

January 4, 2010

APPROVED:.....	Nov. 10, 2009
Division Administrator	
By:.....	David B. Law
FEDERAL HIGHWAY ADMINISTRATION	

SPECIAL PROVISIONS FOR PROTECTION OF RAILWAY INTERESTS

**NORFOLK SOUTHERN RAILWAY COMPANY, hereinafter called the
"Railway"; and**

**SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION,
hereinafter called the "Department";**

**1. AUTHORITY OF RAILWAY ENGINEER AND
DEPARTMENT ENGINEER:**

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

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

2. NOTICE OF STARTING WORK:

- A. The Department's Prime contractor shall not commence any work on Railway's rights-of-way until he has complied with the following conditions:**
- 1. Given the Railway written notice, with copy to the Department Engineer who has been designated to be in charge of the work, at least ten days in advance of the date he proposes to begin work on Railway's rights-of-way.**

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

2. Obtained written approval from the Railway of Railroad Protective Liability Insurance coverage as required by paragraph 14 herein. It should be noted that Railway Company does not accept notation of Railroad Protective insurance on a certificate of liability insurance form or Binders as Railway Company must have the full original countersigned policy. Further, please note that mere receipt of the policy is not the only issue but review for compliance. Due to the number of projects system-wide, it typically takes a minimum of 30-45 days for Railway Company to review.
 3. Obtained Railway's Flagging Services as required by paragraph 7 herein.
 4. Obtained written authorization from the Railway to begin work on Railway's rights-of-way, such authorization to include an outline of specific conditions with which he must comply.
 5. Furnished a schedule for all work within the Railway's rights-of-way as required by paragraph 7,B,1.
- B. The Railway's written authorization to proceed with the work shall include the names, addresses, and telephone numbers of the Railway Representatives who are to be notified as hereinafter required. Where more than one representative is designated, the area of responsibility of each representative shall be specified.
3. **INTERFERENCE WITH RAILWAY OPERATIONS:**
- A. The Contractor shall so arrange and conduct his work that there will be no interference with Railway's operations, including train, signal, telephone and telegraphic services, or damage to the property of the Railway Company or to poles, wires, and other facilities of tenants on the rights-of-way of the Railway Company. Whenever work is liable to affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railway 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 shall be deferred by the Contractor until the flagging service or inspection service required by the Railway is available at the job site.
- B. Whenever work within Railway's rights-of-way is of such a nature that impediment to Railway 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 Railway, the Contractor shall make such provisions. If in the judgment of the Railway Engineer, or in his absence, the Railway's Division Engineer, such provisions are 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 Railway or the Department.

4. **TRACK CLEARANCES:**

- A. The minimum track clearances to be maintained by the Contractor during construction are shown on the Project Plans. However, before undertaking any work within Railway's rights-of-way, or before placing any obstruction over any track, the Contractor shall:
1. Notify the Railway Representative at least 72 hours in advance of the work.
 2. Receive assurance from the Railway Representative that arrangements have been made for flagging service as may be necessary.
 3. Receive permission from the Railway Representative to proceed with the work.
 4. Ascertain that the Department Engineer has received copies of notice to the Railway and of the Railway's response thereto.

5. **CONSTRUCTION PROCEDURES:**

A. **General:**

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

1. Subject to the inspection and approval of the Railway.
2. In accord with the Railway's written outline of specific conditions.
3. In accord with the Railway'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. Excavation:

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

Additionally, the Railway Engineer may require installation of orange construction safety fencing for protection of the work area.

C. Excavation for Structures:

The Contractor will be required to take special precaution and care in connection with excavating and shoring pits, and in driving piles or sheeting for footings adjacent to tracks to provide adequate lateral support for the tracks and the loads which they carry, without disturbance of track alignment and surface, and to avoid obstructing track clearances with working equipment, tools or other material. All plans and calculations for shoring shall be prepared and signed by a Registered Professional Engineer. The Registered Professional Engineer will be responsible for the accuracy for all controlling dimensions as well as the selection of soil design values which will accurately reflect the actual field conditions. The procedure for doing such work, including need of and plans and calculations for shoring, shall first be approved by the Department Engineer and the Railway Engineer, but such approval shall not relieve the Contractor from liability.

Additionally, walkway with handrail protection may be required as noted in paragraph 11 herein. .

D. Demolition, Erection, Hoisting

1. Railway's tracks and other Railway property must be protected from damage during the procedure.
2. The Contractor is required to submit a plan showing the location of cranes, horizontally and vertically, operating radii, with delivery or disposal locations shown. The location of all tracks and other railroad facilities as well as all obstructions such as wire lines, poles, adjacent structures, etc. must also be shown.

