



**SPECIAL PROVISIONS  
FOR  
CONSTRUCTION WORK ON RAILROAD RIGHT-OF-WAY WITH A+B FOR BIDDING RAILROAD  
FLAGGERS (CANADIAN PACIFIC)**

**Keokuk County  
HRRR-C045(90)--5R-54**

**Effective Date  
December 16, 2014**

**THE STANDARD SPECIFICATIONS, SERIES 2012, ARE AMENDED BY THE FOLLOWING MODIFICATIONS AND ADDITIONS. THESE ARE DEVELOPMENTAL SPECIFICATIONS AND THEY PREVAIL OVER THOSE PUBLISHED IN THE STANDARD SPECIFICATIONS.**

**125003.01 DESCRIPTION.**

This specification applies to projects on the Interstate, Primary, Secondary, and Local Road systems involving construction or maintenance of roadways and structures requiring additional property rights or facility adjustments from the Canadian Pacific (CP).

This specification describes the following:

- Requirements when work is within the Right-of-way (ROW) or properties of the Canadian Pacific (CP) and adjacent to tracks, wire lines, and other facilities.
- Coordination with CP when work by the Contractor will be performed upon, over, or under the CP ROW, or may impact current or future CP operations.
- A+B for bidding provisions for railroad flagging.

The CP representative will be the person or persons identified by the CP Manager of Industry and Public Projects to handle specific tasks related to the project. The contract documents will specify the contact information for this individual(s).

Prior to advertising the project for letting, the Contracting Authority will negotiate and obtain an agreement with the CP for the work on CP ROW. Prior to entering CP property, the Contractor shall execute and abide by the terms of the Right of Entry License Agreement, which is included as Attachment A to this specification. In the case of any conflicts between Attachment A and this specification, the provisions of Attachment A shall prevail.

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

**125003.02 REQUESTS FOR INFORMATION.**

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

**125003.03 A + B BIDDING FOR RAILROAD FLAGGING.**

**A. General.**

The determination of the low bidder on this project will involve a combination of the contract sum and the bidder's proposed time to complete all work requiring the use of railroad flaggers. Railroad flagging will be required whenever the conditions in Article SP-125003.06 are encountered.

A Critical Path Method schedule will be required according to Section 1110 of the Standard Specifications.

**B. Definitions.**

**1. Daily Railroad Flagging Cost.**

The amount that represents the average daily cost of a single railroad flagger. The daily railroad flagger cost will be shown on the proposal form.

**2. Railroad Flagger Day**

Any calendar day that a railroad flagger is required according to Article SP-125003.06. The need for railroad flaggers at multiple sites per calendar day will result in the Contractor being charged an additional number of railroad flagger days.

**C. Preparation of Proposal.**

The bidder shall establish the number of days they propose to use to complete all work requiring the use of railroad flagging services under this proposal. The proposal form may state a maximum number of railroad flagger days allowable. Bids showing railroad flagger days in excess of the maximum amount will be considered non-responsive and will not be considered.

**D. Consideration of Bids.**

Each bid submitted shall consist of two parts:

(A) = Contract sum.

(B) = Total number of railroad flagger days proposed by the bidder to complete all work requiring the use of railroad flaggers. The bidder shall enter the number of railroad flagger days on the proposal form.

The successful bid will be determined by the lowest combination of (A) and (B) according to the following formula:

$(A) + [(B) \times (\text{Daily Railroad Flagging Cost})] = \text{Bid amount for award consideration.}$

**E. Charging of Railroad Flagger Days.**

A Railroad flagger day will be charged whenever railroad flaggers are required as described in Article SP-125003.06. Railroad flagger days will be only charged in whole days.

The Contractor shall submit to the Engineer a log of railroad flagger usage that identifies all railroad flagger requests to begin, modify, and end work activities; and number of railroad flaggers provided. This report shall be submitted to the Engineer weekly (reporting the previous week's activities). This report shall also include a written statement of any objections to railroad flagger days charged by the Engineer.

**F. Railroad Flagger Payment or Assessment.**

Railroad flagger incentive payment or disincentive assessment will be as follows:

**1. Incentive Payment.**

The Contractor will be paid an amount equal to the Daily Railroad Flagging Cost multiplied by the number of railroad flagger days remaining after all work requiring railroad flagging services have been completed.

**2. Disincentive Assessment.**

The Contractor will be assessed an amount equal to the Daily Railroad Flagging Cost multiplied by the number of railroad flagger days used in excess of the total number of days entered on the Proposal Form. There will be no maximum amount for disincentive assessment.

**G. Consideration for Extra Work or Delays During Railroad Flagging Periods.**

**1. Railroad Flaggers.**

No consideration for additional railroad flagger days will be considered for the first two consecutive days of delay for each extraordinary circumstance. The Contractor will be responsible for obtaining necessary weather forecasts prior to ordering railroad flagging services.

**2. Additional Time.**

Additional time will be given by the Engineer for extra work, overruns of contract items, or extraordinary circumstances meeting the following requirements:

- a. Approved extra work or overruns of contract items that extend the duration of the railroad flagging period shall be documented and included in the critical path of the project. The revised critical path diagram shall be submitted to the Engineer for approval.
- b. Non-weather related extraordinary circumstances that delay the Contractor during the railroad flagging periods shall be documented by the Contractor and a written request for additional time shall be submitted to the Engineer within 72 hours of the beginning of the delay. The Engineer will approve or deny all requests for additional closure time resulting from non-weather related extraordinary circumstances. Non-weather related extraordinary circumstances will be limited to the following:
  - 1) **Strikes:** Strikes which are not directed against the Contractor.
  - 2) **Legal Stoppages:** Legal Stoppages will be allowed if they result from legal action against the Contracting Authority or against the Contractor if not based on a specification violation.
  - 3) **Late Delivery of Material:** Procurement of material for a project is the sole responsibility of the Contractor. Late delivery will be considered an extraordinary circumstance only when the Contractor can show that orders were placed with a reliable supplier in sufficient time for materials to be delivered when needed and only when there is:
    - A nationwide shortage,
    - An industry wide strike,
    - Transportation strike which delays the delivery of material, or
    - Delays due to a change in material commitments when caused by a Federal emergency or order.
  - 4) **Natural Disaster:** A suspension order may be issued on any project in a declared disaster area, if the disaster causes conditions that do not allow productive work.
- c. Adverse weather including rain, snow, wind, flood, extreme heat, and the results thereof, such as inaccessibility or non-workability of materials, is only considered as extraordinary circumstance if the Contractor is working or ready to work on the contract and the adverse weather conditions do not allow productive work on the critical path. Adverse weather that delays the Contractor during the critical closure activity shall be documented by the Contractor and a written request for additional closure days shall be submitted to the Engineer within ten calendar days of the beginning of the delay. Some delays for weather have been included in the number of closure days allowed. Therefore, additional

closure days for adverse weather will not be allowed for the first five consecutive closure days of each delay.

**125003.04 CONSTRUCTION AND AS-BUILT SUBMITTALS.**

- A. Submittals are required for construction materials and procedures as outlined below. The submittals shall include all review comments from the Engineer. All design submittals shall be stamped and signed by a Professional Engineer registered in the State of Iowa.
- B. The tables below provide CP’s minimum submittal requirements for the construction items noted. Submittal requirements are in addition to those specified elsewhere in the contract documents. The minimum review times indicated below represent CP’s requirements only. The Contractor shall allow additional time for the CP’s review time as stated elsewhere in the contract documents.

For this specification the following definitions shall apply:

Overpass: when the roadway bridges over the railroad.  
 Underpass: when the roadway crosses under the railroad.

- C. Submittals will be made by the Engineer to the CP. Items in Table SP-125003.04-1 shall be submitted for both railroad overpass and underpass projects, as applicable. Items in Table SP-125003.04-2 shall be submitted for underpass projects only.

Prior to or during construction of underpass structures, the CP requires the review of drawings, reports, test data, and material data sheets to determine compliance with the specifications. Product information for items noted in Table SP-125003.04-2 shall be submitted to CP through the Engineer for their review and approval. The signed submittal and the Engineer’s review comments will be reviewed by CP. Review of the submittals will not be conducted until after review by the Engineer.

**Table SP-125003.04-1: Review Sets and Minimum Time for Review**

Description	Sets Required	CP’s Minimum Review Time
Shoring design and details	4	4 weeks
Falsework design and details	4	4 weeks
Drainage design provisions	4	4 weeks
Erection diagrams and sequence	4	4 weeks
Demolition diagram and sequence	4	4 weeks

**Table SP-125003.04-2: Sets Required**

Description	Sets Required	Notes
Shop drawings	4	Steel and Concrete members
Bearings	4	For entire structures
Concrete Mix Designs	4	For entire structures
Rebar & Strand certifications	4	For superstructure only
28 day concrete strength	4	For superstructure only
Waterproofing material certifications and installation procedure	4	Waterproofing & protective boards
Structural steel certifications	4	All fracture critical members & other members requiring improved notch toughness

Fabrication and Test reports	4	All fracture critical members & other members requiring improved notch toughness.
Welding Procedures and Welder Certification	4	AWS requirements
Foundation Construction Reports	4	Pile driving, drilled shaft construction, bearing pressure test reports for spread footings.
Compaction testing reports for backfill at abutments	4	Must meet 95% maximum dry density, Modified Proctor ASTM D 1557.

D. As-Built Records will be submitted to the CP within 1 year of completion of the structures. These records shall consist of the following items:

**1. Overpass Projects:**

- Electronic files of all structure design drawings with as-constructed modifications shown in Microstation J or Acrobat .PDF format.
- Hard copies of all structure design drawings with as-constructed modifications shown.

