

March 28, 2025

ADDENDUM NO. 1

RE: Item #10, April 16, 2025 Letting - NH-P 0021(188), 0009-251, 0009-251, 0009-251, 0009-252, 0009-253, 0009-253, 0009-253, PCN 09L0, I7KR, I7KT, I7QT, I7QU, I7KU, I7KW, I7QR, Aurora, Brule, Charles Mix, Douglas, Gregory, McCook, Minnehaha, Sanborn County - Asphalt Surface Treatment

TO WHOM IT MAY CONCERN:

The following addenda to the plans shall be inserted and made a part of your proposal for the referenced project.

SPECIAL PROVISIONS: Please add “Special Provision Regarding Railroad Insurance Requirements for BNSF Railway Company”, dated 3/21/25 and “Special Provision Regarding Working on Railroad Property for BNSF Railway Company”, dated 3/21/25 after the “Special Provision for Indian Employment and Contracting on the Yankton Sioux Tribe”, dated 3/4/25.

SDEBS BID PROPOSAL: NONE

PLANS: NONE

Sincerely,

Sam Weisgram
Engineering Supervisor

SW/cj

CC: Travis Dressen, Mitchell Region Engineer
Jay Peppel, Mitchell Area Engineer

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

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SPECIAL PROVISION REGARDING
RAILROAD INSURANCE REQUIREMENTS FOR
BNSF RAILWAY COMPANY

NH-P 0021(188) PCN 09L0, MCCOOK COUNTY

SD 42 MRM 327.50 TO 333.06
DOT# 385967L at RR MP 344.180, LS 2002

March 21, 2025

Before commencing any work on, over, or near BNSF property, the Contractor will provide and maintain in effect insurance covering all of the work and services to be performed by the Contractor and each of its subcontractors in the coverage and minimum amounts as noted below:

1. Railroad Protective Liability: **BNSF Railway Company will be the Named Insured** for bodily injury and property damage of \$2,000,000 per occurrence and \$6,000,000 in the aggregate. This insurance will include the *Limited Seepage and Pollution Liability Endorsement, Pollution Exclusion Amendment, and Notice of Change Endorsement*.
2. Commercial General Liability: **BNSF Railway Company will be named an Additional Insured** for bodily injury, property damage and contractual liability for work being performed within 50 feet of railroad property, in the amount of \$2,000,000 per occurrence, with an aggregate of \$4,000,000.
3. Automobile Liability: **BNSF Railway Company will be named an Additional Insured** for bodily injury and property damage, with coverage of at least \$1,000,000 combined single limit or the equivalent covering any and all vehicles owned or hired by the Contractor and used in performing work for this project.
4. Workers' Compensation Insurance: As required under the South Dakota Workers' Compensation Law.

RAILROAD PROTECTIVE LIABILITY

The Contractor must purchase Railroad Protective Liability Insurance from BNSF's Public Project Railroad Protective Program through Insurance Brokers Marsh USA, Inc. Purchasing Railroad Protection Liability Insurance through BNSF's Public Project Railroad Protective Program will also grant the Contractor Right of Entry to railroad property.

The contact information to purchase insurance is: Marsh USA, Inc.
1717 Main Street, Suite #4400
Dallas, Texas 75201
Attn: Rosa Martinez, telephone #214-303-8519

IMPORTANT: This project requires Railroad Protective Liability Insurance but does not require any permitting. Clearly state to Marsh USA, Inc., when purchasing RPLI, that this is a public project that was coordinated with Alex Fiorini of BNSF Railway, and that no permitting is required for this project.

CERTIFICATE OF INSURANCE

The Contractor will obtain a Certificate of Insurance evidencing the issuance of insurance coverage as prescribed in items 2, 3, and 4 above. A Waiver of Subrogation is to be shown in favor of the Railroad as respects to the General Liability, Automobile Liability and Workers' Compensation. Also required is primary and non-contributing wording as respects to the General Liability and Automobile Liability.

