PROSECUTION AND PROGRESS

1.01 SUBLETTING OR ASSIGNMENT OF CONTRACT

A. Work by Contractor:

1. The Contractor shall perform, with its own organization and forces, work amounting to no less than 50% of the total contract cost, except any items designated in the contract documents as "specialty items" may be performed by subcontract, and the cost of any such "specialty items" may be deducted from the total contract cost before computing the amount of work required to be performed by the Contractor with its own organization. Any items that have been selected as "specialty items" for the contract will be listed as such in the contract documents.

2. In order to meet this 50% requirement, the Contractor shall not purchase any materials for a subcontracted item, nor shall it place other contractor's employees on its payroll.

3. The Contractor shall not assign this Contract to another person, firm, or corporation without the prior consent of the Jurisdiction. The Jurisdiction may refuse to approve a proposed assignment of contract if such assignment would not be in the best interests of the Jurisdiction, or if such assignment would be contrary to law or public policy. An assignment of contract and all subcontracts shall be in writing.

B. Permission to Sublet:

1. The Contractor shall not sublet, assign, or otherwise dispose of any portion of the contract, except for the furnishing and transportation of materials, without a written "permission to sublet" order duly approved by the Jurisdiction.

2. Requests for permission to sublet, assign, or otherwise dispose of any portion of the contract shall be in writing and shall provide the name, address, telephone number, and representative of the organization that will perform the work, a description of the work is to be sublet, and the associated cost. When requested by the Engineer, the Contractor shall provide a written report showing the organization that will perform the work is particularly experienced and equipped for such work.

3. Consent to sublet, assign, or otherwise dispose of any portion of the contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract or in any way create any contractual relationship between the subcontractor and the Jurisdiction.

C. Subcontracts:

1. Upon request of the Engineer, the Contractor shall submit a copy of each subcontract agreement within 10 calendar days.

2. The Contractor shall be responsible to include all conditions and requirements of the contract documents in all its subcontracts and enforce said requirements with its subcontractors.

1.02 CONTRACT TIME

A. When a completion date is specified in the contract documents, the contract time shall be the time from the starting date stated in the Notice to Proceed to the date specified for completion as shown in the contract, both dates inclusive. When working days or calendar days are specified in the contract documents, the contract time shall be the time as calculated with the number of working days or calendar days as specified in the contract and the starting date in the Notice to Proceed. The contract time may be extended by the Jurisdiction as provided in these specifications, in which event the contract time includes the new extension of time. The Contractor acknowledges that if it fails to complete the contract in said time, liquidated damages will be assessed against it as specified in Section 1080, 1.12 - Liquidated Damages.

1. Completion Date Contracts: The Contractor shall complete the contract on or before the completion date. Unless otherwise noted in the proposal form, the Contractor may commence work any time after receipt of the signed contract, specifications permitting and issuance of the Notice to Proceed. Section 1080, 1.06 will not apply. Liquidated damages will be assessed according to Section 1080, 1.12 for each calendar day beyond the completion date that the contract remains uncompleted.

2. Calendar Day Contracts: The Contractor shall complete the contract within the number of consecutive calendar days specified. The calendar day count will commence on the date specified by the Notice to Proceed. Section 1080, 1.06 will not apply. Liquidated damages will be assessed according to Section 1080, 1.12 for each calendar day beyond the specified number of calendar days that the contract remains uncompleted.

3. Working Day Contracts: The three types of start dates are as follows:

   a. Specified Start Date: Working days will be charged to the Contractor starting on the specified start date, the date noted in the Notice to Proceed, or 14 calendar days after execution of the contract, whichever is later. Starting work prior to the specified start date will be considered upon request, and working days will be charged when work starts.

   b. Approximate Start Date: It is expected the site will be available by the approximate start date. If it appears the site will not be available by the approximate start date, the Engineer will inform the Contractor of the delay and if possible the duration of the delay. The Contractor may commence work, weather and specifications permitting, any time after execution of the contract, after receipt of the Notice to Proceed, and on or after the approximate start date provided the site has become available. If work is started under these conditions, working days will be charged. Starting work before the approximate start date and before the site is available, will be considered only after the Contractor has submitted a signed waiver of any right to claim extra compensation for damages due to delays from any cause related to early commencement. If approved, working days will not be charged when working prior to the date of site availability. If the Contractor is working on the project when the site becomes available, working days will be first charged on the following day.

   c. Late Start Date: Unless otherwise noted in the proposal form, the Contractor may commence work any time after receipt of the signed contract, receipt of the Notice to Proceed, and weather and specifications permitting. Working days will begin to be charged whenever the Contractor starts work. Charging of working days will begin on the late start date if the Contractor has not started work prior to this date.

