



January 18, 2012

UPRR Folder No.: Folder Number

NAME & ADDRESS OF CONTACT

Dear Salutation:

RE: Proposed use of a Width of Road Crossing at-grade temporary haul road crossing at Mile Post Mile Post, on the Name of Branch/Subdivision, in or near City, County & State.

Attached are duplicate originals of a *Contractor's Temporary Road Crossing Agreement* covering your use of the Railroad Company's right-of-way. To properly document your use of the Railroad Company's property, it is necessary that you execute the attached documents. Please return to me the following:

1. **ALL** of the executed documents.
2. Certificate of Insurance, if required.
3. Resolution for document execution, if required.
4. Check made payable to the Union Pacific Railroad Company in the amount of **\$Fee Numeric**. If you require formal billing, you may consider this letter as a formal bill. In compliance with the Internal Revenue Services' new policy regarding their Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

Under Exhibit D of the enclosed Agreement, you are required to procure Railroad Protective Liability Insurance (RPLI) for the duration of this project. As a service to you, Union Pacific is making this coverage available to you. You are not required to purchase this coverage from the Railroad and are encouraged to shop the market for the best available rate. If you decide; however, that acquiring this coverage from the Railroad is of benefit to you, simply contact Mr. Mike McGrade of Marsh USA at 1-800-729-7001.

If we have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void.

Real Estate Department
UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street, MS 1690
Omaha, Nebraska 68179-1690
(fax) 402.501.0340



If you have any questions, please contact me.

Sincerely yours,

PAUL G. FARRELL
Senior Manager Contracts
Phone: (402) 544-8620
e-mail: *pgfarrell@up.com*

DRAFT

Real Estate Department
UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street, MS 1690
Omaha, Nebraska 68179-1690
(fax) 402.501.0340



BCC:

Name of MIPP – Engineering (Public Projects) - MIPP Location

Attached are an extra copy and duplicate originals of the subject agreement. Please handle with the [Political Body/Contractor](#) for execution and return both originals to me for handling for Railroad execution. A fully executed copy will be sent to you when finalized.

DRAFT

Real Estate Department
UNION PACIFIC RAILROAD COMPANY
1400 Douglas Street, MS 1690
Omaha, Nebraska 68179-1690
(fax) 402.501.0340

CONTRACTOR'S TEMPORARY ROAD CROSSING AGREEMENT

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND

NAME OF CONTRACTOR

COVERING

THE CONSTRUCTION, MAINTENANCE AND USE OF A
TEMPORARY AT-GRADE HAUL ROAD CROSSING

AT

RAILROAD MILE POST MILE POST –SUBDIVISION

AT OR NEAR

CITY,
NAME OF COUNTY COUNTY,
STATE

UPRR Folder No.: Folder Number
UPRR Audit No.: _____

CONTRACTOR'S TEMPORARY ROAD CROSSING AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, whose address is 1400 Douglas Street, MS1690, Omaha, Nebraska 68179-1690 (hereinafter "Railroad"), and **(the) NAME OF CONTRACTOR**, a(n) Contractor corporate status, whose address is Contractor Mailing Address (hereinafter "Contractor").

RECITALS:

The Contractor desires the construction, maintenance and temporary use of a private contractor's haul road at-grade crossing (hereinafter "Road Crossing"), consisting of **gravel or asphalt** roadway approaches, a **insert width of road crossing-foot wide concrete, asphalt or timber-planked** crossing surface and all appurtenances thereto, including, but not limited to, any gates or chains, stop signs, guardrails, barriers or drainage facilities across the Railroad's right of way and trackage that Railroad deems necessary for this crossing at Railroad's Mile Post Mile Post on the Subdivision, in or near Location, in the location shown on the Railroad Location Print marked **Exhibit A**, hereto attached and hereby made a part hereof.

The Railroad is willing to grant the Contractor the right to cross its property subject to the terms and conditions contained herein.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1. RAILROAD GRANTS RIGHT; LICENSE FEE.

