

IN THE MATTER OF THE DESIGN AND
CONSTRUCTION FOR WIDENING OF THE GRADE
SEPARATION STRUCTURE CARRYING ABBEY
ROAD OVER THE TRACKS OF THE FLATS
INDUSTRIAL RAILWAY COMPANY IN THE CITY OF
CLEVELAND, CUYAHOGA COUNTY, OHIO.

AGREEMENT NO.: 23256

PID: 77332
(Preliminary Design/ROW)
PID 85531
(Final Design/Construction)

AGREEMENT

THIS AGREEMENT, made this 3rd day of March, 2010 between the **State of Ohio**, acting by and through the Director of Transportation of the State of Ohio, as First Party, hereinafter referred to as the STATE; the **City of Cleveland**, as Second Party, hereinafter referred to as the CITY and **Flats Industrial Railway Company**, as the Third Party, hereinafter referred to as the COMPANY.

WITNESSETH:

WHEREAS, Abbey Road crosses over the COMPANY's tracks by an existing grade separation structure (AARDOT No. 523954S), and the STATE and the CITY have determined that the existing grade separation structure needs to be widened, and

WHEREAS, the STATE proposes to utilize a Design-Build contractor to design and construct the work needed to widen the existing grade separation structure (AARDOT No. 523954S) that carries Abbey Road over the tracks of the COMPANY at milepost 10.60 in the City of Cleveland, Cuyahoga County, Ohio, and

WHEREAS, said work requires the design and construction for widening the existing grade separation structure (AARDOT No. 523954S) that separates the grade of the track of the COMPANY and the highway at the point hereinbefore mentioned. Said design and construction for the resulting structure and necessary approaches thereto are hereinafter referred to as the PROJECT; and

WHEREAS, no existing COMPANY grade crossing will be eliminated as a result of the proposed construction; and

WHEREAS, under such conditions, Chapter 5523 of the Revised Code of Ohio and other grade crossing elimination laws of the State of Ohio do not apply to the PROJECT herein considered; and

WHEREAS, the Director of Transportation of the State of Ohio is empowered generally by Chapter 5501 of the Revised Code of Ohio to carry forward highway improvements of the type herein contemplated; and

WHEREAS, the Federal-Aid Highway Act of 1956, as amended, and Section 5531.03 of the Revised Code of Ohio have become effective, providing funds for the construction costs of projects such as is contemplated herein; and

WHEREAS, it is desired by the parties hereto to carry out and accomplish the design and construction of the PROJECT over the tracks of the COMPANY at the point hereinbefore mentioned and to determine and agree upon the manner of doing said work and the portion of said work to be done by each of said parties respectively, and the proportion of costs and expenses to be paid by each of said parties, and the mode and time of payment therefore.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed between the parties as follows:

SECTION 1

The plans of the STATE for the said improvement are anticipated to be identified by title as follows:

"State of Ohio, Department of Transportation, CUY-90-14.90 (Design-Build Westbound bridge), City of Cleveland, Cuyahoga County, Ohio".

In order for this agreement to remain in force and effect, future plans shall meet the approval of the parties hereto, and upon such approval shall become a part of this agreement by reference.

SECTION 2

The work to be done under this agreement and to be shown on future plans, which will be attached hereto by future Addendum and incorporated herein as if fully rewritten described under SECTION 1 of this agreement, consists of the design and construction for widening of the existing grade separation structure (AARDOT No. 523954S) carrying Abbey Road over the tracks of the COMPANY and the necessary approaches thereto.

Said work for the widening of the existing grade separation structure is anticipated to consist of rehabilitation of the existing steel superstructure, and installation of new concrete parapets, deck and sidewalks on both sides of the existing span.

SECTION 3

Responsibility for the several necessary items of work shall be as follows:

- a. The following items shall be let in contract by the STATE after competitive procurement as provided by law, at PROJECT expense, subject to the provisions of this agreement:
 1. Procurement of a Design-Build contractor to complete the design and construction for rehabilitation and widening of the existing grade separation structure.
 2. Acquisition and payment for all necessary temporary and permanent Right-of-Way.