**2. Underpass Projects:**

- Electronic files of all structure design drawings with as-constructed modifications shown, in Microstation J or Acrobat .PDF format.
- Hard copies of all structure design drawings with as-constructed modifications shown.
- Final approved copies of shop drawings for concrete and steel members.
- Foundation Construction Reports
- Compaction testing reports for backfill at abutments

**125003.05 SITE INSPECTIONS BY THE CP.**

Site inspections may be performed by the CP at significant points during construction, including but not limited to the following:

- Preconstruction meetings
- Pile driving, drilling of caissons or drilled shafts
- Reinforcement & concrete placement for railroad bridge substructure or superstructure
- Erection of precast concrete or steel bridge superstructure
- Placement of waterproofing (prior to placing ballast on bridge deck)
- Completion of the bridge structure

A detailed 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 CP for review prior to commencement of work. This schedule shall also include the anticipated dates when the above listed events will occur. This schedule shall be updated for the above listed events as necessary, but at least monthly so that site visits may be scheduled.

**125003.06 CP REPRESENTATIVES.**

CP representatives will be provided at the expense of the Contracting Authority to protect CP facilities, property, and movements of its trains or engines. In general, CP 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 CP, track or other CP facilities may be subject to settlement or movement.
- During any clearing, grubbing, excavation, or grading in proximity to CP facilities, which, in the opinion of CP, may endanger CP facilities or operations.
- During the Contractor's operations when, in the opinion of CP, CP facilities, including, but not limited to, tracks, buildings, signals, wire lines, or pipe lines, may be endangered.
- The Contractor shall arrange with the CP to provide the adequate number of flag persons to accomplish the work.

#### **125003.07 INSURANCE.**

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

In addition to providing to CP the insurance binders, endorsements, and certificates described below, the Contractor shall also provide the subcontractor insurance endorsements that are described in Article SP-125003.08; 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.

##### **A. 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 "Canadian Pacific 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.

##### **B. 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 "Canadian Pacific 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 CP 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 1112.02, B, of the Standard Specifications.

**C. 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 CP in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

**D. 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.

**E. Pollution Liability Insurance.**

Pollution liability coverage shall be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$1,000,000 per occurrence and an aggregate limit of \$2,000,000.

If the scope of work as defined in this contract includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor shall furnish to CP evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

- F.** All policy(ies) required above (except worker's compensation and employers liability shall include the CP 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 CP as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for the CP'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.
- G.** 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.
- H.** 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.
- I.** 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.
- J.** All insurance policies shall be written by a reputable insurance company acceptable to the CP 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.

- K. The fact that insurance is obtained by the Contractor or by the CP 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 CP from the Contractor or any third party shall not be limited by the amount of the required insurance coverage.

**125003.08 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.

**125003.09 ADDITIONAL SAFETY REQUIREMENTS.**

Personnel employed by the Contractor or subcontractors shall complete the CP course "Orientation for Contractor's Safety", and be registered prior to working on CP property. This orientation is available at: [www.contractororientation.com](http://www.contractororientation.com). This course shall be completed annually.

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 CP 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.

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

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

If at any time the Engineer or the CP 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 proper protective measures are adopted and provided.

**125003.10 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 or in the vicinity of the CP's property without the prior consent of the CP, which shall not be given if, in the sole discretion of the CP, such discharge would be dangerous or would interfere with the CP's property or facilities. For the purposes hereof, the "vicinity of the CP's property" shall be deemed to be any place on the CP's property or in such close proximity to the CP's property that the discharge of explosives could cause injury to the CP's employees or other persons, or cause damage to or interference with the facilities or operations on the CP's property. The CP reserves the right to impose limitations on

the transportation, handling, storage, security, and use of explosives as the CP, in the CP's sole discretion, may deem to be necessary, desirable, or appropriate. In addition to any limitations as may be specifically imposed:

1. The Contractor shall provide no less than 48 hours written notice, excluding weekends and holidays, before discharging any explosives.
2. Any explosives loaded in holes, placed or otherwise readied for discharge, they shall be discharged the same day during daylight hours, and at mutually acceptable times.
3. The Contractor, at its own expense, shall take all precautionary measures and construct all temporary shelters necessary to guard against danger of damage, destruction, or interference arising out of or connected with any blasting or any transportation, handling, storage, security, or use of explosives.

**B. Obstructions to View.**

Except as otherwise provided herein, the Contractor shall not cause or permit the view along the tracks of the CP 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 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 CP. The Contractor shall not perform any work that may disturb the stability of any area or adversely affect the CP'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 CP to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the CP's operations in the vicinity.

**D. 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 CP that may adversely affect any of the CP's operations, equipment or any third parties with permitted facilities on the CP'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 CP'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 CP or any part thereof, or property of others. The Contractor shall not obstruct or interfere with existing ditches or drainage facilities.

**E. Clearances.**

The Contractor shall provide a minimum vertical clearance of 21.5 feet (6.56 m) above top of rails and a minimum lateral clearance of 12.0 feet (3.66 m) from centerline of track nearest temporary construction falsework.

Proposed changes to the specified minimum clearances shall be submitted to CP, through the Engineer, at least 30 calendar days in advance of the work. No work shall commence until the Engineer receives concurrence, in writing, from CP that approval is given and that arrangements have been made for flagging service, as may be necessary. The CP will have two weeks to respond to the request.

**F. Demolition of Existing Structures.**

The Contractor shall submit demolition plans to the Engineer for review and approval. The Engineer will forward to the CP as identified in the project agreement. Demolition shall not be undertaken until the Contractor has received the Engineer's written approval of such demolition plans. All such reviews and approvals or rejections will be completed by the Engineer within 45 calendar days of receipt from the Contractor.

**125003.11 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 CP'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 CP'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.

**125003.12 EXCAVATIONS IN CLOSE PROXIMITY TO CP FACILITIES.**

The Contractor shall take special precaution in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls, or other facilities that require shoring shall comply with the following requirements: OSHA, AREMA, and CP "Guidelines for Temporary Shoring".

The Contractor shall contact CP's "Call Before Your Dig" at least 48 hours prior to commencing work at 1.800.336.9193 during normal business hours (6:30 a.m. to 8:00 p.m. C.S.T., Monday through Friday, except holidays - also a 24 hour, seven day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near CP property, the Contractor shall coordinate with CP and the telecommunication company to arrange for relocation or other protection of the system prior to beginning any work on or near CP property.

**125003.13 NO INTERFERENCE WITH CP'S OPERATION.**

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

**125003.14 TRAFFIC CONTROL.**

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

**125003.15 INDEMNITY.**

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

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

**125003.16 MAINTENANCE OF CP 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 CP's ROW, and repair any other damage to CP property, or its tenants; at no additional cost to the CP.

**125003.17 COMMUNICATIONS AND SIGNAL LINES.**

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

**125003.18 FIBER OPTIC CABLE SYSTEMS.**

Fiber optic cable systems may be buried on the CP'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 CP (1.800.336.9193 (a 24-hour number)) to determine if fiber optic cable is buried anywhere on the CP'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 CP's Crossing Area.

In addition to the liability terms elsewhere in this specification, the Contractor shall indemnify and hold harmless the CP 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 CP'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 CP's property in the crossing area. The Contractor shall not have or seek recourse against CP 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 CP's property or a customer or user of services of the fiber optic cable on CP's property.

**125003.19 COOPERATION.**

The CP 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 CP's ROW in performing the work.

**125003.20 WAIVER OF BREACH.**

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

**125003.21 CP OPERATIONS.**

The Contractor shall be advised that trains or equipment are expected on any track, at any time, in either direction. Contractor shall become familiar with the train schedules in this location and structure its bid assuming intermittent track windows in this period, as defined below.

All railroad tracks within and adjacent to the work are active and rail traffic over these tracks shall be maintained throughout the contract. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations may occur continuously throughout the day and night on these tracks and shall be maintained at all times. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with CP operations.

Work windows for this contract shall be coordinated with the Engineer. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:

- A. Conditional Work Window:** A period of time that CP operations have priority over construction activities. When construction activities may occur on and adjacent to the railroad tracks within 25 feet (7.62 m) of the nearest track, a CP flag person will be required. At the direction of the CP flag person, upon approach of a train, and when trains are present, the tracks shall be cleared (i.e., no construction equipment, materials, or personnel within 25 feet (7.62 m), or as directed by the CP, from the tracks). Conditional Work Windows are available for the contract.
- B. Absolute Work Window:** A period of time that construction activities are given priority over CP operations. During this time frame the designated tracks will be inactive for train movements and may be fouled by the Contractor. At the end of an Absolute Work Window the tracks or signals shall be completely operational for train operations and all CP, Public Utilities Commission, and Federal Railroad Administration requirements, codes, and regulations for operational tracks shall be met. In the situation where the operating tracks or signals have been affected, the CP will perform inspections of the work prior to placing back into service. CP flag persons will be required for construction activities requiring an Absolute Work Window.

Absolute Work Windows will not generally be granted. Any request will require a detailed explanation for CP review.

- C.** All work on CP's ROW shall be done at such times and in such manner so as not to interfere with or endanger the operations of CP. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to the CP for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor that requires flagging or inspection service shall be deferred until the flagging protection required by CP is available at the job site.
- D.** The Contractor shall make requests in writing for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request shall include:
- Exactly what the work entails.
  - The days and hours that work will be performed.
  - The exact location of work, and proximity to the tracks.
  - The type of window requested and the amount of time requested.
  - The designated contact person.

The Contractor shall provide written notice to the CP at least 48 hours before commencing work in connection with approved work windows when work will be performed within 25 feet (7.62 m) of any track center line.

- E.** Should a condition arising from, or in connection with the work, require that immediate and unusual provisions be made to protect operations and property of CP, the Contractor shall make such provisions. If in the judgment of the CP such provisions are insufficient, the CP may require or provide such provisions as deemed necessary. In any event, such provisions shall be at the Contractor's expense. The CP or Engineer will have the right to order Contractor to temporarily cease operations in the event of an emergency or, if in the opinion of the CP, the Contractor's operations could endanger CP's operations. In the event such an order is given, Contractor shall immediately notify the Engineer of the order.

#### **125003.22 RAILROAD FLAGGING.**

The Contractor shall notify the CP and Engineer at least 15 working days in advance of 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 CP's track at anytime unless and until a railroad flagger is provided to watch for trains.

