

RAILROAD GENERAL SPECIAL PROVISIONS - CSX TRANSPORTATION, INC.**I. AUTHORITY OF CSXT ENGINEER**

The CSXT Representative shall have final authority in all matters affecting the safe maintenance of CSXT operations and CSXT property, and his or her approval shall be obtained by the Contractor for methods of construction to avoid interference with CSXT operations and CSXT property and all other matters contemplated by the Agreement and these Special Provisions.

II. INTERFERENCE WITH CSXT OPERATIONS

- A. The Contractor shall arrange and conduct its work so that there will be no interference with CSXT operations, including train, signal, telephone and telegraphic services, or damage to CSXT's property, or to poles, wires, and other facilities of tenants on CSXT's Property or right-of-way. Agency or its Contractor shall store materials so as to prevent trespassers from causing damage to trains, or CSXT Property. Whenever Work is likely to affect the operations or safety of trains, the method of doing such Work shall first be submitted to the CSXT Representative for approval, but such approval shall not relieve the Contractor from liability in connection with such Work.
- B. If conditions arising from or in connection with the Project require that immediate and unusual provisions be made to protect train operation or CSXT's property, the Contractor shall make such provision. If the CSXT Representative determines that such provision is insufficient, CSXT or NCDOT may, at the expense of the Contractor, require or provide such provision as may be deemed necessary, or cause the Work to cease immediately.

III. NOTICE OF STARTING WORK

The Contractor shall not commence any work on CSXT Property or rights-of-way until it has complied with the following conditions:

- A. Notify CSXT in writing of the date that it intends to commence Work on the Project. Such notice must be received by CSXT at least ten business days in advance of the date the Contractor proposes to begin Work on CSXT property. The notice must refer to this Agreement by date. If flagging service is required, such notice shall be submitted at least thirty (30) business days in advance of the date scheduled to commence the Work.
- B. Obtain authorization from the CSXT Representative to begin Work on CSXT property, such authorization to include an outline of specific conditions with which it must comply.
- C. Obtain from CSXT the names, addresses and telephone numbers of CSXT's personnel who must receive notice under provisions in the Agreement. Where more than one individual is designated, the area of responsibility of each shall be specified.

IV. WORK CORRESPONDENCE AND SUBMITTALS

Initially, direct all maintenance work related correspondence to the Philadelphia AECOM office, CSXT's General Engineering Contractor. The address is:

Mr. Brian V. Harrison, PE
AECOM
1700 Market Street, Suite 1600
Philadelphia, PA 19103

And a copy to:

Mr. Clyde Gray
CSX Transportation
1610 Forest Avenue, Suite 120
Richmond, VA 23229

All required work plan submittals shall be forwarded to and approved in writing by the Railroad Company prior to proceeding with the work of each applicable phase. Thirty (30) days will be required to review all submittals. An additional thirty (30) days will be required to review any subsequent submissions returned not approved.

V. REQUIRED SUBMITTALS

The Contractor shall submit the following procedures and documents. The Contractor shall obtain written acceptance of each before proceeding with maintenance work or entering railroad right of way.

- A. Means and Methods -The Contractor shall develop a detailed construction schedule indicating the progression of work with specific times when tasks will be performed during the project. This submission will include a walk-through at which time CSXT personnel will be present. Work will not be permitted to commence until the Contractor has provided CSXT with a satisfactory plan that the project will be undertaken without scheduling, performance or safety related issues. Provide a listing of the anticipated equipment to be used, the location of all equipment to be used and insure a contingency plan of action is in place should a primary piece of equipment malfunction. All work in the vicinity of CSXT property that has the potential of affecting CSXT train operations must be submitted and approved by CSXT prior to work being performed. This submission will also include a detailed narrative discussing the coordination of project safety issues between the Contractor and CSXT. The narrative shall address project level coordination and day to day, specific work operations including, but not limited to, equipment operations and temporary works.
- B. Containment System - If a containment system is proposed over the CSXT track(s), the submittal must include a written installation and removal procedure and a plan showing the details of the system. This submission is to include any work platforms with design loads and supporting calculations signed and sealed by a Professional Engineer in the State of North Carolina. The design of the system shall also be in accordance with OSHA and all applicable environmental standards. The containment system must provide 23'-0 vertical clearance measured from the top of rail to the

