

## DB Section 174 – Utilities, Railroads, and Right of Way (ROW)

*If not otherwise defined in DB General Provisions, Section 110 or in this Section 174, defined terms in this Section 174 will have the definition provided in the ODOT Right of Way Manual.*

### DB174.10 Utilities

**(a) Introduction** - This Subsection provides information on Design-Builder's overall responsibilities as they relate to existing and/or new Utilities, the manner in which Utilities are to be protected, relocated, upgraded, constructed, or incorporated into the construction, and who will be responsible for the Work.

Design-Builder shall comply with OAR 734-055, OAR 952-001-0010 through 952-001-0100, and the *Bridge Design and Drafting Manual (BDDM)* as it relates to Utilities.

Design-Builder shall comply with all requirements of this Subsection. Design-Builder shall also comply with and fulfill the requirements related to Utility facilities or systems included in other Contract Documents.

**(b) General** - Unless otherwise set forth in the **DB Special Provisions** or on the Plans, existing Utilities requiring adjustment may be adjusted by the Utility before, during, or after Project construction. "Adjustment of Utilities" shall mean the alteration, abandonment, protection in place, improvement, connection, disconnection, relocation, or removal of existing Utility lines, facilities, or systems in a temporary or permanent manner.

Design-Builder shall be aware that during the term of this Contract the owners and operators of Utilities may make changes in ownership and to their facilities. Changes made to the Utility facilities may be made by the Utility employees or by contract within or adjacent to the Project Site, and may be both temporary and permanent.

### **(c) Agency Responsibilities**

**(1)** Agency will make a preliminary assessment for the Adjustment of Utilities. Agency will provide the following information, for use as reference only, in the **DB Special Provisions**:

- Agency identified Utility owners within the Project limits
- Contact name and telephone number for each Utility owner
- A description of Utility facilities with potential conflict and information on prior Agency contact with the Utility
- Responsible party for cost of Adjustment of Utilities

**(2)** Agency will also be responsible for approval of Design-Builder's Utility Adjustment Master Plan.

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**(d) Design-Builder Responsibilities**

**(1) Design-Builder Contact Person** - Design-Builder shall assign an individual whose responsibility is to coordinate Project activities with each Utility owner affected by the Project. This individual shall be readily available by telephone, a telephone number which shall be provided to Agency, throughout the life of the Project.

**(2) Financial Responsibility** - Design-Builder shall be responsible for the cost of all Utility coordination tasks defined in this Subsection. Unless otherwise specified in the **DB Special Provisions**, Agency shall be responsible for all costs associated with Adjustments of Utilities. Adjustment of Utilities costs include, but are not limited to, engineering costs, relocation costs, and replacement ROW costs of the Utility.

**(3) Coordination** - Design-Builder shall have the responsibility of coordinating the Project design and construction with all Utilities that may be affected. Design-Builder shall be responsible for identifying, verifying the existence of, determining if conflicts exist, and resolving all Utility conflicts on the Project. Activities include, but are not limited to, the following:

- Identifying the full extent of Utilities in the Project Site
- Verifying Utility owners and locations of Utilities
- Locating Utilities and identifying potential conflicts not previously identified
- Providing information to Agency to assist in acquiring additional ROW or easements, if necessary
- Coordinating and/or designing/constructing the Adjustment of Utilities and/or new Utilities in accordance with this Subsection

**(4) Design-Builder Certification and Utility Owner Sign-off** - Design-Builder shall obtain, or together with the Utility owner, prepare a sketch for each Utility that requires adjustment in the preparation of the Utility Adjustment Master Plan. Design-Builder must review the proposed Adjustment of Utilities sketch and certify in a written statement to Agency PM that the proposed Adjustment of Utilities will not conflict with the proposed Highway improvement and will not conflict with another Utility's relocation plan. If a party other than the Utility owner or its agent prepares the relocation sketch, there shall be a concurrence box on the plans where the Utility owner signs and accepts the relocation sketch as shown.