Upon receipt of such, ten working day notice, the CP will determine and inform the Contractor whether a railroad 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 CP such services will be provided at a fixed daily cost, however the actual and necessary flagging expense will be billed to the Contracting Authority as a reimbursable item of railroad work. The CP will segregate flagger service expenses by project number.

It is to be understood that if the CP provides any railroad flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein.

This report shall include railroad flagger days and notices of flagger service requests to begin and end flagging. To enable orderly flagger reassignment to other projects the Contractor shall notify the CP 5 working days prior to the termination of flagging need or five working days prior to completion of the Contractor's work, whichever is sooner. The Contractor shall inform the CP when work requiring flaggers is complete on each project and ready for a final billing to the Contracting Authority.

The CP will notify the Engineer and Contractor when non-compliance is reported by CP train crews or other CP employees. Contractor work performed without proper flagging services, when required, will be subject to a \$5,000 per day price adjustment by the Engineer.

#### **125003.23 TEMPORARY CROSSINGS.**

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

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 CP 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 CP. Prior notice of need for a temporary crossing needs to allow for CP site review, cost estimating, securing material, and work crew scheduling and will vary. The Contractor should contact the CP prior to making a bid when a temporary crossing is required.

#### **125003.24 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 CP to use and maintain its property, not inconsistent with highway purposes, including the right and power of the CP to construct, maintain, repair, renew, use, operate, change, modify, or relocate CP 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 CP, not inconsistent with highway purposes and at CP'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 CP's property, and others) and the right of the CP to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**125003.25 MECHANIC'S 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 CP for any work performed. The Contractor shall indemnify and hold harmless the CP 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 CP to the extent permitted by law.

**125003.26 METHOD OF MEASUREMENT AND BASIS OF PAYMENT.**

Railroad Protective Liability Insurance for Dakota, Minnesota, and Eastern Railroad Corp. will be paid for as a Lump Sum bid item. The Contractor will be paid 100% of the Lump Sum bid item once the Engineer has received all necessary certificates of insurance.

### RIGHT OF ENTRY LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made by and between Canadian Pacific and .....(contractor name).....

**1. PARTIES:**

Dakota, Minnesota and Eastern Railroad Corp., doing business as Canadian Pacific with general offices at:

Address	Contact Info	
11306 Franklin Avenue, Franklin Park, IL 60131	Name:	Daniel Sabatka
	Phone:	612-209-7659
	Fax:	
	Email:	daniel_sabatka@cpr.ca

hereinafter called "CP,"

and ....(contractors name).....whose address is:

Address	Contact Info	
	Name:	
	Phone:	
	Fax:	
	Mobile:	
	Email:	

hereinafter called "Licensee."

**2. PROPERTY; SCHEDULE; GRANT OF LICENSE;**

**2.1. Property**

CP hereby grants Licensee a license to enter in and upon certain property owned or controlled by CP in County, City and State at railroad mile post \_\_\_\_\_ on the \_\_\_\_\_ Subdivision, as shown upon the map labeled Exhibit A that is attached hereto and made a part hereof (the "Property")

**2.2. Work Schedule:**

for the sole purpose of performing, generally, the following activities: roadway reconstruction per the approved detailed plans, specifications and special provisions affecting the interest of CP and subject to approval by CP's authorized representative.

**2.3. Grant of License:**

This license is granted subject to all the terms and conditions set forth below and apply to all Work and activities upon the Property that may be performed by Licensee through its employees, agents, and contractors. For the purposes of this Agreement, the actions and omissions of such employees, agents, and contractors shall be deemed the actions and omissions of Licensee.

**2.4. Agreement To Be Available At Work Site:**

Licensee shall keep a copy of this Agreement at the Work site and shall make it available upon demand by any employee or agent of CP.

**3. TERM, EFFECTIVE DATE, EXPIRATION & TERMINATION**

**3.1. Term:** The term of this Agreement shall

*Commence* at 12:01 am on ..... 2012, the "**Commencement Date**;" and

*Expire* at 11:59 pm on ..... 2012, the "**Expiration Date**;"

the "**Term**." Upon agreement between CP and Licensee, the Term may be lengthen or shorten without affecting any other provisions of this Agreement

**3.2. Effective Date:**

This Agreement shall be effective upon the date that it has been signed by both parties.

**3.3. Expiration:**

This Agreement will expire at the Expiration Date, or when the Work is completed, whichever occurs first. Notwithstanding any other provision of this Agreement, the preceding sentence shall not terminate or limit any claim by CP against Licensee arising prior to the Expiration Date. If the Work includes monitoring wells, and if such wells remain on the Property after the Expiration Date, this Agreement shall remain in effect for those wells until the earlier of the following:

- (i) the date they are properly closed (i.e., sealed and abandoned in accordance with applicable legal requirements) by Licensee or
- (ii) the date CP assumes ownership of such wells pursuant to section 10.8.

**3.4. TERMINATION; EXCLUSION:**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN**, this Agreement is terminable by CP prior to the Expiration Date in the event Licensee breaches any of its obligations under this Agreement. If CP elects to terminate this Agreement, it shall give Licensee notice of termination, which notice shall specify the obligation or obligations breached by Licensee; and this Agreement shall terminate 30 days after such notice is given (provided, however, that this Agreement shall not terminate if the breach is cured within said 20 day period). This Agreement is also subject to early termination pursuant to paragraph 21. The early termination of this Agreement shall not terminate or limit any claim by CP against Licensee arising prior to such termination. If Licensee is in breach of any of its obligations under this Agreement, any employee or agent of CP may order Licensee off the Property, in which case Licensee shall immediately leave the Property; moreover, Licensee shall leave the property immediately upon receipt of a notice given pursuant to this paragraph 3(D); and in either case, Licensee shall not re-enter the Property until such time as the breach is cured.

**4. PAYMENTS**

**4.1. License Fee.**

In consideration of the permissions herein granted, the Licensee shall with its execution hereof pay to CP the sum of Five Hundred (\$500.00) **Dollars**.

**4.2. Utilities.**

Licensee shall assume and timely pay for any gas, electrical, telephone, computer, sewer, water, storm water, waste or trash removal or any other service or commodity connected with

the Work, collectively "**Utility Service.**" If any Utility Service fee is in common with CP or other parties, Licensee shall be liable for its proportionate share of any such Utility Service Fee and upon receipt of a bill therefor, promptly pay CP or such other party for its share. It shall be a default in the terms of this lease if it can be shown that Licensee has not made such payments within 30 days if due to CP, or within 60 days if payable to any other party.

**4.3. Mechanics' And Materialmen's Liens:**

If any mechanics' or materialmen's lien, or similar lien, is asserted against the Property, or any other property of CP, as a consequence of the Work, Licensee shall immediately satisfy, defend, or obtain the release of such lien, all at Licensee's expense, and Licensee shall indemnify and defend CP against any Claims arising out of or connected with such lien.

**4.4. Additional Charges.**

Licensee shall within 30 days of receipt of a bill therefor, pay to CP costs for flagging, track changes or damage, or other such charges as may be provided by this Agreement or that CP may reasonably impose in connection with Licensee's Work.

**4.5. Due Dates; Penalties; Other Charges**

**4.3.1. Due Dates**

Any item, submission or payment required to be made shall be deemed timely made if received by the other party on or before the specified due date, or prior to expiration of the applicable period for compliance, submission or payment.

**4.3.2. Late Fees**

In addition to any amounts payable by Licensee to CP, Licensee shall pay CP a late fee for any payment not timely made by Licensee. The late fee shall be at the rate for overdue accounts set by CP's Accounting Department that is in effect at the time that that any such payment is due. Said late fee shall initially be an amount equal to 1% of the invoice amount per month.

**4.3.3. Fines & Service Fees**

In addition to any other amounts payable by Licensee to CP, Licensee shall pay CP for any bank fines or service incurred by it in connection with the handling, non-payment, return or currency conversion incurred by CP in connection with processing of any payment made by Licensee to CP.

**4.6. Work At No Cost To CP:**

The Work completed by Licensee shall be performed at no cost to CP.

**5. CONTACT, NOTICES, ETC.**

**5.1. Contact Persons; Communications:**

Communications pursuant to this Agreement shall be directed to the contact persons designated in Section 1 or their designees. Either party may change its contact person, or the address(es), telephone number, or fax number for the contact person, by notice to the other party.

**5.2. Notices:**

Except as otherwise provided in this Agreement, all notices pursuant to this Agreement shall be in writing and shall be effective upon delivery to the address or fax number of the contact person for the party to whom notice is being given. If notice is given by fax, the notice shall not be deemed effective until received in legible form.

**5.3. Notification Prior To Beginning Work:**

Licensee must notify CP's contact person by telephone at least five working days prior to beginning any separate phase of the Work, and again promptly after such phase of the Work has been completed.

**6. PERMITTED & PROHIBITED USES; RIGHTS OF CP**

**6.1. Permitted Uses:**

**6.1.1. *The Work:***

The use of Property by Licensee shall be limited to the completion of the Work set forth in Section 2.2., or such other kind of activities as may be approved by CP in writing.

**6.1.2. *Government Authorities.***

Licensee may permit governmental authorities with jurisdiction over the Work to enter the Property for the purpose of inspecting or monitoring the Work. Whenever possible, Licensee shall advise CP (by telephone or other means calculated to bring the matter to CP's immediate attention) prior to permitting such governmental authorities to enter the Property for such purposes. The actions and omissions of such governmental authorities while on the Property for such inspections and monitoring shall be deemed the actions and omissions of Licensee. Licensee is not authorized to permit governmental authorities to enter the Property for any other purpose.

**6.2. Prohibited Uses and Activities.**

The Licensee shall not use, occupy or permit the Property to be used for any purpose, activity or improvement except as provided in this Agreement or as may be approved of in writing by CP. Specifically, Licensee shall not:

**6.2.1. *Advertising***

permit any advertisements or signs upon the Property;

**6.2.2. *Use of Hazardous Substances***

without prior written disclosure to and approval by CP, Use or authorize the Use of any Hazardous Substance on the Property, including installation of any above or underground storage tanks; subject thereto, the Licensee shall arrange at its own cost for the lawful transportation and off-site disposal of any and all Hazardous Substances that it shall Use or generate;

**6.2.3. *Use of Premises for waste treatment or as storage or disposal facility***

cause or allow the Property or any of CP's adjacent property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or to otherwise bring any such property within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance; or

**6.2.4. *Subleasing is prohibited.***

sublease the Property or the permissions or rights herein granted in any manner or form.

