



**SPECIAL PROVISIONS
FOR
MAINTENANCE WORK ON RAILROAD RIGHT-OF-WAY
(CEDAR RAPIDS AND IOWA CITY RAILWAY)**

**Linn County
ER-1187(815)--8R-57**

**Effective Date
Feb 15, 2022**

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.

156208.01 DESCRIPTION.

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

The CRANDIC representative will be the person or persons identified by the CRANDIC General Manager, Lane Spence, 1445 Rockford Rd S.W., Cedar Rapids, Iowa 52404 (telephone number: 319.786.3674 and email address: lanespence@travero.com) to handle specific tasks related to the project.

Prior to advertising the project for letting, the City of Cedar Rapids, Iowa (City) will negotiate and obtain an agreement with the CRANDIC for the work on CRANDIC ROW. The Contractor is required to coordinate with CRANDIC to attain and execute an Access Agreement similar to the document attached to this Special Provision.

The Contractor shall provide track protection for all equipment operating within 50 feet from nearest rail.

156208.02 REQUESTS FOR INFORMATION.

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

156208.03 CONSTRUCTION SCHEDULE NOTICE.

A construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided to the City for submittal to the CRANDIC prior to commencement of work. When construction activities are on or about railroad property this schedule shall also include the anticipated dates when the CRANDIC facilities may be impacted by construction activities.

156208.04 CRANDIC REPRESENTATIVES.

CRANDIC representatives will be provided at the expense of the Contractor to protect CRANDIC facilities, property, and movements of its trains or engines. In general, CRANDIC will furnish such personnel or other protective services as follows:

- When any part of any equipment is standing or being operated within 50 feet, measured horizontally, from centerline of any track on which trains may operate, or when any object is off the ground and any dimension thereof could extend inside the 50 foot limit, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track.
- For any excavation below elevation of track subgrade if, in the opinion of CRANDIC, track or other CRANDIC facilities may be subject to settlement or movement.
- During any clearing, grubbing, excavation, or grading in proximity to CRANDIC facilities, which, in the opinion of CRANDIC, may endanger CRANDIC facilities or operations.
- During the Contractor's operations when, in the opinion of CRANDIC, CRANDIC facilities, including, but not limited to, tracks, buildings, signals, wire lines, or pipe lines, may be endangered.
- The Contractor shall arrange with the CRANDIC to provide the adequate personnel or other protective services.

156208.05 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). Following award of the Contract, the Contractor shall submit a certificate of insurance evidencing the foregoing coverage to CRANDIC and Contracting Authority (if other than the Department), and a certified, true, and complete copy of policy or policies to the Contracting Authority and CRANDIC. 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 CRANDIC.

To the fullest extent permitted by law, the Contractor(s) shall indemnify and hold harmless CRANDIC and CRANDIC's affiliates, and their employees, officers, agents and authorized representatives from and against any and all liability, claims, damages, losses and expenses, including but not limited to punitive damages and attorneys' fees, arising from the injury to or death of any person or persons, or loss of or damage to any property whatsoever, while on or about CRANDIC's premises or arising out of or resulting from performance of the work or services provided by Contractor or a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. The Contractor shall indemnify and hold harmless CRANDIC against any assertion of claims for mechanics' liens by subcontractors or material contractors, and against any assertion of security interests for goods or materials which are placed or installed upon CRANDIC's premises.

The Contractor(s) shall provide and maintain the minimum insurance limits shown below in connection with the access, use or occupancy of the premises by its employees, agents, or subcontractors. The Contractor(s) on behalf of itself and each agent and each subcontractor shall furnish CRANDIC certificates issued by insurance companies acceptable to CRANDIC showing policies carried and the limits of coverage as follows:

A. Commercial General Liability Insurance.

This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$1,000,000 each occurrence and an aggregate limit of at least \$2,000,000.