**(5) Utility Adjustment Master Plan** - Design-Builder shall assemble all the information that may have a bearing on the final Utility locations for the Project. The plan shall contain the following:

- Existing location of each Utility, based on survey
- Proposed location of each Utility (for those Utilities that require relocation). Initially this could be based on relocation maps prepared by the Utilities. However, if the proposed relocation does not fit with other proposed Utility relocations, Design-Builder may need to work with the Utilities to refine/change the proposed new locations so they will work within the context of the Project

- Specifically show and identify any additional ROW or Utility easements planned
- A description of any timing and sequencing requirements in relation to the relocations
- Coordinated process and end results that considers all Utilities
- Relocation schedule as agreed to in the Agreement with Utilities

**(6) Agreement with Utilities** - Design-Builder shall obtain written agreement with all Utility owners where Adjustment of Utilities is required. The agreement shall clearly state the agreed-upon scope of work, responsibility for the work, cost of the work, schedule, and cost impacts for delays. Design-Builder shall not enter into any agreement with a Utility owner that purports to bind Agency in any way, unless Agency has executed such agreement as a party thereto.

**(e) Coordination Requirements** - Design-Builder shall invite affected Utility owners to participate in all of Design-Builder's and Agency's Design Reviews (see **DB General Provisions**, Section 155).

Design-Builder shall allow, in its Baseline Progress Schedule and monthly updates, the time defined in the Utility agreement required for Utility owners to accomplish the tasks and activities for which they are responsible.

**(f) Accommodation of Utilities on Bridges** - Design-Builder shall provide the minimum Utility accommodations, at the cost of Design-Builder, per the *BDDM*, Section 1.4.7.3, for each of the following situations:

- Existing Utility facilities located on the existing Structure that intend to relocate to the new Structure
- Any Utility owner that requests accommodation and is approved by Agency

Design-Builder shall provide reasonable access to Utility owners before, during, and after construction to install their facilities.

**(g) Prior Authorization for Adjustment of Utilities** - Design-Builder shall, at each Work Location, obtain Agency approval of the Utility Adjustment Master Plan prior to any Adjustment of Utilities, and before submittal of the RFC Plans.

Agency review will not exceed 14 Calendar Days.

**(h) Design** - Design-Builder shall design the Project to avoid conflicts with Utilities where possible, and minimize impacts where conflicts cannot be avoided.

**(i) Additional Right of Way and/or Easements** - Design-Builder shall follow the procedures outlined in Subsection 174.20 – Right of Way Acquisition, if additional ROW or easements are required for the relocation of any Utilities. Any additional ROW or easements must be identified in the Utility Adjustment Master Plan.

**(j) Abandoned Utilities** - Unless specifically noted otherwise in the **DB Special Provisions**, or directed otherwise in writing by Agency, Design-Builder will not be required

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to remove abandoned underground Utilities or pipes.

**(k) Protection of Utilities** - Design-Builder is responsible for protecting any and all Utilities that Design-Builder has concluded are not affected in constructing the Project (see **DB General Provisions**, Subsection 170.89).

**(l) Damage to Utilities** - If Design-Builder causes or observes damage to any Utility facilities; Design-Builder shall notify the Utility owner immediately. If the damage causes an emergency, Design-Builder shall also notify all appropriate local public safety agencies immediately by calling 911, and shall take reasonable steps to ensure the public safety. Design-Builder shall not bury damaged underground facilities without the consent of the Utility owner of the damaged facility. If the damaged facility is repaired by the Utility owner and Design-Builder is determined to be at fault for the damage, Design-Builder shall reimburse the Utility owner within 45 Calendar Days of receipt of the Utility owners invoice. If Design-Builder fails to make any required payment within 45 Calendar Days after receipt of the Utility owner's invoice, Agency will have the right to pay the Utility owner from Agency's funds and deduct an amount sufficient to cover the cost from any monies due or that may become due Design-Builder under the Contract.

**(m) Utility Caused Delays** - If Design-Builder complies with the Utility agreement, and if Adjustment of Utilities are completed later than agreed upon, thus causing Contract completion to be delayed, additional Contract Time will be considered under **DB General Provisions**, Subsection 180.80, and additional compensation, if applicable, will be considered under **DB General Provisions**, Subsection 195.40. Otherwise, no additional compensation will be allowed for any delays, inconvenience or damage sustained by Design-Builder or its Subcontractors due to interference from Utilities or the operation of relocating Utilities.

Design-Builder shall provide Agency with a copy of a fully-executed agreement with the Utility owner prior to Agency's consideration of a Utility-caused delay.

