



**SPECIAL PROVISION  
FOR  
MAINTENANCE WORK ON RAILROAD RIGHT-OF-WAY  
(CBEC RAILWAY INC.)**

**Pottawattamie County**

**ESL-1642(660)--7S-78**

**Effective Date  
December 15, 2009**

**THE STANDARD SPECIFICATIONS, SERIES 2009, ARE AMENDED BY THE FOLLOWING MODIFICATIONS AND ADDITIONS. THESE ARE DEVELOPMENTAL SPECIFICATIONS AND THEY PREVAIL OVER THOSE PUBLISHED IN THE STANDARD SPECIFICATIONS.**

**A. DESCRIPTION**

This Special Provision involving construction or maintenance of roadways and trails that do not require additional property rights or facility adjustments from the CBEC Railway Inc. (CBEC).

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

The CBEC representative will be Ron Hankins, CBEC Railway Inc., 4299 NW Urbandale Drive, Urbandale, Iowa 50322 Telephone (515) 281-2798.

The Contracting Authority has negotiated and obtained an agreement with the CBEC for the work on CBEC ROW. The Contractor is not required to enter into an agreement with the CBEC.

The Contractor shall provide track protection for all equipment operating within 25 feet (7.62 m) from nearest rail.

**B. REQUESTS FOR INFORMATION**

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

**C. 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 Engineer for submittal to the CBEC prior to commencement of work. When construction activities are on or about railroad property this schedule shall also include the anticipated dates when the CBEC facilities may be impacted by construction activities.

#### **D. CBEC REPRESENTATIVES**

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

- When any part of any equipment is standing or being operated within 25 feet (7.62 m), 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 25 foot (7.62 m) 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 CBEC, track or other CBEC facilities may be subject to settlement or movement.
- During any clearing, grubbing, excavation, or grading in proximity to CBEC facilities, which, in the opinion of CBEC, may endanger CBEC facilities or operations.
- During the Contractor's operations when, in the opinion of CBEC, CBEC facilities, including, but not limited to, tracks, buildings, signals, wire lines, or pipe lines, may be endangered.
- The Contractor shall arrange with the CBEC to provide the adequate number of flag persons to accomplish the work.

#### **E. INSURANCE**

The Contractor shall not begin work upon or over CBEC's ROW until the Engineer and CBEC have been furnished the insurance policies, binders, certificates, and endorsements required by the contract documents and the CBEC has notified the Engineer that such insurance provisions are in accordance with the contract documents. The insurance shall be kept in full force and effect during the performance of work and thereafter until the Contractor removes all tools, equipment, and material from CBEC's property and cleans the premises in a manner reasonably satisfactory to CBEC.

In addition to providing to CBEC the insurance binders, endorsements, and certificates described below, the Contractor shall also provide the subcontractor insurance endorsements that are described in Article F; ASSIGNMENT, SUBCONTRACTING, AND INSURANCE ENDORSEMENTS.

The Contractor shall provide the following kinds of insurance in addition to the requirements of Article 1107.02 of the Standard Specifications.

##### **1. Commercial General Liability Insurance**

Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance shall be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy shall also contain the following endorsement, which shall be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "CBEC Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

##### **2. Business Automobile Coverage Insurance**

Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

The policy shall contain the following endorsements, which shall be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "CBEC Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90), if required by law.

**NOTE:** Alternate Liability Insurance Limits: The CBEC will accept Contractor's Commercial General Liability insurance limits of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$2,000,000, and will accept Business Automobile Insurance containing a combined single limit of at least \$2,000,000 per occurrence or claim if the Contractor secures Railroad Protective Liability Insurance coverage with a combined single limit of \$5,000,000 per occurrence with a \$10,000,000 aggregate instead of the limits described in Article 1107.02, B, of the Standard Specifications.

### **3. Workers Compensation and Employers Liability Insurance**

Coverage shall include, but not limited to:

- The Contractor's statutory liability under the workers' compensation laws of the State of Iowa.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit, \$500,000 each employee.

If the Contractor is self-insured, evidence of the State of Iowa's approval and excess workers compensation coverage shall be provided. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall contain the following endorsement, which shall be stated on the certificate of insurance:

Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing CBEC in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

### **4. Umbrella or Excess Insurance**

If the Contractor utilizes umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

5. All policy(ies) required above (except worker's compensation and employers liability shall include the CBEC as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to the CBEC as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for the CBEC's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions contained in the specifications.
6. Punitive damages exclusion, if any, shall be deleted (and the deletion indicated on the certificate of insurance), unless the law governing prohibits all punitive damages that might arise in connection with this contract.
7. The Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors, and employees. This waiver shall be stated on the certificate of insurance.
8. Prior to commencing the work, the Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this contract.
9. All insurance policies shall be written by a reputable insurance company acceptable to the CBEC or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of Iowa.
10. The fact that insurance is obtained by the Contractor or by the CBEC on behalf of the Contractor shall not be deemed to release or diminish the liability of the Contractor, including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by the CBEC from the Contractor or any third party shall not be limited by the amount of the required insurance coverage.

