



KANSAS CITY SOUTHERN RAILWAY

MINIMUM CONSTRUCTION GUIDELINES

DEFINITION:

RAILROAD or KCS shall mean The Kansas City Southern Railway Company.

AGENCY shall mean the State, Political Subdivision or government agency that is responsible for the structure being built.

STRUCTURE shall mean the bridge, underpass or overpass, being constructed by the AGENCY across KCS Right of Way.

CONTRACTOR shall mean all contractors, subcontractors, agents and others hired by the AGENCY to perform any work on the structure being built including construction, inspection or exploration.

AGREEMENT shall mean the Construction and Maintenance Agreement executed between the RAILROAD and the AGENCY.

PLANS & SPECIFICATIONS shall mean all documents issued by the AGENCY for the construction of the structure that have been reviewed and approved by KCS.

DESCRIPTION:

These guidelines describe the minimum requirements when work performed by the Contractor is upon, over or under KCS Right of Way or may impact current or future KCS operations.

The AGENCY shall construct, or cause to be constructed, in accordance with the said plans and specifications, the overhead bridge, the approach fills, the highway surfacing and all other highway facilities. The proposed bridge and appurtenances shall be constructed in accordance with the specifications referred to on the plans reviewed and approved by KCS.

All work done by the CONTRACTOR on the RAILROAD'S right-of-way shall be done in a manner satisfactory to the Chief Engineer for the RAILROAD, or his authorized representative, and shall be performed at such times and in such manner as not to unnecessarily interfere with the movement of the trains or traffic upon the track of the RAILROAD. The CONTRACTOR shall use all reasonable care and precaution in order to avoid accident, damage, or unnecessary delay or interference with the RAILROAD'S train or other property. Upon completion of the project, the CONTRACTOR shall restore the RAILROAD to its original condition to the satisfaction of the Chief Engineer or his designee.

Except as authorized by RAILROAD, neither AGENCY nor its CONTRACTOR(S) will construct a crossing over any track at any location. Where crossings are needed or desired, AGENCY'S CONTRACTOR shall make arrangements with RAILROAD and obtain a Permit paying any and all fees.

If the CONTRACTOR must cross tracks with cleated or crawler type equipment, then the track shall be protected with a temporary crossing surfacing approved by RAILROAD. Should RAILROAD'S track or ballast become fouled as a result of CONTRACTOR'S use, CONTRACTOR shall reimburse RAILROAD for its costs and expenses in restoring said track and/or ballast.

If CONTRACTOR must cross any paved road on RAILROAD property with cleated or crawler type equipment, then the pavement shall be protected with a temporary surfacing approved by RAILROAD.

CONTRACTOR shall submit shoring plans to the RAILROAD for excavations done inside the RAILROAD Right of Way for review and approval. All excavations shall proceed only after such approval by the RAILROAD.

The CONTRACTOR shall abide by the following minimum temporary clearance during the course of construction:

12'-0" Horizontal from centerline of track
21'-6" Vertically above top of rail

For construction clearances less than above requires RAILROAD's approval.

CONTACT:

For all questions regarding the RAILROAD shall be addressed to:

Sri Honnur, P.E.
Engineering Department
Post Office Box 219335
Kansas City, MO 64121-9335
SHonnur@KCSouthern.com

FLAGGING:

Except as specifically authorized by RAILROAD, CONTRACTOR will not work within the "Minimum Clearance Zone" of any track. The "Minimum Clearance Zone" is defined as an area measured 25 feet, horizontally, on either side of the centerline of track with unlimited vertical distance within the horizontal limits. Additionally, CONTRACTOR will locate all equipment, devices, and materials at a sufficient distance from any track to ensure that no apparatus or part of any equipment, device, or material, such as the boom of a crane or a dragline, could, under any circumstances, encroach on the "Minimum Clearance Zone" of any track. When CONTRACTOR is required to work within the "Minimum Clearance Zone" of any track, Railway will provide a qualified flagman at AGENCY's expense.