**(n) As-Constructed Plans** - Design-Builder shall accurately show the final location of all Utilities on the As-Constructed Plans for the Project.

**(o) Utility Payments** - For Adjustment of Utility costs that are the responsibility of Design-Builder, Design-Builder shall reimburse the Utility owner within 45 Calendar Days of receipt of the Utility owners invoice. If Design-Builder fails to make any required payment within 45 Calendar Days after receipt of the Utility owner's invoice, Agency will have the right to pay the Utility owner from Agency's funds and deduct an amount sufficient to cover the cost from any monies due or that may become due Design-Builder under the Contract.

#### **DB174.20 Right of Way (ROW) Acquisition**

**(a) General** - This Subsection sets out the general provisions, activities, Standards and governing Laws, manuals and policies Design-Builder shall follow with regards to acquiring ROW.

**(1) Private Property Access** - The right of entry shall be obtained by Design-Builder prior to entering onto private property(ies) to examine, survey, conduct tests, and take samples in compliance with ORS 35.220, and other applicable state and federal Laws and Agency policies.

**(2) Conflict of Interest** - No person(s) on Design-Builder's Team shall acquire any interest in property within or adjacent to the Project that is reasonably anticipated to be impacted, nor receive any real estate fees, compensation, or benefit associated with the sale of a replacement dwelling to a displaced person of this Project, or from any other real estate acquisition activity related to this Project.

No person(s) on Design-Builder's Team for this Project shall discuss compensation with the property owner or his/her representative prior to establishment of Just Compensation by Agency and a written offer being made to a property owner.

**(3) Commencement of Construction Activities** - No construction shall commence in any portion of the Project prior to a ROW clearance approved by Agency, indicating that all ROW has been acquired, has been cleared, and possession has been obtained by Agency.

Any decision to advance to the construction stage shall not impair public safety or in anyway be considered coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent ROW portions. These provisions include, but are not limited to:

- Adequate access shall be provided to all occupied properties, including businesses, to ensure emergency, delivery and personal vehicle access
- Utility service must be maintained to all occupied properties at all times
- Open burning shall not occur within 1,000 feet of an occupied dwelling

**(4) Utilities and Railroads** - ROW activities associated with the Project that effect Utility and/or Railroad services or property rights shall be approved by Agency. See Subsection 174.10 – Utilities, and, Subsection 174.30 – Railroad, for additional Standards that shall be followed.

**(b) ROW Acquisition by Design-Builder** - Unless otherwise stated in the **DB Special Provisions**, ROW shall be acquired by Design-Builder in accordance with the following Agency Standards:

- ODOT ROW Manual
- ODOT ROW Engineering Manual
- ODOT ROW & Rail/Utility Coordination Contractor Services Guide found at: <http://egov.oregon.gov/ODOT/HWY/ROW/publications.shtml>
- Code of Federal Regulations, 23 CFR 710
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (The Uniform Act 42 USC 4610 et seq. and 49 CFR Part 24)
- ROW Appraisal Guidelines

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- All other relevant state and federal laws

Prior to commencement of any ROW, Design-Builder shall submit to Agency PM, for review and approval, a written acquisition and relocation plan prioritizing appraisal, acquisition and relocation strategies, identifying a schedule with reasonable time frames for orderly relocation of residents and businesses, and incorporating Agency approval checkpoints.

Agency will consider a plan in which the acquisition of ROW is segmented or phased. During the review and approval process, Agency may consider the establishment of “no work” zones around any occupied properties to ensure compliance with State ROW procedures and federal regulations.

Design-Builder shall submit a ROW Quality Plan for review and approval by Agency. This Plan shall identify contacts and outline the quality management procedures to be followed, and shall be based on the requirements of the ODOT ROW Manual and the ROW Engineering Manual. The plan shall show Design-Builder’s proposal to control, monitor, report on, and assure the quality of the delivery of the ROW acquisition services.

Design-Builder shall submit only originals of all deliverables to Agency.

**(1) Additional ROW** - In the event Design-Builder requires the acquisition of any additional ROW subsequent to the authorization-to-proceed with construction activities, Design-Builder shall be responsible for all related costs and time delays associated with the acquisition of the additional ROW.

