



**SPECIAL PROVISION  
FOR MAINTENANCE WORK ON  
RAILROAD RIGHT-OF-WAY  
(CANADIAN NATIONAL / CEDAR RIVER RAILROAD COMPANY)**

**Bremer County  
STP-U-8190(626)--70-09**

**Effective Date  
February 15, 2011**

**THE STANDARD SPECIFICATIONS, SERIES 2009, ARE AMENDED BY THE FOLLOWING MODIFICATIONS AND ADDITIONS. THIS IS A SPECIAL PROVISION AND IT PREVAILS OVER THOSE PROVISIONS PUBLISHED IN THE STANDARD SPECIFICATIONS.**

**092010.01 DESCRIPTION.**

This specification applies to the project on 2<sup>nd</sup> Avenue SW in Waverly, Iowa involving maintenance of roadways that do not require additional property rights or facility adjustments from the Canadian National Railroad (CNRR).

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

The CNRR representative will be the person or persons identified by the CN Manager Public Works to handle specific tasks related to the project. The contract documents specify the contact information for this individual(s).

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

**092010.02 REQUESTS FOR INFORMATION.**

All requests for information involving work within any CNRR 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 CNRR as necessary.

**092010.03 CONSTRUCTION SCHEDULE NOTICE.**

A construction schedule, including the proposed construction sequence for all work to be performed, shall be provided to the Engineer for submittal to the CNRR prior to commencement of work. When construction activities are on or about railroad property this schedule shall include the anticipated dates when the CNRR activities may be impacted by construction activities.

**092010.04 CNRR REPRESENTATIVES.**

CNRR representatives will be provided as required to protect CNRR facilities, property, and movements of its trains or engines. In general, CNRR 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
- During the Contractor's operations when, in the opinion of CNRR, CNRR facilities, including, but not limited to, tracks, buildings, signals, wire lines, or pipe lines, may be endangered.
- The CNRR to provide the adequate number of flag persons to accomplish the work.

**092010.05 INSURANCE.**

The Contractor shall not begin work upon or over CNRR's ROW until the Engineer and CNRR have been furnished the insurance policies, binders, certificates, and endorsements required by the contract documents and the CNRR 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 CNRR's property and cleans the premises in a manner reasonably satisfactory to CNRR.

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

**CHICAGO CENTRAL AND PACIFIC RAILROAD COMPANY INSURANCE REQUIREMENTS****A. Insurance required of CONTRACTOR:**

1. Statutory Workers Compensation and Employer's Liability Insurance.
2. Automobile Liability Insurance in an amount not less than \$5,000,000 combined single limit.
3. Commercial General Liability Insurance in an amount not less than \$5,000,000 per occurrence, with an aggregate limit of not less than \$10,000,000. The policy must name the Railroad and its parents as additional insureds.

The policy must not contain any provisions excluding coverage for injury, loss or damage arising out of or resulting from (a) doing business or undertaking construction or demolition on, near, or adjacent to railroad track or facilities, or (b) surface or subsurface pollution, contamination or seepage, or from handling, treatment, disposal or dumping of waste materials or substances.

4. If the project for which CONTRACTOR is required to purchase insurance is limited to work on, near or adjacent to railroad track or facilities, as an alternative to the insurance required under paragraph 3 above, CONTRACTOR may procure Railroad Protective Liability Insurance.

This coverage shall be written on an Occurrence Form with limits of not less than \$5,000,000 per occurrence for Bodily Injury, Personal Injury and Physical Damage to Property, with an aggregate limit of not less than \$10,000,000.

5. Include description of operations, railroad milepost, highway or street name, city and state of location, project number, and Railroad contact person on the certificate.

- B.** Before commencing work, CONTRACTOR shall deliver to the Railroad a certificate of insurance evidencing the foregoing coverages and true and complete copies of the policies described above. If the policy is being issued in conjunction with, or as a result of, a city, county or state contract, the policy should be initially submitted to the respective city, county or state agency that will review it first and then forward it to the railroad.

- C. Common Policy Provisions.** Each policy described in paragraph A, parts 1 through 4, above must include the following provisions:
1. Each policy shall include a waiver by the insurer of any right of subrogation against any recovery by or on behalf of any insured.
  2. Each policy shall provide for not less than thirty days prior written notice to the Railroad of cancellation of or any material change in that policy.
- D.** It is understood and agreed that the foregoing insurance coverage requirements, and CONTRACTOR'S compliance with those requirements, is not intended to, and shall not, relieve CONTRACTOR from, or serve to limit, CONTRACTOR'S liability and indemnity obligations under the provisions herein.

It is further understood and agreed that, so long as this Agreement shall remain in force, the Railroad shall have the right, from time to time, to revise the amount or form of insurance coverage required under this Agreement as circumstances or changing economic conditions may require. The Railroad shall give CONTRACTOR written notice of any such requested change at least thirty days before the date of expiration of the then-existing policy or policies, which notice constitutes an amendment to this Agreement and shall become a part hereof; CONTRACTOR agrees to, and shall, thereupon provide the Railroad with such revised policy or policies.