NAMED INSURED

The certificate holder for Certificate of Insurance and the named insured for Railroad Protective Liability will read:

_____ BNSF Railway Company
_____ PO Box 140528
_____ Kansas City, MO 64114
_____ Email: bnsf@certfocus.com

Questions regarding BNSF's insurance requirements are to be directed to Vickie Barnett, Assistant Manager – Risk Management, BNSF Railway Company, at 817-352-2414.

SUBMITTAL OF INSURANCES TO BNSF AND THE AREA ENGINEER

- A. The Contractor will submit the **BNSF Public Project Notification Form for the State of South Dakota** to BNSF's Certificate Tracking Administrator, CertFocus. (See page 4 of 4 of this special provision for the form.)
- B. The Contractor will submit a signed Certificate of Insurance evidencing the issuance of insurance coverage as prescribed for Commercial General Liability, Automobile Liability, and Workers' Compensation Insurance to CertFocus, and the Area Engineer.
- C. MARSH USA, Inc., will forward the required acknowledgement document to CertFocus that a Railroad Protection Liability Insurance Policy has been purchased from BNSF's Public Project Railroad Protective Program by the Contractor.
- D. BNSF through Jones Lang LaSalle Brokerage, Inc., will provide the Contractor an approved Railroad Protective Liability Insurance policy agreement.
- E. The Contractor will submit a copy of BNSF's approved Railroad Protective Liability Insurance policy agreement to the State's Area Engineer.

The Contractor will submit the information as requested in items A, B, C, and D to:

CertFocus

PO Box 140528

Kansas City, MO 64114

Email: bnsf@certfocus.com

Fax number: 817-840-7487

Toll Free: 877-576-2378

AND Jay Peppel, Mitchell Area Engineer

Po Box 1206

Mitchell, SD 57301-7206

Email: jay.peppel@state.sd.us

Telephone Number: 605-995-8120

The Contractor will not proceed with any work on, over, or near BNSF property (at a minimum of 50 feet from the centerline of any track) until the Contractor has been notified by the BNSF that the required insurance has been approved and documentation of approval has been provided to the Area Engineer.

All costs associated with these insurance requirements, including increasing policy limits, when required, will be incidental to the bid item RAILROAD PROTECTIVE INSURANCE.

The parties mutually understand and agree that the purchase of insurance will not in any way limit the liability of the Contractor to the Railroad.

Failure to obtain the required insurance and approvals prior to working on, over, or near BNSF property will result in the suspension of all work until the required insurances are obtained and approved.

BNSF Public Project Notification Form for the State of South Dakota

Location on Railroad System:

DOT # 385967L RR MP & Line Segment: MP 344.180, LS 2002
DOT # _____ RR MP & Line Segment: _____
DOT # _____ RR MP & Line Segment: _____

Nearest City: BRIDGEWATER

Contractor Information:

Contractor Name: _____

Contractor Address: _____

Contractor Phone Numbers: _____ cell: _____

Contractor Fax Number: _____

Contractor Contact Name: _____

Start Date of Project: _____ End Date of Project: _____

Work to be completed for: State/DOT City County Township

SD State Project Number: NH-P 0021(188) PCN 09L0

Describe Work to be performed on, over or near BNSF property: Asphalt Surface Treatment

Submit this form to BNSF's Certificate Tracking Administrator: CertFocus
PO Box 140528
Kansas, MO 64114
Email: bnsf@certfocus.com
Fax number: 817-840-7487
Toll Free: 877-576-2378

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION

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SPECIAL PROVISION REGARDING
WORKING ON RAILROAD PROPERTY FOR
BNSF RAILWAY COMPANY

NH-P 0021(188) PCN 09L0, MCCOOK COUNTY

SD 42 MRM 327.50 TO 333.06
DOT# 385967L at RR MP 344.180, LS 2002

March 21, 2025

1. REQUIREMENTS OF THE CONTRACTOR IN RELATION TO THE PROTECTION OF THE RAILROAD PROPERTY AND OPERATIONS FROM HAZARD DUE TO CONSTRUCTION OPERATIONS.