lowest point of structure within 6'-0" from centerline of track. If the existing vertical clearance is less than 23'-0", no reduction in vertical clearance is permissible. The containment system shall not encroach upon the horizontal clearance envelope of eighteen feet (18') as measured perpendicularly from the centerline of the nearest track. Any proposed variances to the clearances requirements must be provided in writing and will require CSXT approval, which may be withheld for any reason.

- C. Ballast Protection -The proposed ballast protection system shall use filter fabric and indicate the anchorage system. The ballast protection is to extend 25' beyond the proposed limit of work and be continuously maintained to prevent all contaminants from entering the ballast section of all tracks for the entire duration of the project within railroad right of way.
- D. Insurance - Submit all required insurance information in accordance with the current CSXT Insurance Standards for approval. Insurance requirements are listed elsewhere in this document. The insurance policies will be required to be in place and approved prior to any work commencing on or that could potentially impact CSXT right-of-way.
- E. Emergency Action Plan - The Contractor shall develop and submit an emergency action plan indicating the location of the site, contact names and phone numbers, access to the site, instructions for emergency response, and location of the nearest hospitals. The plan shall also cover the Contractor's means of fire suppression that may include the phone number and location of the nearest fire department. The plan shall cover all items required in the event of an emergency at the site.

VI. WORK FOR THE BENEFIT OF THE CONTRACTOR

- A. No temporary or permanent changes to wire lines or other facilities (other than third party fiber optic cable transmission systems) on CSXT property that are considered necessary to the Work are anticipated or shown on the Plans. If any such changes are, or become, necessary in the opinion of CSXT or NCDOT, such changes will be covered by appropriate revisions to the Plans and by preparation of a force account estimate. Such force account estimate may be initiated by either CSXT or NCDOT, but must be approved by both CSXT and NCDOT. The Contractor shall be responsible for arranging for the relocation of the third party fiber optic cable transmission systems, at no cost or expense to CSXT.
- B. Should the Contractor desire any changes in addition to the above, then it shall make separate arrangements with CSXT for such changes to be accomplished at the Contractor's expense.

VII. HAUL ACROSS RAILROAD

- A. If the Contractor desires access across CSXT property or tracks at other than an existing and open public road crossing in or incident to construction of the Project, the Contractor must first obtain the permission of CSXT and shall execute a license agreement or right of entry satisfactory to CSXT; wherein the Contractor agrees to bear all costs and liabilities related to such access.

- B. NCDOT and Contractor shall not cross CSXT's property and tracks with vehicles or equipment of any kind or character, except at such crossing or crossings as may be permitted pursuant to this section.

VIII. COOPERATION AND DELAYS

- A. The Contractor shall arrange a schedule with CSXT for accomplishing work by CSXT. In arranging its schedule, Agency or Contractor shall ascertain, from CSXT, the lead time required for assembling crews and materials and shall make due allowance therefore.
- B. The Contractor may not charge any costs or submit any claims against CSXT for hindrance or delay caused by railroad traffic; work done by CSXT 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 shall cooperate with others participating on this Project to the end that all work may be carried on to the best advantage.
- D. The Contractor understands and agrees that neither NCDOT nor CSXT assume any responsibility for work performed by others in connection with the Project. The Contractor further understands and agrees that they shall have no claim whatsoever against NCDOT or CSXT for any inconvenience, delay or additional cost incurred by the Contractor on account of operations by others.

