DocuSign Envelope ID: C32E85B4-F997-4B76-8FCB-DCF2B12F4103

RR Project #: 21IORY10R

Agency #: 43-22-02

INDIANA & OHIO RAILWAY COMPANY (IORY) CONSTRUCTION AND MAINTENANCE AGREEMENT

RR MILEPOST 71.78, INDIANA & OHIO RAILWAY COMPANY
CITY OF DELTA, COUNTY OF FULTON, STATE OF OHIO

THIS CONSTRUCTION AND MAINTENANCE AGREEMENT ("Agreement") made this day of December 15, 2021 ("Effective Date"), by and between the **OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION,** hereinafter called "**Agency**", and **INDIANA & OHIO RAILWAY COMPANY, (IORY)** hereinafter called "**Railway**":

WITNESSETH:

WHEREAS, in the interest of public safety, the **Agency** proposes to replace the bridge deck and widen the existing bridge of I-90/Ohio Turnpike (DOT# 258372H) over **Railway's right of way (**hereafter called "**Project**") located in the Village of Delta, State of Ohio; and

WHEREAS, **Railway** is willing to coordinate and cooperate with the **Agency** to permit construction of the **Project** upon the terms and conditions herein stated and not otherwise; and

WHEREAS, the **Agency** is willing to undertake 100% of the expense associated with installation and construction of the **Project**; and

WHEREAS, attached hereto and hereby made a part hereof as ***Exhibit A*** is a Project Print showing the type, size, and location of the **Project**; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed as follows:

I. Performance of Work

The **Agency** and **Railway** will each perform various items of work as described below:

A. WORK TO BE PERFORMED AND MATERIALS FURNISHED BY EITHER **AGENCY** OR ITS CONTRACTOR AT **AGENCY** EXPENSE.

1. Project Construction
   Take all necessary, reasonable steps - including funding - for the construction of the Project, including but not limited to all labor, materials and equipment required for the construction of the Project, (Exhibit A).

2. Grading and Excavation
   Take all necessary, reasonable steps - including funding - for all associated grading and excavation required for the installation of the Project, (Exhibit A).

3. Safety
   Bear responsibility for installation and removal of fencing and all other safety measures along the **Railway's** right of way as deemed necessary by the **Railway**.

4. Schedule & Notification
   Provide **Project** construction schedule and notify **Railway** ninety days (90) days prior to the date **Railway** is to coordinate track related construction.

B. WORK TO BE PERFORMED AND FURNISHED BY THE **RAILWAY** AT THE EXPENSE OF THE **AGENCY.**

1. Construction Engineering and Engineering Inspection
   Perform engineering services, including submittal reviews, project coordination, and construction inspection, including field and office work and preparation of invoices for the **Project.**

2. Flagging
   The **Railway** will schedule and perform flagging and furnish requested services and devices during construction operations of the **Agency** or its contractor, as deemed necessary by the **Railway** even if there are no trains.

C. COSTS AND PAYMENTS.

The **Agency** hereby agrees to pay the **Railway** 100% of the cost of the work to be performed by Railway pursuant to Section I.B. The **Railway** will provide a final invoice ninety (90) days after the end of **Project** construction/installation, but no later than one (1) year after completion. The **Agency** will have up to sixty (60) days to pay **Project** invoices. The Railway may bill the Agency monthly or periodically for its force account when costs exceed $1,000.

II. Construction Plans and Specifications

The **Agency** or its contractors shall perform its work in accordance with standard plans and specifications which shall be provided by the **Railway** for those sections that are applicable to **Railway**'s right-of-way, facility, or operations. No work pursuant to said plans and specifications shall be performed on the right-of-way of the **Railway** prior to receipt **of a notice to proceed given by the Railway.**

III. Traffic Protection, Safety and Flagging

All work herein provided for to be done by the **Agency** or its contractors on or near the **Railway**'s right-of-way shall be performed at such time and in such manner as not to interfere unreasonably with the movement of trains or traffic upon the tracks of the **Railway**. The **Agency** or its contractors shall enter into a "Right-of-Entry Agreement" with the **Railway** prior to commencement of construction adjacent to or upon **Railway**'s right-of-way, such Agreement to be provided by Railway upon request. The **Agency** or **Agency's** contractor shall reimburse the **Railway** for all actual costs related to flagging per *Section I.B.2.* in this Agreement. The **Railway** may bill the Agency in accordance with Section 1.C. in this Agreement.

Wherever the safeguarding of trains or traffic of the **Railway** is mentioned in this Agreement, it is intended to cover and include all users of the **Railway**'s tracks having permission for such use.

IV. Conditions, Restrictions, and Limitations

All the aforementioned rights are granted subject to the terms, provisions, conditions, restrictions, limitations, covenants, reservations and exceptions contained in this Agreement, including, without limitation, those set forth in the Right-of-Entry Agreement and in Attachment 2 (Roadway Worker Protection Training Policy) and Attachment 3 (Contractor Safety Rules), each as attached hereto and by this reference incorporated herein; the **Agency** and its contractors, in the exercise of the rights and in the conduct of the **Project,** shall and will do, keep, observe and perform each and all of the terms, provisions, conditions, restrictions, limitations, covenants, reservations and exceptions thereof.

The Agency shall ensure that its contractor(s) obtain and provide to **Railway** evidence that such contractor(s) have procured the insurance coverage described in ***Exhibit C***, hereto attached, covering their work on **Railway**'s property in connection with the **Project**.