It is the CONTRACTOR's responsibility to contact the RAILROAD concerning any flagging services that may be required during the course of this project. At least 15 working days of advance notice is required to schedule a flagman. Flagging services provided by a RAILROAD-approved flagging contractor will be required whenever agents, employees or equipment of the AGENCY or any of its contractors or subcontractors on this project shall be within twenty-five feet (25') of the nearest rail of RAILROAD's tracks, unless otherwise waived in writing by RAILROAD.

RAILROAD's currently approved flagging contractors are:

<p><u>Railroad Protective Services</u> 2001 Ryan Rd, Saint Augustine, FL 32092 Patsy Crisafi 904-273-8121 (Office) 904-813-9905 (Cell) pjcrisafi@aol.com</p> <p>Alternate Contact David Schaffer 904-588-3433 flagging@railpros.com drsshaffer@aol.com</p>	<p><u>RailPros, Inc.</u> 25 Mauchly Drive, Suite 329 Irvine, CA 92618 Donna Beasley 318-938-2815, Ext. 3 (Office) 714-900-9270 (Cell) 866-762-7619 (Fax) Donna.Beasley@railpros.com</p> <p>General e-mail flagging@railpros.com</p> <p>Alternate Contact Johnny Johnson 949-278-8637 (Cell) johnny.johnson@railpros.com</p>	<p><u>JP Signal, Inc.</u> P.O. Box 247 Overton, TX 75684 John Posey 903-834-6578 (Office) 903-520-8672 (Cell) jpsignal@earthlink.net</p>
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RAILROAD SAFETY TRAINING:

All employees of the AGENCY and its CONTRACTOR must complete the RAILROAD'S On Track Safety (OTS) training prior to entering the RAILROAD right of way. The training can be obtained by contacting:

TrackSense Inc.
308 Durst Drive
Warren, OH 44483
Ph: 330-847-8661
Attn: Larry Slater
LSlater@neo.rr.com

MOVEMENT OF TRAINS:

The safe operation of the railroad shall take precedence over AGENCY's work on, under and above the right-of-way. RAILROAD will cooperate as far as practicable and consistent with the operation of its trains to enable CONTRACTOR to proceed with the Project without delay, but the traffic over and upon RAILROAD's tracks will unless otherwise agreed to in writing by RAILROAD, have priority use over the RAILROAD's right-of-way. The AGENCY and its CONTRACTOR shall instruct all of its employees, agents, contractors and officials to be always on the lookout for the movement of trains upon the tracks. The AGENCY or the Contractor except as specifically permitted by RAILROAD and when a qualified flagman is present, will not obstruct the clearance point of the tracks.

DRAINAGE:

CONTRACTOR shall in no way alter or obstruct any drainage ditches, canals, or other drainage facilities located on the RAILROAD's right-of-way without first securing RAILROAD's approval. CONTRACTOR, upon RAILROAD's reasonable request, shall clear sediment or debris out of RAILROAD's drainage facilities while the project is ongoing, and at completion of work on the project.

UTILITIES:

CONTRACTOR is responsible for making its own determination as to type and location of underground utilities on the RAILROAD right-of-way, and it shall take any steps necessary to avoid damage to such facilities. RAILROAD will, at CONTRACTOR's request, provide information in its possession regarding

utilities on RAILROAD's right-of-way, but such information is provided without any representation or warranty that it is accurate or complete. CONTRACTOR should make its own independent investigation prior to undertaking any excavation on the right-of-way. The relocation of any utility lines and other facilities located upon RAILROAD's right-of-way in the area of the work that may be damaged or covered by the work shall be arranged for and paid by CONTRACTOR.

FENCING, SIGNS AND BARRICADES:

CONTRACTOR shall erect and maintain adequate temporary fences, signs, and barricades, when necessary, to prevent trespass upon the right-of-way and to otherwise comply with applicable laws, rules and regulations.

CLEANUP:

Upon completion of the Project, CONTRACTOR shall return the right-of-way and all other RAILROAD property to a condition equal to or better than existed prior to commencement of the work. CONTRACTOR shall remove all waste, excess materials, false work and other temporary structures, and equipment, leaving the location of the work cleaned to the reasonable satisfaction of RAILROAD. The CONTRACTOR shall repair to the reasonable satisfaction of RAILROAD's Chief Engineer, and at the CONTRACTOR's sole cost and expense, any and all damages to the RAILROAD's property caused during construction of the Project.

