

SPECIAL PROVISIONS FOR PROTECTION OF RAILWAY INTEREST

1. FLAGGING SERVICES:A. When Required

Under the terms of the agreement between the N. C. Department of Transportation, herein called Department and the Norfolk Southern Railway Company herein called the Railroad, the Railroad has sole authority to determine the need for flagging required to protect its operations. In general, the requirements of such services will be whenever the Contractor's men or equipment are, or are likely to be, working on the Railroad's right-of-way, or across, over, adjacent to or under a track, or when such work has disturbed or is likely to disturb a railroad structure or the railroad roadbed or surface and alignment of any track to such extent that the movement of trains must be controlled by flagging. Normally, the Railroad will assign one flagman to a project; but in some cases, more than one may be necessary, such as yard limits where three (3) flagmen may be required. However, if the Contractor works within distances that violate instructions given by the Railroad's authorized representative or performs work that has not been scheduled with the Railroad's authorized representative, a flagman or flagmen may be required full time until the project has been completed. Should such violations or unscheduled, unauthorized work by the contractor result in full time flagging being required by Railroad, the additional cost of such flagging above normal flagging cost shall be deducted from the final payment to the Contractor as provided in Article 109-9 of the Standard Specifications. Neither Railroad nor Department will be liable for damages resulting from unscheduled or unauthorized work.

B. Scheduling and Notification

- (1) The Contractor's work requiring railroad flagging should be scheduled to limit the presence of a flagman at the site to a maximum of 50 hours per week. The Contractor shall receive Railroad approval of work schedules requiring a flagman presence in excess of 40 hours per week.
- (2) Not later than the time that approval is initially requested to begin work on Railroad right-of-way, Contractor shall furnish to the Railroad and the Department a schedule for all work required to complete the portion of the project within Railroad right-of-way and arrange for a job site meeting between the Contractor, the Department, and the Railroad's authorized representative. Flagman or flagmen may not be provided until the job site meeting has been conducted and the Contractor's work scheduled.
- (3) The Contractor will be required to give the Railroad representative at least 10 working days of advance written notice of intent to begin work within Railroad right-of-way in accordance with this special provision. Once begun, when such work is then suspended at any time, or for any reason, the Contractor will be

required to give the Railroad representative at least 3 working days of advance notice before resuming work on Railroad right-of-way. Such notices shall include sufficient details of the proposed work to enable the Railroad representative to determine if flagging will be required. If such notice is in writing, the Contractor shall furnish the Highway Engineer a copy; if notice is given verbally it shall be confirmed in writing with copy to the Highway Engineer. If flagging is required, no work shall be undertaken until the flagman, or flagmen, is present at the job site. It may take up to 30 days to obtain flagging initially from the Railroad. When flagging begins, the flagman is usually assigned by the Railroad to work at the project site on a continual basis until no longer needed and cannot be called for on a spot basis. If flagging becomes unnecessary and is suspended, it may take up to 30 days to again obtain from the Railroad. Due to labor agreements, it is necessary to give 5 working days notice before flagging service may be discontinued and responsibility for payment stopped.

- (4) If, after the flagman is assigned to the project site, emergencies arise which require the flagman's presence elsewhere, then the Contractor shall delay work on Railroad right-of-way until such time as the flagman is again available. Any additional costs resulting from such delay shall be borne by the Contractor and not the Department or Railroad.