Agency agrees that at no time shall it file or permit the filing of a lien or liens upon the property of **Railway** related to the Project. If, at any time, during the progress of the Project, at the time of acceptance of this Agreement or thereafter, any indebtedness due a subcontractor of **Agency** has become or may become a lien or liens upon said work, equipment or materials, **Agency** shall immediately, upon request from **Railway** pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond, or otherwise. In the case of its failure to do so, **Railway** may suspend the use of its property until such claim or indebtedness is paid or may apply such money toward the discharge thereof, or assert and enforce a claim against **Agency** for such claim or indebtedness, or declare this Agreement to be cancelled, take possession and control of the Project and complete the same or cause the same to be completed in accordance with the terms and conditions hereof.

V. [RESERVED]

VI. Funding and Signatory Warranty

Agency acknowledges that it has available all funds necessary to complete the Project, including the reimbursement of **Railway** for the estimated costs, as set forth in the initial estimate (Exhibit B).

Each party to this Agreement certifies that its signatory has the authority to enter into this Agreement on its behalf.

VII. Term, Ownership, and Maintenance Responsibilities

Subject to Section IX(B), the term of this Agreement shall commence on the Effective Date and remain in effect until the earlier of (a) expiration of the Term or (b) until completion of the construction of the Project, as determined by the Railway and subject to Section IX(C). Sections X and XI(B) shall survive termination of this Agreement.

Upon completion of the **Project**, the **Agency**, at the **Agency's** expense, will be responsible for the maintenance of the bridge and all associated structures and landscaping.

VIII. Assignment

Neither party has the right to assign this Agreement without the prior written consent of the other. Notwithstanding the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto, their successors, and permitted assigns.

IX. Construction

A. The parties acknowledge that time is of the essence in the completion of the Project.

B. The **Agency** shall complete all construction within twenty-four (24) months of the Effective Date ("Term"). If construction has not commenced within one (1) year after the Effective Date, this Agreement becomes null and void.

C. If construction has commenced and is not complete within the Term, the **Agency** shall provide the **Railway** a time line for the completion of the construction. The **Railway** will review and determine if amendments to the terms of this Agreement, including Exhibit B, or supplemental agreements are required prior to the completion of construction.

X. Indemnity

A. As a material inducement for entering into this Agreement, and without which **Railway** would not enter into the same, **Agency** shall require its contractors t (1) enter into **Railway's** standard Right-of-Entry Agreement prior to entering **Railway's** right-of-way; and (2) obtain insurance sufficient to comply with Exhibit C when working or operating in the **Railway's** right-of-way. insurance sufficient to comply with Exhibit C when working or operating in the Railway's right-of-way.

B. It is specifically understood and agreed that neither party of this Agreement indemnifies the other. Each party shall be responsible for its own acts and omissions and shall be liable for payment of that portion of any and all loss, claims, causes of action, costs, damages, and obligations, financial or otherwise, including attorney fees and legal expenses, arising from any and all acts of the said party. Its employees, agency, independent contractors, subcontractor, licensees, and invitees in the performance of this Agreement that result in injury to persons or damage to property. In no event shall

either party be liable to the other for consequential, special, or incidental damages whether in an action based on contract, tory (including negligence) or any other legal theory, even if the party has been advised of the possibility of such damages.

XI. Cancellation of Project; Termination of Agreement; Remedies

A. If **Agency** determines it is necessary to cancel the Project for any reason, **Agency** may terminate this Agreement by delivery of written notice to **Railway**. Upon **Railway's** receipt of such notice, **Railway** shall proceed to stop work.

B. **Agency** shall reimburse **Railway** for all reasonable costs and expenses incurred by **Railway** prior to the notice of termination and for reasonable costs and expenses incurred in stopping work and returning **Railway's** property to its original condition to **Railway's** reasonable satisfaction,

XII. General Provisions

SOLE BENEFIT. This Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto and their respective officers, agents, employees, parent corporation, subsidiaries, affiliates, successors, and permitted assigns, any right or benefit pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement.

WAIVER. Any waiver at any time by one Party of a breach hereof by the other Party will extend only to the particular breach so waived and will not impair or affect the existence of any provision, condition, obligation, or requirement of this Agreement or the right of either party hereto thereafter to avail itself of any rights under this Agreement with respect to a subsequent breach. No provision of this Agreement shall be waived by any act or knowledge of the parties hereto, but only by a written instrument signed by the party waiving a right hereunder.

SEVERABILITY. If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

MERGER. This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto, written or oral.

AMENDMENT. No provision of this Agreement shall be modified without the written concurrence of the parties hereto.

HEADINGS. The headings of the Sections of this Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

CONSTRUCTION OF TERMS. The terms of this Agreement have been arrived at after mutual negotiation and, therefore, it is the intention of the Parties that its terms not be construed against any of the Parties by reason of the fact that it was prepared by one of the Parties.

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GOVERNING LAW. This Agreement will be construed in accordance with the laws of the state in which the work is performed.

COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

The following is a list of the attachments:

Exhibit A – Construction Plans
Exhibit B – Rail Services Cost Estimate
Exhibit C – Insurance Requirements
Attachment 1 – not applicable
Attachment 2 – Roadway Worker Protection Training Policy
Attachment 3 – Contractor Safety Rules

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year hereinafter written.

Approved as to form:

DocuSigned by:
Heather Veljkovic
FC9B7809C864410...

Heather Veljkovic, Esq.
Acting General Counsel

Heather Veljkovic Staff Attorney

Authorized Representative (print) /Title

12/7/2021

Date

OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

DocuSigned by:
F.M. Ahmed
923910B5D612416...