3. Crane rating sheets showing cranes to be adequate for 150% of the actual weight of the pick. A complete set of crane charts, including crane, counterweight, and boom nomenclature is to be submitted.
4. Plans and computations showing the weight of the pick must be submitted. Calculations shall be made from plans of the existing and/or proposed structure showing complete and sufficient details with supporting data for the demolition or erection of the structure. If plans do not exist, lifting weights must be calculated from field measurements. The field measurements are to be made under the supervision of the Registered Professional Engineer submitting the procedure and calculations.
5. A data sheet must be submitted listing the types, size, and arrangements of all rigging and connection equipment.
6. A complete procedure is to be submitted, including the order of lifts, time required for each lift, and any repositioning or re-hitching of the crane or cranes.
7. All erection or demolition plans, procedures, data sheets, etc. submitted must be prepared, signed and sealed by a Registered Professional Engineer.
8. The Railway Engineer or his designated representative must be present at the site during the entire demolition and erection procedure period.
9. All procedures, plans and calculations shall first be approved by the Department Engineer and the Railway Engineer, but such approval does not relieve the Contractor from liability.

E. Blasting:

1. The Contractor shall obtain advance approval of the Railway Engineer and the Department Engineer for use of explosives on or adjacent to Railway property. The request for permission to use explosives shall include a detailed blasting plan. If permission for use of explosives is granted, the Contractor will be required to comply with the following:
 - (a) Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of the Contractor and a licensed blaster.

- (b) Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way radios.
- (c) No blasting shall be done without the presence of the Railway Engineer or his authorized representative. At least 72 hours advance notice to the person designated in the Railway's notice of authorization to proceed (see paragraph 2B) will be required to arrange for the presence of an authorized Railway representative and such flagging as the Railway may require.
- (d) Have at the job site adequate equipment, labor and materials and allow sufficient time to clean up debris resulting from the blasting without delay to trains, as well as correcting at his expense any track misalignment or other damage to Railway property resulting from the blasting as directed by the Railway's authorized representative. If his actions result in delay of trains, the Contractor shall bear the entire cost thereof.

2. The Railway representative will:

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

F. Maintenance of Railway 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 Railway's rights-of-way and repair any other damage to the property of the Railway 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.

G. Storage of Materials and Equipment:

Materials and equipment shall not be stored where they will interfere with railroad operations, nor on the rights-of-way of the Railway Company without first having obtained permission from the Railway Engineer, and such permission will be with the understanding that the Railway Company will not be liable for damage to such material and equipment from any cause and that the Railway 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 Railway, and any associated, controlled or affiliated corporation, harmless from and against all losses, costs, expenses, claim or liability for loss 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.

H. Cleanup:

Upon completion of the work, the Contractor shall remove from within the limits of the Railway's rights-of-way, all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings of the Contractor, and leave said rights-of-way in a neat condition satisfactory to the Chief Engineer of the Railway 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 Railway traffic.
- B. Any cost incurred by the Railway 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 Railway by the Contractor.

7. FLAGGING SERVICES:

A. Requirements:

Flagging services will not be provided until the contractor's insurance has been reviewed & approved by the Railway.

Under the terms of the agreement between the Department and the Railway, the Railway 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 personnel or equipment are or are likely to be, working on the Railway's right-of-way, or across, over, adjacent to, or under a track, or when such work has disturbed or is likely to disturb a railroad structure or the railroad roadbed or surface and alignment of any track to such extent that the movement of trains must be controlled by flagging.

Normally, the Railway 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 Railway's authorized representative or performs work that has not been scheduled with the Railway's authorized representative, a flagman or flagmen may be required full time until the project has been completed.

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 Railway's approval of work schedules requiring a flagman's presence in excess of 40 hours per week.
2. Not later than the time that approval is initially requested to begin work on Railway's rights-of-way, Contractor shall furnish to the Railway and the Department a schedule for all work required to complete the portion of the project within Railway's rights-of-way and arrange for a job site meeting between the Contractor, the Department, and the Railway's authorized representative. Flagman or Flagmen may not be provided until the job site meeting has been conducted and the Contractor's work scheduled.
3. The Contractor will be required to give the Railway representative at least 10 working days of advance written notice of intent to begin work within Railway's rights-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 Railway representative at least 3 working days of advance notice before resuming work on Railway's rights-of-way. Such notices shall include sufficient details of the proposed work to enable the Railway representative to determine if flagging will be required. If such notice is in writing, the Contractor shall furnish the Engineer a copy; if notice is given verbally, it shall be confirmed in writing with copy to

the Engineer. If flagging is required, no work shall be undertaken until the flagman, or flagmen are present at the job site. It may take up to 30 days to obtain flagging initially from the Railway. When flagging begins, the flagman is usually assigned by the Railway 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 Railway. Due to Railway labor agreements, it is necessary to give 5 working days notice before flagging service may be discontinued and responsibility for payment stopped.