C. Payment

- (1) The Department will be responsible for paying the Railroad directly for any and all costs of flagging which may be required to accomplish the construction. The Contractor shall reimburse the Railroad for any costs of the flagging which is required for work for the benefit of the Contractor.
- (2) The cost of flagging service is based on an 8-hour work day and 40-hour work week. This cost includes the base pay for each flagman, overhead, and includes an estimated per diem charge for travel expenses, meals and lodging. The charge by the Railroad will be the actual cost based on the rate of pay for the Railroad's employees who are available for flagging service at the time the service is required. Work by a flagman in excess of 8 hours per day or 40 hours per week but not more than 12 hours a day will result in overtime pay at 1½ times the appropriate rate. Work by a flagman in excess of 12 hours per day will result in overtime pay at 2 times the appropriate rate. If work is performed on a holiday, the flagging rate is 2½ times the normal rate. Railroad work involved in preparing and handling bills will also be charged. Charges by the Railroad shall be in accordance with applicable provisions of Federal-Aid Policy Guide 23 CFR 140I and 23 CFR 646B issued by the Federal Highway Administration on December 9, 1991, including all current amendments.

ID. Verification

- (1) The Contractor and Department will review and sign the Railroad flagman's time sheet, (Form 11123) attesting that the flagman was present during the time recorded. Flagmen may be removed by Railroad if form is not signed. If flagman is removed, the Contractor will not be allowed to re-enter the Railroad right-of-way until the issue is resolved. Complaints concerning flagman or flagmen must be resolved in a timely manner. If need for flagman or flagmen is questioned, please write or telephone Railroad's Engineer-Grade Separation Structures. All verbal complaints must be confirmed in writing by the Contractor within 5 working days with copy to the Highway Engineer. All written correspondence should be addressed to:

Chief Engineer-Bridges & Structures
 Norfolk Southern Railway Company
 99 Spring Street, S.W.
 Atlanta, GA 30303
 Attention: Engineer-Grade Separation Structures

- (2) The Railroad flagman assigned to the project will be responsible for notifying the Highway Engineer upon arrival at the job site on the first day (or as soon thereafter as possible) that flagging services begin and on the last day that he performs such services for each separate period that services are provided. The Highway Engineer will document such notification in the project records. When requested, the Highway Engineer will also sign the flagman's diary showing daily time spent and activity at the project site.

2. AUTHORITY OF RAILROAD ENGINEER AND STATE ENGINEER:

The authorized representative of the Railroad company, hereinafter referred to as Railroad Engineer, shall have final authority in all matters affecting the safe maintenance of Railroad traffic of his Company including the adequacy of the foundations and structures supporting the Railroad tracks.

The authorized representative of the Department, hereinafter referred to as the Engineer, shall have authority over all other matters as prescribed herein, in the Project Specifications, and Special Provisions, and on the plans.

3. NOTICE OF STARTING WORK:

- A. The Contractor shall not commence any work on Railroad rights of way until he has complied with the following conditions:

- (1) Given the Railroad written notice, with copy to the Engineer who has been designated to be in charge of the work, at least ten days in advance of the date he proposes to begin work on Railroad rights of way to:

Chief Engineer-Bridges & Structures
Norfolk Southern Railway Company
99 Spring Street, SW
Atlanta, Georgia 30303

- (2) Obtain written authorization from the Railroad to begin work on Railroad rights of way, such authorization to include an outline of specific conditions with which he must comply.
 - (3) Obtain written approval from the Railroad for Railroad Protective Insurance coverage as required by paragraph 13 herein.
- B. The Railroad's written authorization to proceed with the work will include the names, addresses, and telephone numbers of the Railroad's representatives who are to be notified as hereinafter required. Where more than one representative is designated, the area of responsibility of each representative will be specified.
4. INTERFERENCE WITH RAILROAD OPERATIONS:
- A. The Contractor shall so arrange and conduct his work that there will be no interference with Railroad operations, including train, signal, telephone and telegraphic services, or damage to the property of the Railroad Company or to poles, wires, and other facilities of tenants on the rights of way of the Railroad Company. Whenever work is liable to affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad Engineer for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor which requires flagging service or inspection service (watchman) shall be deferred by the Contractor until the flagging protection required by the Railroad is available at the job site.
 - B. Whenever work within Railroad rights-of-way is of such a nature that impediment to Railroad operations such as use of runaround tracks or necessity for reduced speed is unavoidable, the contractor shall schedule and conduct his operations so that such impediment is reduced to the absolute minimum.
 - C. Should conditions arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of the Railroad, the Contractor shall make such provisions. If in the judgment of the Railroad Engineer, or in his absence, the Engineer, such provision is insufficient, either may require or provide such provisions as he deems necessary. In any event, such unusual provisions shall be at the Contractor's expense and without cost to the Railroad or the Department.