MAINTENANCE & REPAIR:

Upon completion of the project, the AGENCY shall, at its own cost and expense, maintain or by agreement with others, provide for the maintenance of the bridge structures, approach grades and all other highway facilities

Once the bridge is built, the AGENCY shall provide to and obtain approval from RAILROAD of any plans for any addition to or expansion of, partial or complete demolition of, or major maintenance or rehabilitation of the bridge, in order to insure that such work does not interfere with RAILROAD's safe operation or with the safety of persons performing such work.

RIGHT OF ENTRY PERMIT:

The AGENCY or its CONTRACTOR shall inform the RAILROAD in writing 30 days in advance anytime and for any reason its employees, agents, contractors or subcontractors or designees need to come inside the RAILROAD Right of Way. If employees or equipment or designees of the AGENCY or CONTRACTOR are expected to come inside RAILROAD Right of Way, the CONTRACTOR shall obtain a Right of Entry Permit from the RAILROAD, per attached Exhibit "A." The CONTRACTOR shall be responsible for any and all fees as required by the RAILROAD to obtain the Right of Entry Permit.

INSURANCE:

The contract or contracts to be let by AGENCY for the construction of the Project shall provide:

- a. Comprehensive General Liability Insurance Policy. AGENCY or its contractor shall furnish evidence to Railway that AGENCY or contractor carries a Standard Comprehensive General Liability Insurance Policy providing limits of not less than three million dollars (\$3,000,000) for bodily injury and property damage per occurrence and not less than six million dollars (\$6,000,000) aggregate for all occurrences.

If any part of the Project is sublet, similar insurance shall be provided by or on behalf of the subcontractors to cover their operations.

- b. Contractors' Protective Liability Insurance. AGENCY or its contractor shall furnish evidence to Railway that AGENCY or Contractor carries a contractors' Protective Liability Insurance Policy providing for a limit of not less than three million dollars (\$3,000,000) for bodily injury and property damage per occurrence and not less than six million dollars (\$6,000,000) aggregate for all occurrences.
- c. Railroad Protective Liability Insurance (which includes Bodily Injury, Property Damage, and Physical Damage Insurance). AGENCY or its contractor shall furnish an original policy to RAILROAD for and on behalf of RAILROAD that provides the Standard Railroad Protective Liability Insurance Policy with a limit of not less than three million dollars (\$3,000,000) for bodily injury, property damage and physical damage to property, and not less than six million dollars (\$6,000,000) aggregate for all occurrences.
- d. Automobile Liability insurance with combined single limits of not less than \$2,000,000 per occurrence covering all vehicles owned, used or hired.
- e. Workers' Compensation and Employer's Liability insurance coverage (Part B). Employer's liability must have limits of at least \$1,000,000 each accident, \$1,000,000 by disease each employee, and \$1,000,000 by disease policy limit.

General. The insurance specified in paragraphs a., b., d. and e. shall be carried until all work required to be performed under the terms of this Agreement is satisfactorily completed as evidenced by formal acceptance by AGENCY. The insurance specified in paragraph c. above shall be carried until all work performed on RAILROAD right-of-way has been completed and the right-of-way is no longer used by the AGENCY or its contractor(s) or subcontractor(s).

Each policy must be issued by financially reputable insurers licensed to do business in all jurisdictions where work is performed during the term of the Agreement. Comprehensive General Liability and any Umbrella Liability policy will each name Kansas City Southern and subsidiaries as an additional insured and to the fullest extent allowed under law contain a waiver of subrogation in favor of KCS. Contractor will provide to KCS a certificate of insurance reasonably satisfactory in form and content to RAILROAD, evidencing that all the required coverage is in force and has been endorsed to provide that no policy will be canceled or materially altered without first giving RAILROAD 30 days' prior written notice. All policies will be primary to any insurance or self-insurance RAILROAD may maintain for acts or omissions of the AGENCY or anyone for whom the AGENCY is responsible. The AGENCY and its contractor(s) will include copies of relevant endorsements or policy provisions with the required certificate of insurance. Nothing contained in this Section limits the AGENCY's liability to RAILROAD to the limits of insurance certified or carried by the AGENCY or its contractor(s).