Coverage must be purchased on ISO occurrence form CG 00 01 12 04 or a substitute form providing equivalent coverage and include coverage for, but not limited 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 Contractual Liability Railroads CG 24 17 endorsement (or equivalent),

No other endorsements limiting coverage as respects obligations under this specification 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, non-owned or hired

C. Workers Compensation and Employers Liability Insurance.

This insurance shall include coverage for, but not limited to:

- Contractor's liability to the extent of the statutory limits of 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 \$1,000,000 each accident, \$1,000,000 by Occupational Disease policy limit, \$1,000,000 by disease each employee.

D. Excess or Umbrella Liability Insurance.

This insurance shall contain a single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$2,000,000.

Coverage must include, as scheduled policies, the following:

- Employer's Liability Insurance
- Commercial General Liability Insurance (including completed operations)
- Automobile Liability Insurance (as described in this Section) The excess policies will be "following form".

E. Railroad Protective Liability Insurance.

This insurance is required if there is any work to be performed in the railroad right-of-way or within 50 feet of the railroad tracks. If applicable, this insurance shall name 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 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 1093) and on ISO Form no. CG00351093
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- 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 Easement Agreement.

Contractor shall use the website listed below to acquire Railroad train movement information for the purpose of obtaining Railroad 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.

F. Other Requirements.

CRANDIC and each of their respective employees, officers and directors must be included as additional insureds on a primary and non-contributory basis, with respect to General Liability and Excess/Umbrella (if any) coverages.

All policies (except Railroad Protective Liability) must contain a waiver of any right of subrogation or recourse by the Contractor's insurer against CRANDIC and each of their respective employees, officers and directors.

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Contractor is not allowed to self-insure without the prior written consent of CRANDIC. If granted by CRANDIC, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all CRANDIC 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 work, Contractor shall furnish to CRANDIC an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify CRANDIC in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from CRANDIC, a certified duplicate original of any required policy shall be furnished.

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

Failure to provide evidence as required by this section shall entitle, but not require, CRANDIC to remove contractor from or deny entry of contractor to CRANDIC property 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 Easement Agreement. Damages recoverable by CRANDIC shall not be limited by the amount of the required insurance coverage.

156208.06 ASSIGNMENT, SUBCONTRACTING, AND INSURANCE ENDORSEMENTS.

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

Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

156208.07 ADDITIONAL SAFETY REQUIREMENTS.

The Contractor shall require its employees to be suitably dressed to perform their duties safely. The Contractor shall require workers to wear personal protective equipment as specified by CRANDIC rules and regulations. Protective equipment shall include, but not be limited to the following: protective headgear meeting ANSI 289.1; eye protection meeting ANSI 287.1, however additional eye protection shall be provided to meet specific job situations such as welding, grinding, burning, etc.; and hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Only waist length shirts with sleeves and trousers covering the entire leg shall be worn. Flare-legged trouser bottoms shall be tied to prevent catching.

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

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

If at any time the CITY or the CRANDIC are of the opinion that any work of the Contractor is being or is about to be done or prosecuted without due regard and precaution for safety and security, the CITY may suspend the work until suitable, adequate, and proper protective measures are adopted and provided.

156208.08 SAFETY MEASURES-PROTECTION OF OPERATIONS.

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

A. Obstructions to View.

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

B. Excavation.

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

C. Drainage.

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

D. Clearances.

The Contractor shall provide a minimum vertical clearance of 21.5 feet above top of rails and a minimum lateral clearance of 8.5 feet from centerline of track measured at right angles thereto.

Proposed changes to the specified minimum clearances shall be submitted to CRANDIC, through the CITY, at least 30 calendar days in advance of the work. No work shall commence until the CITY receives concurrence, in writing, from CRANDIC that approval is given and that arrangements have been made to provide the adequate personnel or other protective services, as may be necessary. The CRANDIC will have two weeks to respond to the request.

156208.09 WALKWAYS.

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

156208.10 EXCAVATIONS IN CLOSE PROXIMITY TO CRANDIC FACILITIES.

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

The Contractor shall contact CRANDIC at least 48 hours prior to commencing work during normal business hours to determine location of fiber optics. If a telecommunications system is buried anywhere on or near CRANDIC property, the Contractor shall coordinate with CRANDIC and the telecommunication company to arrange for relocation or other protection of the system prior to beginning any work on or near CRANDIC property.