The Railroad grants to the Contractor the right to cross Railroad's property and track(s) at the location shown on **Exhibit A** subject to the terms set forth herein including **Exhibit B**, hereto attached and hereby made a part hereof. In consideration of the license and permission granted herein, the Contractor agrees to observe and abide by the terms and conditions of this Agreement and to pay to the Railroad a license fee of **FEE (WRITTEN FORMAT) (\$Fee (Numeric Format))** upon the execution and delivery of this Agreement.

ARTICLE 2. CONSTRUCTION OF ROAD CROSSING.

INSTRUCTIONAL NOTE:

Paragraph A below may need to be modified if the Contractor will be furnishing the road crossing materials.

A. The Railroad will:

- furnish the materials for and install the portion of the Road Crossing lying between the rails of the track(s) and for one (1) foot on the outside of each rail, and
 - if applicable, perform other associated work at an estimated cost to the Contractor of Fee (Written Format) (\$Fee (Numeric Format)), as set forth in Railroad's Material and Force Account Estimate dated Date of Railroad Material Force Account Estimate (the "Estimate"), marked **Exhibit C**, attached hereto and hereby made a part hereof.
- B. The Railroad, if it so elects, may recalculate and update the Estimate in the event Railroad does not perform such work within six (6) months from the date of the Estimate.

INSTRUCTIONAL NOTE:

All or a part of this Paragraph C may need to be amended since sometimes Railroad's Material and Force Account Estimate does include a flagging estimate.

- C. The Contractor acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Contractor's use of the Road Crossing. All of such costs incurred by the Railroad are to be paid by the Contractor.
- D. The Contractor, at its sole expense, will perform all grading and surfacing work for the remaining portion of the Road Crossing and install gates or chains at either end of the Road Crossing at the right-of-way lines. In addition, the Contractor shall install, at its sole expense, the drainage facilities, stop signs, guard rails, barriers and other items deemed necessary by Railroad. All construction work shall be done to the satisfaction of the Railroad before the Contractor may begin its use of the Road Crossing.

ARTICLE 3. PAYMENT BY THE CONTRACTOR.

- A. The Contractor agrees to reimburse the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Road Crossing and this Agreement including, but not limited to, actual costs of preliminary engineering review, construction, inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.
- B. The Contractor shall pay the Railroad within thirty (30) days of receipt of billing from the Railroad.
- C. The Contractor confirms that the Railroad shall have one hundred twenty (120) days to submit a final billing to the Contractor after the Railroad completes its work.

ARTICLE 4. DEFINITION OF CONTRACTOR.

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

ARTICLE 5. INSURANCE.

- A. Before commencing any work, the Contractor will provide the Railroad with the insurance binders, policies, certificates and/or endorsements set forth in the Contract Insurance Requirements marked **Exhibit D** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:
*Union Pacific Railroad Company
Attn: Senior Manager Contracts
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179-1690
UPRR Folder No.: Folder Number*

ARTICLE 6. FLAGGING PROTECTION.

- A. The Contractor is prohibited in using the Road Crossing unless a Railroad provided flagman is at the Road Crossing providing flagging protection. The Contractor shall contact the following Railroad employee in connection with the Contractor's use of the Road Crossing:
(Name, Address & Phone Number of MTM)
- B. The presence of a Railroad provided flagman shall in no way relieve the Contractor of its responsibility for policing and supervising the use of the Road Crossing.
- C. The Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of the Contractor commencing its work or using the Road Crossing.
- D. 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, the Contractor shall pay on the basis of the new rates and charges.
- E. Reimbursement to the 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 the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad by assignment of such flagman to other work, even though the Contractor may not be working during such time. When it becomes necessary for the

Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Contractor must provide the 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, the 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 the Railroad if flagging services are needed again after such five day cessation notice has been given to the Railroad.

ARTICLE 7. TERM.

This Agreement shall be effective as of the date first herein written, and, unless sooner terminated as provided in **Exhibit B**, shall continue in full force and effect until Expiration Date.

ARTICLE 8. SPECIAL PROVISIONS.