**6.3. Reservations and Rights of CP:**

**6.3.1. *Railroad Activities Take Priority over Work***

All Work by Licensee shall always and all times be subordinate to the needs of CP in connection with the operation and movement of railroad trains and equipment, and the repair of railroad track, structures, communications and appurtenances thereto.

**6.3.2. Reservation of prior and future uses not inconsistent with Licensee's activities.**

The rights herein granted to Licensee are subject to the rights granted in all other licenses, permits and easements for tracks, roads, walkways, poles, wires, pipelines, sewers, billboards and other improvements that exist or may be placed upon, across, above or underneath the Property by CP, or its employees, agents, licensees, grantees, representatives or invitees. Further, CP reserves unto itself the right to place (or to give others the right to place) additional tracks, roads, walkways, poles, wires, pipelines, sewers and billboards upon, across, above or underneath the Property in any manner that does not unreasonably interfere with Licensee's Work.

**6.3.3. Monitoring**

CP may elect to be present during the conduct of the Work and to monitor same.

**7. COVENANTS, CONDUCT & RESPONSIBILITIES**

**7.1 Definitions**

**7.1.1 "Claim" or "Claims"** means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);

**7.1.2 "Environmental Law" or "Environmental Laws"** means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Water Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law, ordinance, order or decree dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted;

**7.1.3 "Hazardous Substance" or "Hazardous Substances"** means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law;

**7.1.4 "Release" or "Released"** means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "environment" is defined in CERCLA;

**7.1.5 "Response" or "Respond"** means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;

**7.1.6 "Use"** means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon.

**7.2 Investigation; Compliance with Laws; Safety Requirements.**

**7.2.1 Tenants and Licensees in possession of Property.**

Before entering the Property, Licensee shall secure the consent of all persons or entities who are using or occupying any portion of the Property. CP will cooperate with Licensee to obtain consent from any such person or entity who unreasonably withholds consent.

**7.2.2 *Underground Utilities And Structures:***

- a. Licensee shall be responsible for determining the location of all underground utilities (electric lines, telephone lines, gas lines, steam lines, sewer lines, water lines, fiber optic cables, pipes, wires, and the like) and underground structures.
- b. Licensee shall call CP "ONE CALL" at 1-866-291-0741 and Roger Communication "ONE CALL" at 1-888-625-8702 a minimum of 5 business prior to commencing any excavation or boring on the Property.
- c. CP will cooperate with Licensee to identify the location of underground utilities and structures known to CP, but such cooperation shall not relieve Licensee from its primary responsibility to determine the locations of such utilities and structures.

**7.2.3 *Permits And Licenses; Compliance With Laws:***

Licensee shall secure, at no expense to CP, any permits or licenses required in connection with the Work and shall comply with all laws applicable to the Work and the Property, including (but not limited to) any laws, standards, regulations, and permit requirements relating to environmental pollution or contamination or to occupational health and safety. Licensee shall indemnify and defend CP against any and all Claims arising out of or connected with the violation of any law by Licensee while on or about the Property.

**7.2.4 *Compliance With CP Safety Requirements; Identification:***

- a. While on the Property, Licensee shall comply with the safety requirements of CP, as such requirements may be amended from time to time during the duration of the Work, all at no expense to CP. CP's safety requirements are set forth "Exhibit B" titled "MINIMUM SAFETY REQUIREMENTS FOR CONTRACTORS WORKING ON RAILWAY PROPERTY" and in CP's current safety handbook. One free copy of the current safety handbook will be provided to the Licensee by the CP contact person. Additional copies will be provided at Licensee's expense. Licensee shall be responsible for ensuring that any person performing any of the Work for or on behalf of Licensee shall comply with the CP safety requirements that would apply to a CP employee performing similar work.
- b. ~~Prior to any entry onto the Property, Licensee and every employee, agent or subcontractor who carries out any part of the Work on the Property shall successfully complete the safety training available through the e-railsafe program at [www.e-railsafe.com](http://www.e-railsafe.com) in respect to requirements for Canadian Pacific operations.~~
- c. ~~Licensee and every employee, agent or subcontractor who carries out any part of the Work on the Property shall at all times wear and visibly display the identification badge issued to them following successful completion of the e-railsafe safety training together with whatever additional identification materials that CP may reasonable require.~~

**7.3 *Work In Close Proximity To Railroad Operations;***

**7.3.1 *Interference With Railroad Operations:***

Licensee shall keep CP fully apprised of its proposed activities on the Property so as to prevent any interference with the operations of CP's trains or equipment (or trains or equipment of others) operating on or near the Property.

**7.3.2 Drainage;**

Licensee shall not make any changes to existing drainage patterns on or adjacent to railroad property without written approval by CP. Licensee shall not perform work that modifies capacity of drainage conveyance systems.

**7.3.3 Clearance;**

No work shall be done or any equipment or other obstruction placed over or within 25 feet laterally of the centerline of any track without advance notification to CP prior to performing such work or placing such equipment or obstruction.

**7.3.4 Flagging:**

Licensee must make arrangements with CP for such flagging or watchman service as CP deems necessary for the protection of railroad traffic. Cost for the first 55 days of flagging shall not be the responsibility of the contractor. Any flagging beyond 55 days shall be charged to the contractor. The fact that CP provides such service shall not relieve Licensee from any liability under this Agreement. CP's labor and material additives are subject to change without notice to Licensee, and CP shall be reimbursed based upon its labor and material additives actually in effect as of the date of such service.

**7.3.5 Certain Work Close To Track Not Permitted; Lateral Support:**

- a. Unless otherwise agreed to in writing by CP, excavations, borings, wells, pits, test holes, probe sites, and the like shall not be located closer than 25 feet from the centerline of the nearest railroad track on or adjacent to the Property nor shall it take or allow any action upon the Property that would materially impair the lateral or subadjacent support of adjacent lands or railroad tracks.;
- b. Unless otherwise agreed to in writing by CP, drilling and excavating equipment and related equipment shall not be located closer than 25 feet from the nearest rail of any such track;
- c. In the event that CP permits excavations, borings, wells, pits, test holes, probe sites, or the like in close proximity to tracks, embankments or other features providing lateral or subadjacent support to land or tracks, then notwithstanding anything to the contrary in this license, Licensee shall be responsible for designing and constructing at no cost to CP any measure that is required to prevent the collapse, erosion or impairment to said land or tracks.

**7.3.6 Storm Water**

Licensee shall not, without the advance written approval of CP, make any changes to the Property that would either increase the historic flow rate of storm water from the Property or create an impediment to the historic flow of storm water to the Property. Unless otherwise agreed in writing, Between CP and the Licensee it is understood and agreed that Licensee shall at Licensee's cost and expense be liable to CP for the construction, maintenance, repair and replacement upon the real property or other land not belonging to Grantor such storm sewer lines, manholes, mains, rip rap, boulders, wing walls, ditches and related

**7.3.7 Fencing**

Licensee shall, at no cost to CP, construct and maintain during the term hereof a fence acceptable to CP in the location(s) designated on Exhibit A. Following completion of the Work, the Licensee shall remove the fencing, remove any post footings or concrete, and fill and tamp any post holes with clean fill material.

**7.4 Conduct**

**7.4.1. Property clean, safe and free from nuisances**

The Licensee shall not permit the existence of any nuisance upon the Property and shall at all times keep the Property in a proper, clean, safe and sanitary condition, and free from accumulations of waste materials, debris or refuse.

**7.4.2. Release of Hazardous Substances:**

The Licensee shall not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property.

**7.4.3. Response Actions**

The Licensee shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property caused by, or attributable to, any act or omission of the Licensee (or the Licensee's employees, agents, representatives or invitees) that could:

- a. give rise to any Claim under any Environmental Law,
- b. cause a public health or workplace hazard, or
- c. create a nuisance.

**7.5. Required Notices/Disclosures**

**7.5.1 Transportation and Disposal Contracts**

The Licensee shall, upon written request by CP, provide CP with copies of transportation and disposal contracts and manifests for Hazardous Waste, any permits issued under any Environmental Laws, and any other documents demonstrating that the Licensee has complied with all Environmental Laws relating to the Property

**7.5.2 Releases or Suspected Releases**

The Licensee shall promptly notify CP of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release.

**7.5.3. Notices, summons citations, etc.**

The Licensee shall promptly provide CP with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning:

- a. any Release of a Hazardous Substance on, to or from the Property,
- b. the imposition of any lien on the Property, or
- c. any alleged violation of or responsibility under any Environmental Law relating to the Property.

**7.5.4. Other Reports <not applicable>**

Licensee shall, at CP's option, provide CP, at no cost to CP, a copy of any other report, summary or written test results, collectively "Report," pertaining to the Work. If any such

Report is to be filed or made available to any governmental agency acting in a regulatory capacity, then Licensee shall also give CP a reasonable time (not less than 5 working days) to review and comment on a draft of such Report and when preparing any such final Report pertaining to the Work, Licensee or its contractor shall give due consideration to CP's comments with respect to the draft of that Report. Licensee will promptly provide CP with a copy of any final Report.

**7.6. CP's right to Participate in Response Actions**

Following receipt of any notice, order, claim, investigation, information request, letter, summons, citation, directive, or other communication identified in 7.D.iii connection with any action taken pursuant to section 7.C.iv, Licensee shall notify CP of and permit CP to participate in any and all investigations, telephone conferences, settlement discussions, remediation plans and all other interactions, direct or indirect, with governmental or regulatory officials, and Licensee shall take all action necessary to ensure that any indemnification, release, waiver, covenant not to sue, or hold harmless agreement benefiting Licensee and arising out of such activities, whether from a governmental or regulatory entity or from a private entity, also benefits CP to at least the same extent as Licensee.

