



**SPECIAL PROVISIONS
FOR
WORK ON RAILWAY RIGHT-OF-WAY (IOWA SOUTHERN RAILWAY)**

**Appanoose County
NHSN-002-7(50)--2R-04**

**Effective Date
May 16, 2017**

THE STANDARD SPECIFICATIONS, SERIES 2015, ARE AMENDED BY THE FOLLOWING MODIFICATIONS AND ADDITIONS. THESE ARE SPECIAL PROVISIONS AND THEY SHALL PREVAIL OVER THOSE PUBLISHED IN THE STANDARD SPECIFICATIONS.

150261.01 WORK AND IMPROVEMENTS.

Prior to entering Railway ROW, contact Railway to arrange for the schedule of work to be completed.

A. No Interference.

During construction, perform work on or near Railway's ROW in a manner to preclude injury to persons or damage to Railway property, or any party on or with property on Railway's rail corridor or property, and ensure there is no interference with Railway operations or other activities of Railway, or anyone present on Railway's ROW with the authority or permission of Railway. Do not disturb improvements of Railway or Railway's existing lessees, licensees, license beneficiaries, or lien holders; or interfere with the use of improvements except that improvements, such as utility lines, cable or fiber optic facilities, not known or disclosed to be in the path of the proposed temporary construction improvements prior to construction and may be required to relocate in a manner consistent with the use of the easement area for temporary construction purposes. Railway may direct one of its field engineers to observe or inspect construction, maintenance, operation, or removal of improvements, or any portion thereof, at any time to ensure such safety and noninterference, and to ensure that improvements comply with the contract documents. If Contractor is ordered to leave the Railway ROW or halt activity on Railway ROW, then the party conducting that activity shall immediately cease activity and leave Railway ROW, if the order was issued by Railway's personnel to promote safety, such noninterference with other activities or property, or because the improvements were not in compliance with this specification. Railway shall make such demands in good faith and only to the extent needed to eliminate an unsafe condition or interference with Railway operations and shall be liable for increased costs of construction incurred by the Contractor in connection with any order issued under this provision that was excessive, unnecessary or did not, in fact, reasonably promote safety or eliminate interference with Railway operations. In the event such an order to leave the Railway ROW is made, the Railway and the Engineer will immediately work together in good

faith, to determine how to resolve the condition or activity that said order was based on in a mutually acceptable manner. The Railway's order to leave the Railway ROW shall abate upon the elimination by the Engineer or the Contractor of the condition or activity that led to such order or upon the implementation of a mutually agreed upon plan to resolve, cure, or eliminate said condition or activity, and at that time the Contractor will be permitted to re-enter the Railway ROW and resume work. Notwithstanding the foregoing right of the Railway, Railway has no duty or obligation to observe or inspect, or to halt work on, the Railway ROW, it being solely Engineer's responsibility to ensure that the improvements are constructed, maintained, operated, and removed according to the contract documents. Neither the exercise nor the failure by Railway to exercise any right set forth in this section shall alter the liability allocation set forth in this specification.

B. Approvals; Compliance with Laws and Safety Rules.

1. Comply with safety requirements of the Railway, as such requirements may be amended from time to time Railway's safety requirements are set forth in the "Minimum Safety Requirements for Contractors Working On Railway ROW" and in Railway's current safety handbook. Engineer will be responsible to ensure that Contractor's personnel performing work for or on behalf of the Contracting Authority shall comply with the Railway's safety requirements that would apply to a Railway employee performing similar work.
2. Prior to entry onto Railway ROW, the Engineer's and Contractor's representatives or subcontractors who carries out work on the Railway ROW shall successfully complete safety training available through e-railsafe (www.e-railsafe.com) program in respect to requirements for Railway operations. Liability for acts, torts, accidents or other events occurring on Railway ROW or affecting the Railway ROW and occurring during the course of performing work or in pursuance of rights of the Contracting Authority under this specification shall be governed by this specification and not by any statements or responses that may be encountered in completion of the e-railsafe program.
3. The Engineer's and Contractor's representatives and subcontractors who perform work on Railway ROW shall wear and visibly display the identification badge issued to them following successful completion of e-railsafe safety training together with whatever additional identification materials that Railway may reasonably require.