IX. STORAGE OF MATERIALS AND EQUIPMENT

NCDOT and Contractor shall not store their materials or equipment on CSXT's property or where they may potentially interfere with CSXT's operations, unless NCDOT or Contractor has received CSXT Representative's prior written permission. NCDOT and Contractor understand and agree that CSXT will not be liable for any damage to such materials and equipment from any cause and that CSXT may move, or require NCDOT or Contractor to move, such material and equipment at NCDOT's or Contractor's sole expense. To minimize the possibility of damage to the railroad tracks resulting from the unauthorized use of equipment, all grading or other construction equipment that is left parked near the tracks unattended by watchmen shall be immobilized to the extent feasible so that it cannot be moved by unauthorized persons.

X. CONSTRUCTION PROCEDURES

- A. Work on CSXT property shall be subject to CSXT inspection and approval.
- B. Work on CSXT property shall be in accord with CSXT's written outline of specific conditions and with these Special Provisions.
- C. Contractor shall observe the terms and rules of the CSXT Safe Way manual, which Agency and Contractor shall be required to obtain from CSXT, and in accord with any other instructions furnished by CSXT or CSXT's Representative.

- D. Contractor access will be limited to the immediate project area only. The CSXT right-of-way may not be used for contractor access to the project site.
- E. The Contractor will be required to abide by the provisions of the NCDOT/CSXT Railroad Agreement. Periodically, throughout the project duration, the Contractor will be required to meet, discuss and, if necessary, take immediate action at the discretion of CSXT personnel to comply with provisions of that agreement and these specifications.

XI. MAINTENANCE OF DITCHES ADJACENT TO CSXT TRACKS

The Contractor shall maintain all ditches and drainage structures free of silt or other obstructions that may result from their operations. All such maintenance and repair of damages due to the Contractor's operations shall be performed at the Contractor's expense.

XII. FLAGGING / INSPECTION SERVICE

- A. CSXT has sole authority to determine the need for flagging required to protect its operations and property. In general, flagging protection will be required whenever Agency or Contractor or their equipment are, or are likely to be, working within fifty (50) feet of live track or other track clearances specified by CSXT, or over tracks.
- B. All equipment operations that could potentially impact CSXT right-of-way must be coordinated with the CSXT Flagman.
- C. NCDOT shall reimburse CSXT directly for all costs of flagging that is required on account of work within CSXT property shown in the Plans, or that is covered by an approved plan revision, supplemental agreement or change order. All bills shall be prepared in accordance with the Federal-Aid Policy Guide 23 CFR 646B.
- D. The Contractor shall give a minimum of 10 days advance notice to CSXT Representative for anticipated need for flagging service. No work shall be undertaken until the flag person(s) is/are at the job site. If it is necessary for CSXT to advertise a flagging job for bid, it may take up to 90 days to obtain this service and CSXT shall not be liable for the cost of delays attributable to obtaining such service.
- E. CSXT shall have the right to assign an individual to the site of the Project to perform inspection service whenever, in the opinion of CSXT Representative, such inspection may be necessary. NCDOT shall reimburse CSXT for the costs incurred by CSXT for such inspection service. Inspection service shall not relieve the Contractor from liability for its Work.
- F. CSXT shall render invoices for, and NCDOT shall pay for, the actual pay rate of the flag persons and inspectors used, plus standard additives, whether that amount is above or below the rate provided in the Estimate. If the rate of pay that is to be used for inspector or flagging service is changed before the work is started or during the progress of the work, whether by law or agreement between CSXT and its employees, or if the tax rates on labor are changed, bills will be rendered by CSXT and paid by NCDOT using the new rates. The Contractor shall perform their operations that

require flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

XIII. CLEAN-UP

The Contractor, upon completion of the Project, shall remove from CSXT's Property any temporary grade crossings, any temporary erosion control measures used to control drainage, all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings belonging to NCDOT or Contractor. The Contractor, upon completion of the Project, shall leave CSXT Property in neat condition, satisfactory to CSXT Representative.

XIV. FAILURE TO COMPLY

If the Contractor violates or fails to comply with any of the requirements of these Special Provisions, CSXT may require the Contractor to vacate CSXT Property; and CSXT may cure such failure and NCDOT shall reimburse CSXT for the cost of curing such failure. NCDOT shall deduct monies owed to the Contractor to cover such costs.