**7.7. Restoration of Property;**

Upon completion of the Work or expiration or early termination of this Agreement, whichever occurs first, Licensee shall remove any debris resulting therefrom and shall restore the Property to the condition it was in prior to the commencement of the Work (or such other condition as is satisfactory to CP). All excavations are to be backfilled and tamped. All borings shall be backfilled with grout. Drill cuttings shall not be used as backfill. Licensee shall dispose of all drill cuttings, soil and sediment samples, purge water, dewatering effluent, and water samples and all excess excavation material in a manner acceptable to CP and in accordance with all applicable laws, all at no expense to CP.

**8. LIABILITY**

**8.1. Damage To Tracks, Facilities, And Equipment:**

If any tracks, facilities, or equipment owned, used, or maintained by CP are damaged in connection with the Work, CP shall repair (or arrange for the repair of) such damage and Licensee shall pay the full cost of such repair within 30 days after CP shall tender a bill therefor.

**8.2. Assumption Of Risk:**

Licensee is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about the Property. Without in any way limiting the scope of the preceding sentence, Licensee assumes the risk that monitoring wells, elevation bench marks, reference points, and other installations located on the Property may be disturbed, damaged, or destroyed by CP or third persons, and Licensee shall not make any claim against CP on account of same, even if such disturbance, damage, or destruction arises from the negligence of CP or its employees, agents, or invitees. Licensee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on the Property.

**8.3. Indemnity:**

To the maximum extent permitted by applicable law, Licensee shall indemnify and defend the Indemnified Parties (as defined below) against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines,

sanctions, court costs, litigation costs, and attorneys' fees (collectively, Claims) arising out of or relating to any destruction of (or damage to) any property or natural resource, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the Work, any action or omission of Licensee while on or about the Property pursuant to this Agreement, or the exercise by Licensee of the license granted by this Agreement. As used in this Agreement, Indemnified Parties means the following businesses and their officers, directors, employees, and agents: Soo Line Railroad Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to the Property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

## **9. INSURANCE.**

Licensee shall procure and maintain in effect (or shall cause its contractor to procure and maintain in effect), at any time when any portion of the Work is being performed, the following insurance:

### **9.1. Comprehensive General Liability Insurance:**

Comprehensive general liability insurance with a policy limit of not less than \$2,000,000 per occurrence and \$5,000,000 aggregate for bodily injury, death, and damage to or destruction of property (including the loss of use thereof). The policy will include those policy extensions commonly referred to as broad form completed operations, contractor's protective, collapse, and underground damage. The policy shall by its wording or by endorsement insure those liabilities and obligations which this Agreement contemplates will be assumed by Licensee, including liabilities and obligations to indemnify the Indemnified Parties. The policy shall be endorsed to require that CP be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage. The policy shall be endorsed with a cross liability (severability of interest) endorsement in substantially the following form: "This policy shall insure each person, firm, or corporation hereunder in the same manner and to the same extent as if a separate policy had been issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurance company's liabilities." The policy shall be endorsed to add the following as additional insureds: Soo Line Railroad Company, Soo Line corporation Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to the Property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing (collectively, the Protected Parties). The policy shall also be endorsed to waive subrogation rights against the Protected Parties.

### **9.2. Automobile Liability and Property Damage Insurance:**

Automobile liability and property damage insurance in an amount not less than \$2,000,000, personal injury and property damage combined, covering the ownership, use, and operation of any motor vehicles and trailers licensed for use on public highways which are owned, leased, or controlled by Licensee or its contractor and used in connection with the Work. The policy shall be endorsed to require that CP be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage.

### **9.3. Workers Compensation Insurance:**

Workers compensation insurance that meets the requirements of applicable state law.

**9.4. Railroad Protective Liability Insurance:**

Railroad protective liability insurance (occurrence form), in the name of Soo Line Railroad Company and Canadian Pacific Railway Company, with limits of no less than \$2,000,000 per occurrence and \$6,000,000 aggregate for personal injury and property damage.

**9.5. Environmental Pollution Impairment Liability Insurance: <not applicable>**

Contractor's environmental Pollution Impairment liability insurance with a policy limit of not less than \$5,000,000 per occurrence. The policy shall be endorsed to require that CP be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage. The policy shall be endorsed with a cross liability (severability of interest) endorsement in substantially the following form: "This policy shall insure each person, firm, or corporation hereunder in the same manner and to the same extent as if a separate policy had been issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurance company's liabilities." The policy shall be endorsed to add the Protected Parties as additional insureds and to waive subrogation rights against the Protected Parties.

**9.6. Other Policies of Insurance: <not applicable>**

Such other insurance as may be necessary to protect the Protected Parties against certain other claims arising out of the Work, to wit:

- a. claims under any workers' compensation law,
- b. claims under the Federal Employer's Liability Act, and
- c. any other claims for damages for personal injury or death.

**9.7. Contractual Endorsement**

Each policy of insurance required in 9.1 and 9.2 shall include the following endorsement upon the certificate, or within the binder, policy or other contractual evidence signed by the insurer and in form acceptable to CP:

**"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work pursuant to the Right of Entry Agreement dated \_\_\_\_\_, 2010 by and between .....(contractors name)..... and Dakota Minnesota and Eastern Railroad Corp., including work upon railroad property, within railroad right of way and in close proximity operating railroad tracks."**

Before Licensee enters the Property, CP must receive and approve certificates of insurance evidencing the coverage's required by sections 9.1, 9.2, and endorsements 9.7 and CP must also receive and approve either the policy required by subparagraph 9.4 or a binder evidencing that that policy is in effect. CP reserves the right to demand a certified copy of any required policy, and Licensee or its contractor shall provide such copy within 10 working days after CP shall give notice to Licensee demanding such copy. All of the required policies shall be issued by insurers acceptable to CP and shall be acceptable to CP in both form and substance. Licensee shall not enter the Property until all of the required policies have been approved in writing by CP. If the comprehensive general liability and automobile policies are procured by Licensee's contractor, Licensee shall be added as an additional insured party under such policies. If the contractor uses a subcontractor, the contractor shall provide the required policies and shall, in addition, either require the subcontractor to provide insurance equivalent to that described herein (except that only one policy required by subparagraph 9.4 need be provided for the Work) or obtain endorsements to the contractor's policies naming the subcontractor as an additional insured party. If a subcontractor uses a sub-subcontractor, the sub-subcontractor shall either provide insurance equivalent to that required of the

subcontractor or shall be named as an additional insured party on the contractor's or subcontractor's policies. In the event any required policy lapses, CP shall have the option of immediately terminating the License, with or without notice to Licensee; such termination shall be without prejudice to CP's rights and privileges under this Agreement. The insurance coverage obtained pursuant to section 9 and its sub-sections shall in no manner restrict or limit the liabilities assumed by Licensee under this Agreement.

## **10. ENTIRE AGREEMENT**

### **10.1. Survival Of Indemnity Provisions:**

The indemnification provisions of this Agreement shall survive its expiration or termination.

### **10.2. Mere License:**

The permissions encompassed by this Agreement is a mere license to use the Property for the specified purpose and does not create any estate or interest in the Property.

### **10.3. No Warranty Of Title:**

CP does not warrant that it has good title to the Property.

### **10.4. Assignment; Binding Effect:**

This Agreement may not be assigned by Licensee without the advance written consent of CP. Subject to the preceding sentence, this Agreement shall be binding upon, and inure to the benefit of, the parties' respective successors and assigns.

### **10.5. Governing Law:**

This Agreement shall be construed and interpreted in accordance with the laws of the state in which the Property is located, without reference to the choice of law rules of that state.

### **10.6. Entire Agreement:**

This Agreement is the full, complete, and entire Agreement of the parties with respect to the subjects hereof, and any and all prior writings, representations, and negotiations with respect to those subjects are superseded by this Agreement.

### **10.7. Headings:**

The headings used in this Agreement are provided solely as a convenient means of reference. They are not intended to, and do not, limit or expand the purpose or effect of the paragraphs to which they are appended. The headings shall not be used to construe or interpret this Agreement.

### **10.8. Singular And Plural:**

As used in this Agreement, the singular form of a word includes the plural form of that word, and vice versa, and this Agreement shall be deemed to include such changes to the accompanying verbiage as may be necessary to conform to the change from singular to plural, or vice versa.

### **10.9. Duplicate Copies & Counterparts.**

This Agreement may be executed in counterparts, which together shall constitute one and the same document. The parties may execute more than one copy of this Agreement, each of which shall constitute an original.

**11. SIGNATURES.**

**THE PARTIES HERETO** have executed this Agreement as evidence of their agreement to the terms herein.

..... (contractors name).....

**DAKOTA, MINNESOTA AND EASTERN  
RAILROAD CORP.**

*doing business as Canadian Pacific Railway*

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

\*\*\*\*\*

**EXHIBIT A**

**SITE PLAN**

(See project plans)

\*\*\*\*\*

**EXHIBIT B**

**"MINIMUM SAFETY REQUIREMENTS FOR CONTRACTORS WORKING ON RAILWAY PROPERTY"**



**CANADIAN  
PACIFIC**

## FLAGGING BILL CHARGES

Per Canadian Pacific (CP) flagging requirements we must be notified for any construction work or related field activities that will be performed within the CP Right-of-Way, or within 50 feet of near track. In instances where there is potential danger of the track getting fouled in distances greater than 50 feet, the need for flagging may also exist. Flagging is important to protect the safety and well-being of the outside workforce. The individual performing the flagging is thoroughly trained on the proper safety precautions vital when working on or near the rail. The "General Contractor" is responsible for CP flagging charges for their sub-contractors that are working under contract. If a sub-contractor contacts CP to request flagging services, the sub-contractor should advise CP to submit CP invoices to the General Contractor at the time of call.

