



**SPECIAL PROVISIONS
FOR
WORK ON RAILROAD RIGHT-OF-WAY (BNSF)**

**Adams County
BRS-C002(55)--60-02**

**Effective Date
October 18, 2016**

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.

Section 1 Contractor Requirements

1.1 General

1.1.1 The Contractor shall cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right of way, hereafter referred to as "Railway Property", during the construction of a bridge at DOT #095332G 260th Street. Work shall not endanger or interfere with the safe and timely operations of the Railway and its facilities.

1.1.2 The Contractor shall contact the Railway for an official "Exhibit C-1" agreement document to be executed and delivered to the Railway. A non-executable draft has been attached for reference along with a summary of its contents in Section 3 of this special provision.

The contractor shall allow 30 days for the Railway "Exhibit C-1" submittal process.

The Contractor shall provide and maintain in full force and effect the insurance called in said "Exhibit C-1".

1.01.02a The contact for "Exhibit C-1" is Calvin Nutt, BNSF Railway, Manager of Public Projects, 80-44th Ave N.E, Minneapolis, MN 55421, Ph (763)-782-3495, Fax (763)-782-3061, Email calvin.nutt@bnsf.com.

1.1.2 b Questions regarding procurement of the Railroad Protective Liability Insurance shall be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

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

1.1.4 The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; or (iii) the insurance described in "Exhibit C-1" is canceled during the course of the Project. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Adams County Engineer
Eldon Rike, P. E.
500 9th Street
Corning, IA 50841

1.1.5 The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.

1.1.6 The Contractor shall notify Adams County Iowa at (641) 322-3910, and the Railway's Manager Public Projects, telephone number (763) 782-3495 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway shall refer to Railway's file _____

1.1.7 For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor shall furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing shall include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" shall be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals shall be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations shall be stamped by a registered professional engineer licensed to practice in the state of Iowa. All calculations shall take into consideration railway surcharge loading and shall be designed to meet American Railway Engineering and Maintenance-of-Way Association {previously known as American Railway Engineering Association) Coopers E 80 live loading standard. The Contractor shall not begin work until notified by the Railway that plans have been approved. The Contractor is required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

1.1.8 Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor shall have no claim

whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.2 Contractor Safety Orientation

1.2.1 No employee of the Contractor, its subcontractors, agents or invitees that is working on the Project may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor shall ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor shall ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor shall renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.3 Railway Requirements

1.3.1 The Contractor shall take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway at the Contractor's expense.

1.3.2 The Contractor shall notify the Railway's Division Engineer Indalacio Sandoval at (402) 458-7520 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.

1.3.3 The Contractor shall abide by the following clearances during construction:

- 15'-0" Horizontally from centerline of nearest track,
- 21'-6" Vertically above top of rail.
- 27'-0" Vertically above top of rail for electric wires carrying less than 750 V,
- 28'-0" Vertically above top of rail for electric wires carrying 750 V to 15,000V,
- 30'-0" Vertically above top of rail for electric wires carrying 15,000 V to 20,000 V, and
- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 V.

1.3.4 Upon completion of construction, the following clearances shall be maintained:

- 25'-0" Horizontally from centerline of nearest track,
- 23'-6" Vertically above top of rail.

1.3.5 Any infringement within State statutory clearances due to the Contractor's operations shall be submitted to the Railway and to Adams County Iowa and shall not be undertaken until approved in writing by the Railway and Adams County Iowa. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval.

1.3.6 In the case of impaired vertical clearance above top of rail, the Railway will have the option of installing tell tales or other protective devices the Railway deems necessary for protection of Railway operations. The cost of tell tales or protective devices will be borne by the Contractor.

1.3.7 Details of construction affecting the Railway's Property and tracks not included in the contract plans shall be submitted to the Railway by Adams County Iowa for approval before work is undertaken and this work shall not be undertaken until approved by the Railway.

