



CUY-90-14.90

PID 77332/85531

APPENDIX RR-09

**Flats Industrial Railroad Special Clauses
(Contract Document)**

State of Ohio
Department of Transportation
Jolene M. Molitoris, Director

**Innerbelt Bridge
Construction Contract Group 1 (CCG1)**

Revision Date: March 3, 2010

CUYAHOGA COUNTY
CUY-INNERBELT BRIDGE CCG-1 (Abbey Road bridge), PID 77332
Flats Industrial Railroad
MP 10.6

SPECIAL CLAUSES

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FLATS INDUSTRIAL RAILROAD

I. Overview

The Design-Build consultant will be responsible for all technical coordination and drawing reviews with the Flats Industrial Railroad (FIR), as well as construction and flagman scheduling during subsequent construction phases.

FIR may utilize, at their own discretion, the services of an outside General Engineering Consultant (GEC) for technical reviews and construction issues, at which time the Design-Build contractor will be notified of the appropriate contact person

Copies of all correspondence with the Railroad should be copied to ODOT's State Rail Coordinator:

Rich Behrendt
Program Manager/State Rail Coordinator
Ohio Dept. of Transportation
1980 W.Broad St.
Columbus, OH. 43223
Phone: 614-387-3097
Email: richard.behrendt@dot.state.oh.us

Construction around active railroad track, and/or on Railroad Right-of-Way, cannot begin until FIR (and/or their designated General Engineering Consultant) has acknowledged, in writing, approval of the project plans, and a fully executed Standard Railroad Construction Agreement has been executed with the State through ODOT's State Rail Coordinator in Columbus, and necessary insurance coverage for construction activities has been received and acknowledged in writing by FIR.

The following are added requirements for the Design-Build contractor when working on or around active FIR railroad tracks

II General Requirements:

The Design-Build contractor agrees:

1. To cooperate at all times with the local officials of the railroad company, field inspectors, or their designees

2. To use all reasonable care and diligence in the work in order to avoid accidents, damage or unnecessary delay to, or interference with the trains and other property of the railroad company.
3. To conduct his work in a manner satisfactory to the Chief Engineer of the railroad company or his authorized representative, to perform his work in such manner and at such time as not to unnecessarily interfere with the movements of trains or railroad traffic, including train, signal, telephone services, or damage to FIR's property, or to poles, wires, and other facilities of tenants on FIR's property or right-of-way; and to hold his work at all times open to inspection of railroad company inspectors.
4. That the FIR Representative shall have final authority in all matters affecting the safe maintenance of FIR operations and FIR property, and his or her approval shall be obtained by the State or its' Design-Build contractor for methods of construction to avoid interference with FIR operations and FIR property and all other matters applicable to FIR contemplated by the Agreement and these Special Clauses.
5. To cooperate with a public utility, railroad or other organizations having occasion to do work on or in connection with the improvement.
6. To avoid unnecessary use of railroad property without written permission of the railroad company and to remove all temporary grade crossings, temporary erosion control measures used to control drainage, all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings, and to leave railroad roadbed and property in a condition acceptable to the Chief Engineer of the railroad company upon completion of the project.
7. To execute a bond conditioned according to Section 5525.16 of the Revised Code of Ohio, in favor of the State of Ohio and further to carry insurance of the following kinds and amounts:

a) **Railroad Protective Liability Insurance.**

In addition to the above, he shall furnish evidence to the highway department that, with respect to the operations he or any of his sub-contractors perform, he has provided for and in behalf of Flats Industrial Railroad in the amount of \$5,000,000 per occurrence and subject to that limit per occurrence, an aggregate limit in the amount of \$10,000,000 for each annual period.

The above railroad protective policy of insurance shall conform to the Railroad Liability requirements prescribed by the Federal Highway Administration in Federal-Aid Policy Guide 23 CFR 646A as amended. The insurer must be rated B+ or better by A.M. Best Company, Inc.