4. If, after the flagman is assigned to the project site, an emergency arises that requires the flagman's presence elsewhere, then the Contractor shall delay work on Railway's rights-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 Railway.

C. Payment:

1. The Department will be responsible for paying the Railway directly for any and all costs of flagging which may be required to accomplish the construction.
2. The estimated cost of flagging is current rate per day based on a 10-hour work day. This cost includes the base pay for the flagman, overhead, and includes a per diem charge for travel expenses, meals and lodging. The charge to the Department by the Railway will be the actual cost based on the rate of pay for the Railway'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 1 and 1/2 times the appropriate rate. Work by a flagman in excess of 12 hours per day will result in overtime at 2 times the appropriate rate. If work is performed on a holiday, the flagging rate is 2 and 1/2 times the normal rate.
4. Railway work involved in preparing and handling bills will also be charged to the Department. Charges to the Department by the Railway shall be in accordance with applicable provisions of Subchapter B, Part 140, Subpart I and Subchapter G, Part 646, Subpart B of the Federal-Aid Policy Guide issued by the Federal Highway Administration on December 9, 1991, including all current amendments. Flagging costs are subject to change.

D. Verification:

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

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

Attn:
System Engineer
Public Improvements

2. The Railway 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 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.

8. HAUL ACROSS RAILROAD:

- 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 Railway, the Contractor will be required to make all necessary arrangements with the Railway regarding means of transporting such materials across the railroad. The Contractor will be required to bear all costs incidental to such crossings whether services are performed by his own forces or by Railway personnel.
- B. No crossing may be established for use of the Contractor for transporting materials or equipment across the tracks of the Railway Company unless specific authority for its installation, maintenance, necessary watching and flagging thereof and removal, until a temporary private crossing agreement has been executed between the Contractor and Railway. The approval process for an agreement 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; included in the force account agreement between the Department and the Railway or will be covered by appropriate revisions to same which will be initiated and approved by the Department and/or the Railway.**
- B. Should the Contractor desire any changes in addition to the above, then he shall make separate arrangements with the Railway 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 Railway for accomplishing stage construction involving work by the Railway or tenants of the Railway. In arranging his schedule he shall ascertain, from the Railway, the lead time required for assembling crews and materials and shall make due allowance therefore.**
- B. No charge or claim of the Contractor against either the Department or the Railway Company will be allowed for hindrance or delay on account of railway traffic; any work done by the Railway Company or other delay incident to or necessary for safe maintenance of railway traffic or for any delays due to compliance with these special provisions.**

11. TRAINMAN'S 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 trainman's use in walking along trains, extending to a line not less than 10 feet from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while Railway'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 and must conform to AREMA and/or FRA standards.

12. GUIDELINES FOR PERSONNEL ON RAILWAY'S RIGHTS-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 of safety boots is strongly recommended. In the vicinity of at-grade crossings, it is strongly recommended that reflective vests be worn.

- 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 EQUIPMENT ON RAILWAY'S RIGHTS-OF-WAY:

- A. No crane or boom equipment will be allowed to set up to work or park within boom distance plus 15' of centerline of track without specific permission from Railway official 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 Railway 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 Railway Engineer and flagman.**
- M. No equipment or materials will be parked or stored on Railway's property unless specific authorization is granted from the Railway Engineer.**
- N. All unattended equipment that is left parked on Railway 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 carry 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 Railway specified in item A.2.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.
- 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) Required State Cancellation Endorsement**
- (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 item no. 2.h above.**

- B. If any part of the work is sublet, similar insurance, and evidence thereof as specified in A.1 above, shall be provided by or on behalf of the subcontractor to cover its operations on Railway's right of way.**
- C. Prior to entry on Railway's rights-of-way, the original Railroad Protective Liability Insurance Policy shall be submitted by the Prime Contractor to the Railway and a copy shall be provided to the Department's Resident Construction Engineer, for information, prior to beginning work. In addition, certificates of insurance evidencing the Prime Contractor's and any subcontractors' Commercial General Liability Insurance shall be issued to the Railway at the addresses below. The 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 Railway and the Department. No work will be permitted by Railway on its rights-of-way until it has reviewed and approved the evidence of insurance required herein.**

RAILWAY:

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

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

15. FAILURE TO COMPLY:

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

- A. The Railway Engineer may require that the Contractor vacate Railway property.**
- B. The Engineer may withhold all monies due the Contractor on monthly statements.**

Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railway Engineer and the 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 costs shall be included in prices bid for other items of the work as specified in the payment items.

**Office of Chief Engineer
Bridges & Structures
Norfolk Southern Corporation
1200 Peachtree Street, N. E.
Internal Box 142
Atlanta, GA 30309**

**Date:
File:
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