Ferzan M. Ahmed, P.E.
Executive Director

Ferzan Ahmed Executive Director

Authorized Representative (print)/Title

12/7/2021

Date

WITNESS:

Kimberly Walker

INDIANA & OHIO RAILWAY COMPANY

LEONARD WAGNER - President - 12/15/2021 9:48:45 AM

Authorized Representative Signature

Authorized Representative (print) / Title

Date

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RR Project #: 21IORY10R

Agency #: 43-22-02

Exhibit A
Project Print

OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

THE JAMES W. SHOCKNESSY OHIO TURNPIKE

PROJECT NO. 43-22-02
BRIDGE DECK REHABILITATION

OHIO TURNPIKE OVER STATE ROUTE 109 MP 40.3,
OHIO TURNPIKE OVER INDIANA AND OHIO RAILWAY MP 40.5
FULTON COUNTY, OHIO

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OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION STANDARD DRAWINGS

AS-1	REINFORCED CONCRETE APPROACH SLAB	12/31/19
CB-1	CATCH BASIN, NO. CB-1 WITH SLOPE DRAIN TILE DETAIL	12/31/19
CB-4A	INLET, NO. I-3B50, DOUBLE GRATE	09/19/18
CBR-2	CONCRETE BARRIER, SINGLE SLOPE, TYPES B-50 AND C-50, AS PER PLAN	09/26/18
DJ-1	DECK JOINT DETAILS, CELLULAR ABUTMENTS	12/31/19
DJ-2	DECK JOINT DETAILS	10/20/17
DR-1	PRECAST FLARED END SECTION	10/20/17
F-1	RIGHT OF WAY FENCE	01/07/21
RPM-1	RAISED PAVEMENT MARKER AND STRIPING LAYOUT	10/20/17
SBR-50	50" SINGLE SLOPE CONCRETE MEDIAN BRIDGE PARAPET	09/19/18
TC-1	TRAFFIC CONTROL BRIDGE AND BARRIER SIGN SUPPORT DETAILS	10/20/17
TC-3	TRAFFIC CONTROL MISCELLANEOUS DELINEATION	10/20/17
TCB-1	REQUIREMENTS FOR PORTABLE BARRIER SETTING AND REMOVAL OPERATIONS	10/20/17
TCR-1	TEMPORARY TRAFFIC CONTROL GENERAL NOTES	01/07/21
TCR-2	TEMPORARY TRAFFIC CONTROL DETAILS, LEGEND, NOTES, AND STANDARD SINGLE LANE CLOSURE	01/07/21
TCR-9	TEMPORARY TRAFFIC CONTROL SHORT DURATION/SHORT TERM SHOULDER CLOSURE	01/07/21
TCR-9.2	TEMPORARY TRAFFIC CONTROL LANE CLOSURE AT EXIT AND ENTRANCE RAMP	10/20/17
TCR-9.3	TEMPORARY TRAFFIC CONTROL DOUBLE LANE CLOSURE AT EXIT AND ENTRANCE RAMP	10/20/17
TCR-10	TEMPORARY TRAFFIC CONTROL DOUBLE LANE CLOSURE	01/07/21
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TCR-12	TEMPORARY TRAFFIC CONTROL DOUBLE LANE SHIFT ZONE	01/07/21
TCR-13	SONIC NAP ALERT PATTERN (SNAP)	01/07/21
TCR-14	TEMPORARY TRAFFIC CONTROL SINGLE LANE CLOSURE WITH PORTABLE BARRIER	01/07/21
TCR-15	TEMPORARY TRAFFIC CONTROL SIGNS FOR MAINTENANCE AND CONSTRUCTION	01/07/21
UD-1	UNDERDRAIN DETAILS	09/19/18

OHIO DEPARTMENT OF TRANSPORTATION STANDARD DRAWINGS

BP-5.1	CONCRETE CURB AND COMBINED CURB AND GUTTER	01/18/19
DM-1.1	OUTLETS, DRAINS, AND SEWER	07/17/20
DM-4.4	CONSTRUCTION EROSION CONTROL	01/15/16
MGS-1.1	GUARDRAIL DETAILS	01/19/18
MGS-2.1	MIDWEST GUARDRAIL SYSTEM, STANDARD TYPE MGS	01/19/18
MGS-3.1	MGS BRIDGE TERMINAL ASSEMBLY, TYPE 1	01/19/18
MGS-3.2	MGS BRIDGE TERMINAL ASSEMBLY, TYPE 2	01/18/13
MGS-6.1	GUARDRAIL AT BRIDGES	01/19/18
MT-95.30	CLOSING RIGHT OR LEFT LANE OF A MULTI-LANE DIVIDED HIGHWAY WITH DRUMS	07/19/19
MT-95.40	CLOSING LEFT OR RIGHT LANE OF A MULTI-LANE DIVIDED HIGHWAY WITH PORTABLE CONCRETE BARRIER	01/17/20
MT-96.11	SIGNALIZED CLOSING 1 LANE OF A 2-LANE HIGHWAY	04/17/20
MT-96.20	DETAILS FOR SIGNALIZED CLOSING 1 LANE OF A 2-LANE HIGHWAY	07/15/16
MT-97.10	FLAGGER CLOSING 1 LANE OF A 2-LANE HIGHWAY - STATIONARY OPERATION	04/19/19
MT-101.60	ROAD CLOSURE USING TYPE 3 BARRIERS	01/17/20
MT-101.90	DROP-OFFS IN WORK ZONES	07/17/20
MT-105.10	TEMPORARY SIGN SUPPORT	01/17/20
RB-1-55	ROCKERS AND BOLSTERS FOR STEEL BEAM AND GIRDER BRIDGES	07/19/13
SBR-1-13	SINGLE SLOPE CONCRETE BRIDGE RAILING	07/20/18
TC-52.10	SIGN BLANK DETAILS 1	10/18/13
TC-52.20	SIGN BLANK DETAILS 2	01/15/21