**F. 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 Engineer. 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.

**G. 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 CBEC 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.

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

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

If at any time the Engineer or the CBEC 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 Engineer may suspend the work until suitable, adequate, and proper protective measures are adopted and provided.

**H. SAFETY MEASURES-PROTECTION OF OPERATIONS**

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

**1. Obstructions to View**

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

**2. 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 CBEC. The Contractor shall not perform any work that may disturb the stability of any area that may adversely affect the CBEC'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 CBEC to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the CBEC's operations in the vicinity.

### **3. 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 CBEC so as to adversely affect any of the CBEC's operations, equipment or any third parties with permitted facilities on the CBEC'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 CBEC'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 CBEC or any part thereof, or property of others. The Contractor shall not obstruct or interfere with existing ditches or drainage facilities.

### **I. 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 CBEC's use in walking along trains, extending to a line not less than 12 feet (3.66 m) from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while CBEC'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 (2.59 m) horizontally from center line of tangent track or 9.5 feet (2.9 m) horizontally from centerline of curved track.

### **J. NO INTERFERENCE WITH CBEC'S OPERATION**

The Contractor shall not interfere with the constant, continuous, and uninterrupted use of the tracks, property, and facilities of the CBEC its lessees, licensees, or others, unless specifically permitted by this specification, or specifically authorized in advance by the CBEC. When not in use, the Contractor's machinery and materials shall be kept at least 50 feet (15.24 m) from the centerline of CBEC's nearest active track, and there shall be no crossings of CBEC's tracks except at existing open public crossings or as provided by agreement.

### **K. TRAFFIC CONTROL**

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

### **L. INDEMNITY**

As used in this Article, "CBEC" includes other railroad companies using the CBEC'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 CBEC'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 CBEC, or property in its care or custody).

The Contractor shall indemnify, hold harmless, and defend to the extent allowed by law the CBEC 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 CBEC, or except to the extent caused by the gross negligence or willful misconduct of the CBEC.

### **M. MAINTENANCE OF CBEC 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 CBEC's ROW, and repair any other damage to CBEC property, or its tenants; at no additional cost to the CBEC.

### **N. COMMUNICATIONS AND SIGNAL LINES**

If required, CBEC will rearrange its communications and signal lines, grade crossing warning devices, train signals and tracks, and facilities that are in use and maintained by CBEC's forces in connection with

its operation at the expense of the Contracting Authority. This work will be performed by the CBEC and it is not a part of the contract.

#### **O. FIBER OPTIC CABLE SYSTEMS**

Fiber optic cable systems may be buried on the CBEC'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 CBEC to determine if fiber optic cable is buried anywhere on the CBEC'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 CBEC's Crossing Area.

#### **P. COOPERATION**

The CBEC 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 CBEC's ROW in performing the work.

#### **Q. WAIVER OF BREACH**

The waiver by the CBEC 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 CBEC to avail itself of any subsequent breach thereof.

#### **R. RAILROAD FLAGGING**

##### **1. Flagging and Notification**

The Contractor shall notify the CBEC and Engineer at least 15 working days in advance of the commencement of work and at least ten working days in advance of proposed performance of any work by the Contractor in which any person or equipment will be within 25 feet (7.62 m) 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 25 feet (7.62 m) of any track. This notice shall include the following:

- Project Number
- Contractor's name
- Date flagging is needed
- Location of flagging services to be provided
- Duration of flagging

No work shall be performed, and no person, equipment, machinery, tools, materials, vehicles, or things shall be located, operated, placed, or stored within 25 feet (7.62 m) of any of CBEC's track at any time, for any reason, unless and until a railroad flagger is provided to watch for trains.

Upon receipt of such ten day notice, the CBEC will determine and inform the Contractor whether a flagger need be present 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 CBEC, such services will be provided at Contractor's expense with the understanding that if the CBEC provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. All flagging charges shall be handled directly between the City's Contractor and CBEC's agent, Iowa Interstate. The Contractor will be responsible to pay CBEC or its agent directly for all flagging charges associated with this project within 30 days of receipt of the CBEC's or its agent's billing.