The Railroad contact for this project is: **Ben Leach, Roadmaster, BNSF Railway Company, Sioux Falls, SD 763-285-4546.** The Roadmaster may designate others to represent the Railroad.

Construction work or activities within 25' of a track will require railroad flaggers to flag to safeguard Railroad's operations and property. Depending on workload BNSF Railroad may utilize contracted railroad flaggers, RailPros Field Services, Inc., to flag to safeguard Railroad's operations and property. The Contractor will schedule its work in a manner and sequence that will minimize the requirement for Railroad flagging.

The Contractor will notify the Roadmaster at least **thirty (30) days** in advance before entering Railroad property to allow BNSF Railroad to possibly bulletin for Railroad flagger(s) position or utilize RailPros as contracted flaggers. **The Contractor will coordinate its work schedule with the State and Railroad Representatives prior to notifying the Railroad of required flagging dates.**

The Contractor will contact the Roadmaster again at least fourteen (14) working days in advance of entering upon Railroad property to conduct work or activities that will require flagging. Prior to entering Railroad property, a safety orientation is required, see item (2) of this Special Provision for additional information.

When flagger(s) is/are no longer required to flag the Contractor's work or activities as determined after consultation with the State and Railroad Representatives, the Contractor will provide five (5) working days' notice to the Roadmaster in order for the Railroad to abolish the flagger(s) position per Railroad union requirements. **The lack of proper or timely notification could result in which the Contractor being responsible for payment for unnecessary flagging.** Normal and customary charges for flagging will be paid by the State.

Invoicing for flagging will be submitted directly to **Cassidy Schnabel, Highway Rail Safety Engineer, 700 E Broadway Ave, Pierre, SD 57501, cassidy.schnabel@state.sd.us.** The Contractor will notify Roadmaster of billing requirement.

If BNSF utilizes RailPros as contract flaggers, then RailPros will contact the Area Office to fill out an application that ultimately leads to a service agreement between SDDOT and RailPros. The application to executed service agreement can take up to Fourteen 14 days to process. After the service agreement has been executed then RailPros requires Fourteen (14) days in advanced notice prior to flagging. RailPros will submit the billings for flagging directly to the Area Office for payment.

Railroad flagger(s) and protective services and devices will be required and furnished when the Contractor's work or activities are located **over, under, or within twenty-five (25) feet** measured horizontally and perpendicular from centerline of the nearest track, when cranes or similar equipment positioned outside of 25-foot area from track centerline could foul the track in the event of tip over or other catastrophic occurrence, and, including, but not limited to the following conditions:

- a. When in the opinion of the Railroad's Representative, it is necessary to safeguard Railroad property, employees, trains, engines, or facilities.
- b. When any excavation is performed below the bottom of railroad tie elevation, if, in the opinion of Railroad's Representative, track or other railroad facilities may be subject to movement or settlement.
- c. When work in any way interferes with the safe operation of trains at timetable speeds.
- d. When any hazard is presented to railroad track, communications, signal, electrical, or other facilities either due to persons, material, equipment, or blasting in the vicinity.

The Contractor must obtain special permission from the Railroad before moving heavy or cumbersome objects or equipment which may result in making the track impassable.

The Contractor will not be within 25 feet of center of any track when a train is present. Further, no work or activities performed by the Contractor will cause any interference with the constant, continuous and uninterrupted use of the track, property, or facilities of the Railroad; its lessees, licensees, or other users, unless specifically authorized in advance by the Railroad's Representative. Nothing will be done by the Contractor at any time that would in any manner impair the safety of the track, property, or facilities of the Railroad, its lessees, licensees, or other users.