APPROVED FOR
THE OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION
BY

_____
CHIEF ENGINEER

_____
DATE

UNDERGROUND UTILITIES
Contact Two Working Days Before You Dig
OHIO811.org Before You Dig
OHIO811, 8-1-1, or 1-800-362-2764
(Non-members must be called directly)

OHIO DEPARTMENT OF TRANSPORTATION SUPPLEMENTAL SPECIFICATIONS

SS 800	REVISIONS TO THE 2019 ODOT CMS	07/16/21
SS 821	ARROW BOARD	04/20/12
SS 832	TEMPORARY SEDIMENT AND EROSION CONTROL	10/19/18
SS 921	ARROW BOARD	04/20/12
SS 1122	DETERMINING SULFATE CONTENT IN SOILS	07/20/18

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RR Project #: 21IORY10R

Agency #: 43-22-02

Exhibit B
Rail Services Cost Estimate

Force Account Estimate

Estimate to Complete

Railroad:	Indiana & Ohio Railway	**Region:**	NORTHERN
Agency:	Ohio Turnpike and Infrastructure Commission	**State:**	OH
DOT #:	258372H	**COUNTY:**	Fulton
ROADWAY:	Ohio Turnpike (I-89)	**CITY:**	Delta
DESCRIPTION:	Services in support of the I-89 Bridge project over IORY. Tasks include flagging coordination, prepare/manage project correspondence, 6 submittal reviews, 1 pre-con meeting, biweekly inspections for 6 months, 4 task specific inspections, 1 final inspection, agency invoicing, and project closeout.		
AGENCY PROJECT NUMBER:	71-19-01	**ESTIMATE SUBJECT TO REVISION AFTER:**	04/11/22

PRELIMINARY ENGINEERING:				
Contracted & Administrative Engineering Services			$	19,500
Subtotal			**$**	**19,500**
CONSTRUCTION & CLOSEOUT:				
Contracted & Administrative Engineering Services			$	71,800
Subtotal			**$**	**71,800**
FLAGGING SERVICE:				
Contracted or Railroad Flagmen Services	130	Days	$	182,000
Subtotal			**$**	**182,000**
UTILITY WORK:				
Power Service			$	-
Other			$	-
Subtotal			**$**	**-**
CONTRACT WORK:				
Outside Services			$	-
Design & Labor & Material			$	-
Subtotal			**$**	**-**
RAILROAD TRACK:				
Labor & Material			$	-
Subtotal			**$**	**-**
RAILROAD SIGNAL & COMMUNICATION:				
Labor & Material			$	-
Subtotal			**$**	**-**
PROJECT SUBTOTAL:			**$**	**273,300**
Public Project Admin:	**0.00%**		$	-
Contingencies:	**15.00%**		$	40,995
PROJECT TOTAL:		**********	**$**	**314,295**
CURRENT AUTHORIZED BUDGET:		**********	**$**	**22,425**
TOTAL SUPPLEMENT REQUESTED:		**********	**$**	**291,870**

DIVISION OF COST:

Agency	100.00%	$	314,295
Railroad	0.00%	$	-

NOTE: Estimate is based on FULL CROSSING CLOSURE during work by Railroad Forces & Contractors.

This estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower and resource availability, and other factors known as of the date prepared. The actual cost for the railroad work may differ based upon the agency's requirements, their contractor's work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work.

Estimated prepared by: SKS **Approved by:** **Public Project Department**

DATE: 03/17/21 **REVISED:** 10/13/21 **DATE:** 10/13/21

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Exhibit C
Insurance Requirements

The parties agree that the following coverages are material requirements of this Agreement and such coverages shall not be limited by Agency's inability to indemnify and hold harmless Railroad Indemnitees under applicable laws and regulations:

(a) Agency shall, at its own cost and expense, prior to entry onto the property of Railway (the "Property") or the commencement of any work pursuant to this Agreement, procure and thereafter maintain throughout the term of this Agreement the following types and minimum amounts of insurance:

(i) Agency shall maintain Public Liability or Commercial General Liability Insurance ("CGL") including Contractual Liability Coverage and CG 24 17 "Contractual Liability-Railroads" endorsement, covering all liabilities assumed by Agency under this Agreement, without exception or restriction of any kind, with a combined single limit of no less than two million dollars ($2,000,000) for bodily injury and/or property damage liability per occurrence, and an aggregate limit of no less than six million dollars ($6,000,000) per annual policy period. Such insurance policy shall be endorsed to provide a Waiver of Subrogation in favor of Railway Indemnitees and shall name Railway Indemnitees as Additional Insureds. An Umbrella or Excess policy may be utilized to satisfy the required limits of liability under this section but must "follow form" and afford no less coverage than the primary policy.

(ii) Agency shall maintain Commercial Automobile Insurance for all owned, non-owned and hired vehicles with a combined single limit of not less than one million dollars ($1,000,000) for bodily injury and/or property damage liability per occurrence. Such insurance policy shall be endorsed to provide a waiver of subrogation in favor of Railway Indemnitees and shall name Railway Indemnitees as Additional Insureds.

(iii) Agency shall maintain Statutory Workers' Compensation and Employers' Liability Insurance for its employees (if any) with minimum limits of no less than one million

dollars ($1,000,000) for bodily injury by accident, each accident; one million dollars ($1,000,000) for bodily injury by disease, policy limit; one million dollars ($1,000,000) for bodily injury by disease, each employee. Such insurance policy shall be endorsed to provide a waiver of subrogation in favor of Railway Indemnitees.