B. Excavation:

The subgrade of an operated track shall be maintained with edge of berm at least 10'0" from centerline of track and not more than 24 inches below top of rail. The Contractor will not be required to make existing section meet this specification if substandard, in which case existing section will be maintained.

C. Excavation for Structures:

The Contractor will be required to take special precaution and care in connection with excavating and shoring pits, and in driving piles, for footings adjacent to tracks to provide adequate lateral support for the tracks and the loads which they carry, without disturbance of track alignment and surface, and to avoid obstructing track clearances with working equipment, tools or other material. The procedure for doing such work, including need of and plans for shoring, shall first be approved by the Railroad Engineer, but such approval shall not relieve the Contractor from liability. Before submission of plans to the Railroad Engineer for approval, such plans shall first be reviewed and certified satisfactory by the Department.

D. Blasting:

- (1) The Contractor shall obtain advance approval of the Railroad Engineer and the Engineer for use of explosive on or adjacent to Railroad property. If permission for use of explosives is granted, the Contractor will be required to comply with the following:
 - (a) Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of the Contractor.
 - (b) Electric detonating fuses shall not be used because of the Possibility of premature explosions resulting from operation of two-way train radios.
 - (c) No blasting shall be done without the presence of an authorized representative of the Railroad. At least 72 hours advance notice to the person designated in the Railroad's notice of authorization to proceed (see paragraph 3B above) will be required to arrange for the presence of an authorized Railroad representative and such flagging as the Railroad may require.
 - (d) Have at the job site adequate equipment, labor and materials and allow sufficient time to clean up debris resulting from the blasting without delay to trains, as well as correcting at his expense any track misalignment or other damage to Railroad property resulting from the blasting as directed by the Railroad's authorized representative. If his actions result in delay of trains, the Contractor shall bear the entire cost thereof.

(2) The Railroad representative will:

- (a) Determine the approximate location of trains and advise the Contractor the approximate amount of time available for the blasting operation and clean-up.
- (b) Have the authority to order discontinuance of blasting if, in his opinion, blasting is too hazardous or is not in accord with these special provisions.

E. Maintenance of Railroad Facilities:

- (1) The Contractor will be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from his operations; to promptly repair eroded areas within Railroad rights of way and to repair any other damage to the property of the Railroad or its tenants.
- (2) All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense.

F. Storage of Materials and Equipment:

Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the rights of way of the Railroad company without first having obtained permission from the Railroad engineer, and such permission will be with the understanding that the Railroad Company will not be liable for damage to such material and equipment from any cause and that the Railroad Engineer may move or require the Contractor to move, at the contractor's expense, such material and equipment.

All grading or construction machinery that is left parked near the track unattended by a watchman shall be effectively immobilized so that it cannot be moved by unauthorized persons. The Contractor shall protect, defend, indemnify and save Railroad, and any associated, controlled or affiliated corporation, harmless from and against all loss, costs, expenses, claim or liability for loss of or damage to property or the loss of life or personal injury, arising out of or incident to the Contractor's failure to immobilize grading or construction machinery.

G. Cleanup:

Upon completion of the work, the Contractor shall remove from within the limits of the Railroad rights of way, all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of the Contractor, and leave said rights of way in a neat condition satisfactory to the Chief Engineer of the Railroad or his authorized representative.

7. DAMAGES:

- A. The Contractor shall assume all liability for any and all damages to his work, employees, servants, equipment and materials caused by Railroad traffic.
- B. Any cost incurred by the Railroad for repairing damages to its Property or to property of its tenants, caused by or resulting from the operations of the contractor, shall be paid directly to the Railroad by the contractor.