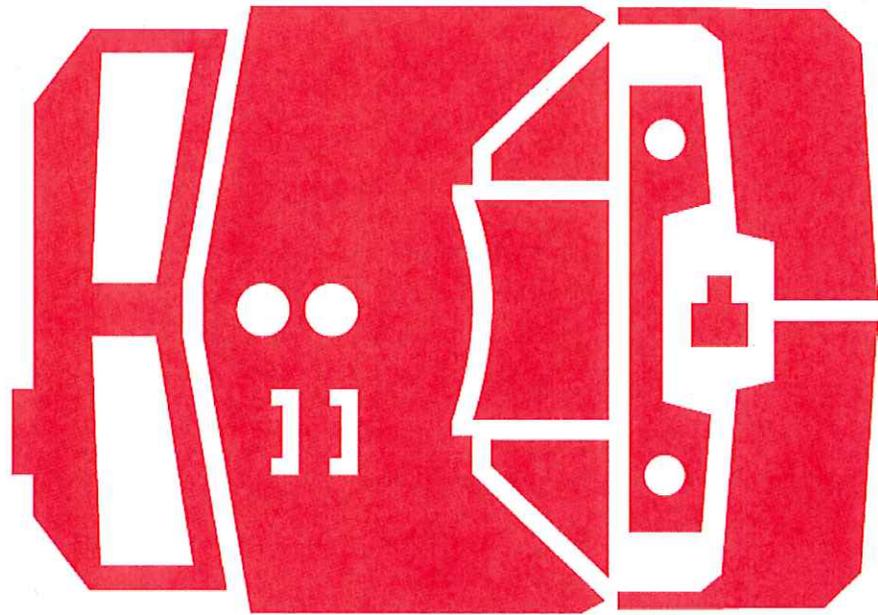
A flagman has to perform many functions in conjunction with a flagging project. The hours start once the flagman reaches the local yard. Any needed safety materials must be collected and other railroad employees that may come into the area must be well informed of the project that will be taking place. The commute time from the local yard to the actual project is included in an invoice. Once on site the individual must set up warning devices several miles away from the site (in both directions) in order to assure locomotive engineers are properly warned of additional safety precautions necessary. Once the day is over, the flagman must collect these warning devices and return them to the local yard. In CP terminal areas, this employee is compensated for a full eight hour day regardless if the employee was physically flagging at the location or not, therefore, the full day is charged back to the contractor. If CP must pay the employee for hours in excess of their daily scheduled time or on a holiday in order to accomplish the flagging project, those costs are passed onto the contractor as well.

Occasionally it is necessary for the flagman to leave the project for various reasons. Some of these are to throw a manual switch in order to divert an oncoming train, or to meet a train that is approaching.

If a flagman is requested but it is decided the work won't be needed on a particular day, if CP is not notified in advance of this cancellation, charges will still be issued and expected of the contractor.

Terms of payments on CP's flagging invoices is **15 days due net**. Credit is automatically issued for a flagging request as long as payment history from previous flagging jobs (if any) is within the terms. If a flagging invoice is not paid, CP will make several attempts to contact and collect after which time, the file will be forwarded to a collection agency for their

pursuance as well as potential legal action. Any costs of doing this will be passed onto the General Contractor. In some instances, CP will report the contractor to the local municipalities who may put the contractor on a list of contractors with delinquent debt outstanding which could hinder their chances of receiving bids on local projects. CP could also refuse to work with the contractor as well as refuse access to CP properties or demand an estimated payment in advance of services performed.



**MINIMUM SAFETY REQUIREMENTS  
FOR CONTRACTORS WORKING ON  
RAILWAY PROPERTY**

**E-RAILSAFE UNITED STATES  
SAFETY ORIENTATION**

June 2014

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## Introduction



### Operate Safety

At CP, safety is an integral part of the way we do business and is one of our foundations. We expect everyone working on behalf of CP to be unconditionally committed to safety. Safety must be given top priority.

We are committed to provide a safe and healthy working environment for all railroad and contractor employees' and we welcome you to our property.

This presentation provides you with a general safety orientation and the minimum safety requirements that must be adhered to when working for CP on our property. It is designed to supplement your e-learning experience.

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**CP**

## Introduction



# Corporate Safety Policy

### Goal

Our goal is to be the safest railway in North America.

### Corporate Commitment

- We will integrate workplace, operational and public safety into everything we do.
- We will meet or exceed all applicable safety laws and regulations.
- We will establish safety objectives and develop plans to meet our goal.
- We will provide the leadership, training, tools and resources needed to maintain a safe and healthy work environment.
- We will maintain and continuously improve our safety culture, processes, technologies and management systems.

### Manager Accountability

- We will make the Health & Safety of our workplace and our operation our first priority.
- We will empower all employees to perform their work safely and to participate in safety processes.
- We will assess the potential risk of all safety hazards and develop action plans to prevent accidents and injuries.
- We will investigate safety incidents, determine cause and apply appropriate corrective actions to reduce the risk of recurrence.

### Employee Accountability

- We will make our Health & Safety and that of our co-workers our first priority and personal responsibility.
- We will identify and report all Health & Safety hazards and incidents.
- We will comply with all rules and standards to ensure operational and public safety.

**No job on our railway will ever be so important that we can't take the time to do it safely.**

Recommitment date: January 1, 2014

E. Hunter Harrison  
Chief Executive Officer



# Introduction



# Environmental Policy

Canadian Pacific is committed to conducting its operations and activities in a manner that:

- Protects the environmental health and welfare of its employees and other persons who may be affected by its operations and activities;
- Protects the natural environment to meet the needs of today without hindering the ability of society to meet future needs;
- Meets or exceeds environmental requirements of government applicable to its operations and activities; and
- Keeps employees and the public informed about its environmental plans through communications programs.

**Protect Our Environment Today for Tomorrow**

Recommitment date: January 1, 2014

A handwritten signature in black ink, appearing to read "E. Hunter Harrison".

E. Hunter Harrison  
Chief Executive Officer

50935



## Scope

CP's Minimum Safety Requirements For Contractors Working On Railway Property and the contents included within the presentation apply to contractors and other persons performing work or otherwise providing services on CP property in the U.S.



- In addition, local requirements at the worksite are to be complied with and are discussed within.
- On-Track Safety procedures (FRA requirement) are also required to be complied with if the work you perform is on or foul of track.

**CP**

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## **Scope Cont.**

CP's Minimum Safety Requirements for Contractors Working on Railway Property and this presentation provide a basic overview of what is required. For complete details refer to a written copy of Minimum Safety Requirements for Contractors Working on CP Property.

## **Important --**

In addition, prior to the commencement of work at the worksite a local safety orientation must be conducted to include the following:

- Hazard identification/risk assessment of hazards inherent in the work to be undertaken or generated by the work processes to be used.
- Various controls used to mitigate risk of the hazards present both as a result of the railway and contractor work processes.
- Local communication procedures including emergency call-out/response.
- Local evacuation procedures.

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**CP**

## **Contents**

- Compliance
  - Site Conditions & Worksite Safety
- Security
  - Job Briefings- Field Level Risk Assessments
- Qualifications & Personal Conduct
  - Communication Regular & Emergency
- Personal Protective Equipment & Clothing
  - First Aid & Emergency Response
- Protection of Railroad Property & Traffic
  - Incident Reporting
- Train Movements & Working Near Tracks
  - Conclusion
- Track Protection & Flagging

## Compliance

### As a contractor you are responsible for ensuring:

- your own safety;
- the health and safety of others you work with;
- the health and safety of CP employees you maybe working in proximity to or with;
- the protection of the environment;
- the protection of CP's property; and
- your work does not interfere with safe railway operations

### In addition, you must:

- be properly trained and qualified to safely perform the work;
- be in possession of any required certifications, licenses, permits or written authorizations;
- be in possession of the required identification while on CP property;
- be in compliance with CP's Minimum Safety Requirements for Contractors Working on Railway Property in the United States and your company's Contractor Safety Management Plan; and
- comply with all applicable legislation related to health, safety, security and the environment.



## **Compliance Cont.**

**To ensure compliance and the safety of the work, CP reserves the right to:**

- review your Company's Safety Management Plan;
- review your training records;
- observe, inspect, test and audit all contractor personnel for compliance; and
- ask for records and documentation providing evidence of compliance

**Failure of you or your company may result in CP:**

- taking over control of the work;
- ordering the work to stop; and/or
- ordering you and/or your Company to leave CP property.

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**CP**

## Safety Job Briefing

### Contractor Personnel shall:

- attend all job briefings whenever required;
- have an understanding of the scope of work to be performed;
- be aware of any specific or unusual hazardous conditions;
- be alert to hazards that may result from interaction of work being performed by the contractor and any CP personnel or other 3rd parties that are in proximity;
- identify and communicate hazards to their supervisor and all others who may be affected; and
- take interim measures to protect people, property, equipment and the environment until the hazard can be properly assessed and appropriate corrective actions taken.



**When CP employees are working with or in proximity to contractor personnel or are assigned to provide track protection, operate track units or other duties, they must be included in the job briefing.**

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**CP**

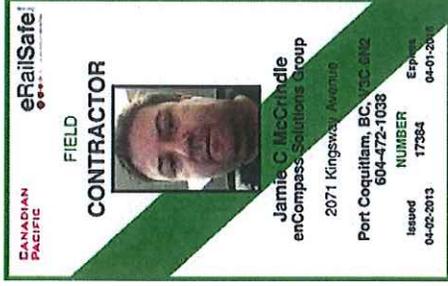
# Security

## ACCESS TO CP PROPERTY

**All Contractor Personnel must have the following identification on their person to present upon request:**

- 1) photo identification (e.g. driver's license);
- 2) proof of employment document or card;
- 3) decal, identification card, or other proof of safety orientation issued by CP;
- 4) access pass, issued and signed by the Manager-in-Charge where work requires Contractor Personnel to ride in any locomotive or non-passenger rolling stock;
- 5) security identification card, where required by CP;
- 6) building access pass, where required by CP or by a 3rd party having control of the premises.

**Note:- An e-Railsafe issued photo identification badge (as pictured) will satisfy 1 thru 3 above.**



The image shows a rectangular form with a red border. It is titled 'CANADIAN PACIFIC AUTHORIZED CONTRACTOR'. The form contains the following fields: 'Name: \_\_\_\_\_', 'Company: \_\_\_\_\_', 'Location: \_\_\_\_\_', 'Issued: MM / DD / YY', 'Expires: MM / DD / YY', 'CP Manager Signature: \_\_\_\_\_', and 'Contract Number: \_\_\_\_\_'. The 'Issued' and 'Expires' fields contain handwritten dates: '04 / 02 / 13' and '04 / 01 / 15' respectively.