(iv) Prior to construction within fifty (50) feet of the Railway's tracks, Agency shall purchase Railroad Protective Liability Insurance naming Railway Indemnitees as the named insureds with limits of two million dollars ($2,000,000) each occurrence and six million dollars ($6,000,000) aggregate limit. The policy shall be issued on a standard ISO form CG 00 35 12 03 or, if available, obtain such coverage from Railway.

(b) The following general insurance requirements shall apply:

(i) The specified insurance policies must be affected under standard form policies underwritten by insurers licensed in the state where work is to be performed and carry a minimum Best's rating of "A-" and size "Class VII" or better. Railway reserves the right to reject as inadequate any insurance coverage provided by an insurer that is rated less than the ratings specified in this section.

(ii) All coverages shall be primary and non-contributory to any insurance coverages maintained by Railway Indemnitees.

(iii) All insurance policies shall be endorsed to provide Railway with thirty (30) days prior written notice of cancellation, non-renewal or material changes.

(iv) Agency shall provide Railway with certificates of insurance evidencing the insurance coverages, terms and conditions required prior to commencement of any activities on or about the Property. Said certificates should reference this Agreement by date and description and shall be furnished to Railway at the following address, or to such other address as Railway may hereafter specify:

Indiana & Ohio Railway Company (IORY)
2856 Cypress Way
Cincinnati, Ohio 45212

(v) If any policies providing the required coverages are written on a Claims-Made basis, the following shall apply:

a. The retroactive date shall be prior to the commencement of work.
b. Agency shall maintain such policies on a continuous basis.
c. If there is a change in insurer or policies are cancelled or not renewed, Agency shall purchase an extended reporting period of not less than three (3) years after the Agreement expiration or termination date.
d. Agency shall arrange for adequate time for reporting of any loss under this Agreement.

c. Railway may require Agency to purchase additional insurance if Railway reasonably determines that the amount of insurance then being maintained by Agency is insufficient in light of all relevant factors. If Agency is required to purchase additional insurance, Railway will notify Agency. Failure of Agency to comply within thirty (30) days shall be considered a default subject to termination of the Agreement.

d. Furnishing of insurance by Agency shall not limit Agency's liability under this Agreement but shall be additional security therefor.

e. The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement, or any amendment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the Agreement was in effect and the insurance was in force.

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f. Failure to provide the required insurance coverages or endorsements (including contractual liability endorsement) or adequate reporting time shall be at Agency's sole risk

g. If contractors are utilized by Agency, Agency agrees to require all such contractors to comply with the insurance requirements of this Exhibit C.

Agency shall keep said insurance in full force and effect until all work to be performed upon or adjacent to the Property under this Agreement is completed to the satisfaction of and accepted by Railroad and thereafter until Agency has fulfilled the provisions of this Agreement with respect to the removal of tools, equipment and materials from the Property.

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Attachment 2

Roadway Worker Protection Training Policy

Railroad and Contractor have a mutual interest in providing a safe workplace for the employees of both parties and in maintaining the integrity and security of Railroad's facilities and property (the "Property"). To help ensure this goal, Railroad has instituted a training program for all employees of Contractor or its subcontractor(s) seeking admission to the Property (the "Program"). These employees must successfully complete the Program. Contractor shall cause its employees, and shall cause its subcontractor to require its employees, to successfully complete the Program on an annual basis, at their sole cost and expense, prior to their admission onto the Property. The Program will be available on-line and administered by a third party on behalf of GWI. The cost per employee certification attempt is $75.00 USD, payable via credit or purchasing card.

To access the G&W Roadway Worker Protection Training for Railroad Contractors Course on the RWT
On-Line Portal please follow these instructions:

- Start at website https://railpros.com/training/
- Click on the "Online Training" button
- Select the G&W course by clicking on the course name or simply add to cart
- If creating an account for multiple people, adjust the quantity purchased to match the tests needed
- Create an account as a new user or use previous login information
- A username will be assigned after an account is created
- Fill out all of the fields on the payment page and submit
- You will be asked if this is for you or someone else, if it is for your use select you. If it is for members of your team, enter the name and contact information of those that will be taking the test
- After receiving the username and password go back to the On-Line University page and select the G&W course again
- Complete the registration process and training

All employees of the Contractor or its subcontractor(s) will be required to submit a copy of their training certification to the railroad personnel managing the applicable project

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RR Project #: 21IORY10R

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Attachment 3

Contractor Safety Rules

CONTRACTOR
SAFETY
RULES

Issued to all North American Subsidiaries of

Genesee & Wyoming Inc.

Effective April 1, 2002
Revised Dec. 31, 2006

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Introduction:

These rules apply to contractors performing maintenance, repair or specialty work on or about railroad property; on other properties the railroad is responsible for and/or on property directly adjacent to the railroad track.

They do not apply to contractors providing incidental services that do not influence safety, such as janitorial services, food & drink services, laundry, or other supply services.

Contractor Responsibilities:

1. All contractor employees must be trained in the work practices necessary to safely perform his or her job.

2. Document that each contractor employee has received and understands the purpose of the Genesee & Wyoming Inc. Contractor Safety Rules.

   - The contractor must prepare a record, which contains the identity of the contractor employee, the date of the training and means used to verify that the employee understood the training.