**E. Insurance required of SUBCONTRACTOR:**

1. If a SUBCONTRACTOR is to be employed by CONTRACTOR for the installation of the work, before commencing work, the SUBCONTRACTOR shall provide and thereafter maintain all of the insurance described in paragraph A, parts 1 through 4, above, in the same forms and amounts as provided for above and subject to the other terms and conditions provided for in paragraphs B through D above.
2. In the alternative, at the Railroad's option, if a SUBCONTRACTOR is to be employed by CONTRACTOR for the installation of the WORK, before the SUBCONTRACTOR commences work, CONTRACTOR may provide and thereafter maintain all of the insurance described in paragraph A, parts 1 through 4, above, in the same forms and amounts as provided for above and subject to the other terms and conditions provided for in paragraphs B through D above, provided that all such insurance names SUBCONTRACTOR as an additional insured and all such insurance provides coverage to all additional insureds, including the Railroad, for any liability arising out of WORK performed by all other additional insureds, including SUBCONTRACTOR.

**092010.06 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 required by IDOT Specifications. Protective equipment shall include, but not be limited to the following: protective headgear; eye protection; and hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

**eRailsafe Training:**

All employees of contractors not hired by CNRR that will work on CNRR property are required to have minimum CN Safety and Security Awareness training. This training can be obtained through the eRailSafe.com website <http://www.erailsafe.com>. If not done before, the contractor must contact CN Special Agent James Conroy at 708-332-5947 or [James.Conroy@cn.ca](mailto:James.Conroy@cn.ca) to be issued a vendor number prior to accessing the noted website. This training is good for a period of two years.

Such employees have been exempted from undergoing the background check portion of the eRailSafe.com process, but must take and pass the required Safety and Security Awareness exam portion.

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

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

If at any time the Engineer or the CNRR 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.

#### **092010.07 SAFETY MEASURES-PROTECTION OF OPERATIONS.**

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

**A. Explosives.**

The Contractor shall not discharge any explosives on this project.

**B. Obstructions to View.**

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

**C. Excavation.**

The Contractor shall not perform any excavation on the CNRR ROW.

**D. Drainage.**

The Contractor 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 CNRR so as to adversely affect any of the CNRR's operations, equipment or any third parties with permitted facilities on the CNRR's ROW.

**E. Clearances.**

There will be no changes in vertical or horizontal clearances as part of this project.

**F. Demolition of Existing Structures.**

There will be no demolition of existing structures as part of this project.

#### **092010.08 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 CNRR'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 CNRR's flagging service is provided shall be removed before the close of each work day.

#### **092010.09 EXCAVATIONS IN CLOSE PROXIMITY TO CNRR FACILITIES.**

There will be no excavations on the CNRR as part of this project.

#### **092010.10 NO INTERFERENCE WITH CNRR'S OPERATION.**

The Contractor shall not interfere with the constant, continuous, and uninterrupted use of the tracks, property, and facilities of the CNRR its lessees, licensees, or others, unless specifically permitted by this specification, or specifically authorized in advance by the CNRR. When not in use, the Contractor's

machinery and materials shall be kept off of the CNRR ROW, and there shall be no crossings of CNRR's tracks except at existing open public crossings.

**092010.11 TRAFFIC CONTROL.**

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

**092010.12 INDEMNITY.**

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

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

**092010.13 MAINTENANCE OF CNRR 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 CNRR's ROW, and repair any other damage to CNRR property, or its tenants; at no additional cost to the CNRR.

**092010.14 COMMUNICATIONS AND SIGNAL LINES.**

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

**092010.15 FIBER OPTIC CABLE SYSTEMS.**

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

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

to a telecommunication company using CNRR's property or a customer or user of services of the fiber optic cable on CNRR's property.

**092010.16 COOPERATION.**

The CNRR 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 CNRR's ROW in performing the work.

**092010.17 WAIVER OF BREACH.**

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

**092010.18 RAILROAD FLAGGING.**

**A. Flagging and Notification.** The Contractor shall notify the CNRR 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 CNRR'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 CNRR will determine and inform the Contractor whether a flagger need be present and whether the Contractor need implement any special protective or safety measures. Flagging or other special protective or safety measures are to be performed by the CNRR, with the understanding that if the CNRR provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein.

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

**092010.19 TEMPORARY CROSSINGS.**

No temporary crossings will be used. The Contractor shall not move any equipment or materials across the CNRR's tracks at any location other than established public road crossings.

**092010.20 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 CNRR to use and maintain its property, not inconsistent with highway purposes, including the right and power of the CNRR to construct, maintain, repair, renew, use, operate, change, modify, or relocate CNRR tracks, roadways, signal, communication, fiber optics, or other wire lines, 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 CNRR, not inconsistent with highway purposes and at CNRR's sole cost and expense.

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

**092010.21 MECHANICS' LIENS.**

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

**092010.22 METHOD OF MEASUREMENT AND BASIS OF PAYMENT.**

Cost of CNRR Insurance Provisions required by this specification above those required by Division 11 of the Standard Specifications and the safety training requirements of the contractor set forth in this Special Provision will be measured as a lump sum. Payment for any additional insurance provisions and safety training requirements shall be included in the lump sum bid price for Railroad Insurance Provisions.