The Contractor will waive, release, indemnify, and defend Railroad for all judgments, awards, claims, demands, and expenses (including attorney fees), for injury or death to all persons, including Railroad's and the Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from the Contractor's or any of the Contractor's subcontractor's acts or omissions or any work performed by or on behalf of the Contractor's or any of the Contractor's subcontractor's on or about Railroad's property or right-of-way. **THE LIABILITY ASSUMED BY THE CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILROAD, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIM IS PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR SOLE NEGLIGENCE OF RAILROAD.**

This obligation will not include any claim, cost, damage, or expense which may be caused by the intentional misconduct or sole negligence of Railroad or its contractor, agent, or employee.

THE INDEMNIFICATION OBLIGATION ASSUMED BY THE CONTRACTOR INCLUDES ANY CLAIM, SUIT, OR JUDGMENT BROUGHT AGAINST RAILROAD UNDER THE FEDERAL EMPLOYEES' LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

The Contractor further agrees, at its expense, in the name and on behalf of Railroad, that the Contractor will adjust and settle all claims made against Railroad, and will, at Railroad's discretion, appear and defend any suit or action at law or in equity brought against Railroad on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by the Contractor under this Special Provision for which Railroad is liable or is alleged to be liable. Railroad will give notice to the Contractor, in writing, of the receipt or dependency of such claim and thereupon the Contractor must proceed to adjust and handle to a conclusion such claim, and, in the event of a suit being brought against Railroad, Railroad may forward summons and complaint or other process in connection therewith to the Contractor, and the Contractor, at Railroad's discretion, must defend, adjust, or settle such suit and protect and indemnify Railroad from and against all damage, judgment, decree, attorney fees, cost, and expense growing out of or resulting from or incident to any such claim or suit.

In addition to any other provision of this Special Provision, if all or any portion of this Article is deemed to be inapplicable for any reason, including, without limitation as a result of a decision of an applicable court, legislative enactment, or regulatory order, the parties agree this Article will be interpreted as requiring the Contractor to indemnify Railroad to the fullest extent permitted by applicable law.

The assumption of liabilities and indemnification provided for in this Special Provision will survive any termination of this Special Provision.

The Contractor's obligations under this Special Provision will not extend to the liability of the architect or engineer, agents or employees arising out of: (1) The preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or, (2) The giving of or the failure to give directions or instructions by the architect, or engineer, agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

2. REQUIREMENTS FOR THE CONTRACTOR WORKING ON RAILROAD PROPERTY.

Prior to entering Railroad property, each person providing labor, material, supervision, or services connected with the work to be performed on or about Railroad property will attend railroad safety training program at the following Internet Website www.BNSFcontractor.com. This training must be completed no more than one year in advance of entry on Railroad property.

Expenses associated with completing the safety training will be incidental to the project.

While on or about Railroad property, the Contractor will fully comply with Railroad's "Contractor Requirements," including, but not limited to, clearance requirements and personal protective equipment requirements. A partial list of the "Contractor Requirements" is included in this Special Provision. Additional information regarding "Contractor Requirements" is available for viewing at the above referenced safety training Internet Website. The Contractor will be responsible for fully informing itself as to Railroad's "Contractor Requirements."

PARTIAL LIST OF "CONTRACTOR REQUIREMENTS"

- a. Prior to entering the Railroad property, the Contractor will prepare and implement a Safety Action Plan acceptable to the Railroad. During the performance of work, the Contractor will audit its compliance with that plan. The Contractor will designate an on-site project supervisor who will serve as the contact person for the Railroad and who will maintain a copy of said plan and audit results at the work site for inspection and review by the Railroad at all reasonable times.
- b. All **insurance policies and certificates must be received and approved** before the Contractor enters Railroad property. Insurance must remain in effect during the entire project.
- c. Before the Contractor begins any task on Railroad property, a thorough job safety briefing will be conducted with all personnel involved with the task. The briefing will be repeated if the personnel or the task changes.
- d. No change will be made to "Construction Plans" without approval by the Railroad or State Representatives. Approved revised plans will be furnished prior to implementation of changes.
- e. When deemed necessary by the Railroad or State Representative, flagging protection by Railroad may be required while working on Railroad property or when equipment crosses the tracks.
- f. The Contractor must furnish details to and obtain approval from BNSF on how it will perform work that will affect existing drainage or possibly foul a track, as well as any **removal of any overhead bridge or structure**. BNSF approval process may take an excess of 30 days.
- g. Construction equipment must cross railroad track only at approved locations and must be over a full depth timbers, rubber, or concrete crossing. No equipment with steel wheels, lugs, or tracks may cross steel rails without aid of rubber tires or other approved protection. No vehicle may cross Railroad's track except at existing open public crossings.