1.3.8 At other than public road crossings, the Contractor shall not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor shall obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing shall be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

1.3.9 Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and the Contractor shall immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor shall not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

1.3.10 The Contractor upon completion of the work covered by this contract, shall promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and shall cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.4 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

1.4.1 Each Contractor that will perform work within 25 feet of the centerline of a track shall develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program shall provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor shall develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to the Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor shall audit its work activities. The Contractor shall designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.4.2 The Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion a) to be on Railroad's property, or b) that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at <http://www.e-railsafe.com>, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth

in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.5 Railway Flagger Services

1.5.1 The Contractor shall give Railway's Roadmaster Scott Amato at (402) 422-5249 a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor shall give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

1.5.2 Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25 feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

1.05.02a When, upon inspection by Railway's Representative, other conditions warrant.

1.05.02b When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.

1.05.02c When work in any way interferes with the safe operation of trains at timetable speeds.

1.05.02d When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.

1.5.2 e Special permission shall be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

1.5.3 Flagging services will be performed by qualified railroad flaggers. The Railway will furnish flagging services necessary for the safety of BNSF's property and the operation of its trains during construction of the project as set forth in this document.

1.05.03a Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

1.05.03b Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.

1.05.03c The cost of flagger services provided by the Railway will be borne by Adams County. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the contractor hereunder shall be used to calculate the actual cost of flagging pursuant to this paragraph.

1.05.03d The average train traffic on this route is 30 freight trains per 24-hour period at a timetable speed 60 MPH and 2 passenger trains at a timetable speed of 79 MPH.

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

1.6 Contractor General Safety Requirements

1.6.1 Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track shall be in compliance with FRA Roadway Worker Protection Regulations.

1.6.2 Before beginning any task on Railway Property, a thorough job safety briefing shall be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing shall include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

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

1.6.4 When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project shall be notified. A minimum of two employees shall be present at all times.

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

1.6.6 Any damage to Railway Property, or any hazard noticed on passing trains shall be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment shall be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and shall be posted at the job site.

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

1.6.8 All personnel protective equipment (PPE) used on Railway Property shall meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above the ankle lace up and a defined heel; and d) high visibility retro reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators shall be worn as required by State and Federal regulations. (NOTE—Should there be a

discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)

1.6.9 The contractor shall not pile or store any materials, machinery, or equipment closer than 25'-0" to the centerline of the nearest railway track. Materials, machinery, or equipment shall not be stored or left within 250 feet of any highway/rail at-grade crossing or temporary construction crossing, where storage of the same will obstruct the view of a train approaching the crossing. Prior to beginning work, the contractor shall establish a storage area with concurrence of the railway's representative.

1.6.10 Machines or vehicles shall not be left unattended with the engine running. Parked machines or equipment shall be in gear with brakes set and if equipped with blade, pan or bucket, they shall be lowered to the ground. All machinery and equipment left unattended on Railway's Property shall be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

1.6.11 Workers shall not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water shall meet all Federal, State and Local regulations.

1.6.12 All power line wires shall be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load shall be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet shall be maintained. A person shall be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.7 Excavation:

1.7.1 Before excavating, the Contractor shall determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the project work area. The Contractor shall determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor shall contact BNSF's Field Engineering Representative Mark Anderson (913) 551-4434. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.

1.7.2 The Contractor shall cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor shall also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work shall be performed until the exact location has been determined. There will be no exceptions to these instructions.

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

1.7.4 Any excavations, holes or trenches on the Railway's Property shall be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas shall be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations shall be back filled as soon as possible.