      If the Contractor wishes to start preliminary work prior to the late start date and move out intending to return at a later date to complete the project, the Contractor shall request approval from the Engineer for temporary suspension of work according to Section 1080, 1.08. Approval of suspension of work in this circumstance will be based on if the project area is in a condition that is at least as safe as it was before the start of the work. The Engineer will submit in writing to the Contractor approval for suspension of work and a computed revised late start date. The revised late start date will be computed by adding the working days used for the preliminary work to the late start date listed on the proposal form. The charging of the remainder of the working days will resume on the revised late start date or when the Contractor recommences work if prior to the revised late start date.

1.02 CONTRACT TIME (Continued)

B. Intermediate contract periods may be designated for completion of a specific item or certain portions of the contract. The contract period and the liquidated damages, if any, for each portion will be listed in the contract documents.

1.03 WORK PROGRESS AND SCHEDULE

A. The progress of the work shall be at a rate sufficient to complete the contract within the time allowed. The Contractor's sequence of operations shall be such as to cause as little inconvenience to the general public as possible.

B. After being awarded the contract, and if requested by the Engineer, the Contractor shall immediately prepare and submit to the Engineer for approval a progress schedule that will ensure the completion of the project within the time specified. Adequate equipment and forces shall be made available by the Contractor to start work immediately upon Notice to Proceed by the Engineer and to prosecute the work to completion according to schedule and within the time specified.

C. If it appears the rate of progress is such that the contract will not be completed within the time allowed, or if the work is not being executed in a satisfactory and workmanlike manner, the Engineer may order the Contractor to take such steps as necessary to complete the contract within the period of time specified or to prosecute the work in a satisfactory manner. If the Contractor fails to comply with such order within two weeks after receipt of the order, the Contractor may be disqualified from receiving any additional contracts, and the Jurisdiction will have the right to declare the contract in default.

1.04 PRECONSTRUCTION CONFERENCE

The Engineer may schedule and conduct a preconstruction conference. The Contractor and the intended subcontractors, if known, shall participate in this conference. The Engineer will invite representatives of railroads and utilities and others having responsibilities or interest in the work.

1.05 NOTICE TO PROCEED

A. The return of the signed and executed contract to the Contractor shall serve as notice the contract bond is acceptable, the contract is in force, and the Contractor may complete arrangements for materials and other work according to the contract documents.

B. The Contractor shall begin work as specified in the Notice to Proceed issued by the Engineer and shall prosecute the work vigorously and continuously to completion, except when it is physically impossible to do so due to weather conditions or other unavoidable handicaps. The necessity of discontinuing and resuming work on any portion of the contract shall be determined by the Engineer.

C. The Jurisdiction may, if provided for in the contract documents, give a limited Notice to Proceed as to any portion of the work under the contract.

1.06 WEEKLY RECORD OF WORKING DAYS

A. On contracts with completion provisions based upon working days, the Engineer will furnish the Contractor a weekly statement showing the number of working days charged to the Contractor for the preceding week, the number of working days specified for completion of the project, the number of working days remaining to complete the contract, and the revised date for completion.

1.06 WEEKLY RECORD OF WORKING DAYS (Continued)

B. Working days will be charged under the following circumstances:

1. Prior to Commencement of Work: Beginning on the date designated in the Notice to Proceed, or beginning on the specified starting date or as soon thereafter as provided in the specifications, a working day will be charged for every calendar day other than Saturday, Sunday, or a recognized legal holiday. Working days will be charged for Saturdays if a mandatory six-day work week is specified in the contract documents.

2. After Commencement of Work: One full working day will be charged for any weekday, exclusive of Saturdays, Sundays, or a recognized legal holiday, when weather or other conditions (not under control of the Contractor) will permit construction operations to proceed for not less than 3/4 of a normal workday in the performance of a controlling item of work as determined by the Engineer. If such conditions allow operations to proceed for at least 1/2 but less than 3/4 of the normal working hours, one-half working day will be charged.