**(c) Design-Builder ROW Qualifications** - At the time of submittal of its acquisition and relocation plan, Design-Builder shall identify its ROW Project Manager and ROW Acquisition Team for approval by Agency. All subsequent additions to the team shall be submitted to Agency for approval.

Design-Builder shall identify a ROW Project Manager as the prime point of contact. This person shall have at least three (3) years experience managing the acquisition of transportation ROW projects for a condemning authority, be knowledgeable in ROW acquisition and related processes, and conversant with the state and federal Law governing ROW and eminent domain acquisitions.

Contact with property owners relating to or affecting their rights will be made only by ROW personnel that are knowledgeable in state and federal eminent domain requirements, and have the required state licenses.

Negotiation and acquisition agents shall have a minimum of two (2) years experience working in an eminent domain environment. The work efforts of agents with less experience shall be under the direct control of a responsible party who has the prescribed minimum experience.

Appraisers shall be licensed or certified in the State of Oregon, have experience in appraising real property for eminent domain purposes, including partial taking appraisals, and be on Agency’s approved list of appraisers.

**(d) Forms, Format, and Reporting Requirements**

**(1) Forms and Formats** - All forms, formats, brochures and pamphlets shall conform to the current versions of the ODOT ROW Manual, and the ODOT ROW & Rail/Utility Coordination Contractor Services Guide. These forms, formats, brochures, and pamphlets shall not be altered. These documents may be found at: <http://egov.oregon.gov/ODOT/HWY/ROW/publications.shtml>

**(2)** The acquisition status for all parcels to be acquired for ROW purposes shall be tracked. Design-Builder shall provide progress reports every two (2) weeks to Agency PM, and shall submit forms, spreadsheets and information in the appropriate format for use by Agency and to facilitate input in Agency's RAIN data system.

**(e) ROW Engineering Services** - All ROW engineering activities, ROW drawings and property descriptions shall be prepared in compliance with the requirements and guidelines in the ODOT ROW Engineering Manual, and the ODOT ROW & Rail/Utility Coordination Contractor Services Guide, and completed so that ROW descriptions and drawings can be generated to allow for ROW acquisition.

All ROW engineering work shall be performed under the direction and supervision of a Professional Land Surveyor registered in the State of Oregon.

The current versions of MicroStation and Bentley InRoads shall be used to produce deliverables that are fully compatible, readable and useable by Agency software. No loss of data integrity or accuracy shall result from any transfer of data.

**(f) Access** - Design-Builder shall incorporate any Agency-provided access management plan(s) into Design-Builder's design and recognize its impact on ROW activities.

**(1) Closure** - Closure of an approach road (access), which has a legal permit to operate, maintain and use an approach, shall be coordinated with Agency's District Permitting Office, and shall be reviewed for an administrative remedy in accordance with OAR 734-051-0520 and in coordination with Agency's ROW section.

A closure of access at a reservation will be addressed in the appraisal process (see ODOT ROW Manual, Chapter 4).

**(2) Access Remedies** - Upon closure of a permitted approach road by Agency's District Office, a review of each closure notice shall be performed and will contain documentation of the findings for an administrative remedy. Such documentation will provide support for either recommending a remedy or recommending no remedy and shall be submitted to Agency for approval. The process of determining a remedy is separate from the appraisal process for an acquisition and is not offered as part of Just Compensation during negotiations.

**(g) ROW Services Kick-Off Meeting** - Prior to initiating any ROW Work, Design-Builder's ROW Project Manager will arrange for a kickoff meeting with all parties to the ROW activities of the Contract to discuss the services to be provided under the Contract.

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**(h) ROW Estimate / Authorization** - No ROW appraisal, acquisition, or relocation activity shall take place by Design-Builder until written authorization-to-proceed is provided by Agency.

To receive authorization-to-proceed, Design-Builder must submit a programming cost estimate, along with ROW descriptions and drawings, which are prepared and submitted in compliance with the ODOT ROW Manual and ODOT ROW & Rail/Utility Coordination Contractor Services Guide.

No ROW acquisition shall begin on federally-funded projects until FHWA approves all necessary environmental documents.

**(i) Title / Conveyance Documents** - All title companies whose services are used on this Project by Design-Builder shall be licensed to do business in the State of Oregon.