8. HAUL ACROSS RAILROADS:

- A. Where the plans show or imply that materials of any nature must be hauled across a Railroad, unless the plans clearly show that the State has included arrangements for such haul in its agreement with the Railroad, the Contractor will be required to make all necessary arrangements with the Railroad regarding means of transporting such materials across the Railroad. The Contractor will be required to bear all costs incidental, including flagging, to such crossings whether services are performed by his own forces or by Railroad personnel.
- B. No crossing may be established for use of the Contractor for transporting materials or equipment across the tracks of the Railroad Company unless specific authority for its installation, maintenance, necessary watching and flagging thereof and removal, all at the expense of the contractor, is first obtained from the Railroad Engineer.

9. WORK FOR THE BENEFIT OF THE CONTRACTOR:

- A. All temporary or permanent changes in wire lines or other facilities which are considered necessary to the project are shown on the plans; included in the force account agreement between the Department and the Railroad or will be covered by appropriate revisions to same which will be initiated and approved by the State and/or the Railroad.
- B. Should the Contractor desire any changes in addition to the above, then he shall make separate arrangements with the Railroad for same to be accomplished at the Contractor's expense.

10. COOPERATION AND DELAYS:

- A. It shall be the Contractor's responsibility to arrange a schedule with the Railroad for accomplishing stage construction involving work by the Railroad or tenants of the Railroad. In arranging his schedule he shall ascertain, from the Railroad, the lead time required for assembling crews and materials and shall make due allowance therefor. The Contractor shall cooperate with others in the construction of the project to the end that all work may be accomplished to the best advantage.
- B. No charge or claims of the Contractor against either the Department or the Railroad Company will be allowed for hindrance or delay on account of railroad traffic, any work

done by the Railroad company or other delay incident to or necessary for safe maintenance of railroad traffic or for any delays due to compliance with these special provisions.

- C. The Contractor's attention is called to the fact that neither the Department nor the Railroad Company assumes any responsibility for any work performed by others in connection with the construction of the project, and the Contractor shall have no claim whatsoever against the Department, or the Railroad Company for any inconvenience, delay, or additional cost incurred by him on account of such operations by others.

11. TRAINMAN'S WALKWAYS

- A. 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 trainman's use in walking along trains, extending to a line not less than 10' from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while Railroad's protective service is provided shall be removed before the close of each work day. If there is any excavation near the walkway, a handrail, with 10'-0" minimum clearance from centerline of track, shall be placed.

12. COMPLETION AND ACCEPTANCE:

- A. Upon completion of the work, the Contractor shall remove from within the limits of the railroad right of way all machinery, equipment, surplus materials, rubbish or temporary buildings of the Contractor, and leave said rights of way in a neat and orderly condition. After the final inspection has been made and work found to be completed in a satisfactory manner acceptable to the Department and the Railroad Company, the Department will be notified of the Railroad Company's acceptance in writing by the Railroad Company's Chief Engineer or his authorized representative within ten (10) days or as soon thereafter as practicable.

13. SAFETY:

A. GUIDELINES FOR PERSONNEL ON RAILROAD RIGHT-OF-WAY:

1. All persons shall wear hard hats. Appropriate eye and hearing protection must be used. Working in shorts is prohibited. Shirts must cover shoulders, back and abdomen. Working in tennis or jogging shoes, sandals, boots with high heels, cowboy and other slip-on type boots is prohibited. Hard-sole, lace-up footwear, zippered boots or boots cinched up with straps which fit snugly about the ankle are adequate. Safety boots are strongly recommended.
2. No one is allowed within 25' of the centerline of track without specific authorization from the flagman.

3. All persons working near track while train is passing are to lookout for dragging bands, chains and protruding or shifted cargo.
4. No one is allowed to cross tracks without specific authorization from the flagman.
5. All welders and cutting torches working within 25' of track must stop when train is passing.
6. No steel tape or chain will be allowed to cross or touch rails without permission.