(Insert any special provisions.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY,
(Federal Tax ID #94-6001323)

By _____

PAUL G. FARRELL
Senior Manager Contracts

NAME OF CONTRACTOR

By _____

Printed Name: _____

Title: _____

EXHIBIT A

To Contractor's Temporary Road Crossing Agreement

Cover Sheet for the
Railroad Location Print

EXHIBIT B

To Contractor's Temporary Road Crossing Agreement

Cover sheet for the
General Terms and Conditions

EXHIBIT B

TO CONTRACTOR'S TEMPORARY ROAD CROSSING AGREEMENT

GENERAL TERMS AND CONDITIONS

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- (a) The rights granted to the Contractor are subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire railroad right of way, and are also subject to the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, fiber optics communication or other wire lines, pipelines and other facilities upon, along or across any or all parts of said right of way, any of which may be freely done at any time by the Railroad without liability to the Contractor or to any other party for compensation or damages.
- (b) The Contractor's rights are also subject to all outstanding superior rights (including those in favor of licensees, lessees of said right of way, and others) and the right of the Railroad to renew and extend the same, and are granted without covenant of title or quiet enjoyment.
- (c) It is expressly stipulated that the Road Crossing is to be a strictly private one and is not intended for public use. The Contractor, without expense to the Railroad, will take any and all necessary action to preserve the private character of the Road Crossing and prevent its use as a public road.

Section 2. MAINTENANCE.

The Contractor, at its own expense, shall maintain the Road Crossing and appurtenances in a manner satisfactory to the Railroad and suitable for the use to which it may be subjected; PROVIDED, HOWEVER, that the Railroad may, if it so desires, maintain, at the Contractor's expense, that part of the Road Crossing lying between the rails of the tracks and for one foot on the outside of each rail. Appurtenances shall include, without limitation, gates, chains, necessary drainage facilities, and any guardrails or barriers needed to confine vehicles using the Road Crossing or to protect the Railroad's property or facilities.

Section 3. USE OF ROAD CROSSING.

The Contractor's use of the Road Crossing shall be conducted without interruption to or delay of operation of the Railroad or of others lawfully using the Railroad's property. In order that said operations may be adequately safeguarded, it is agreed that:

- (a) The Contractor shall not move tractors, bulldozers, caterpillars or other equipment not equipped with pneumatic rubber tires over the Railroad's tracks unless it has first placed rubber pads, wood mats or other protective materials (hereinafter "portable crossings") on the Railroad's tracks so as not to damage or shunt the tracks. The Contractor's use of the portable crossings shall be limited to daylight hours only. Contractor shall not place portable crossings on the Railroad's tracks or use the portable crossings until and unless a railroad flagman is present. Contractor, at its own expense, shall furnish standby equipment capable of removing the portable crossings immediately upon request of the flagman. The portable crossings shall be removed at all times when a railroad train, engine or car is approaching, and, in any event, at the end of each working day, and shall not be stored or placed closer than twenty (20) feet from the center line of the nearest track.
- (b) The Contractor, at its own expense, shall adequately police and supervise all such work and the use of the Road Crossing so as not to endanger, interfere with, hinder or delay operations of the Railroad or of others, nor inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property or facilities of the Railroad or of others.
- (c) If at any time the Railroad is of the opinion that the Road Crossing is being used without due regard and precaution for safety and security, Contractor will at the Railroad's request immediately suspend use of the Road Crossing until it adopts adequate and proper protective measures that are approved by the Railroad.
- (d) Contractor, at Contractor's own expense, will take suitable and adequate precautions to avoid collisions between vehicles using the Road Crossing or between vehicles using the Road Crossing and the Railroad's trains or equipment. Vehicles using the Road Crossing shall not exceed ten (10) miles per hour in approaching or crossing the tracks. No vehicle shall attempt to cross said tracks until directed to do so by the Railroad's flagmen. No vehicle shall stop upon the Railroad's tracks.
- (e) At all times when the Road Crossing is not in use, the Contractor will barricade it by closing and locking the gates or chains.
- (f) The Contractor, at its own expense, will keep the tracks, flangeways and drainage facilities free and clear from gravel, rock, earth and other debris and material.