   Working days will not be charged for Saturdays (unless a mandatory six-day work week is specified in the contract documents), Sundays, and recognized legal holidays the Contractor does not work. Working days will be charged for Sundays and recognized legal holidays the contractor does work.

   As an incentive to the Contractor to expedite the work, working days will not be charged for Saturdays that the Contractor does work, unless a mandatory six-day work week is specified in the contract documents.

C. Any objection by the Contractor to such weekly determinations shall be deemed waived and shall not thereafter be made the basis of any claim, unless the Contractor shall, within seven calendar days after receipt of a weekly statement, file with the Engineer its written protest setting forth its objections and reasons. If the Contractor's objection to the working day count is made on the grounds it was unable to work due to causes beyond its control, the Contractor shall state its reasons in writing, furnish proof to establish its claim, and state the approximate number of calendar days it estimates it was delayed. The Engineer shall then determine the appropriate number of working days to be charged under the contract.

1.07 WORK ON SUNDAYS OR LEGAL HOLIDAYS

A. Except when an accelerated work schedule is required in the contract documents, no work requiring inspection will be allowed on Sundays or holidays observed by the Jurisdiction except with permission of the Engineer. The Contractor should request a determination of the holidays observed by the Jurisdiction.

B. Such work as may be required to properly maintain or protect completed or partially completed construction, or to maintain lights and barricades, will be permitted on Sundays or holidays without specific permission of the Engineer.

1.08 TEMPORARY SUSPENSION OF WORKING DAYS

When, in the judgment of the Engineer, unfavorable weather makes it impractical to secure acceptable results or other conditions warrant an order to suspend working days, the Engineer shall issue to the Contractor a written order to suspend working days wholly or on any part of the contract. When conditions are again favorable for prosecution of the working days, the Engineer shall issue to the Contractor a written order to resume the suspended working days. Orders to suspend working days will not be written for short intermittent shutdowns due to weather conditions. The Contractor shall take every precaution to prevent any damage or unreasonable deterioration of the work during the time of suspended operations.

1.09 EXTENSION OF TIME

A. Allowances for Delays: The Contractor expressly covenants and agrees that in undertaking to complete the work within the contract time, it has taken into consideration and made allowance for all delays and hindrances that would ordinarily be anticipated in performing such work.

B. Request for Extension of Time: Whenever the Contractor becomes aware of its inability to complete the work under the contract within the contract period, it shall request an extension in writing. Such request shall be submitted to the Engineer at least two weeks prior to the expiration of the contract time to allow for the Jurisdiction's action before termination. The submission or acceptance of a request for extension of time shall not guarantee such extension will be granted. The following items may be justification for extension of time:

1. **Weather:** Extension of time due to adverse weather conditions at the site, so unusual or severe as not to be reasonably anticipated, as determined by the Engineer, may be requested. An average or usual number of inclement working days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

2. **Other Contractors:** An extension of time may be requested for delays caused by the noncompletion of essential work of other contractors, provided such noncompletion is the sole and only cause of delay, and where the Contractor has available on the site of the work all equipment, material, and labor necessary to proceed with the work.

3. **Change Orders:** An extension of time may be requested for delays caused by the issuance of a change order, where the work occasioned by the change order is the sole and only cause of the impossibility to complete the work within the specified time.

4. **Work Stoppage:** An extension of time may be requested for delays caused by a general work stoppage in the area or a work stoppage affecting this project that is beyond the control of the Contractor, or where the Contractor has taken in good faith all steps made available to it by law to resolve the causes thereof and to terminate such work stoppage.

5. **Acts by U.S. Government:** An extension of time may be requested for delays caused by any act taken by the United States government that would affect fabrication or delivery of materials or equipment to the work site.

6. **Court Proceedings:** An extension of time may be requested for delays caused by any court proceedings.

7. **Other Delays:** An extension of time may be requested for other delays encountered by the Contractor beyond its control and impossible for the Contractor to complete the contract within the specified time.