If the AGENCY's contractor utilizes subcontractors in performance of this Agreement for the AGENCY, the subcontractors must meet the same insurance requirements as the contractor. If a subcontractor does not meet the coverage requirements of this Article, the subcontractor must either supplement the deficient areas of coverage or the AGENCY's contractor must certify that the contractor has acquired sufficient coverage to supplement any deficiency of the subcontractor.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
427 West 12th Street
Kansas City, Missouri 64105-1403

EXHIBIT "A"



APPLICATION FOR
Right of Entry Permit

SUBMIT WITH NON-REFUNDABLE \$750.00 PROCESSING FEE PAYABLE TO
Jones Lang LaSalle Americas, Inc. - 3017 Lou Menk Drive, Suite 100 - Fort Worth, Texas 76131-2800
Attn.: Sylvia Schmidt - Phone: 817-230-2688 - Fax: 817-306-5521 - Email: sylvia.schmidt@am.jll.com

1. Application Date: _____

2. Applicant Information:

Name of applicant who will occupy the property: _____

State in which incorporated: _____ If not incorporated, please attach name(s) of owners or partners.

Mailing address of applicant: _____

City, State, Zip Code: _____

Contact Person: _____ Phone #: _____

Fax #: _____ Cell #: _____ Email: _____

3. Scope of Work:

Area to occupy: _____ feet by _____ feet

Time Period: From _____ (MM/DD/YY) to _____ (MM/DD/YY)

Total cost of project: \$ _____

Purpose of occupancy (be specific): _____

Type of work to be done (be specific): _____

4. Location:

If crossing, relation to centerline of Railroad tracks at Railroad Mile Post _____ plus _____ feet

If parallel, beginning Railroad Mile Post _____ plus _____ feet,

ending Railroad Mile Post _____ plus _____ feet

If spur, distance from point of switch _____ feet

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
427 West 12th Street
Kansas City, Missouri 64105-1403

EXHIBIT "A"



In or near _____ (name of nearest City, Town or Village on Railroad),
_____ (State), in _____ (Parish/County)

Location of proposed occupancy: _____ ¼ Section: _____ Township: _____ Range: _____

Distance from inside face of back wall on nearest Railroad Bridge: _____ Bridge #: _____

Distance from centerline of DOT-AAR #: _____ Name: _____ DOT #: _____

Is the work to be performed within twenty-five feet (25') from the track? Yes No

Percentage of project done within twenty-five feet (25') of the track: _____%

Will a crossing be required? Yes No If yes, at what Mile Post location? _____ plus _____ feet

Was this service requested by the KCS? Yes No

If yes, who requested? _____ Requester Phone #: _____

We submit for your approval the following specifications for a Right of Entry Permit. We propose to enter The Kansas City Southern Railway Company ("KCS")/Texas Mexican Railway Company ("Tex-Mex")/Gateway Eastern Railroad ("GWER") Right-of-Way, as described above and as shown on attached drawing.

By submitting this application, I/we understand that KCS/Tex-Mex/GWER is under no obligation to grant this request and that KCS/Tex-Mex/GWER may deny this request for any reason, including but not limited to safety and engineering considerations and operating convenience.

Attached to the sheet is a location plan and detailed sketch. Shown on the sketch are exact dimensions of the project area and distances to the centerline of the nearest railroad track and road crossing, bridge or other railroad structure.

I/we understand that submission of this application does not authorize occupancy of the property. Exact fees, insurance requirements and appropriate agreement document will be forwarded after the application has been reviewed and approved by the Railroad.

Signature: _____

Date: _____

Print Name: _____

Title: _____

If you need further assistance, please contact Sylvia Schmidt at sylvia.schmidt@am.jll.com or 817-230-2688.

Exhibit "A" Cont'd

AGREEMENT

THIS AGREEMENT, is made and executed in duplicate originals this 16th day of November 2004, by and between THE KANSAS CITY SOUTHERN RAILWAY COMPANY, (hereinafter called "Railway"), and (*Company Name*), (*Company Address*) (hereinafter called "Contractor").

RECITALS:

Contractor has been employed by (*work being performed for whom*) to perform (*type of work*) work at (*location description*) in (*city, state*).