3. Ensures that each contractor employee follows the railroad's safety rules and procedures.

4. The contractor must advise the railroad of any hazards presented by the contractor's work when they occur.

5. Unless otherwise provided in the contract, the contractor is responsible for restoring ballast, filling holes created when replacing ties and removing all debris generated as a result of the work that is being performed. Permanent or temporary safety precautions must be in place each day prior to the contractor leaving the worksite. These safety precautions are the responsibility of the contractor when providing hazard protection.

6. All applicable transportation department rules apply to contractors when rail cars are involved in the project i.e. (Riding on equipment, 3 Points of Contact, 3 Step Protection, Getting on or off equipment.)

7. All pertinent railroad safety rules and regional procedures must be reviewed prior to the commencement of work on railroad property.

8. All contractor employee injuries and all railroad property damaged by the contractor must be reported to the regional railroad's claims office and the Genesee & Wyoming Inc. claims office located in Rochester, NY at (716) 463-3406. All reports must be completed in accordance to FRA Reporting requirements.

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Definitions:

Flagman: An employee designated to direct or restrict the movement of trains at a point on track to provide on-track protection for Roadway Workers. This employee must be qualified on the railroad's operating rules, roadway worker safety; and may not perform any other duties.

Foul Time: A method of establishing working limits through exclusive use of the track in which notification is given and recorded by the train dispatcher or block operator to an employee that no trains will operate within a specific segment of controlled track during a specific time period, and the required blocking devices have been placed on the control machine to protect the track fouled. Foul time must remain in effect until the employee to whom the foul time was issued has reported clear of the track.

Fouling A Track: The location of an individual or equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or whenever an individual or equipment is within four (4) feet of the field side of the near running rail.

Inaccessible Track: A method of establishing working limits on non-controlled track by preventing access to the working limits.

Lone Worker: An individual employee who is not being afforded On-Track Protection by another employee, who is not a member of a gang, and is not engaged in a common task with another employee.

Restricted Speed: Prepared to stop within one-half the range of vision-short of a train, obstruction, or switch improperly lined. Be on the lookout for broken rail.

Roadway Maintenance Machine: Powered equipment, other than by hand, which is being used on or near the track for maintenance, repair, construction or inspection of track; bridges; roadway; or signal, communication, or electric traction systems. These machines may have road or rail wheels or may be stationary.

Roadway Maintenance Work Train: A train that is being operated within working limits in conjunction with roadway maintenance, construction or repairs, under the direction of a designated employee in charge.

Roadway Worker: An employee, or employee of a contractor whose duties include inspection, construction, maintenance or repair of track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track with the potential of fouling a track, and flagmen and watchmen affording on track protection.

Track Centers: The distance from the centerline of one track to the centerline of an adjacent track.

Gage: The distance (4 ft. 8 1/2 inches) between track rails.

Clear of Tracks: Minimum clearance of at least four feet outside the rail of all tracks, and not between main tracks.

Blue Flag Protection: A method of providing protection for people who work on, under, or between railroad rolling stock; freight cars, locomotives, etc.

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1. Accident/Injury Requirements:

The contractor is required to have an employee qualified to give first aid. If a contractor employee is injured while working on railroad property, he or she should be given first aid at once. Medical assistance should be obtained as soon as possible if further care is needed.

2. Personal Protective Equipment:

a. Safety Footwear:

- Employees whose duties require them to work on or about tracks or equipment are required to wear leather laced type shoes that cover the entire foot. These shoes must be at least six inches high, and have safety toes, must have a defined heel of not more than 1 ¼ inches in height and must have oil resistant soles.
- Shoes that are excessively worn or, do not provide ankle support, have thin, loose or smooth soles must not be worn.

b. Eye Protection requirements:

- Safety glasses must be worn at all times while on railroad property. Protect your vision by wearing safety eyewear with side shields that are clean and properly fitted.
- If you wear corrective lenses, you must wear either approved prescription safety glasses with side shields or cover-all type goggles over your personal glasses:
- Do not face welding, heating, or grinding operations unless you are wearing appropriate eye protection.
- If you are performing work near electric (arc) welding or cutting operations, wear a welding helmet. If a welding helmet is not available, move a safe distance from the operation.

c. Hearing Protection:

- Wear hearing protection when you are welding, cutting, or exposed to flying sparks from these operations. Sparks from welding or cutting can burn your inner ear.
- Wear hearing protection when working in high noise areas in accordance with the railroad's hearing conservation policy, hereby attached.

d. Respiratory Protection

- Wear respiratory protection when you are exposed to fumes, dust, mist, or vapor.

e. Protective Clothing

- Wear protective gloves and clothing when you are handling or working on a wet cell battery, handling, pouring, or using acids, toxic substances, or solvents or, handling creosote materials.

f. High-visibility Workwear

All contractors are required to wear approved high-visibility workwear when they are on duty or on the Company property. Such high-visibility workwear must be worn as the outermost layer of clothing.

i. High-visibility workwear must be approved by the Regional Director of Safety and may consist of a vest, coveralls, T-shirt or other clothing of the prescribed color (yellow/green or orange) equipped with reflective striping as follows: a horizontal band around the waist, two vertical bands and/or an "X" on the back, and two vertical bands in front from the waist to the top of the shoulders. Stripes must be of silver or yellow reflective material and be at least 2 inches (5 cm) in width.

ii. Vests must be properly sized and constructed with tear-away features as approved by the Regional Director of Safety.

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iii. Defective, damaged or lost workwear must be reported immediately to your supervisor and replaced before reporting for duty.

iv. Exceptions:

(a.) High-visibility workwear is not required when you are in these locations:

- Lunchroom;
- Locker room;
- Inside vehicles;
- Inside railway passenger cars;
- Inside locomotive cabs; or
- Offices.