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

The Contractor shall provide the CBEC a minimum of two working days notice prior to the completion of work for which the flagging services were requested.

**2. Flagger Rate of Pay**

The rate of pay per hour for each flagger will be the prevailing hourly rate in effect for an eight hour day for the class of worker used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and UC, supplemental pension, Employee, Liability and Property Damage, and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect on the day of execution of the agreement between the CBEC and the Contracting Authority. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the CBEC and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Contractor shall pay on the basis of the new rates and charges.

**3. Reimbursement to the CBEC**

Reimbursement to the CBEC' agent, Iowa Interstate, by the Contractor, shall cover the full eight hour day during which any flagger is furnished, unless they can be assigned to other CBEC work during a portion of such day. Reimbursement will not be required for the portion of the day during which the flagger is engaged in other CBEC work. Reimbursement will also be required for any day not actually worked by said flagger following assignment to work on the project for which the CBEC is required to pay the flagger and which could not reasonably be avoided by the CBEC by assignment of such flagger to other work, even though the Contractor may not be working during such time.

In the event the Contractor fails to reimburse the CBEC or its agent, the Contracting Authority will reimburse the CBEC within 30 calendar days of the Contractor defaulting on the payment (default is defined as non-payment within 30 calendar days of final billing by the CBEC to the Contractor). Failure of the Contractor to reimburse the CBEC may result in a reduction or suspension of the Contractors bidding qualifications according to Article 1102.03 of the Standard Specifications.

**4. Documentation and Reimbursement to the Contractor**

The Contractor shall initially pay invoices for all flagging costs in conjunction with railroad flaggers when any of the conditions identified in this Special Provision, warrant a flagger. The Contracting Authority will reimburse the Contractor for any daily cost that exceeds \$700 per day for the cost of flagger services provided by the CBEC. The Contracting Authority will reimburse the Contractor 100% of the total cost of flagger services, as deemed necessary by the CBEC, that does not meet any of the conditions identified in this Special Provision, unless the flagger's presence on the project was a result of the Contractor's communication, or lack of communication, with the CBEC. The Contracting Authority will reimburse the Contractor following completion of all work necessitating flagging operations by the CBEC and receipt of documentation verifying the CBEC invoices have been paid.

For each day that railroad flaggers have been provided, the Contractor shall document daily the conditions on the project site that warrant the flagger. The Contractor shall submit the daily records to the Engineer each week. The Engineer will review the daily logs and promptly notify the Contractor if any information in the daily log is believed to be incorrect.

The Contractor shall forward copies of the invoices received from the CBEC for flaggers and a summary of the flagging costs incurred that exceed the Contractors' requirements described in this Special Provision, to the Engineer with a request for payment for the additional railroad flagger costs. The Engineer will review the Contractor's daily logs against the CBEC's invoice and make payment for the eligible costs in accordance with Article 1109.03, of the Standard Specifications.

The Contractor shall be responsible to CBEC for all flagging costs. Flagging costs for subcontracted work shall be the responsibility of the Contractor. Reimbursement from subcontractors to the Contractor shall be the sole responsibility of the Contractor.

The Contractor shall forward, to the Engineer, copies of payments made to CBEC for flagging costs.

#### **S. TEMPORARY CROSSINGS**

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

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 CBEC 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 will always be required during use of a temporary crossing. The billing, Contractor payment provisions, and final Contractor payment requirements for crossing costs except flagging are to be covered as agreed to in a separate agreement between the Contractor and CBEC. Prior notice of need for a temporary crossing needs to allow for CBEC site review, cost estimating, securing material, and work crew scheduling and will vary. The Contractor should contact the CBEC prior to making a bid when a temporary crossing is required.

#### **T. 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 CBEC to use and maintain its property, not inconsistent with highway purposes, including the right and power of the CBEC to construct, maintain, repair, renew, use, operate, change, modify, or relocate CBEC 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 CBEC, not inconsistent with highway purposes and at CBEC'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 CBEC's property, and others) and the right of CBEC to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

#### **U. 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 CBEC for any work performed. The Contractor shall indemnify and hold harmless CBEC 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 CBEC to the extent permitted by law.

#### **V. METHOD OF MEASUREMENT AND BASIS OF PAYMENT**

CBEC Insurance Provisions required by this specification above those required by Division 11 of the Standard Specifications will be measured as a lump sum. The cost of the insurance provisions above that required by Division 11 of the Standard Specifications shall be included in the lump sum bid price for CBEC Insurance Provisions.