C. Existing Facilities.

In the event construction, repair, maintenance, work or other use of the Railway ROW will affect any lines, fences, buildings, or other facilities, whether owned by the Railway or owned by another individual or entity (collectively, "Existing Facilities"), Contractor shall be responsible at their sole risk to locate and relocate or accommodate said facilities in a manner that is consistent with Article SP-150261.01. Mark existing facilities on plans and mark such existing facilities in the field in order to verify their locations. Use all reasonable methods when working on or near Railway ROW to determine if existing facilities may exist. Contact the owner(s) of existing facilities notifying them of work that may damage these existing facilities and/or interfere with their service and if those owners hold an easement in the area of construction, obtain the owner's written approval or, if the owners do not own an easement, coordinate relocation or disruption to those existing facilities prior to affecting the existing facilities in the same manner as it would with any other utility present in an overhead highway bridge.

D. Flagging and Other Costs.

Do not conduct activities on, or be present on, any portion of the Railway ROW or Railway's rail corridor or property that is within 25 feet of any active railway track, except in the presence of a

flagman. In any case where a flagman or flagmen are required in connection with the presence of individuals on Railway's rail corridor or the Railway ROW for routine maintenance or contract work, Contractor shall provide 5 calendar days' advance notice prior to entry upon Railway ROW. In cases of emergency or other non-routine situations, provide as much notice as possible. Railway will arrange for presence of the flagman or flagmen as soon as practicable after receipt of notice from Contractor. Contractor will not be responsible for cost associated with flagmen.

Any cost incurred by the Railway for repairing damage to tracks, including disturbance of their alignment and surface, interlocking or other facilities which it maintains, caused by or resulting from the operations of the Contractor, shall be paid by the Contractor to Railway who has the maintenance responsibilities for this track structure.

Railway will notify the Engineer and Contractor when non-compliance is reported by Railway train crews or other Railway 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 Railway or Engineer from the project.

E. No Unauthorized Tests or Digging.

Except as otherwise provided by law, do not conduct tests, investigations, or other activity using mechanized equipment or machinery, or place or store mechanized equipment, tools or other materials, within 25 feet of the centerline of railway track on Railway's rail corridor or property (whether or not such centerline is located within the Railway ROW), except after Contractor has obtained written approval from Railway, and then only in strict accordance with the terms and any conditions of such approval.

F. Excavation and Boring.

Call Iowa Southern Railway at 641.529.0061 or such other telephone number as may be provided by Railway from time to time in accordance with the notice provisions of Article SP-150261.07 a minimum of 5 business days prior to commencing any excavation or boring on the Railway ROW. Upon written request, which shall be made 30 business days in advance of proposed construction or modification of improvements, Railway will provide to Contractor any information that Railway has in the possession of its Engineering Department concerning existence and approximate location of Railway's underground utilities and pipelines at or near the vicinity of the proposed Improvements. Railway does not warrant accuracy or completeness of information relating to subsurface conditions and Contractor's operations at all times shall be subject to the liability provisions set forth herein. Any open hole, boring or well constructed on the Railway ROW shall be safely covered and secured at all times when anyone who is not creating it, working in it, or using it as permitted hereunder is present in the actual vicinity thereof. Following completion of that portion of work, holes or borings constructed on Railway ROW shall be promptly filled to surrounding ground level with compacted bentonite grout, or otherwise secured or retired in accordance with applicable Laws. No surplus excavated materials shall remain on Railway ROW for more than 10 calendar days, and shall be properly disposed of by Contractor.

150261.02 INDEMNIFICATION AND ASSUMPTION OF RISK.

- A.** To the fullest extent permitted by law, Contractor shall release, indemnify, defend and hold harmless Railway and Railway's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents (collectively, "Indemnitees") for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, court costs, attorneys' fees and costs of investigation, removal and remediation and governmental oversight costs) environmental or otherwise (collectively, "liabilities") of any

nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) any of the following:

1. Injuries or damages received or sustained by a person, persons, or property resulting from Contractor's operations.
 2. Neglect in safeguarding the work.
 3. Use of unacceptable materials in constructing the work.
 4. Acts or omissions, neglect, or misconduct of the Contractor.
 5. Claims or amounts recovered for an infringement by Contractor of patent, trademark, or copyright.
 6. Claims or amounts arising or recovered under the workers compensation act, relating to the Contractor's employees.
 7. The Contractor's noncompliance with a law, ordinance, order, or decree relating to the contract.
 8. Any violation of the terms of this easement agreement by the Contractor, including, without limitation, its environmental provisions.
 9. Contractor's exercise of any rights or interests granted pursuant to this easement agreement.
 10. The occupation and use of the Railway ROW by Contractor or its officers, agents, invitees, licensees, employees, or subcontractors, or anyone directly or indirectly employed by any of them, or anyone they control or exercise control over.
 11. The environmental condition and status of the Railway ROW caused by or contributed to by the Contractor.
 12. Any act or omission of the Contractor.
- B.** Even if liabilities described in Article SP-150261.02, A, arise from or are attributed to, in whole or in part, any negligence of any indemnitee, Contractor shall to the fullest extent provided by law indemnify the indemnitees for such liabilities except those proximately caused by the gross negligence or willful misconduct of an indemnitee.
- C.** To the fullest extent permitted by law, notwithstanding the limitation in Article SP-150261.02, the Contractor shall now and forever waive any and all claims, regardless of whether based on strict liability, negligence or otherwise, that Railway is an "owner", "operator", "arranger", or "transporter" with respect to the improvements for the purposes of CERCLA or other environmental laws.
- D.** To the fullest extent permitted by law, Contractor shall, regardless of any negligence or alleged negligence of any Indemnitee, indemnify and hold harmless the Indemnitees against and assume the defense of any liabilities asserted against or suffered by any Indemnitee under or related to the Federal Employers' Liability Act (FELA) whenever employees of Contractor or any of its agents, invitees, or subcontractors claim or allege that they are employees of any Indemnitee or otherwise. This indemnity shall also extend, on the same basis, to FELA claims based on actual

or alleged violations of any federal, state or local laws or regulations, including but not limited to the safety appliance act, the boiler inspection act, the occupational health and safety act, the resource conservation and recovery act, and any similar state or federal statute.

- E. To the fullest extent permitted by law, Contractor shall, upon written notice from Railway, assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this specification agreement for which Contractor has an obligation to assume liability for and/or save and hold harmless any Indemnitee.

150261.03 INSURANCE.

Before the contract is awarded, Contractor shall submit to the Department a certificate of insurance evidencing the coverage. The certificate shall identify the insurance company firm name and address, Contractor firm name, policy period, type of policy, limits of coverage, and scope of work covered (including project number). Policies shall provide no less than 30 calendar days prior written notice to Contracting Authority and Railway of cancellation or material change in policies. Following award of the Contract, Contractor shall submit a certificate of insurance evidencing the foregoing coverage to the Railway and Contracting Authority (if other than the Department), and a certified, true, and complete copy of policy or policies to the Contracting Authority and Railway. Upon request from either the Contracting Authority or Railway, a certified duplicate original of any required certificate or policy shall be furnished at no cost to the Contracting Authority or Railway.

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 Railway's property and cleans the Railway ROW in a manner reasonably satisfactory to Railway.

A. Comprehensive General Liability Insurance.

Comprehensive general liability insurance with a policy limit of not less than \$5,000,000 per occurrence and \$10,000,000 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 contractor including liabilities and obligations to indemnify the Indemnified Parties. The policy shall be endorsed to require that Railway be given not less than 30 calendar 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 insured: Iowa Southern Railway. The policy shall also be endorsed to waive subrogation rights against the protected parties.

B. 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 contractor and used in connection with the work. The policy shall be endorsed to require that Iowa Southern Railway be given not less than 30 calendar 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.

C. Railroad Protective Liability Insurance.

Railroad protective liability insurance (occurrence form), in the name of the Iowa Southern Railway, with limits of no less than \$5,000,000 per occurrence and \$10,000,000 aggregate for personal injury and property damage.

Contractor shall use the website listed below to acquire Railway train movement information for the purpose of obtaining Railway Protective Liability Insurance:

<http://safetydata.fra.dot.gov/OfficeofSafety/PublicSite/Crossing/Crossing.aspx>

The US DOT Crossing Inventory Number will be located in the project plans. Zero trains per day will be displayed on the crossing inventory report for locations with grade separated crossings or at-grade crossings when there is less than one train per day. In these situations generating a map to find alternative crossing locations may be used to provide the number of trains per day and speed nearest the project location.