All title and conveyance documents necessary to accomplish the acquisition of needed ROW shall be produced in a format approved by Agency. These documents will be delivered in accordance with the ODOT ROW Manual, the ODOT ROW & Rail/Utility Coordination Contractor Services Guide, and any other procedures established by the ODOT ROW Section.

All property interests held will be cleared unless identified in Agency's Office Title Report. Any requests for taking title subject to any outstanding interests not already designated as such in the Office Title Report shall be presented to Agency for review and approval.

**(j) Real Property Appraisals** - Appraisers performing real property appraisals that are not employees of Agency, must be licensed or certified by the State of Oregon Appraiser Certification and Licensure Board (ACLB), and be identified on ODOT ROW's approved list of appraisers.

Appraisers shall provide the property owner and/or designated representative a 15 Calendar Day advance written notice of appraisal inspection, and shall invite them to accompany the appraiser on any inspection of the property according to statutory requirements in ORS Chapter 35.

**(1) Appraisal Reports** - Real estate appraisals shall conform to the Uniform Act; all State and Federal laws; and the Standards contained in the ODOT ROW Manual and Appraisal Guide. All real estate appraisals shall be prepared in a reviewable manner acceptable to Agency, using forms or formats approved by the ODOT ROW Section.

Appraisals shall include all supplemental reports and estimates necessary to value specialty items to be acquired or to support cost-to-cure estimates. Specialty reports may include, but are not limited to timber appraisals, personal property reports, sign reports, or hazardous material findings.

The date of valuation must be subsequent to date of the legal description and no more than 30 Calendar Days prior to the date the appraisal is submitted to Agency. Any

change in description of the needed property will require a new appraisal report based on the new description date.

**(2) Appraisal Reviews** - All Appraisal reports, including revised appraisal reports, shall be submitted to ODOT's ROW Section for review and determination of Just Compensation to be offered to each property owner.

Review periods are established by Agency and shall begin on the date of receipt of the appraisal report. In the event the report has to be revised or changed in any manner, the timeline to provide a review begins again.

Appraisals supplied by the property owner shall be submitted to Agency for review.

**(3) Appraisal Expert Witness Services** - Any party performing ROW appraisal services shall participate in condemnation proceedings as an expert witness, if called upon by Agency.

**(k) Negotiations** - Negotiations shall be conducted, and acquisition documents prepared in accordance with Agency's ROW Manual, the Uniform Act, and all other applicable state and federal laws.

Offers to property owners shall be made in a timely manner by personal contact or by certified mail with return receipt if personal contact is not possible. The amount offered shall be the Just Compensation stipulated in Agency's Appraisal Review. A copy of the appraisal shall be provided to the property owner(s), although the Appraisal Review **shall not be provided** to the owner, the owner's representative, a contract purchaser, or any other interest holder in the property.

Advancing the time of condemnation, deferring negotiations, or taking any action that could be deemed coercive in any way shall not be performed in order to induce an agreement with the property owner.

Property owners who are considering a donation shall be provided written notice of their right to receive Just Compensation based on an appraisal identifying the value of the property. A written waiver of rights shall be obtained from the property owner if the owner elects to donate.

Diaries of appraisal, negotiator and relocation agent contacts with property owners and tenants shall be prepared and maintained as Project records and will be included in the final report and relocation closing report.

A change in description will require a new offer to be presented to the property owner(s). The new offer will be made in accordance with the ODOT ROW Manual and all applicable Laws. The new offer will rescind the previous offer. Design-Builder will use Agency's approved forms in making any new offers.

A good faith effort shall be made to expeditiously acquire ROW by negotiation at Agency's determined Just Compensation.

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**(1) Settlement of Negotiations** - Upon reaching an agreement with the property owner, a final report packet shall be prepared and submitted to Agency for review and approval in accordance to the ODOT ROW Manual and the ODOT ROW & Rail/Utility Coordination Contractor Services Guide.

Written justification must accompany any proposed settlement above Agency's estimate of Just Compensation and must be approved by Agency prior to completion of negotiations with the property owner.

**(l) Condemnation** - After all good faith efforts to settle a ROW file have failed, a Recommendation for Condemnation Packet shall be submitted to Agency. This packet must be submitted no later than 100 Calendar Days prior to on-site construction activities. Any party performing ROW negotiation services shall participate in condemnation proceedings as an expert witness, if called upon by Agency.