1.8 Hazardous Waste, Substances, and Material Reporting:

1.8.1 If the Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor shall immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.9 Personal Injury Reporting:

1.9.1 The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property shall be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



NDN-EMPLDVEE PERSONAL INJURY DATA CDLLECTIDN

(If injuries are in connection with rail equipment accident/incident. highway rail grade crossing accident or automobile accident. ensure that appropriate information is obtained. forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

Passenger on train (C)

Non-employee (N)

(i.e. emp of another railroad or non-BNSF emp involved in vehicle accident including company vehicles)

Contractor/safety sensitive (F)

Contractor/non-safety sensitive (G)

Volunteer/safety sensitive (H)

Volunteer/other nan-safety sensitive (I)

Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates

Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates

Non-trespasser (J) - Off railroad property

If train involved. Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-6S7-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone#)

REPORT PREPARED TO CDMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

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

I. Accident City/St: _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BNSF location)

Mile Past /Line Segment: _____

5. Driver's License Na (and state) or other ID: _____ SSN (required): _____

S. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Sender: _____
(if available)

Phone Number: _____ Employer: _____

S. Injury: _____ ID. Body Part: _____
(i.e., Laceration, etc.) (i.e., Hand, etc.)

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

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

13. Dr. Name: _____ Date: _____

14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____

Section 2 Additional Utility Contractor Requirements

2.1 Utilities

2.1.1 The Contractor shall note that fiber optic, communications and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's (Burlington Northern Santa Fe) property or right-of-way. The contractor will be responsible for contacting BNSF's Signal Engineering Representative (Tim Wehland at 402-458-7579), Iowa One Call at 800- 292-8989 and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.

2.1.2 Failure to mark or identify these Lines will be sufficient cause for BNSF to stop construction at no cost to the Agency or BNSF until these items are completed.

2.1.3 In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, reasonable attorney's fees and court cost and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunications company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

2.1.4 The contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

Section 3 Agreement between BNSF Railway and the Contractor

3.01 Agreement

3.01.01 The contractor shall enter into an Agreement with Adams County Iowa for the performance of certain work in connection with the bridge repairs to DOT #095332G 260th Street. Performance of such work shall necessarily require the Contractor to enter BNSF Railway right-of-way and property (hereinafter called "Railway Property"). The Agreement provides that no work shall be commenced within Railway Property until the Contractor employed in connection with said work for Adams County Iowa (i) executes and delivers to Railway an Agreement in the form of "Exhibit C-1", and (ii) provides insurance coverage and limits specified in "Exhibit C-1" and summarized in Section 3.04 if this special provision. If the "Exhibit C-1" Agreement is executed by a party who is not the Owner, General Partner, President, or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of the Contractor.

3.01.02 Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, the Contractor, effective on the date of the "Exhibit C-1" Agreement, has agreed and does hereby agree with Railway as specified in "Exhibit C-1".

3.2 Release of Liability and Indemnity

3.2.1 The contractor hereby waives, releases, indemnifies, defends, and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY .

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under the "Exhibit C-1" Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor shall proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, shall defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provisions of "Exhibit C-1", in the event that all or any portion of an Article in "Exhibit C-1" shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that the Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. THROUGH THE "EXHIBIT C-1" AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in "Exhibit C-1" survive any termination of that Agreement.

3.3 Term

3.3.1 The "Exhibit C-1" Agreement shall be effective from the date of the contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3.4 Insurance

3.4.1 The Contractor shall, at its sole cost and expense, procure and maintain during the life of the "Exhibit C-1" Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage shall be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- Bodily injury and property damage.
- Personal injury advertising injury.
- Fire legal liability.
- Products and completed operations.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway. Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Railway employees.

No other endorsements limiting coverage as respects obligations under the "Exhibit C-1" Agreement may be included on the policy with regard to the work being performed under that Agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway. Additional insured endorsement in favor of and acceptable to Railway
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance shall cover all employees anyway.