D. Other Policies of Insurance.

Such other insurance as may be necessary to protect the Railway against certain other claims arising out of the work:

1. Claims under any workers' compensation law,
2. Claims under the FELA, and
3. Any other claims for damages for personal injury or death.

E. Contractual Endorsement.

Each policy of insurance 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 the Railway:

Before entering Railway's ROW, Railway must receive and approve certificates of insurance evidencing the coverage's required by this specification including endorsements and Railway must also receive and approve either the policy or a binder evidencing that that policy is in effect. Railway reserves the right to demand a certified copy of any required policy, and Contractor shall provide such copy within 10 working days after Railway shall give notice to demanding such copy. All of the required policies shall be issued by insurers acceptable to Railway and shall be acceptable to Railway in both form and substance. Do not enter Railway's ROW until required policies have been approved in writing by Railway. 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 Article SP-150261.03, C, need be provided for the work) or obtain endorsements to the Contractor's policies naming the subcontractor as an additional insured party. In the event any required policy lapses, Railway shall have the option of immediately terminating the work on Railway ROW, with or without notice to Contractor; such termination shall be without prejudice to Railway's rights and privileges under this specification. Insurance coverage obtained pursuant to section "Insurance" and its sub-sections shall in no manner restrict or limit the liabilities assumed by Contractor under this specification.

Send required insurance documentation to the Railway at:

Michael Johns, General Manager
Iowa Southern Railway
1303 South 21st Street
P.O. Box 842
Centerville, IA 52544

150261.04 ENVIRONMENTAL.**A. Notice of Release.**

During construction provide timely notice to the Iowa Southern Railway, 641.529.0061 (or such other telephone number as may be provided by Railway from time to time under the notice provisions of Article SP-150261.07) of any release of hazardous substances on or from the Railway ROW, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Contractor's use of the Railway ROW. Contractor shall use its best efforts to promptly respond to any release on or from the Railway ROW. Engineer will give Railway immediate notice of measures undertaken on behalf of the Contracting Authority to investigate, remediate, respond to, or otherwise cure such release or violation.

B. Remediation of Hazardous Materials Release.

In the event Contractor causes or receives notice of a release of hazardous materials or otherwise violates state or federal environmental laws on the Railway ROW, the remediation, if any, and clean-up, if any, of such hazardous materials shall be performed in accordance with the requirements of all applicable state and federal laws and regulations and the Contractor shall be responsible for all expenses associated with such remediation and clean-up.

150261.05 PERSONAL PROPERTY WAIVER.

Personal property, including, but not limited to, fixtures, equipment, or related materials upon the Railway ROW shall be at the risk of Contractor, and Railway and Railway's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees and agents (collectively indemnitees) will not be liable for damage thereto or theft thereof, whether or not due in whole or in part, except when caused by the intentional malicious misconduct of indemnitee.

150261.06 DEFAULT AND TERMINATION.

If Contractor fails to properly perform its obligations under this specification, Railway, in its sole discretion, may: seek specific performance of the unperformed obligations; or at Contractor's sole cost, may arrange for the performance of such work as Railway deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Railway, or anyone or anything present on the rail corridor or property with the authority or permission of Railway. Contractor shall promptly reimburse Railway for costs of work performed on Contractor's behalf upon receipt of invoice for such costs. Railway's failure to perform obligations of Contractor shall not alter the liability allocation set forth in this specification.

150261.07 NOTICES.

Notices required or permitted to be given by one party to the other shall be in writing and shall be given and deemed to have been served and given if: placed in the United States mail, certified, return receipt requested; or deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than 30 calendar days advance written notice of such change in address.

If to Railway:

Michael Johns, General Manager
Iowa Southern Railway
1303 South 21st Street
P.O. Box 842
Centerville, IA 52544

Email: mjohns@progressiverail.com

Telephone: 641.437.7029

Mobile: 641.529.0061

150261.08 METHOD OF MEASUREMENT AND BASIS OF PAYMENT.

Railway Protective Liability Insurance for Iowa Southern Railway will be paid for as a Lump Sum bid item. Contractor will be paid 100% of the Lump Sum bid item within 30 calendar days after receipt of signed contract, provided that all necessary certificates of insurance have been submitted to the Contracting Authority per Article SP-150261.03.