Contractor has requested Railway to permit it to access (*location*) along Railway's right-of-way from (*specific location, including Mile Post*) in (*city, state*).

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railway and Contractor as follows:

ARTICLE I

Contractor has complete and sole responsibility for, and direction of, its employees, agents, subcontractors or any persons or entity that Contractor hires to perform or assist in performing the services hereunder. Contractor and Railway agree that such persons shall not be considered employees of Railway for any reason, and Contractor shall prohibit any activity that may be construed as creating an employment relationship between such persons and Railway.

ARTICLE II

Railway hereby grants to Contractor, subject to the limitation of 48 hours prior notice to Railway and subject to each and all of the terms, provisions and conditions herein contained, the right to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals. Neither Contractor nor its employees, agents or subcontractors shall interfere with or obstruct any track or drainage structures and facilities on the property. Any damage to railroad property shall be repaired immediately.

The safe operation of the Railway shall take precedence over Contractor's work on the right-of-way. Contractor shall not, without the Railway's prior consent, foul Railway's tracks. All work of the Contractor to be performed on or adjacent to the right-of-way shall be coordinated with Railway so as to avoid, to the greatest extent possible, interference with Railway operations.

Except as authorized by Railway, Contractor will not work within the right of way of any track. The right of way is typically defined as an area measured fifty (50) feet, horizontally, on either side of the centerline of track with unlimited vertical distance within the horizontal limits. Additionally, Contractor will use its best efforts to locate all equipment, devices, and materials at a sufficient distance from any track to prevent apparatus or part of any equipment, device, or material, such as the boom of a crane or a dragline, from encroaching on the right of way of any track. When Contractor utilizes the right-of-way to move equipment, Contractor must utilize an authorized flagman from list provided. All flagging charges will be at Contractor's expense, and Contractor agrees to promptly pay Railway's invoices for same. Contractor must notify Railway's Representative at 816-633-9965 at least two (2) days in advance of the date Contractor wishes to use the KCS right-of-way to allow Railway time to provide the flagman called for herein. Contractor must provide at least ten (10) days notice prior to the first use of flagman.

ARTICLE III.

The right of entry herein granted to Contractor shall commence (*date of commencement of work*) and shall continue until (*date of scheduled work completion*), unless sooner terminated, or at such time as Contractor has completed its work on Railway's property, whichever earlier occurs. Contractor agrees to notify the Railway Representative in writing when it has completed its work on Railway property. This Agreement may be terminated by either party on ten (10) days' written notice to the other party.

ARTICLE IV.

It shall be the exclusive duty and responsibility of Contractor to inspect the property subject to this Agreement for the sole purpose of evaluating its safety for the entry of its employees, agents and subcontractors. Contractor shall not be responsible, however, for ensuring the safety of anyone or any party not employed by or under contract to Contractor. Contractor shall advise all of its employees, agents and contractors entering the property of any observable safety hazards on the property, including, without limitation, the presence of moving vehicles, tripping hazards and overhead wires. Notwithstanding the foregoing, Contractor has no duty or obligation to remediate any such observable hazards or to notify any other project participants of any such hazards. Contractor shall instruct all of its employees, agents and subcontractors entering the property that all persons, equipment and supplies must maintain a distance of at least 25 feet from the centerline of the track unless authorized by the on-site Railway flagman to be closer than 25 feet. Contractor shall use its best efforts to see that no personnel, equipment or supplies under its control are within the clearance point of the track when moving railroad equipment may be seen from or heard at the property subject to this Agreement. Contractor shall require its employees and subcontractors to be trained and certified in on-track safety in accordance with Federal Railroad Administration's Roadway Worker Protection regulations before entering Railway's property.

ARTICLE V.

CONTRACTOR SHALL DEFEND INDEMNIFY, SAVE AND HOLD HARMLESS RAILWAY, ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY LOSS OR DAMAGE TO PROPERTY, OR PERSONAL INJURY OR DEATH TO ANY PERSON, TO THE EXTENT THAT SAME ARE CAUSED BY EITHER CONTRACTOR'S NEGLIGENT PERFORMANCE OF THE WORK ON RAILWAY RIGHT-OF-WAY OR CONTRACTOR'S BREACH OF THE TERMS OR CONDITIONS OF THIS AGREEMENT.