156208.11 NO INTERFERENCE WITH CRANDIC'S OPERATION.

The Contractor shall not interfere with the constant, continuous, and uninterrupted use of the tracks, property, and facilities of the CRANDIC its lessees, licensees, or others, unless specifically permitted by this specification, or specifically authorized in advance by the CRANDIC. When not in use, the Contractor's machinery and materials shall be kept at least 50 feet from the centerline of CRANDIC's nearest active track, and there shall be no crossings of CRANDIC's tracks except at existing open public crossings or as provided by agreement.

156208.12 TRAFFIC CONTROL.

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

156208.13 INDEMNITY.

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

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

The Contractor shall indemnify, hold harmless, and defend to the extent allowed by law the CRANDIC from any loss which is due to or arises from any cause and is associated in whole or in part with the work, a breach of the contract or the failure to observe the health and safety provisions herein, or any activity or

omission arising out of performance or nonperformance; except when caused by the sole negligence of the CRANDIC, or except to the extent caused by the gross negligence or willful misconduct of the CRANDIC.

156208.14 MAINTENANCE OF CRANDIC FACILITIES.

The Contractor shall maintain all ditches and drainage structures free of silt or other obstructions which may result from its operations, promptly repair eroded areas within CRANDIC's ROW, and repair any other damage to CRANDIC property, or its tenants; at no additional cost to the CRANDIC.

156208.15 COMMUNICATIONS AND SIGNAL LINES.

If required, CRANDIC will rearrange its communications and signal lines, grade crossing warning devices, train signals and tracks, and facilities that are in use and maintained by CRANDIC's forces in connection with its operation at the expense of the Contracting Authority. This work will be performed by the CRANDIC and it is not a part of the contract.

156208.16 FIBER OPTIC CABLE SYSTEMS.

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

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

156208.17 COOPERATION.

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

156208.18 WAIVER OF BREACH.

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

156208.19 RAILROAD FLAGGING OR OTHER PROTECTIVE SERVICES.

The Contractor shall notify the CRANDIC and City at least 15 working days in advance of the commencement of work and at least 10 working days in advance of proposed performance of any work by the Contractor in which any person or equipment will be within 50 feet of any track, or near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 50 feet of any track. This notice shall include the following:

- Project Number
- Contractor's name
- Date flagging or other protective services are needed
- Location of flagging or other protective services are to be provided
- Duration of flagging or other protective services

No work shall be performed, and no person, equipment, machinery, tools, materials, vehicles, or things

shall be located, operated, placed, or stored within 50 feet of any of CRANDIC's track at any time, for any reason, unless and until a railroad flagger or other protective services is provided by CRANDIC.

Upon receipt of such 10 day notice, the CRANDIC will determine and inform the Contractor whether a flagger need be present, or other protective services provided by CRANDIC, and whether the Contractor need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the CRANDIC, such services will be provided at the Contractor's expense with the understanding that if the CRANDIC provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. The Contractor shall pay the CRANDIC all charges connected with such services.

Work performed without proper flagging services or other protective services, when required, will be subject to a \$5,000 per day price adjustment.

The Contractor shall provide the CRANDIC a minimum of 2 working days' notice prior to the completion of work for which the flagging services or other protective services were requested.

156208.20 TEMPORARY CROSSINGS.

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

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

156208.21 LIMITATION OF RIGHTS GRANTED.

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

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

156208.22 MECHANICS' LIENS.

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

156208.23 METHOD OF MEASUREMENT AND BASIS OF PAYMENT.

Railroad Protective Liability Insurance for Cedar Rapids and Iowa City Railway, Inc. shall be paid for as a Lump Sum bid item. 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-156208.05.