- h. Each temporary construction crossing must be covered by a “Private Roadway & Crossing Agreement,” and must be barricaded when not in use. Any requests for a temporary construction crossing are to be directed to the Railroad. This process may take an excess of 30 days.
- i. The Contractor will **incur all costs** for any track work made necessary due to its construction operations, including but not limited to costs for temporary construction crossings and repair of damaged track.
- j. The Contractor may not pile construction materials or any other material, including, but not limited to dirt and sand, within 25 feet of center of track or on Railroad property not covered by Construction Easement or Contractor’s Permit/Lease. A 10-foot clear area on each side of a main track must remain unobstructed at all times to allow for stopped train inspection.
- k. When leaving any work area at night and over weekends, each area must be secured and left in a condition that will ensure Railroad’s employees and other personnel and other persons who may be working or passing through the area are protected from all hazards.
- l. No construction will be allowed within 25 feet of center of any track unless authorized by the Railroad’s Representative and shown on plan approved by the Railroad. This includes any excavation, falsework, scaffolding, slope encroachment and driving of sheet piles. Any excavation must be covered, guarded or protected when not being worked on. All excavations must be back filled as soon as possible. Plan approval can take an excess of 30 days.
- m. *No machines or equipment may be left unattended with the engine running. Each parked machine and equipment must be in gear with brakes set and, if equipped with blade, pan or bucket, the blade, pan or bucket must be lowered to the ground. All machinery and equipment left unattended must be left inoperable and secured against movement. The master battery disconnect switch must be left in the off or disconnect position and padlocked. Where equipment has an enclosed cab, a lockable hasp on the cab access door should be provided. This will prevent the use of easily obtainable universal keys to access equipment cabs. Equipment is not to be left within 50 feet of from centerline of nearest track without specific approval from the Railroad Representative. Under no circumstances is equipment to be left where it is within 8’-6” of track centerline or otherwise could be struck by a train or on-track equipment.*
- n. All personal protective equipment used on the Railroad property will meet OSHA and ANSI specifications. Hearing protection fall protection and respirators will be worn as required by State and Federal regulations. The Contractor’s safety rules must not conflict with Railroad safety policies or rules.
- o. Important - Disregard of any of these items will result in the Contractor being shut down for a minimum of 48 hours on railroad property while infraction is investigated. Based on the findings of the investigation, it will be determined if the Contractor will be allowed to work on railroad property in the future.

3. RIGHT OF ENTRY FOR THE CONTRACTOR ON RAILROAD PROPERTY

Right of Entry will not be granted by either the Railroad or the State Representative until the Contractor has completed the following:

- a. The Contractor has furnished the “Railroad Protective Liability” policy, Certificate of Insurance for “Commercial General Liability,” “Automobile Liability,” and “Workers’ Compensation Insurance” to the Railroad and State in amounts satisfactory to the Railroad. See “Special Provision Regarding Railroad Insurance Requirements.”
- b. The Railroad has notified the Contractor that said insurances have been approved by the Railroad.
- c. The Contractor has completed the Railroad safety training program and made satisfactory arrangements with Railroad’s Representative for progress of work without danger to train operations, without unnecessary interruption to train movements, and for flagging protection as necessary.

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