**INSURANCE SPECIAL PROVISIONS FOR
CSX TRANSPORTATION, INC.**

- A. In addition to any other forms of insurance or bonds required elsewhere in the contract documents, the Prime 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 as listed below.

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.

1. CONTRACTOR'S COMMERCIAL GENERAL LIABILITY INSURANCE:

The Contractor shall procure and maintain, at its expense, an original and one certified copy of the policy **to the Department** as evidence of:

- a. Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against CSXT and its Affiliates
- b. Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than \$5,000,000 in combined single limits for bodily injury and property damage per occurrence, and covering the contractual liabilities assumed under this Agreement
- c. Business automobile liability insurance with available limits of not less than \$500,000 combined single limit for bodily injury and/or property damage per occurrence
- d. Such other insurance as CSXT may reasonably require.

Upon request, Licensee shall provide CSXT with a copy of Licensee's applicable insurance policies. A policy endorsement naming CSXT as an additional insured and specifying such coverage shall be furnished to CSXT, and the required coverage will be kept in force until all of the licensee's obligations under this Agreement have been fully discharged and fulfilled, or until Licensee shall have been specifically released by a written instrument signed by an authorized officer of CSXT.

The insurance policies shall provide that the insurance carrier must give CSXT notice at least thirty (30) days in advance of cancellation of coverage, of any change in coverage, or of cancellation of the policy. Notwithstanding any provisions of this Section, the liability assumed by Licensee shall not be limited to the required insurance.

2. **RAILROAD PROTECTIVE LIABILITY INSURANCE:**

The Contractor shall furnish **to the Department** an original and one duplicate of the Railroad Protective Liability Insurance Policy to protect CSXT in connection with operations to be performed on or adjacent to CSXT right of way. The specifications for proper evidence of insurance are as follows:

- a) The Insurer must be financially stable and rated A- or better in A. M. Best Insurance Reports.
- b) The policy must be written using the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
- c) Named Insured and Address:

**CSX Transportation, Inc.
Risk Management (C- 907)
500 Water Street
Jacksonville, FL 32202**

- d) Limits of Liability: \$5,000,000 per occurrence, \$10,000,000 annual aggregate required.
- e) Name and Address of Contractor must be shown on the Declarations page.
- f) Name and Address of the Project Sponsor must be shown on the Declarations page.

Description of operations must appear on the Declarations page and must match the project description, including project or contract identification numbers.

The Description and Designation shall read:

Cleaning and Painting of Existing Bridge Girders over the tracks of CSX Transportation, Inc. on I-277 Bridge No. 332, in Mecklenburg County, North Carolina near Railroad Milepost SF-330.6 identified as State Project 42580.3.4 (BK-5102D) and Federal Project BRIMS-0277(13).

Authorized endorsements:

A. Must

- 1) **Pollution Exclusion Amendment - CG 28 31**
(Not required with CG 00 35 01 96 and newer versions)
- 2) **Delete Common Policy Conditions** – Section E. Premiums

B. Acceptable

- 1) Broad Form Nuclear Exclusion - IL 00 21
- 2) 30-day Advance Notice of Non-renewal
- 3) Required State Cancellation Endorsement
- 4) Quick Reference or Index - CL/IL 240

C. Unacceptable

- 1) Any Pollution Exclusion Endorsement except CG 28 31
- 2) Any Punitive or Exemplary Damages Exclusion
- 3) Any endorsement not named in A or B
- 4) Any type of deductible policy

B. Prior to entry on CSXT right-of-way, the **original** Railroad Protective Liability Insurance Policy shall be submitted by the Prime Contractor to the Department at the address below for its review and transmittal to CSXT. In addition, certificates of insurance evidencing the Prime Contractor’s Commercial General Liability Insurance shall be “issued” to CSXT **and** the Department at the addresses below, and **forwarded to the Department** for its review and transmittal to CSXT. No work will be permitted by CSXT on its right-of-way until it has reviewed and approved the evidence of insurance required herein.