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (this “*Agreement*”) is made and entered into as of the ___ day of _____, 20__ (the “*Effective Date*”), by and between CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY, an Iowa corporation (“*CRANDIC*”) and [REQUESTING PARTY], a [Corporation, Limited Liability Company, Agency, COOPERATIVE] (“*Requesting Party*”) of the state of [State of Formation], having its principal place of business at [Address] (“*Requesting Party*”). Requesting Party and CRANDIC are referred to individually as a “*Party*” and collectively as the “*Parties.*”

RECITALS:

WHEREAS, CRANDIC owns certain real property located in Cedar Rapids, IA, as further described in *Exhibit A* (the “*Premises*”);

WHEREAS, Requesting Party has requested temporary permission from CRANDIC to enter upon the Premises (“*Access*”) for the limited **purpose of performing bridge improvements at the 33rd Avenue SW bridges improvements** (hereinafter referred to as the “*Purpose*”), in accordance with the terms of this Agreement; and

WHEREAS, CRANDIC agrees to grant Requesting Party with such Access for the Purpose, all in accordance with the terms of this Agreement.

AGREEMENT:

In consideration of the following terms and conditions CRANDIC hereby grants to Requesting Party Access to the Premises pursuant to this Agreement.

1. *Access.* CRANDIC hereby grants to Requesting Party a temporary, non-exclusive license on, over and across the License Area (as further described and defined in *Exhibit B*) for the Purpose during the Term of this Agreement (the “*License*”).

2. *Term.* This Agreement is effective as of [the Effective Date or pick another date] and will expire without any action by either Party upon the earlier of the completion of the Purpose or [Insert expiration date] (the “*Term*”). The Parties may, upon mutual agreement in writing, extend the Term.

3. *Requesting Party Covenants.*

a. Upon CRANDIC’s determination, in its sole discretion, that flagging is required for the safe prosecution and completion of any activities associated with the License, Requesting Party shall pay all costs for such flagging (\$130.00 per flagger per hour). The number of flaggers shall be determined by CRANDIC in its sole discretion. If work is performed without proper flagging services when such flagging is required, Requesting Party will be subject to a \$5,000.00 per day

price adjustment and may, at CRANDIC's sole option, be immediately removed from the Premises.

b. Requesting Party shall notify CRANDIC of its arrival and departure from the Premises each day.

c. Prior to entering on to the Premises, Requesting Party shall provide CRANDIC with the name and phone number of a foreman or supervisor that can be contacted in case of emergency or for any other reason CRANDIC requires.

d. In the event Access involves any activity that involves the performance of work on the Premises, upon completion of such activity, a Requesting Party representative will be required to conduct a walk down of the Premises with CRANDIC management.

e. Requesting Party shall, at its sole cost, comply with all applicable laws, rules, regulations, and ordinances of competent authorities affecting said Premises including, but not limited to those relating to Hazardous Materials and the environment (individually and collectively, the "Law"). Requesting Party is solely responsible for obtaining any and all permits required by any Law to support their Access and any activities they conduct on the Premises. As used herein, "Hazardous Material" means any substance which is listed as "hazardous" or "toxic" or listed in the regulations implementing CERCLA. "Hazardous Material" includes any and all material or substances which are defined as "hazardous waste," "hazardous material," "extremely hazardous substance," or a "hazardous substance," pursuant to state, federal, or local governmental law. "Hazardous Materials" includes, but is not restricted to, asbestos, polychlorinated biphenyls ("PCBs"), petroleum and petroleum products.

f. Requesting Party may use contractors to do work on the Premises, provided any such contractors must comply with the terms and conditions hereof, including, but not limited to safety terms and insurance requirements. Requesting Party shall be responsible for the acts and omissions of all contractors and shall require all contractors to indemnify CRANDIC to the same extent as set forth herein.

4. *Cooperation.* Requesting Party shall cooperate with CRANDIC personnel and shall take all other reasonably necessary measures to avoid accidents, damage or harm to persons or property, and delays to or interference with CRANDIC operations.