(b.) When employees are working on locomotives or other equipment inside shop buildings, high-visibility workwear is recommended. All employees working outside of shop buildings require approved high-visibility workwear.

(c.) Accommodations for unusual conditions will be at the discretion of the Regional Director of Safety.

3. Working On Equipment:

Do not operate or ride on any equipment unless it is in the performance of your duties and you have been properly authorized to do so. Do not jump from equipment, platforms, or other elevated places. Use steps or a ladder.

4. Keep Clear of Suspended Loads or Cables/Chains under tension:

a. Keep clear of suspended loads.

b. Stand clear when chains, cables or other tackle in under tension.

5. Keeping Clear of Electrical Wires:

Keep at least 12 feet away from a dangling wire or any object that may be in contact with an electrical current. Keep others away until qualified personnel are notified and take charge.

NOTE: Qualified personnel are employees or contractors who have been trained or qualified to work with electricity.

6. Working With Tools:

a. Do not modify tools.

b. Before you use any tool, examine it for defects. Report any defects to your immediate supervisor.

c. Defective tools must not be used.

7. Working Around On-Track Equipment:

Expect locomotives, cars and track maintenance equipment to move on any track, in either direction, at any time. Therefore, employees must look in both directions before crossing tracks.

8. Avoiding Potential Hazards:

Example: Employees should avoid walking, stepping, resting foot on or sitting on rails, frogs, switches, guardrails, pipe or interlocking apparatus or connections.

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9. Crossing Tracks:

Employees must not cross tracks closer than 50 feet from standing locomotives and cars.

10. Working Near Moving Trains:

a. Employees should never carry objects on their shoulders when they are near moving trains.

b. Employees should not cross in front of moving trains or equipment.

c. Placement of Material Near Tracks.

- Employees should place toolboxes, test equipment and other objects not less than 25 feet from the nearest track. Place all lid apparatus so that lid will open toward track and be secured in place.
- When performing work near tracks, arrange all tools, material, equipment or other objects so that a moving train or equipment will not strike them.

11. Working Near Standing Railroad Equipment:

Employees should keep themselves and material clear of and never lean against, sit on, or otherwise rest on standing railroad equipment.

12. Working In or Near Tunnels – On Bridges or Trestles:

a. Employees must move to a safe location when a train or equipment moves past their work location in tunnel or on bridges, trestles or overpasses.

b. Employees working in tunnels must be protected by railroad watchmen and must occupy safety manholes when a train approaches. Employees must secure loose clothing and maintain handhold if possible until train has passed.

c. Walking in tunnels or on bridges, trestles and overpasses should be avoided whenever possible.

- When an employee must walk through a tunnel or across a bridge, trestle or overpass the employee must look both ways and confirm with railroad personnel that they are properly protected and that he or she can safely complete the walk through the tunnel or across the bridge, trestle or overpass before any moving rail equipment passes through the tunnel or over that bridge, trestle or overpass.
- Extra care must be taken when crossing open floor bridges or trestles.

13. Action to take if Safe Passage of a train is at risk:

If an event occurs that would interfere with the safe passage of trains, the employee must take immediate action to stop trains by radio communication to trains or the person in charge of the track. If protection cannot be immediately ensured, or if communications fail, flag protection must be immediately provided as prescribed by the railroad's rules.

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14. Protection When Fouling or Working on a Track:

a. Trains must be fully protected against any known condition that may interfere with their safe passage.

b. If work on or adjacent to a track will create a condition interfering with the safe passage of trains, that work must not be attempted without permission of the employee in charge of the track.

c. On Main Tracks or where Interlocking rules are in effect, protection is required in accordance with railroad operating and safety rules.

15. Returning Track to Service:

When track is to be returned to service, the employee in charge must take the following actions:

a. Notify the Dispatcher or railroad supervisor responsible for the safety of the track of any restrictions necessary for the safe passage of trains.

b. Ascertain that all track cars and trains are clear of the track, and notify the Dispatcher or railroad supervisor responsible for the safety of the track that they are clear.

c. An employee designated by the railroad must inspect the track prior to operating trains.

16. Interlocking Switches within Work Area:

Dispatchers controlling interlocking switches within the Work Area must line such switches for movements within the Work Area and must apply blocking devices to the controls of those switches. These blocking devices must not be removed without permission of the employee in charge of the Work Area. This requirement does not relieve employees operating within the Work Area from complying with interlocking signal indications.

17. Flag Protection is Required When:

a. Work is being performed by others not hired by railroad and the work is being performed on railroad property or adjacent to railroad right of way.

b. Work is being performed by entities hired by the railroad and the work is being performed within 25ft from the center the track.

18. Fouling Track

Whenever fouling track, the following procedures will apply:

a. Action Required Prior to Issuance:

Before fouling a track, the employee in charge must determine that no trains have been authorized to move in the direction of the point to be fouled, and must ensure that Stop Signals have been displayed and blocking devices applied by the dispatcher to controls of Switches and signals leading to the affected track to be protected.

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b. Permission to Foul a Track:

Permission to foul a track must include the following information:

1. Designation of track to be fouled
2. Location of fouling (mile posts)
3. Time limit for fouling (beginning time and ending time)

Permission must be repeated by the receiving employee and confirmed by the Dispatcher or railroad supervisor responsible for track safety before it is acted upon.

c. Clearing Fouled Track.