**(m) Relocation** - All Relocation activities shall comply with the Uniform Act, state and federal Laws, and the ODOT ROW Manual. In the event the displacee is not able to meet personally, a summary of benefits, along with a complete description of their meaning, will be sent to the displacee by certified mail. Design-Builder shall obtain a confirmation of receipt of the mail.

Displacees will be eligible for all relocation benefits they are entitled to receive, and will be provided adequate time for appropriate advisory services. Relocation activities will also take place in a timely manner in accordance with the time frames and terms required by the regulations.

**(1) Relocation Reports, Studies, and Claims** - Relocation reports, studies, and claims shall be prepared using Agency's forms and formats specified in the ODOT ROW Manual. Agency will be consulted when relocation is required.

All reports, studies and claims will be submitted to Agency for review and approval.

A Relocation Closing Report will be prepared and submitted to Agency after all claims have been prepared and paid, and the displacee has completed relocation.

**(2) Relocation Appeals** - Any party to the Contract performing ROW relocation services shall participate in the relocation appeals process, if called upon by Agency.

**(n) Payments and Closings** - Unless otherwise stipulated, Agency will make all payments to the property owners or displacees for property purchases and/or relocation benefits.

A complete final report packet meeting the requirements of the ODOT ROW Manual shall be provided to Agency for approval and closing of the transaction. All closing and payments will take place in a timely manner.

**(o) Taking Physical Possession** - Agency will issue an authorization-to-proceed when ROW has been appropriately cleared and possession has been received. Authorization-to-

proceed may be issued for separate Work Locations upon receipt of a statement from Design-Builder that all ROW has been acquired and possession has been taken, or that no ROW is necessary.

**(p) Permits of Entry (for Construction)** - Under exceptional circumstances Agency may authorize the use of a Permit of Entry to allow access to a property prior to payment to the property owner for possession (see ROW Manual). Permits of Entry cannot be used to circumvent normal negotiation processes solely to meet a predetermined construction schedule. Design-Builder shall draft such Permits of Entry for Agency approval prior to use.

**(q) Property Management** - Any removal/disposal/demolition activities or any other property management services required by the Project shall be performed by Design-Builder as directed by Agency.

Hazardous material investigations, including but not limited to, lead and asbestos investigations shall be conducted and removal of the hazardous materials shall be completed by Design-Builder, as directed by Agency, and in accordance with DEQ requirements, on all improvements acquired.

**(r) Removal of Improvements** - The clearing and removal of improvements shall be done in accordance with DEQ requirements, the ODOT ROW Manual, and as directed by Agency.

### **DB174.30 Railroad**

**(a) General** - Unless specified otherwise in the **DB Special Provisions**, Agency will enter into negotiations with the Railroad to acquire all necessary property interest required for the Project or enter into any required Construction and Maintenance Agreements. It will be the responsibility of Agency to coordinate all activity with the Railroad(s) that is affected by a highway Project. Design-Builder shall cooperate with Agency throughout the life of the Project.

Design-Builder shall recognize and anticipate that the Railroad will set the schedule for any Railroad-related Work performed by the Railroad or Work performed on Railroad property by Design-Builder.

This Subsection sets out the general provisions, activities, Standards and governing Laws, manuals and policies relating to the requirements applicable to the Work performed upon or adjacent to the Railroad ROW. Design-Builder shall be subject to the requirements related to Railroads as outlined in this Subsection and applicable Standards.

### **(b) Right of Entry Permits and Other Railroad Requirements**

**(1) Railroad Permits** - Design-Builder shall be responsible for acquiring any necessary rights-of-entry permits, temporary crossing permits and any other permitting requirements, including but not limited to shoring requirements, demolition Plans and Specifications, false work, etc., as required by the Railroad for the construction of the Project. Costs for these permits shall be the responsibility of Design-Builder.

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Design-Builder shall not transport Equipment, machinery, or Materials across the Railroad's tracks, except at a public crossing or at temporary equipment crossing for which Design-Builder has received a permit from the Railroad.