B. GUIDELINES EQUIPMENT ON RAILROAD RIGHT-OF-WAY:

1. No crane or boom equipment will be allowed to set up to work or park within boom distance plus 15 ft. of centerline of track without specific permission from railroad official and flagman.
2. No crane or boom equipment will be allowed to foul track or lift a load over the track without flag protection and track time.
3. All employees will stay with their machines when crane or boom equipment is pointed toward track.
4. All cranes and boom equipment under load will stop work while train is passing (including pile driving).
5. Swinging loads must be secured to prevent movement while train is passing.
6. No loads will be suspended above a moving train.
7. No equipment will be allowed within 25' of centerline of track without specific authorization of the flagman.
8. Trucks, tractors or any equipment will not touch ballast line without specific permission from railroad official and flagman.
9. No equipment or load movement within 25' or above a standing train or railroad equipment without specific authorization of the flagman.
10. All operating equipment within 25' of track must halt operations when a train is passing. All other operating equipment may be halted by the flagman if the flagman views the operation to be dangerous to the passing train.
11. All equipment, loads and cables are prohibited from touching rails.

- 12. While clearing and grubbing, no vegetation will be removed from railroad embankment with heavy equipment without specific permission from the Railroad engineer and flagman.
- 13. No equipment or materials will be parked or stored on Railroad's property unless specific authorization is granted from the Railroad engineer.
- 14. All unattended equipment that is left parked on Railroad property shall be effectively immobilized so that it cannot be moved by unauthorized persons.
- 15. All cranes and boom equipment will be turned away from track after each work day or whenever unattended by an operator.

14. INSURANCE

A. In addition to any other forms of insurance or bonds required elsewhere in the contract documents, the Contractor will be required to provide coverage conforming to the requirements of the Federal-Aid Policy Guide outlined under 23 CFR 646A for all work to be performed on Railroad right(s) of way under the terms of the contract by carrying insurance of the following kinds:

1. CONTRACTOR'S COMMERCIAL GENERAL LIABILITY INSURANCE:

a. The Contractor shall furnish an original and one copy of the certificates of insurance and one certified copy of the policy to the Department as evidence that, with respect to the operations he performs on railroad right of way, he carries regular Contractor's Commercial General Liability Insurance including "XCU" coverage providing for limits of liability as follows:

| <u>COVERAGE</u> | <u>MINIMUM COMBINED LIMITS OF LIABILITY</u> |
|---------------------------|---|
| Bodily Injury Liability | \$ 2,000,000 Per Occurrence |
| Property Damage Liability | \$ 2,000,000 Aggregate |

b. If any part of the work is sublet, similar insurance and evidence thereof in the same amounts as required of the Prime Contractor, shall be provided by the subcontractor to cover his operations on railroad right of way. As an alternative, the Prime Contractor may provide insurance for the subcontractor by means of separate and individual policies.

c. Certificates of Insurance holders are to be the addressees given below. Certificates shall make reference to the project, milepost and county.

Division of Highways
 Dept. of Transportation
 c/o State Railroad Agent
 1546 Mail Service Center
 Raleigh, N.C. 27601

Norfolk Southern Railway Company
 c/o Director of
 Risk Management
 Three Commercial Place
 Norfolk, VA 23510-2191

2. RAILROAD PROTECTIVE LIABILITY INSURANCE:

- a. The Contractor shall furnish to the Department an original and one duplicate of the Railroad Protective Liability Insurance Policy with limits of liability as follows:

| <u>COVERAGE</u> | <u>MINIMUM COMBINED LIMITS OF LIABILITY</u> |
|-----------------------------|---|
| Bodily Injury Liability | \$2,000,000 Per Occurrence |
| Property Damage Liability | \$6,000,000 Aggregate Per Annual Policy Period |
| Physical Damage to Property | |