1. Stop all equipment and vehicles on the right of way while the train is passing
2. Stay clear until you are notified that it is safe to resume work

19. Safety Precautions: When working in yards and on tracks:

a. Keep at least 50 feet from passing trains and equipment, if possible. Face the direction from which the train is approaching. Watch for projecting, dragging, or falling objects.

b. Do not perform work that will interfere with the safe passage of trains.

c. Inspect all passing trains to detect a dangerous condition.

d. Cross tracks at least 50 feet from standing locomotives or cars.

e. Do not cross between cars standing less than 50 ft. apart.

f. Give hand signals for movement of work train or wreck train only if you are a member of the train crew. **EXCEPTION: Emergency stop signals may be given by anyone**

20. Employee In Charge:

The employee in charge is responsible for taking charge of the work performed by assembled gangs and arranging protection for the gangs.

The employee in charge is responsible for the safety, instruction, and performance of all employees under his or her jurisdiction.

The employee in charge advises the foremen of the assembled gangs how each of them will protect the safety of the employees under their direction.

The employee in charge is also responsible for:

a. Ensuring that employees comply with all applicable rules.

Take the track out of service, or get verbal permission to temporarily foul the track according to operating rules.

b. If employees are too scattered to hear the watchman's warning whistle or horn, assign advance (additional) watchmen as needed.

c. If bad weather limits visibility, use additional protective measures as needed.

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21. Watchmen:

Responsibilities:

The employee in charge assigns watchmen to watch for approaching trains and warn employees to clear the tracks. If a watchman has not been assigned, the employee in charge acts as a watchman.

Follow these precautions if you have been assigned as a watchman:

a. Give your full attention to watching for trains and warning employees.

b. Do not perform any other duties, even momentarily.

c. If you do not have a full view of trains approaching in either direction, or if you cannot give your full attention to your duties as watchman, signal employees to clear the tracks.

d. Do not leave your station until the employee in charge determines that protection is no longer necessary, or the employee in charge has assigned another watchman who is in position and watching for approaching trains.

Watchman Duties:

Watchmen are responsible for watching for approaching trains and signaling employees to clear the tracks. If a watchman has not been assigned, the employee in charge acts as a watchman. A watchman's duty is to watch. Follow these procedures when you are performing the duties of a watchman:

When a train approaches from either direction, warn employees in time for them to clear track at least 15 seconds before the train approaches the point of work.

NOTE: You may need to give additional warnings around noisy operations. Example: Sounding a whistle or blowing a horn.

22. Clearing Controlled Track:

Follow this procedure for clearing on a Controlled Track, which is any track shown in the timetable as being under the control of a Dispatcher or Block Operator.

a. Clear all tracks, if possible, keeping at least 50 feet from passing trains and equipment.

b. If you cannot clear all tracks;

- Clear the track on which the train is approaching and the adjacent tracks.
- Watch for trains in both directions and determine the track on which other trains will approach. Clear enough tracks so that you will not be trapped.

c. If you are operating equipment within the gage of the track adjacent to the track being cleared, dismount the equipment and clear the track.

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Follow these precautions if you have been assigned as a watchman:

a. Give your full attention to watching for trains and warning employees.

b. Do not perform any other duties, even momentarily.

c. If you do not have a full view of trains approaching in either direction, or if you cannot give your full attention to your duties as watchman, signal employees to clear the tracks.

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Follow this procedure for clearing on a Controlled Track, which is any track shown in the timetable as being under the control of a Dispatcher or Block Operator.

a. Clear all tracks, if possible, keeping at least 50 feet from passing trains and equipment.

b. If you cannot clear all tracks;

- Clear the track on which the train is approaching and the adjacent tracks.
- Watch for trains in both directions and determine the track on which other trains will approach. Clear enough tracks so that you will not be trapped.

c. If you are operating equipment within the gage of the track adjacent to the track being cleared, dismount the equipment and clear the track.

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23. Working On Non-Controlled Industrial and Yard Tracks

Follow these procedures when working on and clearing Non-Controlled Track (Industrial, Yard, or any other track not controlled by a Dispatcher:

Make the working limits inaccessible to trains, engines or other on track equipment using one of the following procedures:

1. A switch lined and effectively secured in one of the following ways:
   - With a private lock on switches that will accommodate them.
   - Properly secured switch point clamp.
   - Driven spikes or wedges that require special tools to remove them.
2. Portable derail with flag.

24. Working Around Self Propelled Equipment:

Follow these safety precautions when working on or around self-propelled equipment:

a. Use the handrail when getting on, riding on, and getting off equipment. Maintain three points of contact.

b. Do not get on or off moving equipment.

c. When working near or observing equipment:

1. Perform a Job Safety Briefing and communicate with the operator of the equipment to cover the following:
   - Operating procedures.
   - Location of employees working around equipment.
   - Operator blind spots.
   - Signal to warn that equipment will move.
2. When your duties require you to be around the equipment, you must maintain a 50-foot safe area from the equipment.
3. If your duties require you to be within the 50-foot safe area of the equipment, perform those duties from the location established in your communication with the operator.

25. Roadway Maintenance Machine Operators

Follow these precautions when operating self propelled equipment:

a. **Communicate with employees in the vicinity of the equipment and cover;**
   - Normal operating procedures including operator's blind spots.
   - Test the brakes immediately after starting.
   - Do not allow anyone to distract you or interfere with your duties.
   - Constantly look out for obstructions or unsafe conditions in the direction you are moving.
   - If you cannot see ahead or behind, designate another employee to keep a lookout for you.

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RR Project #: 21IORY10R

Agency #: 43-22-02

The undersigned has read and understands these Genesee & Wyoming "Safety Guidelines for Contractors and Non-GWRR Personnel":

Ferzan Ahmed

Ferzan M. Ahmed, P.E.
Executive Director

DocuSigned by:
923910B5D612416...

Signature

12/7/2021

Date