3. Said Design-Build contractor will complete remaining design phases of the project, including but not limited to, rehabilitation of the existing superstructure to accommodate widened roadway and sidewalk design; coordination of necessary utility and railroad interface, and construction of the new proposed rehabilitation work, including all grading, superstructure modifications, roadway deck and lighting fixtures, drainage structures, approaches and all other elements deemed necessary for completion of the PROJECT.
- b. The following items shall be done or caused to be done by the COMPANY with its own forces, at PROJECT expense, subject to the provisions of this agreement.
1. Changes in communication and signal lines, interlocking and signal apparatus
 2. Provision of flagmen, watchmen and other protective services and devices to promote safety and insure continuity of train operations as may be necessary in connection with the work performed by the COMPANY's forces, or by that of the STATE's Design-Build contractor.
 3. Timely coordination and cooperation with the STATE's Design-Build contractor throughout the design and construction of the project, including reviewing and returning engineering comments within thirty (30) days from date of receipt at the office of COMPANY's designated representative to time of response back to the Design-Build contractor.

SECTION 4

Any work not specifically provided for in SECTION 3 shall be done by one of the parties hereto as may be mutually agreed upon from time to time during progress of the work, as provided for by the rules and regulations of the Federal Highway Administration as then in effect.

SECTION 5

All work to be done by the COMPANY under the provisions of this agreement shall be done in accordance with future plans, together with such other plans and specifications, detailed and supplementary thereto, as may be mutually agreed upon and as may be necessary to carry out the work fully in accordance with the intent of this agreement and in accordance with good engineering practice.

The STATE will require its Design-Build contractor to use Railroad protective personnel, services or devices as determined by the COMPANY to protect railroad traffic made necessary or occasioned by his operations, as set forth in special provisions to be approved by the parties hereto, which are more specifically set forth in the "Special Clauses" which are attached to this agreement.

The COMPANY agrees to furnish the STATE's Design-Build contractor at PROJECT expense, and the STATE shall require its Design-Build contractor to use railroad protective personnel, services and devices, other than engineering personnel, as in the opinion of the COMPANY are required to promote the safety and insure continuity of railroad traffic during construction operations.

The COMPANY agrees to bill the STATE as a part of its regular force account work the actual cost for such protective services and devices, including the actual rate of pay, plus the amount paid for overtime, insurance, railroad retirement, vacation allowance, holidays, health and welfare, transportation, deadhead and turn around time, accounting and billing.

The STATE agrees to reimburse the COMPANY for said protective services and devices as a part of its regular force account work as set forth in this agreement.

SECTION 6

The STATE and the Design-Build contractor shall have general charge of the engineering work on the PROJECT, and the COMPANY shall provide such engineering services as the STATE's Design-Build contractor may require. Nothing herein shall deny the COMPANY the right to place inspectors on work being done on its property or facilities.

Construction engineering and inspection costs incurred by the COMPANY subsequent to the award of the Design-Build contractor by the STATE may be charged against the PROJECT

SECTION 7

If at any time the STATE's Design-Build contractor requires a temporary crossing over the COMPANY's tracks, the STATE shall require said Design-Build contractor to arrange with the COMPANY for such crossing, and to pay any and all associated costs for said temporary crossing

SECTION 8

It is understood that the construction costs of the PROJECT herein contemplated are to be financed from funds provided by the STATE expended in accordance with Federal regulations, that all plans, specifications, estimates of costs, awards of contracts, acceptance of work and procedure in general will at all times conform to all Federal laws, rules, regulations, orders and approvals applying to a Federal-Aid Project, and the STATE shall reimburse the COMPANY for construction costs and for preliminary and construction engineering costs in accordance with Federal-Aid Policy Guide 140(I) of the Federal Highway Administration or any subsequent amendments thereto, in such amounts and forms as are proper and eligible for payment from Federal-Aid highway funds. The COMPANY shall render its billings to the STATE within 90 days of project completion, in accordance with said rules and regulations, and further agrees to provide and furnish such itemized records of and substantiating data for such costs as may be necessary.