DEPARTMENT:

Department of Transportation
Rail Division
C/O David Hinnant, State Railroad Agent
1556 Mail Service Center
Raleigh NC 27699-1556

RAILROAD:

CSX Transportation, Inc.
Risk Management (C-907)
500 Water Street
Jacksonville, FL 32202

C. The insurance required herein shall in no way serve to limit the liability of Department or its Contractors under the terms of this agreement.

D. No extra allowance will be made for the insurance required hereunder; the entire cost of same is to be included in the unit contract price bids for the several pay items.

SPECIAL PROVISIONS FOR PROTECTION OF RAILWAY INTEREST - NORFOLK SOUTHERN RAILROAD

Under the terms of these provisions, the North Carolina Department of Transportation shall hereinafter be called "Department", and the Norfolk Southern Railway Company shall hereinafter be called "Railroad".

1. AUTHORITY OF RAILROAD ENGINEER AND DEPARTMENT ENGINEER:

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

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

2. NOTICE OF STARTING WORK:

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

(1) Give the Railroad written notice, with copy to the Department Engineer who is designated to be in charge of the work, at least ten (10) days in advance of the date he proposes to begin work on Railroad right of way to:

Office of Chief Engineer - Bridges & Structures
Norfolk Southern Corporation
1200 Peachtree Street NE
Internal Box 142
Atlanta, Georgia 30309

(2) Obtain written approval from the Railroad of Railroad Protective Liability Insurance coverage as required by section 14 herein. The Railroad does not accept notation of Railroad protective insurance on a certificate of liability insurance form or Binders as Railroad must have the full original countersigned policy. The policy will be reviewed for compliance prior to written approval. Due to the number of projects system-wide, it typically takes a minimum of 30-45 days for Railroad to review.

(3) Obtain Railroad's Flagging Services as required by section 7 herein.

(4) Obtain written authorization from the Railroad to begin work on Railroad's right of way, such authorization to include an outline of specific conditions with which he must comply.

(5) Furnish a schedule for all work within the Railroad right of way as required by section 7B1 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.

3. 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 or to poles, wires, and other facilities of tenants on the right of way of the Railroad. 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 or inspection service required by the Railroad is available at the job site.
- B. Whenever work within Railroad's right 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 Railroad's Division 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.

4. TRACK CLEARANCES:

- A. The minimum track clearances to be maintained by the Contractor during construction are as follows:
- (1) Horizontal clearance measured from centerline of track to falsework:
- 13'-0" on tangent track
14'-0" on curved track
- (2) Vertical clearance from top of rail to falsework: 22'-0"
- B. However, before undertaking any work within Railroad's right of way, or before placing any obstruction over any track, the Contractor shall:
- (1) Notify the Railroad Engineer at least 72 hours in advance of the work.
- (2) Receive assurance from the Railroad Engineer that arrangements have been made for flagging service as may be necessary.

- (3) Receive permission from the Railroad Engineer to proceed with the work.
- (4) Ascertain that the Department Engineer has received copies of notice to the Railroad and of the Railroad's response thereto.

5. CONSTRUCTION PROCEDURES:

A. General:

Construction work and operations by the Contractor on Railroad's property shall be:

- (1) Subject to the inspection and approval of the Railroad.
- (2) In accord with the Railroad's written outline of specific conditions.
- (3) In accord with the Railroad's general rules, regulations and requirements including those relating to safety, fall protection and personal protective equipment.
- (4) In accord with these Special Provisions.

B. Work Plan

A work plan detailing all aspects of the maintenance activities on and around railroad right of way must be submitted to the Railroad and approved in writing prior to entry to or any work beginning in the railroad right of way.

The work plan shall include a detailed construction schedule for the duration of the project clearly indicating the time periods for all work on and around railroad right of way.

Provide a listing and location of the anticipated equipment to be used and insure a contingency plan of action is in place should a primary piece of equipment malfunction. All work in the vicinity of railroad property that has the potential of affecting train operations must be submitted and approved by the railroad prior to work being performed.