The corporate name and address of the "Named Insured" as listed on the policy shall be as follows:

Flats Industrial Railroad
1757 Columbus Road
Cleveland, OH. 44113

The description of operations must appear on the Declarations, must match the project description in this agreement and must include the appropriate MP and/or OP number as identified at the top of pg. 1

The job location must appear on the Declarations page and must include the city, state and appropriate highway name/number.

The name and address of the prime Design-Build contractor must appear on the Declarations.

The name and address of the Department must be identified on the Declarations as the "Involved Governmental Authority or Other Contracting Party."

Endorsements that **must** be included:

- Pollution Exclusion Amendment – CG 28 31 (not required with CG 00 35 01 96 and newer versions)
- Delete Common Policy Conditions – Section E. Premiums

Other endorsements/forms that will be accepted are:

- Broad Form Nuclear Exclusion – Form IL 00 21
- 30-day Advance Notice of Non-renewal or cancellation
- Required State Cancellation Endorsement
- Quick Reference or Index Form CL/IL 240

Endorsements/forms that are NOT acceptable are:

- Any Pollution Exclusion Endorsement except CG 28 31
- Any Punitive or Exemplary Damages Exclusion
- Any other endorsement/form not specifically authorized above.
- Any type of deductible policy

The number of trains operating through the improvement at both locations is estimated to be:

0 Passenger trains per day @ miles per hour.

2 Freight trains per day @ 10 miles per hour.

Additional Terms

1. The construction Design-Build contractor must submit its original insurance policies and two (2) copies and all notices and correspondence regarding the insurance policies to:

Ms. Cheryl Ball
Flats Industrial Railroad
1757 Columbus Road
Cleveland, OH. 44113

2. The construction Design-Build contractor may not begin work on the Project until it has received FIR's written approval of the required insurance policies.

Certificate must be provided which evidences the following coverages and lists the Certificate Holder as:

Flats Industrial Railroad
1757 Columbus Road
Cleveland, OH. 44113

Commercial General Liability: as required by the Department's Construction and Material Specification, Section 107.12, and lists Flats Industrial Railroad as additional insured.

(b) General Insurance Requirements

The insurance hereinbefore specified shall be with an acceptable insurance company authorized to do business in the State of Ohio, and shall be taken out before execution of the Contract by the Director and kept in effect until all work required to be performed under the terms of the contract is satisfactorily completed as evidenced by the formal acceptance by the State. Such policies shall include thirty (30) days canceling notice. .

Notwithstanding the Department's Construction and Material Specification No. 107.12 "Evidence" as above set forth shall consist of furnishing the Director of Transportation three (3) certified copies of the railroad policy.

3. To indemnify, defend, and hold FIR and its affiliates harmless from and against all claims, demands, payments, suits, actions, judgments, settlements, and damages of every nature, degree, and kind (including direct, indirect, consequential, incidental, and punitive damages), for any injury to or death of any person(s) (including, but not limited to the employees of FIR, its affiliates, the State or the Design-Build contractor), for the loss of or damage to any property whatsoever (including but not limited to property owned by or in the care, custody, or control of FIR, its affiliates, the State or the Design-Build contractor, and environmental damages and any related remediation brought or recovered against FIR and its affiliates), arising directly or indirectly from the negligence, recklessness or intentional wrongful misconduct of the Design-Build contractor, the State, and their respective agents, employees, invitees, Design-Build contractors, or its Design-Build contractor's agents, employees or invitees in the performance of work in connection with the project or activities incidental thereto, or from their presence on or about FIR's property. The foregoing indemnification obligation shall not be limited to the insurance coverage required in paragraph 6 above
4. The Railroad company will assign, at the sole cost and expense of the Department, railroad flaggers or other protective services, devices or arrangements with the Design-Build contractor as necessary to insure the safety and continuity of the work to be performed as a part of this contract. Said services and devices will be provided when necessary, as determined by the railroad company, because of any of the Design-Build contractor's operations over, under or adjacent to tracks over which trains are operating. The provision of such protective personnel and devices does not relieve the Design-Build contractor from the liability of payment for damage caused by his operations.
5. Such protection will be required when men or equipment are working within clearance limits of 25 feet of a rail or when work being performed adjacent to or over operating tracks may present hazards to tracks, train operation, or when equipment does or may infringe upon such limits.