The image shows the Canadian Pacific (CP) logo, which consists of the letters 'CP' in a bold, red, serif font.

## Security Cont'd

### SECURITY AWARENESS

**All Contractor Personnel must have some understanding of the following while working on CP property:**

- basic understanding of railway security awareness;
- the importance of monitoring and reporting any suspicious persons, activities, or objects; and
- staying alert to the environment.



*Refer to CP's Security Awareness orientation located on e-Railsafe.*

### REPORTING SECURITY CONCERNS

**You must report any security concern, security incident, criminal activity (known or suspected), suspicious happenings and/or suspicious persons on CP property to the Manager-In-Charge or to CP Polices Services at 1-800-716-9132.**

**In the case of emergency, call**

- 911 (where this service exists); or
- Local emergency services; and
- CP Police Services

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**CP**

## **Qualifications & Personal Conduct**

- You will be responsible for the safety of your employees and any sub- contractors.
- You are to comply with all safety laws and regulations applicable to the work being performed (i.e. all Federal (FRA/OSHA), State (OSHA), environmental, etc. that apply).
- Contractor's employees must be fully qualified and experienced in the work to be done.
- The use and/or possession of any drug or alcoholic beverage is prohibited.
- The use of drugs, medication or mood-altering agents, including those prescribed by a doctor, which will adversely affect the ability to work safely is prohibited.
- Smoking, including the use of e-cigarettes is only permitted in designated outdoor smoking areas.
- Use of personal electronic devices, such as portable audio and video devices such as i-Pods, Tablets, DVD, CD, MP3 and game players is prohibited.

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**CP**

## Qualifications & Personal Conduct Cont.

Except in emergency situations or where authorized by CP, use of electronic communication devices, including radio, cell phones, Blackberries, PDAs, Palm Pilots, walkie-talkies, GPS navigation units, portable computers and other similar devices, is prohibited:

- while operating a highway vehicle, unless it is stopped and parked in a safe location;
- while transporting CP personnel, whether on and off CP property;
- while operating or assisting in the operation of any railroad equipment or mobile equipment;
- while operating power tools, equipment or machinery;
- when **foul of track**\* for any reason;
- wherever use is prohibited by signage or by a CP Manager in Charge; or
- whenever use of such device creates an unsafe condition

**\*Foul of track**— means being in proximity to a track such that the individual or equipment could be struck by a moving train or track unit, or in any case within 4 feet (1.2 m) of the outside of the nearest rail.

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**CP**

## Personal Protective Equipment & Clothing

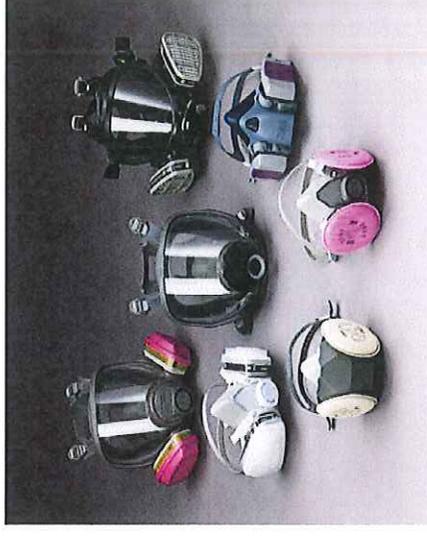
The following PPE must be worn at all times unless specified otherwise:

- Safety boots with puncture resistant soles that meet ASTM F13/2413 standards.
- Hard Hats meeting ANSI Z89.1 standards (high visibility is preferred).
- Safety glasses with permanently attached side-shields meeting ANSI Z87.1 standards.
- High Visibility Vests meeting CSA Z96 or ANSI/ISEA-107 standards.
- Shirts must cover the torso and have at least  $\frac{1}{4}$  length sleeves.
- Pants must be at least ankle length, and ankle straps may be recommended.



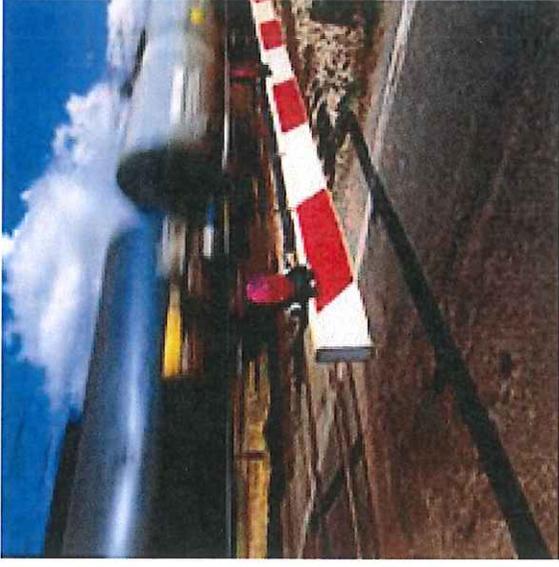
## Other PPE Requirements as Warranted

- Fall protection equipment as required by applicable regulations (FRA/OSHA) and related fall hazards
- Testing, monitoring and rescue equipment where hazardous environments and/or confined spaces are encountered
- Hearing protection whenever the noise level is 85 decibels or higher (FRA/OSHA)
- Welding goggles, gloves and chaps
- Face protection— Face shield
- Respiratory protection where/when required
- Other as required



## Protection of Railroad Traffic & Property

- The contractor's work shall be organized and executed in such a manner as to ensure no interference with the safety of railroad operations.
- CP shall determine where flag persons are required to protect railroad operations.
- Other protection shall be arranged by the appropriate qualified person or department. (roadway protection).



**Note:** This may be the requirement of the CP Manager-in-Charge/Project Manager.

- Any contractor employed by the railroad to perform work on or foul (i.e. within 4' of the nearest rail) of any track must comply with On-Track Safety Rules (i.e. FRA Regulation 49 CFR Part 214, Subpart C- Roadway Worker Protection).

***Refer to CP's General Requirement for Contractors on Track Safety Procedures***

**CP**

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## Protection of Railway Traffic & Property Cont.

- Ensure you are aware and understand how you are being protected from train/equipment movements when working on or near railway tracks
- Unless authorized in writing, no temporary structures, material or equipment shall be installed or located closer than 12 feet to the nearest rail



**CP**

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## Train Movements & Working Near Tracks

- During the passage of trains or track units, the contractor's equipment shall not be operated within 50 feet of the track unless specifically authorized.
- During such times the operator of the equipment shall secure and vacate the equipment and stand clear of the track (20 ft. min. where possible) until the entire train has passed the work site.
- Expect the movement of Trains or Track Units at any time in any direction and stay at least 15 feet away from the end of stationary cars or locomotives when crossing the track(s).
- Ensure a minimum of 50 separation prior to crossing between railway equipment.
- Never climb on, under or between cars.
- Never stand or sit on the rails.
- Stay away from track switches as the switch points can move unexpectedly.
- Do not line switches or operate rail equipment unless qualified or specifically authorized.



**CP**

## Train Movements & Working Near Tracks Cont.

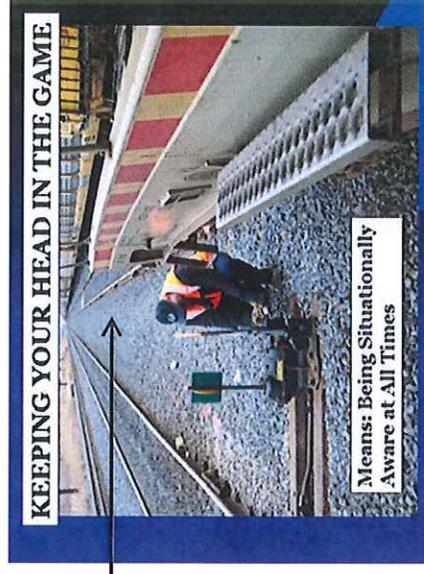
Be alert when working around rail tracks and yards:

- They could be occupied by moving railcars, locomotives and track units. (size & weight).
- Treat all tracks as LIVE.



### Use caution when crossing tracks

- On foot and when driving.
- Do not step on the top of the rail.
- Watch for slippery ties and debris on the track.
- Do not walk between the rails unless proper protection is provided by CP.
  - avoid walking between tracks (i.e. within the devil's strip). If required, confirm and understand how you are being protected from moving trains/equipment.
- Watch for moving trains/equipment on tracks when approaching, crossing or fouling tracks with vehicles and on foot.



**Fouling track**– the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or track unit or in any case within four (4) feet of the field side of the nearest rail.

**CP**

# Train Movements & Working Near Tracks Cont.

Be alert when working around rail tracks and yards...there are many different types of vehicles and equipment to watch out for.