If a containment system is proposed over the track(s), the submittal must include a written installation and removal procedure and a plan showing the details of the system. This submission is to include any work platforms with design loads and supporting calculations signed and sealed by a Professional Engineer in the State of North Carolina. The design of the system shall also be in accordance with OSHA and all applicable environmental standards. The containment system must provide 22'-0" vertical clearance measured from the top of rail to the lowest point of containment structure within 6'-0" from centerline of track. If the existing vertical clearance is less than 22'-0", no reduction in vertical clearance is permissible. The containment system shall not encroach upon the horizontal clearance envelope of fourteen feet (14') as measured perpendicularly from the centerline of the nearest track. Any proposed variances to the clearance requirements must be provided in writing and will require railroad approval, which may be withheld for any reason.

C. 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 and provide and maintain any erosion control measures as required. The Contractor will promptly repair eroded areas within Railroad's right of way and 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.

D. Storage of Materials and Equipment:

Materials and equipment shall not be stored where they will interfere with Railroad operations, nor on the right of way of the Railroad without first having obtained permission from the Railroad Engineer, and such permission will be with the understanding that the Railroad 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.

E. Cleanup:

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

6. 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.

7. FLAGGING SERVICES:

A. Requirements:

Flagging services will not be provided until the Contractor's insurance has been reviewed and approved by the Railroad.

Under the terms of the agreement between the Department and 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, 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 Engineer or performs work that has not been scheduled with the Railroad Engineer, 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 the 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 Department nor Railroad 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) No later than the time that approval is initially requested to begin work on Railroad right of way, the Contractor shall furnish to the Department and Railroad 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, Department, and Railroad. 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 Engineer at least 10 working days of advance written notice of intent to begin work within Railroad's 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 Engineer at least 3 working days of advance notice before resuming work on Railroad's right of way. Such notices shall include sufficient details of the proposed work to enable the Railroad Engineer to determine if flagging will be required. If such notice is in writing, the Contractor shall furnish the Department Engineer a copy; if notice is given verbally, it shall be confirmed in writing with a copy to the Department Engineer.

- (4) 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.
- (5) If, after the flagman is assigned to the project site, emergencies arise which require the flagman's presence elsewhere, 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 estimated cost of flagging service is the current rate per day based on a 10-hour work day. This cost includes the base pay for each flagman, overhead, and a 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.
- (3) 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.
- (4) Railroad work involved in preparing and handling bills will also be charged to the Department. Charges to the Department by the Railroad shall be in accordance with applicable provisions of the Federal-Aid Policy Guide, Title 23 Subchapter B, Part 140I and Subchapter G, Part 646B issued by the Federal Highway Administration on December 9, 1991, including all current amendments. Flagging costs are subject to change. The above estimates of flagging costs are provided for information only and are not binding in any way.

D. Verification:

- (1) Railroad's flagman will electronically enter flagging time via Railroad's electronic billing system. Any complaints concerning flagman or flagmen must be resolved in a timely manner. If need for flagman or flagmen is questioned, please contact Railroad's System Engineer of Public Improvements at (404) 529-1641. All verbal complaints must be confirmed in writing by the Contractor within 5 working days with copy to the Department Engineer. Address all written correspondence to:

Office of Chief Engineer-Bridges & Structures
Attn: System Engineer of Public Improvements
Norfolk Southern Corporation
1200 Peachtree St. NE
Internal Box 142
Atlanta, GA 30309

- (2) The Railroad flagman assigned to the project will be responsible for notifying the Department 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 Department Engineer will document such notification and general flagging times for verification purposes in the project records. When requested, the Department Engineer will also sign the flagman's diary showing daily time spent and activity at the project site. Also if requested, the flagman will cooperate with the Department by submitting daily timesheets or signing the Department Engineer's diary showing daily time spent at the project site.