**(2) Change in Design Requirements** - Unless otherwise approved by Agency, the Design- Builder will be required to stay within the existing highway ROW over Railroad property. If a change in design is requested by Design-Builder, and approved by Agency, unless specified in the DB Special Provisions differently, Agency will coordinate the revised proposal with the Railroad, receive a new plan review, and prepare and receive approval on any necessary subsequent agreements at no cost to Agency. All costs, delay costs and/or costs will be borne by Design-Builder.

In the event a design change is requested, and Agency and Railroad are unable to come to an agreement within the time needed, Design-Builder will not work on the Railroad ROW until an agreement is reached with the Railroad. If the construction of the new structure(s) is temporarily shutdown, Agency will not be billed for any delay costs by Design-Builder.

**(3) Protection of Railroad Property and Operation** - Design-Builder shall exercise care in all operations and shall adequately protect the property of the Railroad and its appurtenances, property, and persons lawfully upon its ROW, from damage, destruction, interference, or injury while performing Work on or near the Railroad property. Design-Builder shall also perform their Work in a manner as to not interfere with the operations of the Railroad or its appurtenances, or any of the Railroad's trains or facilities, and shall complete all project Work to a condition that shall not interfere with or menace the integrity or impair the safe and successful operations of the Railroad or its appurtenances, or any of the Railroad's trains or facilities.

Design-Builder shall keep drainage ditches and other Railroad facilities undamaged, open, and clean from any deposits and debris, and shall clean and restore ballast of the Railroad which may be disturbed or becomes fouled with dirt or materials from the operations of Design-Builder.

All work performed by Design-Builder for this Project shall be conducted in such a manner that there will be a no interference with the operations of Railroad traffic.

**(4) Flagging** - Flagging is performed for the protection of Railroad property. When, in the opinion of the Railroad, the services of flaggers are necessary for the protection of the Railroad's facilities, the Railroad will furnish flaggers or security personnel as may be required at the expense of Design-Builder. To enable the Railroad to provide flagging or other protective services, Design-Builder shall notify the Railroad's Road Master a minimum of 72 hours in advance of whenever Design-Builder is about to perform work adjacent to the tracks. Design-Builder will cooperate with the Railroad if it is determined by the Railroad that Design-Builder can not work due to train traffic or any other delays Railroad operations may cause. No delay costs will be borne to Agency for these delays.

In addition to flagging, other protective devices such as crossing signals, indicators, telltales, lights, telephones, etc. may be required by the Railroad. The Railroad will install the telltales at Design-Builder's expense.

The nature and extent of protective services, personnel and other measures required will in all cases be determined by the Railroad. Nothing in these Specifications will limit, in any way, the Railroad's right to determine and assign the number of personnel, the classes of personnel for protective services, nor other protective measures it deems necessary. Unless otherwise provided, all personnel assigned by the Railroad, other than those engaged in performing work by the Railroad as listed under Construction Work by Railroad, will be considered protective personnel.

When any of Design-Builder's operations are carried on, within or near Railroad ROW, and in the opinion of the Railroad's representative could endanger Railroad facilities or create a hazard to Railroad operations, communications linemen or signalmen may be used to protect communications and signal facilities, if deemed necessary by the Railroad.

**(5) Emergency** - In the event that an emergency occurs in connection with the work specified, the Railroad reserves the right to do any and all work that may be necessary to maintain Railroad traffic. If emergency is caused by Design-Builder, Design-Builder shall pay the Railroad for all costs of such emergency work.

**(6) Liability** - No act by the Railroad in supervising or approving any work shall reduce or in any way affect the liability of Design-Builder for damages, expense, or cost which may result to the Railroad from the construction work. Any costs incurred during the work on the Railroad's property that is due to negligence by Design-Builder for the construction of the Project shall be the responsibility of Design-Builder and no costs shall be borne to Agency.

The Railroad's contact for this project is provided by Agency. Payment for all costs for services provided by the Railroad will be the responsibility of Agency. It shall be the responsibility of Design-Builder to track and keep a record of all Railroad protective services provided by the Railroad described above and to provide that information to Agency upon request.

**(7) Insurances** - Railroad will likely require insurance if Design-Builder enters onto the Railroad property. Such insurance costs will vary and it will be Design-Builder's responsibility to obtain any insurance required by the Railroad. The amount of coverage shall be determined by the Railroad and Agency and this cost shall be the responsibility of Design-Builder. Design-Builder shall provide an accounting of this cost and make it available to Agency.