ARTICLE VI.

Contractor shall provide, and shall require any subcontractors employed by it in the performance of the work to provide, in addition to any other form of insurance or bond required by statute, insurance of the following kinds and amounts:

- (1) Contractor's Public Liability and Property Damage Liability Insurance;
 - (2) Automobile Liability Insurance;
 - (3) Railroad's Protective Insurance and Property Damage Liability Insurance;
- and
- (4) Statutory Workmens Compensation coverage.

The limits of liability for the kinds of insurance required above shall be as follows:

Workmen's Compensation coverage in the amounts and with liability coverage as required by applicable state law. Public Liability, Property Damage, and Railroad Protective Liability, Single Limit Coverage of \$3,000,000 per occurrence, \$6,000,000 aggregate. Automobile Liability Insurance with limits of \$500,000 per occurrence, \$1,000,000 aggregate. Public Liability, Automobile Liability, and Railroad Protective Insurance shall provide coverage for both personal injury and property damage.

If any part of the work is subcontracted by Contractor, similar insurance shall be provided by the subcontractors to cover their operations under this Agreement or Contractor shall cover the subcontractors under its policies of insurance.

An insurance certificate covering such insurance shall be furnished to Contractor before entering the right of way and shall be satisfactory to Railway with respect to coverage amount, and character. The insurance certificate shall contain a clause reading: "In the event any of the above policies are materially altered, changed or canceled, The

Exhibit "A" Cont'd

Kansas City Southern Railway Company will be furnished 30 days advance notice in writing."

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed by their respective officers, duly authorized, as of the day and year first above written.

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

By _____

Title _____

Date _____

(Company Name)

By _____

Title _____

Date _____

SAMPLE

**Union Pacific Railroad
Insurance Requirements**

Contractor shall, at its sole cost and expense, procure and maintain during the course of the project and until all project work on property has been completed and the Contractor has removed all equipment and materials from property and has cleaned and restored property to satisfaction, the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a limit of not less \$5,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the State of Illinois.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremens and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$5,000,000 per occurrence and an aggregate of \$10,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. Umbrella or Excess insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. Pollution Liability insurance. Pollution Liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under any indemnity provisions under which Contractor is to indemnify Railroad under this Project.

Contractor shall not assign or subcontract its contract with the State or any contract with Railroad for this Project, or any interest therein, without the written consent of the State or Railroad, as applicable. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law: (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractors Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2)

require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.

I. Contractor waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers' liability or commercial umbrella or excess liability insurance obtained by Contractor required by this agreement.

J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of Illinois.

L. The fact that insurance is obtained by Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of any agreement that Contractor has with the State or Railroad. Damages recoverable by State or Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

**CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT**

**(ILLINOIS)
ONLY REQUIRED FOR WORK OFF OF STATE'S EASEMENT**

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and _____, a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the State of Illinois, acting by and through its Department of Transportation to perform work relating to _____ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's Milepost _____ on Railroad's _____ [Subdivision] [Branch] [at or near DOT No. _____] located at or near _____, in _____ County, State of _____, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated _____ between Railroad and State.

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - TERM; TERMINATION.

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.
- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 6 - CERTIFICATE OF INSURANCE.

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company

[Insert mailing address]

Attn: _____
Folder No. _____

ARTICLE 7 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 8 - ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad _____ Dollars (\$_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished; unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

b. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit C**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit C** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "loss") incurred by any person (including, without limitation, any indemnified party, contractor, or any employee of contractor or of any indemnified party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

b. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the loss, and shall apply regardless of any negligence or strict liability of any indemnified party, except where the loss is caused by the sole active negligence of an indemnified party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any indemnified party shall not bar the recovery of any other indemnified party.

c. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify Railroad under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

d. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the federal employers' liability act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against Railroad.

e. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any indemnified party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26 and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability insurance.** Coverage must include but not be limited to:
- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability insurance.** Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$5,000,000 per occurrence and an aggregate of \$10,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

- E. **Umbrella or Excess** insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. **Pollution Liability** insurance. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:

- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
- (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
- (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
- (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
- (v) Before stepping over or crossing tracks, look in both directions first.
- (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.