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.
- D. Railroad Protective Liability insurance naming only the Railway as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 12 04 and include the following:
- Endorsed to include the Pollution Exclusion Amendment
 - Endorsed to include the Limited Seepage and Pollution Endorsement.
 - Endorsed to remove any exclusion for punitive damages.
 - No other endorsements restricting coverage may be added.
 - The original policy shall be provided to the Railway prior to performing any work or services under the "Exhibit C-1" Agreement
 - Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against Railway for all claims and suits against Railway. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railway for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railway for loss of its owned or leased property or property under Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of Railway. If granted by Railway, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all Railway liabilities that would otherwise, in accordance with the provisions of the "Exhibit C-1" Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

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 Railroad of cancellation, non-renewal, substitution, or material change in policies. Following award of the Contract, the Contractor shall submit a certificate of insurance evidencing the foregoing coverage to the Railroad and Contracting Authority (if other than the Department), and a certified, true, and complete copy of policy or policies to the Contracting Authority and Railroad. Upon request from either the Contracting Authority or Railroad, a certified duplicate original of any required certificate or policy shall be furnished at no cost to the Contracting Authority or Railroad. Contractor shall not begin work upon or over Railroad's ROW until the Railroad has notified the Engineer that such insurance provisions are in accordance with the contract documents. 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 Railroad's property and

cleans the premises in a manner reasonably satisfactory to Railroad. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

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

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of the "Exhibit C-1" Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that these special provisions have been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by the "Exhibit C-1" Agreement.

Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.

Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate the "Exhibit C-1" Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of the "Exhibit C-1" Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving Railway arising out of the "Exhibit C-1" Agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, the provisions of "Exhibit C-1" shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, Railway shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

3.5 Section 1 Contractor Requirements

3.5.1 The Contractor shall observe and comply with all provisions, obligations, requirements and limitations contained in the contract and the Contractor requirements set forth in "Exhibit C" and summarized in Section 1 of these special provisions, "Exhibit C-1", including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

3.6 Train Delay

3.6.1 Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under the "Exhibit C-1" Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by the "Exhibit C-1" Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to the "Exhibit C-1" Agreement.

Contractor and its subcontractors shall give Railway's representative 30 days advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors shall plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Section 4 Method of Measurement and Basis of Payment

4.1 Method of Measurement and Basis of Payment

Railway insurance provisions required by this specification and "Exhibit C-1" above those required by Division 11 of the Standard Specifications will be measured and paid for 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 "Railroad Protective Liability Insurance for BNSF Railway Company". With the exception of payment for insurance as described, no additional payment will be made for any extra cost incurred on account of compliance with these special provisions. All such costs shall be included in prices bid for other items of the work as specified. The Contractor will be paid the lump sum bid item price within 30 calendar days after receipt of a signed contract, provided that all necessary certificates of insurance have been submitted to the Department per Article SP-154008 (3.4).

4.2 Flaggers

The cost of flagger services provided by the Railway will be borne by Adams County. See Section 1.05 for additional information regarding railway flagger services.

EXHIBIT "C-I"

Agreement Between BNSF

RAILWAY COMPANY

and the

CONTRACTOR

BNSF RAILWAY COMPANY

Attention: Manager Public Projects

Railway File: _____

Agency Project: 260th Street Overpass Bridge – BRS Project No. C002(55)-60-02

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 201____, with Adams County for the performance of certain work in connection with the following project: Construction of the proposed 260th Street Overpass Bridge. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for Adams County (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of **\$5,000,000** each occurrence and an aggregate limit of at least **\$10,000,000** but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 1204 and include the following :

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody, or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this **Agreement**, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following addresses:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration.

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

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this **Agreement** has been thoroughly reviewed by Contractor's

Insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this **Agreement**.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain the insurance coverage(s) set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend, and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend, and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this **Agreement** immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this **Agreement**. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** means "Burlington Northern Santa Fe LLC", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. **THE RATE THEN IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF TRAIN DELAY PURSUANT TO THIS AGREEMENT.**

Contractor and its subcontractors must give Railway's representative (Scott Amato (402) 422-5249 (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

Contractor

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Manager Public Projects

Title: _____

Accepted and effective this ____ day of ____ 20__.

Contact Person:

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____