Section 4. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- (a) Fiber optic cable systems may be buried on the 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. The Contractor shall telephone the 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 (a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is

buried anywhere on the Railroad's premises to be used by the Contractor. If it is, the Contractor will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad Company's premises.

- (b) In addition to other indemnity provisions in this Agreement, the Contractor shall indemnify and hold the 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 the Contractor, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on the 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 the Railroad's property. The Contractor shall not have or seek recourse against the 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 the Railroad's property or a customer or user of services of the fiber optic cable on the Railroad's property.

Section 5. RELOCATION OF ROAD CROSSING.

If in the exercise of its rights under Section 1, the Railroad requires the relocation or modification of the Road Crossing, the Railroad shall, at the Contractor's expense, modify or move the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail, and the Contractor shall, at its own expense, modify or move the remaining portion and the appurtenances thereto.

Section 6. INDEMNITY.

- (a) To the extent not prohibited by applicable statute, the Contractor shall indemnify, defend and hold harmless the 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, the Contractor, or any employee of the Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by the Contractor, (ii) the presence or any use of the Road Crossing, (iii) any act or omission of the Contractor, its officers, agents or employees, or (iv) any breach of this Agreement by the Contractor.
- (b) The right to indemnity under this Section 6 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) The Contractor expressly and specifically assumes potential liability under this Section 6 for claims or actions brought by the Contractor's own employees. The Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Railroad under this Section 6. The 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 the Contractor in any attempt to assert liability against the Railroad.
- (e) The provisions of this Section 6 shall survive the completion of any work performed by the Contractor or the termination or expiration of this Agreement. In no event shall this Section 6 or any other provision of this Agreement be deemed to limit any liability the Contractor may have to any Indemnified Party by statute or under common law.

Section 7. LIENS

The Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by the Contractor. The 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 the Railroad for any such work performed. The Contractor shall indemnify and hold harmless the 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 the Contractor fails to promptly cause any lien to be released of record, the Railroad may, at its election, discharge the lien or claim of lien at the Contractor's expense.

Section 8. TERMINATION ON BREACH OR ON NOTICE.

- (a) It is agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by the Contractor shall, at the option of the Railroad, forthwith work a termination of this Agreement and all rights of the Contractor hereunder. A waiver by the Railroad of a breach by the Contractor of any covenant or condition of this Agreement shall not impair the right of the Railroad to avail itself of any remedy for any subsequent breach thereof.
- (b) This Agreement may be terminated by either party on thirty (30) days' written notice to the other party.

Section 9. REMOVAL OF ROAD CROSSING.

Prior to expiration or upon termination of this Agreement, the Contractor shall, unless notified otherwise by the Railroad, remove at the Contractor's own expense, the Road Crossing and all appurtenances thereto and restore the Railroad's right of way to a condition satisfactory to the Railroad. If Contractor fails to do so within five (5) days after such termination, the Railroad may perform said work at the expense of the Contractor, and the Contractor will reimburse the Railroad for such expense, on demand.

Section 10. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, but the Contractor shall not assign this Agreement or any interest herein without the prior written consent of the Railroad. If the Contractor fails to secure the Railroad's consent to any assignment, the Contractor will continue to be responsible for obligations and liabilities assumed herein.

EXHIBIT C

To Contractor's Temporary Road Crossing Agreement

Cover Sheet for the
Railroad's Material Cost and Force Account Estimate

EXHIBIT D

To Contractor's Temporary Road Crossing Agreement

Cover Sheet for the
Contract Insurance Requirements

EXHIBIT D

TO CONTRACTOR'S TEMPORARY ROAD CROSSING AGREEMENT

CONTRACT INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability Insurance. Commercial general liability (CGL) with a limit of not less than \$5000,000 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.

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 combined single limit of not less \$5,000,000 for each accident.

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(s) affected by this Agreement.
- 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.

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 \$2,000,000 per occurrence and an aggregate of \$6,000,000. 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.

Other Requirements

F. 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.

G. 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.

H. 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.

I. 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.

J. 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(s) in which the work is to be performed.

- K.** The fact that insurance is obtained by Contractor or by Railroad on behalf of 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.