5. *Safety.*

a. Requesting Party shall, at all times, keep the Premises in a safe, clean, and sanitary condition, and shall not mutilate, damage, misuse, alter, or permit waste thereon. No drainage condition shall be created or allowed to exist that is or may be adverse to CRANDIC.

b. All activities performed during the Access shall, as applicable, be done in accordance with instructions of CRANDIC personnel and in such manner as is satisfactory to CRANDIC acting through its designated representatives.

c. **The following clearances must be maintained at all times during Requesting Party activities unless written consent by CRANDIC is otherwise provided: (1) Vertical: 25.0 feet above top of highest rail; and (2) Horizontal: 8.5 feet from centerline of nearest track, measured at right angles thereto.**

6. *Environmental; Safety.*

a. Requesting Party shall be solely responsible for complying with all hazard communication and other requirements of the Occupational Safety and Health Administration (OSHA), as codified at 29 C.F.R. 1910.1200. Requesting Party shall provide Material Safety Data Sheets for any hazardous chemicals brought onto CRANDIC's Premises by Requesting Party, its employees, agents, contractors, or subcontractors. In addition, Requesting Party shall provide the necessary information and training to its employees on each hazardous chemical to which they may be exposed. Requesting Party shall ensure that its employees use proper personal protective equipment, such as hard hats, safety glasses, etc., while on CRANDIC's Premises. Requesting Party may be required to take additional safety precautions and/or terminate activities if work is conducted in an unsafe manner. In such case, Requesting Party shall be responsible for any additional or consequential costs.

b. Requesting Party shall not cause or permit any Hazardous Material other than fluids located inside of vehicles required for vehicle operation (e.g., gasoline, diesel fuel, oil, anti-freeze) to be used, stored, generated, released or disposed of on or in the Premises by Requesting Party, its employees, agents, contractors, subcontractors, or invitees without first obtaining CRANDIC's written consent, which may be withheld at CRANDIC's sole and absolute discretion. If Hazardous Materials are used, stored, generated, released or disposed of on or in the Premises by Requesting Party, its agents, employees, contractors or invitees in violation of this Agreement or any environmental law, or if the Premises become contaminated in any manner for which Requesting Party is liable, Requesting Party shall indemnify, defend, and hold harmless CRANDIC pursuant to the indemnity section set forth below, including, without limitation, for any and all costs incurred in connection with any investigation, remediation or restoration of the Premises or any off-site location (including all costs incurred pursuant to the Comprehensive Environmental Response, Compensation, & Liability Act ("CERCLA" or "Superfund"), 42 U.S.C. § 9601 *et seq.*). In the event that any spills or releases of any Hazardous Materials into the environment result from the actions of Requesting Party or any of its agents or from any such party's access to the Premises pursuant hereto, the Requesting Party shall: (i) take any and all actions necessary to ensure timely and adequate compliance with all applicable environmental laws and the requirements of relevant governmental authorities, including any applicable reporting, investigation and remediation requirements; and (ii) promptly provide CRANDIC with relevant information regarding the details, status, and compliance efforts associated with the spill or release.

c. Notwithstanding the foregoing and to the extent practicable, Requesting Party shall coordinate all investigative, remedial and response actions with, and obtain prior approval with respect thereto from, CRANDIC. In the event that during its operations Requesting Party discovers any existing contamination, Requesting Party shall stop work on that location and contact CRANDIC for instructions on how to proceed. In no event, absent express written permission of

CRANDIC is the Requesting Party authorized to share any information or results associated with the operations, with third parties.

7. *Indemnification.* Requesting Party shall indemnify, defend and hold CRANDIC harmless from and against any and all claims, demands, losses, damages, costs, and expenses (including, but not limited to, court costs, fines, penalties and reasonable attorneys' fees, but excluding consequential or indirect damages), judgments, liabilities and causes of action to the extent arising out of the acts or omissions of Requesting Party, its employees, agents, contractors, or subcontractors in connection with the (i) Access; (ii) use, storage, generation, release or disposal of any Hazardous Materials on, at or from the Premises; or (iii) violation of any Laws, including environmental Laws, in each case by the Requesting Party, its employees, agents, contractors, or subcontractors. Requesting Party shall indemnify and defend CRANDIC for, from and against any and all mechanics' liens and other liens and encumbrances filed by any person claiming by, through or under Requesting Party and against all costs, expenses, losses and liabilities (including reasonable attorneys' fees) incurred by CRANDIC in connection with any such lien or encumbrance or any action or proceeding brought thereon.