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 Department 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 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. The approval process for a temporary private crossing agreement executed between the Contractor and Railroad normally takes 90 days.

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 and 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 Department and/or 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 the work. 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 Railroad will be allowed for hindrance or delay on account of railroad traffic, any work done by the Railroad 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 Railroad 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 Railroad for any inconvenience, delay, or additional cost incurred by him on account of such operations by others.

11. TRAINMAN'S WALKWAYS:

Along the outer side of each exterior track of multiple operated tracks, 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. GUIDELINES FOR PERSONNEL ON RAILROAD'S RIGHT OF WAY:

- A. 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. Wearing Safety boots is strongly recommended. In the vicinity of at-grade crossings, it is strongly recommended to wear reflective vests.
- B. No one is allowed within 25' of the centerline of track without specific authorization from the flagman.

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

13. GUIDELINES FOR EQUIPMENT ON RAILROAD'S RIGHT OF WAY:

- A. 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 Engineer and flagman.
- B. No crane or boom equipment will be allowed to foul track or lift a load over the track without flag protection and track time.
- C. All employees will stay with their machines when crane or boom equipment is pointed toward track.
- D. All cranes and boom equipment under load will stop work while train is passing (including pile driving).
- E. Swinging loads must be secured to prevent movement while train is passing.
- F. No loads will be suspended above a moving train.
- G. No equipment will be allowed within 25' of centerline of track without specific authorization of the flagman.
- H. Trucks, tractors or any equipment will not touch ballast line without specific permission from railroad official and flagman.
- I. No equipment or load movement within 25' or above a standing train or railroad equipment without specific authorization of the flagman.
- J. 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.
- K. All equipment, loads and cables are prohibited from touching rails.
- L. While clearing and grubbing, no vegetation will be removed from Railroad embankment with heavy equipment without specific permission from the Railroad Engineer and flagman.

- M. No equipment or materials will be parked or stored on Railroad's property unless specific authorization is granted from the Railroad Engineer.
- N. All unattended equipment that is left parked on Railroad's property shall be effectively immobilized so that it cannot be moved by unauthorized persons.
- O. 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 under the terms of the contract and specifications, the Prime Contractor will be required to provide coverage conforming to the requirements of the Federal-Aid Policy Guide outlined under Title 23 Subchapter G, Part 646A for all work to be performed on Railroad's right of way by carrying insurance of the following kinds and amounts:

- (1) **Commercial General Liability Insurance** having a combined single limit of not less than \$2,000,000 per occurrence for all loss, damage, cost and expense, including attorneys' fees, arising out of bodily injury liability and property damage liability during the policy period. Said policy shall include explosion, collapse, and underground hazard (XCU) coverage, shall be endorsed to name Railroad specified in section 14A2(c) below both as the certificate holder and as an additional insured, and shall include a severability of interests provision.
- (2) **Railroad Protective Liability Insurance** having a combined single limit of not less than \$2,000,000 each occurrence and \$6,000,000 in the aggregate applying separately to each annual period. If the project involves track over which passenger trains operate, the insurance limits required are not less than a combined single limit of \$5,000,000 each occurrence and \$10,000,000 in the aggregate applying separately to each annual period. Said policy shall provide coverage for all loss, damage or expense arising from bodily injury and property damage liability, and physical damage to property attributed to acts or omissions at the job site.

The standards for the Railroad Protective Liability Insurance are as follows:

- (a) The insurer must be rated A- or better by A.M. Best Company, Inc.
- (b) The policy must be written using one of the following combinations of Insurance Services Office ("ISO") Railroad Protective Liability Insurance Form Numbers:
 - (1) CG 00 35 01 96 and CG 28 31 10 93; or
 - (2) CG 00 35 07 98 and CG 28 31 07 98; or
 - (3) CG 00 35 10 01; or
 - (4) CG 00 35 12 04
- (c) The named insured shall read:

Norfolk Southern Railway Company
 Three Commercial Place
 Norfolk, Virginia 23510-2191
 Attn: Risk Management

- (d) The description of operations must appear on the Declarations, must match the project description in this agreement, and must include the appropriate Department project and contract identification numbers.

