liability covering the obligations assumed by Contractor, with coverage of at least \$2,000,000 per occurrence and \$4,000,000 in the aggregate. Where explosion, collapse, or underground hazards are involved, the X, C, and U exclusions must be removed from the policy.
3. Automobile Liability insurance, including bodily injury and property damage, with coverage of at least \$1,000,000 combined single limit or the equivalent covering any and all vehicles owned or hired by the Contractor and used in performing any of the services under this project.

4. Railroad Protective Liability insurance stating The Burlington Northern and Santa Fe Railway Company is the Named Insured covering all of the liability assumed by the Contractor under the provisions of this Agreement with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. Coverage shall be issued on a standard ISO form CG 00 35 01 96 and endorsed to include ISO form CG 28 31 10 93 and the Limited Seepage and Pollution Endorsement.

The average train traffic per 24-hour period on this route is 2 freight trains at a timetable speed of 25 MPH and 0 passenger trains at a timetable speed of --- MPH and --- switch engine movements.

All insurance shall be placed with insurance companies licensed to do business in the States in which the work is to be performed, and with a current Best's Insurance Guide Rating of A- and Class VII, or better.

In all cases except Worker's Compensation and Railroad Protective Liability coverage the certificate must specifically state that THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY IS AN ADDITIONAL INSURED.

Any coverage afforded Railway, the Certificate Holder, as an Additional Insured shall apply as primary and not excess to any coverage issued in the name of the Railway.

Provide the insurance policy and a copy of the Certificate of Liability to the Engineer and Contracting Authority. The engineer will forward these documents to BNSF for review/approval.

#### **I. PAYMENT**

Payment to the contractor for insurance required in the contract documents shall be considered as incidental to other items in the contract.