8. *Termination.*

a. The occurrence of any one or more of the following matters constitutes a default by Requesting Party under this Agreement (an "*Event of Default*"):

i. Requesting Party becomes insolvent or generally fails to pay, or admits in writing its inability or unwillingness to pay, its debts as they become due;

ii. Requesting Party makes a general assignment for the benefit of its creditors;

iii. Requesting Party commences or consents to any case, proceeding, or other action (A) seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of Requesting Party or of Requesting Party's debts under any Law relating to bankruptcy, insolvency, reorganization, or relief of debts, or (B) seeking appointment of a receiver, trustee, or similar official for Requesting Party or for all or any part of Requesting Party's property;

iv. any case, proceeding, or other action against Requesting Party is commenced (A) seeking to have an order for relief entered against Requesting Party as debtor, (B) seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of Requesting Party or Requesting Party's debts under any Law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or (C) seeking appointment of a receiver, trustee, or similar official for Requesting Party or for all or any part of Requesting Party's property;

v. the breach of any representation or warranty made by Requesting Party herein;

vi. Requesting Party attempts to assign, convey, or transfer this Agreement or any interest herein without CRANDIC's prior written consent; or

vii. Requesting Party fails to observe or perform any other covenant, agreement, obligation, duty, or provision of the Contract Documents, and such failure continues for ten (10) days after Requesting Party's receipt of written notice thereof from CRANDIC.

b. Upon the occurrence of any Event of Default, CRANDIC may, without prejudice to any other right or remedy CRANDIC may have under this Agreement or at law or in equity, terminate this Agreement or any portion of this Agreement and resume and retake possession of said Premises without any accountability whatsoever to Requesting Party, its successors or assigns.

c. Upon termination of this Agreement in any manner, the Requesting Party shall remove all personal property and equipment kept and used on Premises from the Premises and return Premises to the condition it was in prior to the Access. Should the Requesting Party fail to remove such personal property and equipment within ten (10) days after the date of termination of this Agreement, CRANDIC may, at its election, either remove all said personal property and equipment at the sole cost of the Requesting Party or may take and hold said personal property and equipment as its sole property. In the event CRANDIC is not satisfied that the Requesting Party has returned the Premises to an acceptable condition, CRANDIC reserves the right to arrange for such work to be performed and Requesting Party shall reimburse CRANDIC for the cost thereof.

9. *Insurance.*

a. Requesting Party, shall provide and maintain the minimum insurance limits shown below in connection with the Access, use or occupancy of the Premises by Requesting Party its employees, agents, contractors, or subcontractors. Requesting Party on behalf of itself and each agent and each contractor and each subcontractor shall furnish to CRANDIC certificates issued by insurance companies acceptable to CRANDIC showing policies carried and the limits of coverage as follows:

i. Workers' Compensation Insurance for employees to the extent of statutory limits and Occupational Disease and Employer's Liability Insurance for not less than \$1,000,000.

ii. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. The Commercial General Liability policy shall contain the Contractual Liability Railroads CG 24 17 endorsement (or equivalent).

iii. Automobile Liability Insurance for all owned, non-owned and hired automobiles with limits not less than \$1,000,000 each accident.

iv. Excess or Umbrella Liability with limits not less than \$2,000,000 each occurrence and \$2,000,000 aggregate: Such coverage must include, as scheduled policies, the Employer's Liability Insurance, Commercial General Liability Insurance (including

completed operations) and Automobile Liability Insurance described in this Section. The excess policies will be “following form.”

v. CRANDIC further reserves the right to require Requesting Party or its contractors to provide to CRANDIC an insurance policy for Railroad Protective Liability Insurance in the amount of two million dollars (\$2,000,000) if any work is to be performed in the railroad right-of-way or within fifty (50) feet of the railroad tracks.