The Description and Designation shall read:

Description and Designation: Cleaning and Painting existing bridge girders on I-277 Bridge No. 332 over the tracks of Norfolk Southern Railway Company in Mecklenburg County, North Carolina identified as State TIP BK-5102D and Federal Project BRIMS-0277(13).

- (e) The job location must appear on the Declarations and must include the city, state, and appropriate highway name/number.

NOTE: Do not include any references to milepost on the insurance policy.

- (f) The name and address of the prime contractor must appear on the Declarations.
- (g) The name and address of the Department must be identified on the Declarations as the "Involved Governmental Authority or Other Contracting Party."

- (h) Other endorsements/forms that will be accepted are:

- (1) Broad Form Nuclear Exclusion – Form IL 00 21
- (2) 30-day Advance Notice of Non-renewal or cancellation
- (3) 60-day written notice to the Department prior to cancellation or change
- (4) Quick Reference or Index Form CL/IL 240

- (i) Endorsements/forms that are **NOT** acceptable are:

- (1) Any Pollution Exclusion Endorsement except CG 28 31
- (2) Any Punitive or Exemplary Damages Exclusion
- (3) Known injury or Damage Exclusion form CG 00 59
- (4) Any Common Policy Conditions form
- (5) Any other endorsement/form not specifically authorized in section 14A2(h) above.

- D. If any part of the work is sublet, similar insurance, and evidence thereof as specified in section 14A1 above, shall be provided by or on behalf of the subcontractor to cover its operations on Railroad's right of way. As an alternative, the Prime Contractor may provide insurance for the subcontractor by means of separate and individual policies.

- E. Prior to entry on Railroad's right of way, the original and one duplicate copy of the Railroad Protective Liability Insurance Policy shall be submitted by the Prime Contractor to the Department at the address below for its review and transmittal to the Railroad. In addition, certificates of insurance evidencing the Prime Contractor's and any subcontractors' Commercial General Liability Insurance shall be issued to the Department and Railroad at the addresses below, and one certified copy of the Prime Contractor and any Subcontractors policy is to be forwarded to the Department for its review and transmittal to the Railroad. All policies and certificates of insurance shall state that the insurance coverage will not be suspended, voided, canceled, or reduced in coverage or limits without (30) days advance written notice to the Department and Railroad. The Railroad will not permit any work on its right of way until it has reviewed and approved the evidence of insurance required herein.

DEPARTMENT:

NCDOT Rail Division
 Engineering & Safety Branch
 C/O State Railroad Agent
 1556 Mail Service Center
 Raleigh, NC 27699-1556

RAILROAD:

Risk Management
 Norfolk Southern Railway Company
 Three Commercial Place
 Norfolk, Virginia 23510-2191

- F. The insurance required herein shall in no way serve to limit the liability of Department or its Contractors under the terms of this agreement.
- E. The insurance amounts specified are minimum amounts and 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, the Contractor shall immediately notify the Department 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, the 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 Railroad as to form and amount prior to beginning work on Railroad's right of way.
- F. All insurance herein before specified shall be carried until the final inspection and acceptance of the project by the Department and Railroad, or acceptance of that portion of the project within Railroad's right of way. At this point, no work or any other activities by the Contractor shall take place in Railroad's right of way without written permission from both the Department and Railroad.

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's property.

- (2) The Department 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 Department Engineer and the Railroad Engineer.

16. PAYMENT FOR COST OF COMPLIANCE:

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 the various prices bid to perform the work.

17. COMPLETION AND ACCEPTANCE:

Upon completion of the work, the Contractor shall remove from within the limits of the Railroad's right of way all machinery, equipment, surplus materials, rubbish or temporary buildings of the Contractor, and leave said right 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 Railroad, the Department will be notified of the Railroad's acceptance in writing by the Railroad's Chief Engineer or his authorized representative within ten (10) days or as soon thereafter as practicable.