In the event that delays or difficulties arise in securing necessary approvals or in securing necessary rights of way or settling damages or damage claims which, in the opinion of the STATE, render it impracticable to utilize funds from the current appropriation for the construction of the PROJECT, the STATE may serve formal notice of cancellation upon the COMPANY and this agreement shall, with the exception of the obligations set forth in the following sentence, become null and void.

The STATE shall reimburse the COMPANY for all costs and expenses incurred by it at the request of the STATE or the Design-Build contractor, on account of the PROJECT prior to such cancellation, and shall restore the COMPANY's property to the condition existing prior to the initiation of the PROJECT construction.

SECTION 9

The COMPANY may bill the STATE monthly or periodically for its force account when costs exceed \$1,000. Progressive invoices may be submitted for work done during the previous month or period showing the portion of estimated cost completed.

A final bill covering actual cost of work and showing all details shall be submitted to the STATE within ninety (90) days after completion of said work. The STATE shall pay all bills that have been approved within sixty (60) days after receipt thereof. The STATE may hold a retainer on all bills not to exceed eight percent (8%) until final payment. Final payment for all amounts due the COMPANY shall be paid by the STATE within sixty (60) days after the final audit has been made and approved.

SECTION 10

The STATE shall acquire or settle all property, property rights and all damages to property affected by the PROJECT. The cost of said property, property rights and damages to property shall be included as a part of the PROJECT expense.

The COMPANY, insofar as it has the legal right so to do, shall permit the STATE, the CITY and/or its Design-Build contractor to enter upon lands owned or operated by the COMPANY to construct and occupy said highway facilities across its property with sufficient width to permit construction and maintenance of the PROJECT. The STATE and COMPANY shall enter into good faith negotiations for a price to be consistent with the property interest determined by the Director of Transportation to be needed for the proposed improvement.

However, the price to be paid by the STATE to the COMPANY for said conveyances (representing the fair market value thereof plus damages, if any, to the residue) shall be as mutually agreed upon within nine (9) months from the date of occupancy by the STATE, and if agreement as to price is reached, an additional period of ninety (90) days shall be allowed for settlement, it being agreed however, that if no agreement as to price is reached within the aforesaid nine (9) month period, the STATE will within ninety (90) days thereafter institute an eminent domain proceeding authorized by law for the determination of the value of same. The provisions of this agreement shall survive the institution of such eminent domain proceeding.

The STATE, through the Design-Build contractor, shall furnish the plans and descriptions for any such conveyance. It is understood however, that the foregoing right of entry is a permissive use only, and this Section is not intended to convey or obligate the COMPANY to convey any interest in its land.

In case any action involving said improvement is brought by or against any party hereto, said party shall promptly notify the other parties of the pendency of such action.

SECTION 11

Each party hereto waives, but only against the others, any and all damages or right to claim damages to any of its property growing out of or in any way connected with the improvement herein contemplated, except as otherwise provided for in this agreement.

Required insurance provisions are specifically set forth in the attached "Special Clauses" which are included in this agreement by reference

SECTION 12

The work provided for in this agreement shall be commenced by the parties hereto upon the date on which the COMPANY has been notified by the STATE and/or the Design-Build contractor to proceed or the date on which all funds necessary therefore on the part of the STATE have been properly certified and made available; and it shall be completed within a reasonable time thereafter, or as agreed upon by the parties.

All obligations of the STATE provided for in this agreement which require the expenditure of funds by the STATE shall terminate at the end of the present biennium, being June 30, 2011. If construction covered under said agreement is not complete by June 30, 2011, it is the expressed intention of the parties to renew said obligations for one successive biennium period; with the renewal period beginning July 1, 2011 and ending no later than June 30, 2013; until such time as construction covered under said agreement is complete. Said renewal is conditioned upon the STATE determining future appropriations will permit the STATE to renew said obligations.

All financial obligations of the STATE as provided for in this agreement are subject to the provisions of Section 126.07 of the Ohio Revised Code.