b. CRANDIC and each of their respective employees, officers and directors must be included as additional insureds on a primary and non-contributory basis, with respect to General Liability and Excess/Umbrella (if any) coverages.

c. All policies (except Railroad Protective Liability) must contain a waiver of any right of subrogation or recourse by Requesting Party’s insurer against CRANDIC and each of their respective employees, officers and directors.

d. Certificates of insurance shall be on file with CRANDIC prior to access to the Premises, shall remain in effect for the duration of this Agreement, and shall name CRANDIC as an additional insured on the commercial general liability coverage for the Requesting Party’s negligent acts. Failure of CRANDIC to enforce the minimum insurance requirements listed above shall not relieve Requesting Party of responsibility for maintaining these.

10. *Notice.* Any written notice given by CRANDIC to Requesting Party shall be properly served if the same is delivered to Requesting Party, or one of its agents, or employees, or if mailed, postpaid, addressed to Requesting Party at the address listed below. Any written notice given by Requesting Party to CRANDIC shall be deemed properly served if the same be delivered by mail, postpaid, addressed to CRANDIC at the address listed below.

CRANDIC:
Lane Spence
2330 12th Street S.W.
Cedar Rapids, IA 52404
(319) 786-3674

Requesting Party:
Name:
Title:
Address:
Phone:
Taxpayer ID:

Requesting Party shall notify CRANDIC’s representative listed above not less than twenty-four (24) hours before Requesting Party proposes to enter upon CRANDIC’s property.

11. *General*

a. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties hereto. However, the Agreement shall not be assigned or in any manner transferred nor said Premises or any part thereof sublet, used, or occupied by any Party other than Requesting Party without the written consent of CRANDIC.

b. The Parties agree that the laws of the State of Iowa shall govern this Agreement, with venue lying in Linn County District Court.

c. If any of the foregoing provisions is held for any reason to be unlawful or unenforceable, the Parties intend that only the specific words found to be unlawful or unenforceable are severed and deleted from this Agreement and that the balance of the Agreement remains a binding enforceable agreement to the fullest extent permitted by law.

d. The failure of CRANDIC to insist on or enforce, in any instance, strict performance by Requesting Party of any of the terms of this Agreement, or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such terms or rights on any future occasion.

e. All provisions of this Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

f. No modification of this Agreement shall be effective unless made in writing and signed by the parties affected by the modifications. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between the Parties and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to Access to the Premises.

g. The various rights, powers, options, elections, and remedies of either Party, provided in this Agreement, shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies, or priorities allowed either Party by law, and shall in no way affect or impair the right of either Party to pursue any other equitable or legal remedy to which either Party may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged.

h. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one instrument. Delivery of an executed counterpart of a signature page to this Agreement by PDF, facsimile or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed in duplicate this Agreement on the day and year first above written.