6. In general, a flagman is necessary in the following circumstances: (1) the driving of sheeting or piles within twenty-five (25) feet of the tracks; (2) the removal or demolition of all or part of an overhead or adjacent structure; (3) the erection of any structural material, or (4) the performance of any other operation that could obstruct or foul (as described above) the tracks or other facilities of FIR as determined by FIR.
7. Minimum overhead and lateral clearances as specified by FIR shall be maintained during the performance of all work. Existing overhead and lateral clearances shall be maintained during construction unless a temporary reduction in clearance for construction purposes is approved, in writing, by FIR. The Design-Build contractor shall erect a highly visible construction fence no closer than fifteen (15) feet from the centerline of the track through the work area to insure that the lateral clearance requirement is being met.
8. The Design-Build contractor will not be permitted to operate any of his own equipment on railroad tracks except under an acceptable arrangement with the railroad company. Such equipment and the operation of such equipment, or equipment rented from the railroad company, shall be arranged for by the Design-Build contractor with the railroad and the cost for its use, including protection or railroad traffic, shall be borne by the Design-Build contractor.
9. The Design-Build contractor shall notify the railroad company at least 30 days, or as directed by the authorized representative of the Railroad, in advance of starting any work which might require protection; or in suspending or ceasing operations that require a flagger.
10. Railroad protective personnel assigned to the project will be responsible for notifying the Engineer upon arrival at the job site on the first working day that protective services begin and on the last day that he performs such services. This will be required for each separate period that such services are provided.
11. The Design-Build contractor will document such notification in the project diary. The Design-Build contractor will be responsible for protective services provided at his request and not utilized due to a change in the Design-Build contractor's construction schedule or if it is determined by the State that the requested services were not necessary. The actual costs for such protective services so assessed to the Design-Build contractor will be deducted from the Contract.
12. The decision of the Director of Transportation shall be final in the event of controversy as to the necessity for any protection services provided and not utilized by the Design-Build contractor as described in the preceding paragraph.
13. To pay the railroad or owning company for any changes, requested for his convenience, to railroad property, facilities, wire, fiber optic and/or pipe lines other than shown on the plans for the project.
14. If at any time the Design-Build contractor desires a temporary crossing of the railroad's tracks at other than an existing and open public road crossing, or included in the plans and approved by the railroad, he shall make a request for a temporary crossing from the railroad. If approved, he shall arrange with the railroad company, and execute a license agreement or right-of-entry agreement as deemed necessary by the railroad, covering the crossing desired, paying all construction, maintenance, removal, protection and other costs.

15. Methods and procedures for performing work on property of FIR must be approved by:
Ms. Cheryl Ball
Flats Industrial Railroad
1757 Columbus Road
Cleveland, OH. 44113
16. The Design-Build contractor shall arrange a schedule with FIR for accomplishing stage construction involving work by FIR. In arranging its schedule, the Design-Build contractor shall ascertain, from FIR, the lead time required for assembling crews and materials and shall make due allowance required.
17. The Design-Build contractor may not charge any costs or submit any claims against FIR for hindrance or delay caused by railroad traffic; work done by FIR or other delay incident to or necessary for safe maintenance of railroad traffic; or for any delays due to compliance with these Special Clauses.
18. The Design-Build contractor understands and agrees that FIR does not assume any responsibility for work performed by others in connections with the Project. Design-Build contractor further understands and agrees that they shall make no claims whatsoever against FIR for any inconvenience, delay or additional cost incurred by FIR on account of operations by others.

End of Special Clauses