C. Claims for Damages: The Contractor shall have no claim for damages for any extensions or delays provided or mentioned in the preceding portions of this section; but the Contractor shall, in such cases, be allowed to petition for such extension of time as the Jurisdiction may grant in writing on account of such delay, provided, however, the claim for such extension of time is made by the Contractor in writing to the Jurisdiction immediately after any such delay occurs.

D. Extension of Time Granted: No extension of time shall be granted or recognized except as specifically approved by the Jurisdiction in writing to the Contractor. Oral representations or agreements by Jurisdiction agents or employees regarding time extension shall not be binding on the Jurisdiction.

1.10 CONTRACTOR'S EMPLOYEES, METHODS, AND EQUIPMENT

A. Superintendent:

1. All work under the contract shall be performed under the continuous supervision of competent personnel, thoroughly experienced in the class of work specified.

2. Prior to beginning work, the Contractor shall give the Engineer, in writing, the name of the Contractor's official representative or superintendent for the project. The superintendent shall be capable of providing adequate supervision of the project and shall be responsible for receiving instructions, notices, and written orders from the Engineer. A change of the superintendent shall be reported to the Engineer in writing. Failure to provide adequate supervision of the project shall be grounds for the Engineer to require a change in supervision before allowing the work to proceed. The superintendent shall be responsible for reporting to the Engineer any inconsistencies, omissions, or lack of definite detail in the plans, special provisions, or contract documents that may be discovered.

3. The lack of proper supervision by the Contractor or by its supervisory personnel shall be just cause for termination of the contract.

B. Workers:

1. The Contractor shall employ competent and efficient workers for every kind of work. The Jurisdiction reserves the right to direct the suspension or discharge from the work any worker, employee, agent, overseer, foreman, or superintendent in the employ of the Contractor, who, in the opinion of the Engineer, shall be incompetent, negligent, unfaithful, insubordinate, or disorderly, and any such person shall immediately be suspended or discharged by the Contractor whenever so directed by the Engineer.

2. The Contractor shall not employ or hire any of the employees of the Jurisdiction without permission of the Engineer.

C. Methods and Equipment:

1. The methods and equipment used by the Contractor shall produce a satisfactory quality of work and shall be adequate to maintain the schedule of progress specified. Equipment used on any portion of the project shall be such, and its use so regulated, that no serious or irreparable damage to the roadway, adjacent property, or other streets or highways will result from its use. If damage does occur to the street or highway, suitable repairs shall be made at the Contractor's expense.

2. When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the contract documents, the Contractor is free to use any methods or equipment that will accomplish the contract work in conformity with the requirements of the contract documents, as demonstrated to the satisfaction of the Engineer.

3. When the contract documents specify that the construction be performed by use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Engineer.

4. If the Contractor desires to use a method or type of equipment other than specified in the contract documents, the Contractor may request authority from the Engineer to do so. The request shall be in writing and shall include a full description of the method and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor shall be fully responsible for producing construction work in conformity with contract requirements.

1.10 CONTRACTOR'S EMPLOYEES, METHODS, AND EQUIPMENT (Continued)

5. If after trial use of the substituted methods or equipment, the Engineer determines the work produced does not meet the requirements of the contract documents, the Contractor shall discontinue use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the defective work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the construction items involved, or in contract time, as a result of authorizing a change in methods or equipment under these provisions.

1.11 CONTRACTOR'S EQUIPMENT IDENTIFICATION

All vehicles and major construction equipment utilized on Jurisdiction's projects, with the exception of vehicles used for personal purposes and rented equipment bearing the name, address, and telephone number of the rental company, shall exhibit the Contractor's name in at least two locations on each piece of equipment. This identification can be either a decal or painted lettering of a type and size, and with a contrasting color, rendering it legible from a distance of no less than 50 feet.

1.12 LIQUIDATED DAMAGES

A. Time is of the essence of the contract. As delay in the diligent prosecution of the work may inconvenience the public, obstruct traffic, interfere with business, and/or increase costs to the Jurisdiction such as engineering, administration, and inspection, it is important the work be prosecuted vigorously to completion. Should the Contractor, or in case of default the surety, fail to complete the work within the contract time plus such extensions of time as may be allowed by the Jurisdiction, a deduction at the liquidated damages rate specified in the contract will be made for each and every calendar day or working day, whichever is specified, that such contract remains uncompleted after expiration of the contract time. In either event, the Contractor or the Contractor's surety shall be responsible for all costs incident to the completion of the work, and shall be required to pay to the Jurisdiction the liquidated damages stipulated in the proposal form.