SECTION 13

Upon completion of the PROJECT herein contemplated the CITY shall at its own cost and expense, maintain, repair and renew, or by agreement with others provide for the maintenance, repair and renewal of the bridge structure and surfaces, approach grades and all other highway facilities constructed or changed under the terms of this agreement.

The COMPANY will permit access onto its property to perform said maintenance and shall at its own cost and expense, maintain, repair and renew all of its facilities constructed or changed under the terms of this agreement. The COMPANY will not be vested with any rights of ownership of the bridge structure, and will not have a duty to maintain the bridge structure, and will not, if the structure ceases to be a part of the highway system, have a duty to remove the facility from the COMPANY right of way.

The COMPANY shall have the right to attach to the portion of said structure, where it crosses the property of the COMPANY, such signal, electric and communication wires as may be requisite or useful in the operation of the COMPANY; any such attachments which are not a part of the PROJECT shall be made and maintained by the COMPANY at its own expense. No such attachments shall be made without the approval by the STATE of the COMPANY's detailed plans.

SECTION 14

This agreement shall be for the benefit of the parties hereto only and no person, firm or corporation shall acquire any rights whatsoever by virtue of this agreement, except the STATE, the CITY and COMPANY and the successors and assigns of the COMPANY.

SECTION 15

The Federal Highway Administration's Federal-Aid Policy Guide 646(B) classifies this PROJECT in Classification No. 2 resulting in no ascertainable benefits to the COMPANY. The Parties signatory to this agreement accept this classification as applicable in this instance. The COMPANY's contribution shall be zero dollars.

SECTION 16

The COMPANY agrees to adhere to the requirements of Ohio Ethics law as provided by Section 102.04 of the Ohio Revised Code. O.R.C. Section 102.04(A) prohibits a state official or employee from receiving compensation, other than from his own agency, for personal services rendered in a case, proceeding application, or other matter before any state agency. O.R.C. Section 102.04(B) prohibits state officials and employees from selling goods or services to state agencies, except by competitive bidding.

It is understood by the parties that non-elected state officials and employees may qualify for an exemption under Section 102.04(D), if (1) the agency with which the official or employee seeks to do business is an agency other than the one with which he serves; and, (2) prior to rendering personal services or selling or agreeing to sell goods or services, the official or employee files an O.R.C. Section 102.04(D) statement with the Ohio Ethics Commission, the agency with which he serves, and the agency with which he seeks to do business. The statement must include a declaration that the non-elected state official or employee disqualifies himself for a period of two years from any participation in his official capacity as a board or commission member in any matter involving any official or employee of the agency with which he seeks to do business.

It is expressly understood and agreed to by the parties that a failure by the COMPANY to file a declaration statement as required under O.R.C. Section 102.04(D), may be considered by the STATE, a breach of material condition of this agreement and the STATE may, if it so elects, void this agreement.

SECTION 17

In carrying out this contract, the COMPANY shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, or Vietnam-era veteran status. The COMPANY will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, age, or Vietnam-era veteran status.

Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

SECTION 18

COMPANY agrees to comply with all applicable state and federal laws regarding drug-free workplace. COMPANY shall make a good faith effort to ensure that all COMPANY employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

IN WITNESS WHEREOF, the parties hereunto have caused this agreement to be duly executed in duplicate as of the day and year first above written.

THE STATE OF OHIO

By Jolene M. Molitoris
Jolene M. Molitoris
Director

THE CITY OF CLEVELAND

By JW
Print Name Jomane Wasil
Title Public Service Director

By _____
Print Name _____
Title _____

By _____
Print Name _____
Title _____

By _____
Print Name _____
Title _____

FLATS INDUSTRIAL RAILWAY COMPANY

By General A. Ball
Print Name GENERAL A. BALL
Title GENERAL MANAGER

The legal form and correctness of the within instrument is hereby approved.
Robert J. Triozzi, Director of Law
By [Signature]
Chief Asst. Director of Law
Date 3-3-10

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