Locomotives



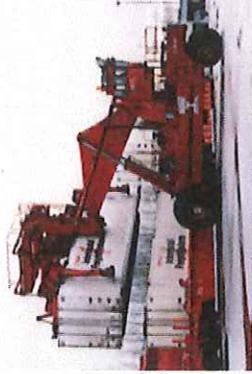
Track Mobiles



Mobile Equipment



Hi-rail Equipment



Top Lift Equipment



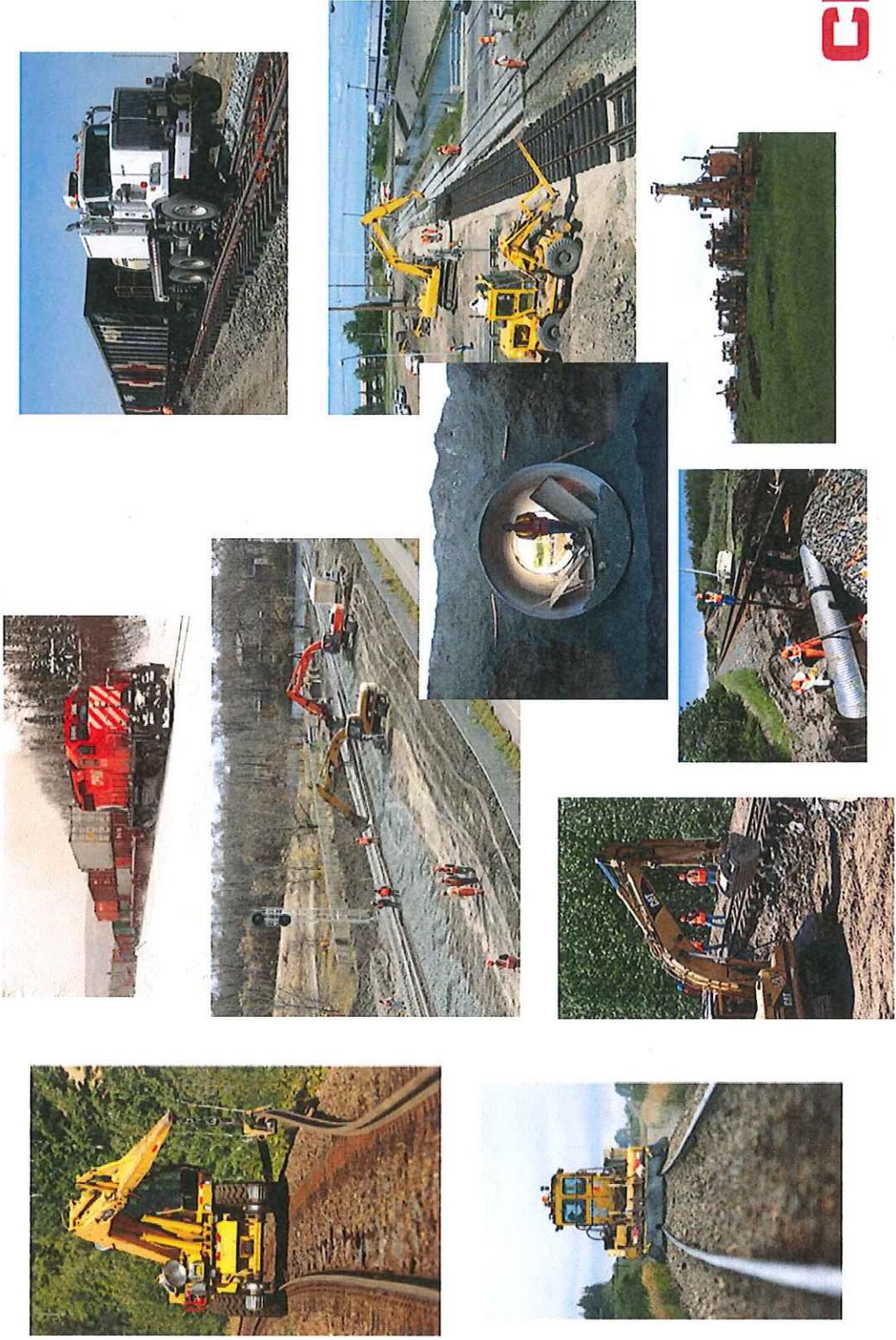
Rail Cars



Vehicles/ATV's



# Train Movements & Working Near Tracks Cont.



## **Train Movements & Working Near Tracks Cont.**

- Be alert for rail equipment moving on the adjacent track(s).
- Altering, obstructing or operating any components of tracks, bridges, signals or other railway equipment is prohibited unless specifically authorized and qualified.
- Unless authorized in writing, contractors' employees are not permitted to operate or ride on any CP rolling stock.

## Track Protection & Flagging

- Track protection in the form of flagging or Track Occupancy Permit (TOP) is required at any time when the track is being fouled and would not allow the passage of trains.
- Only authorized/qualified person(s) can provide this type of track protection.
- Blue flag/signal protection may be used to protect persons working on or about rail cars or locomotives.

Flag Protection  
Other than Main Track



Blue Flag Protection



**CP**

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## Site Conditions & Worksite Safety

- Prior to commencing any work, the contractor must ensure they taken the time to identify all site conditions that may be a hazard or a potential hazard including the location of underground or overhead services (i.e. power, fiber optics, pipelines, etc.).
- Railroad pole lines carry electrical power and should be treated as any other power line (600 volts – 17.4 Kv).
- Excavations / trenches are to be protected by barriers or fences.
- All material and equipment are to be secured and stored clear of all tracks (a minimum of 12 feet to the nearest rail unless authorized in writing). Sightlines at crossings must not be obstructed.



## **Site Conditions & Worksite Safety Cont.**

- All lifting devices such as steel cables, nylon slings, chains, shackles, etc. must be certified.
- All mobile equipment must be equipped with backup alarms and beacons where required.
- Be conscious to protect the natural, physical and biological environment of the work site and comply with all environmental regulations.
- Job Briefings must be conducted.

## Job Briefings– Field Level Risk Assessments

- A meeting held with the appropriate personnel prior to, and during, a task or job to review the job to be performed, the associated hazards, control measures, emergency procedures, and tools/equipment required to perform that job/task safely.
- A job briefing must be conducted which all contractor's supervisors, employees and sub-contractors must attend.
  - Any such individuals who are not able to be present at the main briefing must attend a separate briefing.
- When railway employees are assigned to provide track protection, operate track units or other duties, they must be included in the job briefing.



## **Job Briefings– Field Level Risk Assessments Cont.**

- Review work / task to be done – 5Ws.
- Consider existing and potential hazards associated with the work.
- Break the work down into manageable steps.
- Determine appropriate Controls – Engineering, Administrative or Personal Protective Equipment.
- Determine PPE and Safety equipment required for the job(s).
- Determine if utility locate is required (power, fiber optics, pipelines).
- Determine track protection to be used.
- Identify first aid and emergency response requirements.

## **Job Briefings– Field Level Risk Assessments Cont.**

**Consider how the work is to be assigned:**

- Group assignments.
- Individual Assignments.
- Abilities and experience of individuals.

## **Job Briefings– Field Level Risk Assessments Cont.**

- Ensure all parties involved in the work participate in the job briefing.
- Confirm the information relayed in the job briefing is understood by all.
- Ensure another job briefing is performed when the job tasks and/or work environment changes.
- Record the information relayed on the job briefing as required (i.e. Job Briefing Booklet).

## **Communication Regular & Emergency**

Regular communication must be made with a CP representative prior to work on railroad property.

Examples include:

- CP Manager-in-Charge
- Others?

Establish who will be the contact in an emergency situation.

**CP**

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## **Communication Regular & Emergency Cont.**

### **In the event of an emergency situation:**

- Immediately advise CP Manager-in-Charge of all injuries and incidents
- In case of an emergency situation wherein a hazardous condition may affect the safety of employees, contractors or the general public immediately report the condition to the established CP Manager-in-Charge or at one of the numbers listed below.
- In case of an emergency situation wherein a hazardous condition may affect/impact the safe passage of trains immediately report the condition using the numbers below and the CP Manager-in-Charge.

### **If the contact person is not available, please call:**

- Operations Center Minneapolis 1-800-766-4357
- For incidents requiring Police Services contact CP Police 1-800-716-9132

**CP**

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## First Aid & Emergency Response

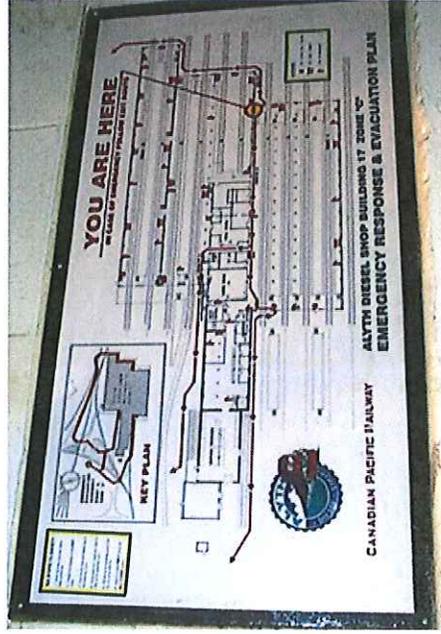
- The Contractor must have a first aid kit, of a size suitable for the crew, available in the immediate vicinity of the work site. It must be examined by the Contractor prior to the commencement of work, after each use and regularly each month to ensure that it is properly equipped.
- Any missing or altered articles must be promptly replaced by the Contractor.



- Where required, other first aid equipment such as stretchers, emergency showers, eye wash stations, etc. must be made available by Contractor at the work site.

## First Aid & Emergency Response Cont.

- The site safety plan must also include emergency call-out/response and evacuation procedures.
  - Including, muster locations, personnel to meet in coming emergency responders.
  - These procedures are to be tested on a semi-regular basis.
- The site safety plan must also include an information sheet for notifying emergency services, emergency transportation and direction of rescue operations.



Designated Meeting Location



## **Incident Reporting**

- All accidents, injuries and incidents must be reported to the CP Manager-in-Charge as soon as possible.
- Written reports are to be completed.
- Contractors may also be required to submit reports as per their company report standards.
- All incidents must be investigated.

## **Conclusion**

CP's Minimum Safety Requirements for Contractors Working on Railway Property in the United States and this presentation provide a basic overview of what is required.

## **Important—**

Prior to the commencement of work at the worksite a local safety orientation must be conducted to include the following:

- Hazard identification / risk assessment of hazards inherent in the work to be undertaken or generated by the work processes to be used.
- Various controls used to mitigate risk of the hazards present both as a result of the railway and contractor work processes.
- Local communication procedures including emergency call-out/response.
- Local evacuation procedures.



## **Remember These Safety Tips**

- Ensure that Health & Safety is the first consideration on all jobs.
- Expect movement at any time in any direction on any track.
- Do not walk on or between rails.
- Ensure firm footing and clear path.
- Follow safe work procedures – short cuts are dangerous.
- Report Hazards.
- Remember– no job on our railroad is so important that we can not take the time to do it safely.

**Thank you for your participation. Let's work together safely.**



**CP**

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