B. The liquidated damages rate specified in the contract documents is hereby agreed upon as the true and actual damages due the Jurisdiction for loss to the Jurisdiction and to the public due to obstruction of traffic, interference with business, and/or increased costs to the Jurisdiction such as engineering, administration, and inspection after the expiration of the contract time, or extension thereof. Such liquidated damages may be deducted from any money due or to become due the Contractor under the contract, and the Contractor and its surety shall be liable for any liquidated damages in excess of the amount due the Contractor.

C. Allowing the Contractor to continue and finish the work, or any part of it, after the expiration of the contract time or extension thereof shall in no way operate as a waiver on the part of the Jurisdiction of any of its rights or remedies under the contract, including its right to liquidated damages pursuant to this provision.

1.13 BREACH OF CONTRACT

A. The Contractor's failure to perform in any of the following particulars shall constitute a breach of contract:

1. Failure by the Contractor to begin work at the time specified;

2. Failure by the Contractor to complete the work within the contract period or any extension thereof;

3. Failure or refusal by the Contractor to comply with an order of the Engineer within a reasonable time;

1.13 BREACH OF CONTRACT (Continued)

4. Contractor's persistent disregard of laws, ordinances, or instructions of the Engineer;
5. Contractor's repeated failure to provide sufficient workers, equipment, or materials to ensure the proper and timely completion of the work;
6. Failure or refusal by the Contractor to remove rejected materials;
7. Failure or refusal by the Contractor to replace, perform anew, or correct any defective or unacceptable work;
8. Contractor's discontinuance of the work without authorization by the Jurisdiction;
9. Bankruptcy or insolvency of the Contractor, or the making of an assignment for the benefit of creditors by the Contractor; or
10. Failure by the Contractor to carry on the work in an acceptable manner.

Upon Contractor's breach of the contract in any particular above, the Jurisdiction shall be entitled to give notice of default to the Contractor. The notice of default shall indicate how the contract has been breached and shall indicate what action the Contractor must take to cure such breach.

B. If the Contractor or its surety does not, within the time for cure provided in the notice of default, take action to cure such breach, the Contractor shall, at the direction of the Engineer, relinquish possession and control of the work, and the Jurisdiction shall thereupon have full power and authority, without violating the contract or bond, to take over the completion of the work, to appropriate or use any or all materials and equipment at the site that may be suitable and acceptable, to enter into agreements with others for the completion of said contract according to the terms and provisions thereof, or to use such other methods as in the Jurisdiction's opinion may be required for the completion of said contract in an acceptable manner.

C. The Contractor and its surety shall be liable for all outlay and expense incurred by the Jurisdiction, together with the costs of completing the work, and such costs may be deducted from any monies due or which may become due to the Contractor. In case the outlay and expense incurred by the Jurisdiction in completing the work is less than the sum that would have been payable under the contract if it had been completed by the Contractor, then the Contractor will be entitled to receive the difference. In case such outlay and expense exceeds the sum that would have been payable under the contract, then the Contractor and its surety shall be liable for and shall pay to the Jurisdiction the amount of said excess.

D. Neither the Jurisdiction, nor any officer, agent, or employee thereof, shall be in any way liable or accountable to the Contractor or the Contractor's surety for the method by which the completion of said work, or any portion thereof, may be accomplished, or for the price paid therefore. Neither by taking over the work nor by declaring the contract in default shall the Jurisdiction forfeit the right to recover damages from the Contractor or the Contractor's surety for failure to complete the entire contract.

E. The Contractor shall be liable for the Jurisdiction’s attorney fees incurred as a result of the Contractor’s breach of contract.

1.14 TERMINATION OF CONTRACTOR'S RESPONSIBILITY

The contract will be considered completed when the work has been accepted in writing by the Jurisdiction as provided in Section 1090, 1.08 - Acceptance and Final Payment hereof. Such final acceptance shall release the Contractor from all further obligation with respect thereto, except as to conditions and requirements as set forth in the bond and Jurisdiction's specifications regarding insurance.

END OF SECTION