REQUESTING PARTY

By: _____
Title: _____

CEDAR RAPIDS AND IOWA CITY RAILWAY

By: Lane Spence
Title: Manager Track & Structures

EXAMPLE:
COORDINATE WITH CRANDIC
TO ATTAIN AND EXECUTE ACTUAL
ACCESS AGREEMENT

EXHIBIT A

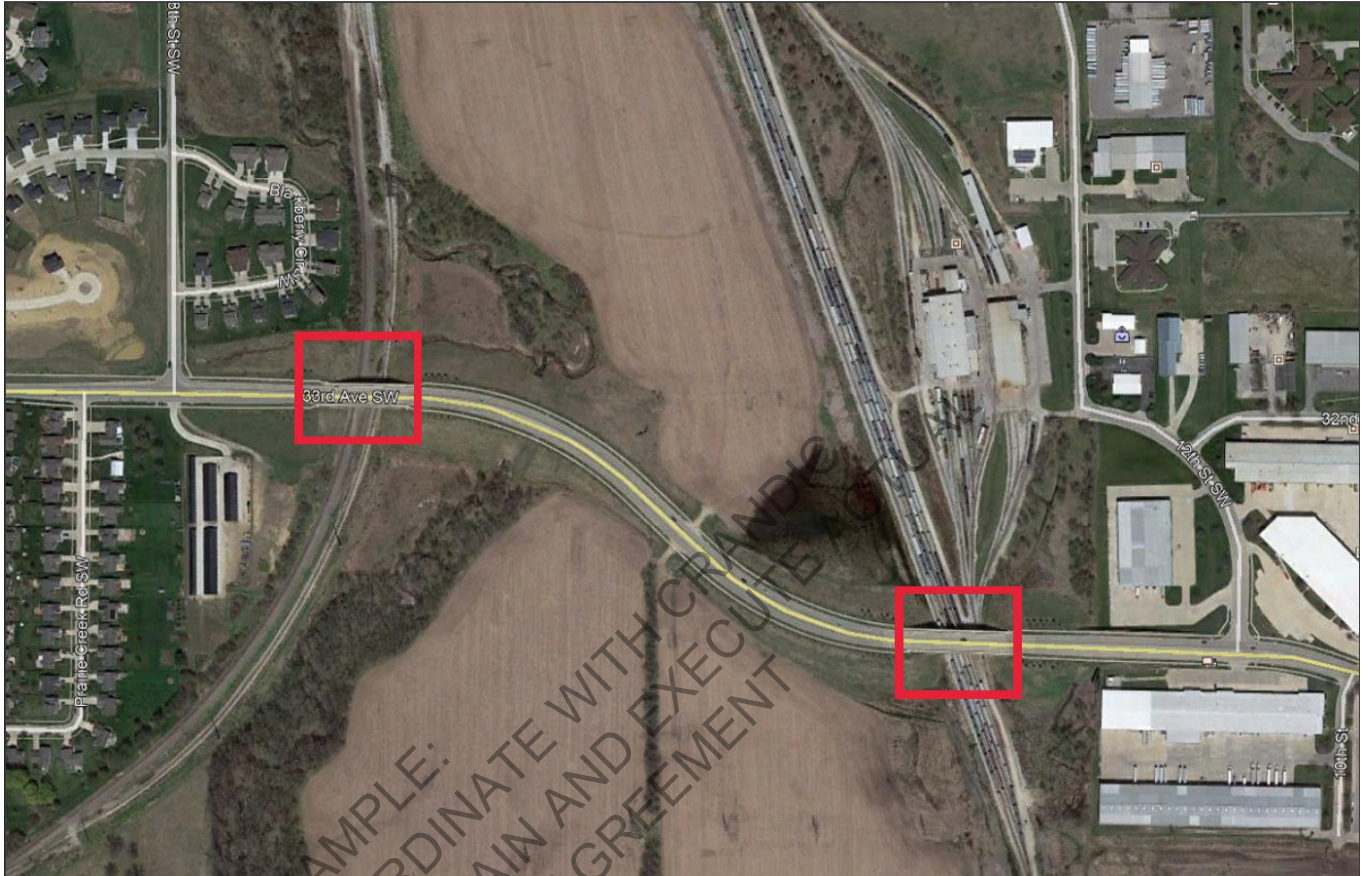
MAP OF PREMISES



EXHIBIT B

LICENSE AREA

“License Area” means the area indicated below:



In order to complete the Access Agreement, please supply the following information:

- 1) Full name of Company

- 2) Type of Business Entity (LLC, Corporation, etc.)
 - a. State of Formation

 - b. Principal Place of Business Address

- 3) Start date of replace project
 - a. Completion date of replacement project

- 4) Following information within your company for any proper notification
Requesting Party:
Name: _____
Title: _____
Address: _____
Phone: _____
Taxpayer ID: _____

- 5) Name and Title of Person to execute agreement:

- 6) List any additional Subcontractor(s). They will be held to these standards as well.

- 7) Mailing Address for flagging fees.

- 8) Description of task being completed.

EXAMPLE: COORDINATE WITH GRANDIC TO ATTAIN AND EXECUTE ACTUAL ACCESS AGREEMENT