- b. The Railroad Protective Liability Policy is to be written on the ISO/RIMA Form No. CG 00 35 06 90 including Endorsements CG 28 31 11 85 and IL 00 21 or their equivalents.
- c. The named insured, description of the work and designation of the job site to be shown on the Policy are as follows:

Named Insured: Norfolk Southern Railway Company
 Three Commercial Place
 Norfolk, VA 23510-2191

Description and Designation: Removal of existing Bridge No. 337, and construction of a new overhead bridge on SR 1108 (Wake Chapel Road) over the tracks of Norfolk Southern Railway Company in Fuquay-Varina, Wake County, North Carolina near Railroad Milepost NS-252.03 identified as State TIP B-3256 and Federal Project BRZ-1108(12).

- B. The Railroad Protective Liability Policy shall contain a clause requiring that sixty (60) days written notice be given the Department and the Railroad Company prior to cancellation or change.

All other policies and certificates shall contain a clause requiring that thirty (30) days written notice be given the Department and the Railroad Company prior to cancellation or change. The notices shall make reference to the project, milepost and county.

NOTICE TO:

Norfolk Southern Railway Company
 c/o Director of Risk
 Management
 Three Commercial Place
 Norfolk, VA 23510-2191

COPY NOTICE TO:

Division of Highways
 Dept. of Transportation
 c/o State Railroad Agent
 1546 Mail Service Center
 Raleigh, NC 27601

- C. All insurance herein before specified shall be carried until the final inspection and acceptance of the project, or that portion of the project within railroad right of way, by the Department or, in the case of subcontractors, until the Contractor furnishes a letter to the Engineer stating that the subcontractor has completed his subcontracted work within railroad right of way to the satisfaction of the Contractor and that the Contractor will accomplish any additional work necessary on railroad right of way with his own forces. It is understood that the amounts specified are minimum amounts and that the Contractor may carry insurance in larger amounts if he so desires. As to "aggregate limits", if the insurer establishes loss reserves equal to or in excess of the aggregate limit specified in any of the required insurance policies, Contractor shall immediately notify the Department of Transportation and shall cease all operations until the aggregate limit is reinstated. If the insurer establishes loss reserves equal to or in excess of one/half of the aggregate limit, Contractor shall arrange to restore the aggregate limit to at least the minimum amount stated in these requirements. Any insurance policies and certificates taken out and furnished due to these requirements shall be approved by the Department and the Railroad Company as to form and amount prior to beginning work on railroad right of way.

- D. Evidence of insurance as required above shall be furnished for review to the Department at the address shown below after which it will be forwarded by the Department to the Railroad.

Send to Department:

Division of Highways
 Dept. of Transportation
 c/o State Railroad Agent
 1546 Mail Service Center
 Raleigh, NC 27601

15. FAILURE TO COMPLY:

- A. In the event the Contractor violates or fails to comply with any of the requirements of these Special Provisions:

- (1) The Railroad Engineer may require that the Contractor vacate Railroad property.
- (2) The Engineer may withhold all monies due the Contractor on monthly statements.

Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Engineer.

16. PAYMENT FOR COST OF COMPLIANCE:

- A. No separate payment will be made for any extra cost incurred on account of compliance with these special provisions. All such cost shall be included in prices bid for other items of the work as specified in the payment items.

B-3256

Railroad Site Data:

The following information was received from the Railroad on **April, 2003**, and is provided as a convenience to the Contractor in bidding this project. This information is subject to change and the Contractor may, at his discretion, contact the Railroad directly to verify its current accuracy. Since this information is shown as a convenience to the Contractor, but is subject to change, the Contractor shall have no claims whatsoever against either the Railroad or the Department of Transportation for any delays or additional costs incurred based on changes in this information which occur after the above date of receipt.

Type and number of tracks within 50 ft. of project.

1 - Mainline

Number of trains on affected track per day.

4 per day

Type of trains.

Freight

Maximum authorized operating speed of trains.

25 mph

Type and number of RR employees assigned to job.

1 - Flagman